



In re Estate of Peter John Kimuyu (Deceased) (Probate & Administration 76 of 2021) [2025] KEHC 10960 (KLR) (Family) (19 June 2025) (Judgment)

Neutral citation: [2025] KEHC 10960 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

PROBATE & ADMINISTRATION 76 OF 2021

CJ KENDAGOR, J

JUNE 19, 2025

IN THE MATTER OF THE ESTATE OF PETER JOHN KIMUYU (DECEASED)

BETWEEN

MIRIAM MUKONYO DAVID 1ST APPLICANT

AARON KITUKU MIRIAM 2ND APPLICANT

PEACE MBENGE MIRIAM 3RD APPLICANT

AND

ANNAH MUNYIVA KIMUYU 1ST RESPONDENT

MARK MUMO 2ND RESPONDENT

JOYCE MWIKALI 3RD RESPONDENT

JUDGMENT

1. The deceased to whom this estate relates, Peter John Kimiyu, died on 23rd July, 2019. The 1st and 3rd Respondents applied for Letters of Administration intestate in their capacities as wife and daughter, respectively. They were issued with a Grant of Letters of Administration Intestate on 17th August, 2021. The Court confirmed the grant on 8th June, 2022 and a Certificate of Confirmation of Grant was issued on 10th June, 2022.
2. The Applicants have presently moved the Court via Summons for Revocation of Grant dated 13th March, 2024. The Application seeks the following orders;
 - a. That the Ruling made on the 15th March, 2022 that led to the issuance of the Certificate of Confirmation of Grant be set aside



- b. That the Confirmed Grant be revoked and or annulled on the ground that the proceedings to obtain the grant were defective in substance and/or was also obtained fraudulently by making of a false statement or by the concealment from the Court of something material to the case.
 - c. Spent
 - d. That costs be in the cause.
3. The Respondents opposed the Summons for Revocation and filed a Replying Affidavit dated 19th December, 2024.
 4. The hearing of the summons was conducted via viva voce evidence. Parties, in addition to the affidavits on record, filed witness statements and submissions at the conclusion of the trial.

The Applicants' case

5. The Applicants asserted that the Respondents had obtained the grant fraudulently by making false statements and concealing material facts. Their evidence was that the deceased had another family besides the Respondents.
6. They asserted that the 1st Applicant was the wife of the deceased, and that the 2nd and 3rd Respondents are his children, and therefore they are all entitled to benefit from the deceased's estate in addition to the first family (Respondents).
7. The Applicants contend that the Respondents were aware of the above assertion and intentionally chose to omit it from the petition for Letters of Administration to orchestrate their disinheritance.

The Respondents' Case

8. The Respondents assert that there was no concealment and that the grant was obtained without any fraudulent means.
9. The Respondents asserted that the deceased had no other family and was married to one wife (the 1st Respondent). Together, they had two children (the 2nd and 3rd Respondents).
10. According to the Respondents, they are the only heirs of the deceased, and they submitted that the Applicants have not fulfilled their burden of proof to show that they are entitled to inherit from the deceased.

Analysis and determination

11. The Applicants in the prayers sought in the application have asked the Court to revoke/annul the certificate of confirmation of grant. The Court in *In re Estate of Ngai Muranga (Deceased)* (Civil Appeal E044 of 2023) [2024] KEHC 3649 (KLR) (17 April 2024) (Judgment) faced a question on revocation of certificates of confirmation of grant and held as follows;

“ 18. A certificate of confirmation of grant is an order of the court emanating from the substantive grant of representation, in this case a grant of letters of administration, which is what may be revoked on the grounds set under section 76 of the *Law of Succession Act*. The certificate of confirmation of grant (which I presume is what the respondent has termed as ‘confirmed grant’) cannot be revoked but rather, set aside. Being an order of the court, it may be the subject



of a review or an appeal for purposes of redistribution of the estate only and not removal or appointment of an administrator.”

12. I agree with the above decision; therefore, the Court can only revoke the grant under Section 76 of the Law of Succession. In their submissions, they stated the position correctly regarding the revocation or annulment of the grant and asked the Court to set aside the confirmation of the grant.

13. Section 76 of the Law of Succession Act makes provision for revocation/ annulment of grants on various grounds;

Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

14. The following issues arise for determination by the Court;

- i. Whether the grant was obtained fraudulently by making of false statement or concealment of material facts;
- ii. Whether the 1st Applicant is the wife of the deceased and/or a beneficiary of the deceased’s estate;
- iii. Whether the 2nd and 3rd Applicants are beneficiaries and or dependants of the deceased.

Whether the 1st Applicant is the wife of the deceased and/or a beneficiary of the deceased’s estate;

15. The 1st Applicant testified that she met the deceased in 1994 and out of their relationship the 2nd Applicant was born in 1995 and the 3rd Respondent in 2001. She stated that the deceased had married her under Kamba Customary Law in the year 2000. In cross-examination, she acknowledged that no dowry was paid.

16. PW4 stated that the deceased married the 1st Applicant as his second wife and lived together as husband and wife after they disagreed with the 1st Respondent. The marriage certificate produced by the 1st Respondent showed that the marriage between the 1st Respondent and the deceased was registered with the Registrar of Marriages in Nairobi, as having taken place on 10th July, 1986. Although the 1st Applicant and PW4 claimed that the deceased had officially divorced the 1st Respondent, there was no solid evidence to support this assertion.

17. The 1st Applicant claimed that they lived together with the deceased, but there was no evidence to corroborate this assertion. Furthermore, the 1st Applicant failed to provide any documentation that would demonstrate the children attended school at the Muua farm as she had stated.

18. Compounding her credibility issues, there was evidence showing that the 1st Applicant was not residing with the deceased at the time of his passing. From PW4’s testimony, it appears that the period in question was longer than 5 years before he passed away.



19. Additionally, no evidence was presented to suggest that she or the children participated in the funeral arrangements or attended the deceased's burial as family members.
20. Furthermore, no documentation or credible witness testimony was provided to verify that the traditional rites for Kamba Customary Marriages had taken place. The Applicant only claimed it was a customary marriage without providing sufficient evidence to support this claim.
21. The claims concerning the marital status of the 1st Applicant in relation to the deceased were largely unsubstantiated. Despite assertions made by the Applicants and PW4, no credible documentation or testimony was presented to verify the nature of their relationship, making it difficult to draw any definitive conclusions about the 1st Applicant's claims regarding their marital status.

Whether the 2nd and 3rd Applicants are beneficiaries and or dependants of the deceased;

22. The Applicants maintained that the 2nd and 3rd Applicants were the deceased's children. The Applicants acknowledged that the birth certificates do not indicate the deceased's name as their father.
23. The explanation provided by the 1st Applicant lacks credibility; she claimed that she omitted the father's name from the birth certificates and that the children adopted her first name as surname in the Identity Cards due to conflicts with the deceased's family. This rationale is unconvincing and raises questions about the true circumstances surrounding the situation, as the 1st Applicant claimed to have access to the deceased's identification documents, among other materials, which would have facilitated the registration.
24. While other types of evidence could also establish paternity, the Applicants did not suggest or seek DNA testing to alleviate any concerns, given the overall questionable reliability of their evidence as analyzed.
25. Even in the absence of the above, there was no evidence that the Deceased had taken and considered the 2nd and 3rd Applicants as his children, nor that he maintained them during his lifetime.
26. Section 29 of the [Law of Succession Act](#) defines dependant as;
 - a. the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
 - b. such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death;
27. The Applicants do not meet the specified conditions and are not considered dependants under the Law of Succession.

Whether the grant was obtained fraudulently by making of false statement or concealment of material facts;

28. The 1st and 3rd Respondents in the petition for Letters of Administration clearly outlined the rightful heirs of the deceased's estate, as well as the two properties that constitute the estate.
29. The Respondents followed the appropriate procedure for processing the transfers after succession, even though the original titles were unavailable. It was stated that the titles had been deposited at the Chief's Office by the deceased. If the copies or original titles were obtained by the 1st Applicant or PW4,



who confirmed they were at the Chief's Office, then the correct course of action would have been to have them handed over to the administrators.

30. There is evidence of a case pending in the Environment and Land Court in Machakos, Civil Suit O.S. E004 of 2024, involving the Respondents and Peter Wambua Ndola, who is listed in the search certificate as having a purchaser's interest. This case will be determined by the ELC Court. However, as the findings in this Succession Cause indicate, the Applicants have no legal rights over the properties in question, and any restrictions they may have imposed are without merit and unlawful.
31. The Grant of Letters of Administration intestate issued on 17th August, 2021 was obtained through a legitimate process.
32. Disposition
 - i. The Application dated 13th March, 2024 is dismissed.
 - ii. The caution and any restrictions imposed on the properties Nairobi/Block 109/2018 and Mavoko Town Block 3/2907 by the Applicants are hereby lifted.
 - iii. Each party to bear own costs of the case.
33. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS
ONLINE PLATFORM ON THIS 19TH DAY OF JUNE, 2025.**

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Githu Advocate for the Applicants

Ms. Karani Advocate for the Respondents

