



REPUBLIC OF KENYA



**In re Estate off Mwaura Kingeche (Deceased) (Succession Cause 420 of 2013 & 3071 of 2004 (Consolidated)) [2025] KEHC 8333 (KLR) (Family) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8333 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**SUCCESSION CAUSE 420 OF 2013 & 3071 OF 2004 (CONSOLIDATED)**  
**PM NYAUNDI, J**  
**JUNE 16, 2025**  
**IN RE ESTATE OFF MWAURA KINGECHE (DECEASED)**  
**(SUCCESSION CAUSE 420 OF 2013 & 3071 OF 2004**

**RULING**

1. The Applicants herein are the registered owners of property known as LR No. Nairobi/ BLOCK 1X0/ 2X6, they present summons for revocation of grant dated 6<sup>th</sup> May 2024 in which they seek inter alia, the revocation of the rectified certificate of confirmation of the grant herein and or in the alternative, they ask that the court remove the parcel of land known as LR No. Nairobi Block 1X0/2X6 from the list of assets of the estate.
2. The respondent are the administrators of the estate of the deceased herein and challenge the title that the applicants hold, they have initiated ELC No. 133 of 2024, in which they seek;
  - a. An order declaring the plaintiff as the sole proprietor of the Suit plots known as Plot No. 667 (now Nairobi/ Block 1X0/2X6), Plot No. 5X4 (now NBI/ BLOCK 1X0/5X6) and Plot No. 7X0 (Now NBI/ BLOCK 1X0/3X1) respectively situate at Thome within Nairobi County.
  - b. An order of cancellation of the title documents held by the 1<sup>st</sup> to 6<sup>th</sup> Defendants and a rectification of the register to reflect the estate of the Mwaura Kingeche aka David Mwaura Kingeche [ deceased] as the proprietor of the suit plots.
  - c. An order of permanent injunction restraining the defendants jointly and severally their servants and or/ agents and any other third party from trespassing on, wasting, damaging, demolishing, alienating, developing and or adversely interfering with the suit plots known as NBI BLOCK 1X0/ 2X6, NBI BLOCK 1X0/ 3X3 and NBI/ BLOCK 1X0/3X1 respectively situate at Thome in the Nairobi County.
  - d. An order of vacant possession and/ or eviction to issue against the 1<sup>st</sup> to 6<sup>th</sup> Defendants from the suit plots within 30 days from the date of judgment.



- e. Mesne profits
  - f. In the alternative, the 7<sup>th</sup> Defendant be ordered to compensate the Plaintiffs with the current market value of the suit plots and / or alternative plots of similar size and value as the suit plots situate in the same locality as the suit plots.
  - g. Costs of this suit
  - h. Any other relief that this Honourable Court may deem fit and just to grant
3. The Application was canvassed via written submissions, both parties filed their submissions. It is the applicants' submission that the probate court can only administer the free estate of the deceased and refers to the decisions in *Re Estate of Atibu Oronje Asioma (Deceased)* [2022] KEHC 1X046 (KLR) and *Re Estate of Stone Kathuli Muinde (Deceased)* [2016] KEHC 3725 (KLR) and *Estate of G. K. Kirima* [2025] KEHC 2557 (KLR)
  4. It is therefore submitted that the applicant has met the criteria for the revocation of grant and that the subject property should be excluded from the certificate of confirmation of grant.
  5. In response, it is submitted that the applicant lacks the locus to present the application and he should have sought leave to be joined as an interested party. Secondly it is submitted that the application is defective as the applicant seeks to revoke the certificate of rectified certificate of confirmation of grant which is not provided for under Section 76 of the *Law of Succession Act*. Reference is made to the Court of Appeal decision in *Re Estate of Ngai Muranga* [2024] KEHC 3646.
  6. The respondent concludes submissions by contending the title that the applicants have to the subject land was obtained fraudulently and this is the gist of the matter they have initiated before the Environment and Land Court.

#### **ANALYSIS AND DETERMINATION.**

7. Having carefully considered the pleadings herein alongside the submissions filed and the relevant law, the issues for determination are;
  - i. Whether the applicant has the locus standi to present the application?
  - ii. Whether the Court should grant the orders sought?
  - iii. Who should pay costs
8. On the 1<sup>st</sup> issue, the High Court in *re Estate of Jonathan Kharakhara Khakina (Deceased)* (Succession Cause 11 of 2023) [2024] KEHC 11420 (KLR) (30 September 2024) (Ruling) was faced with a similar question. It defined interested party under Section 76 of the *Law of Succession Act* as-  

An "Interested person" or "person interested in an estate" includes, but is not limited to, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual or a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. (Emphasis Supplied).
9. I find therefore that the applicant as a person laying claim to ownership to property that is said to be estate property does have the locus to present this application. In any event in *re Estate of David Aura Wesonga (Deceased)* (Succession Cause 257 of 2012) [2023] KEHC 20222 (KLR) (17 July 2023) the Court clarified that the *Law of Succession Act* and the Probate and Administration rules did not provide



for joinder of interested parties, meaning that whoever sought intervention in a probate matter would proceed to file their application, without seeking leave to be added as a party.

10. The 2<sup>nd</sup> issue relates to whether the applicant is entitled to the orders that he seeks, as correctly stated by the respondent it is well settled by judicial precedent that an application that seeks to revoke a certificate of confirmation of grant or as in the current case, a rectified certificate of confirmation of grant is incurably defective, in *Re Estate of Kiberenge Mukwa (Deceased)* [2021] eKLR the Court expressed itself thus-

I am being invited to revoke a certificate of confirmation of grant. The certificate is not an order of the court. A certificate is not a judicial order. It is an extract from a court order made in the confirmation proceedings. The certificate is generated from the court order. It is important for the parties to differentiate between the character of a grant of representation and a certificate of confirmation of grant. A grant is a court order; it is a judicial pronouncement to the effect that some person has been appointed as administrator and granted the power to act as such. The certificate of confirmation of grant on the other side merely certifies that orders have been made to confirm the grant. The certificate of confirmation of grant is not the order itself but a confirmation that the grant has been confirmed and the shares of the beneficiaries ascertained.

11. The application as framed is therefore defective and the Court cannot grant the orders sought. It is therefore dismissed on this ground.
12. The parties are currently before the Court that has the mandate to resolve the issue of ownership over the disputed parcel of land. The ELC Court has already issued an order to maintain the status quo. Both the parties are prevented from acting in a way that would jeopardise the rights of the other pending the determination of the matter. For that reason, it is not necessary for me to invoke this court's inherent jurisdiction under Section 47 of the *Law of Succession Act* and rule 73 of the Probate and Administration rules. The orders on the inclusion or exclusion of Nairobi Block 1X0/2X6 within the estate of the deceased, shall await the finalization of ELC No. 133 of 2024. In any event the respondent is unable to transmit the same until the issue of ownership is determined.
13. The final orders herein are-
- a. Application dated 6<sup>th</sup> May 2024 is dismissed
  - b. Each party will bear their own costs
  - c. The matter will be mentioned on 12<sup>th</sup> November 2025 to confirm the status of ELC NO. 133 of 2024 and take directions.

It is so ordered

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16<sup>TH</sup> DAY OF JUNE 2025.**

**P. M. NYAUNDI**

**JUDGE**

In the presence of:

Kigotho for the Applicant

Fardosa Court Assistant

