



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of Wellington Mwalungo (Deceased) (Succession Cause
291 of 2008) [2025] KEHC 8291 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 291 OF 2008**

G MUTAI, J

JUNE 12, 2025

IN THE MATTER OF THE ESTATE OF WELLINGTON MWALUNGO (DECEASED)

BETWEEN

SHALLET ZAWADI MWALUNGO 1ST APPLICANT

PHOEBE MNYAZI MWALUNGO 2ND APPLICANT

WINNIE NAZI MWALUNGO 3RD APPLICANT

AND

FLORENCE WELLINGTON 1ST RESPONDENT

KENNETH CHIKO MWALUNGO 2ND RESPONDENT

RULING

1. The deceased, whose estate is the subject of these proceedings, died on 7th February 2008. The cause of death was given as “cardiopulmonary arrest due to perforated PUD”. He died at Kilifi District Hospital. His place of residence was given as Chumani.
2. The Petition for the grant of letters of administration intestate in respect of the deceased’s estate was filed on 6th October 2008 by Benjamin Mwadzooyo Rondo, Florence Wellington Mwalungo, and Kenneth Chiko Mwalungo in their respective capacities as brother, widow, and son of the deceased.
3. The grant was issued to them on 3rd June 2009. The grant was confirmed on 30th July 2010. In the certificate of confirmation of grant, the estate of the deceased was identified as being:-
 1. Title No. Kilifi/Roka/420
 2. Title No Kilifi/Roka/1138;
 3. Funds held in 2 bank accounts;



4. Ground rent for a portion of Title No Kilifi/Roka /420 leased to Airtel/Celtel Kenya Ltd; and
5. Shares in various companies.

The certificate of confirmation of grant had a schedule with the agreed mode of distribution of the said estate.

4. The 1st administrator passed on before the estate could be fully administered. The two remaining administrators, however, do not appear to have taken any meaningful steps to complete the administration of the estate.
5. In the Summons for Revocation or Annulment of Grant dated 1st July 2024, the three applicants sought to have the grant issued herein revoked on the grounds that “the persons to whom the grant was made have failed after due notice and without reasonable cause to proceed diligently with the administration of the estate.”
6. The summons was supported by the annexed affidavit of the applicants, sworn on 1st July 2024, in which they accused the administrators of not having distributed the deceased's property in the prescribed manner. Among the documents annexed to the said affidavit was a grant issued to Shallet Zawadi Mwalungo by the Senior Principal Magistrate Court at Kilifi in Succession Cause No. 28 of 2023.
7. In a further affidavit sworn on 28th February 2025, the applicants deponed that upon becoming aware of the grant issued and confirmed in this cause, they withdrew the application before the Senior Principal Magistrate Court on the condition that the estate would be distributed in accordance with the confirmed grant. The applicants filed a further affidavit sworn on 3rd March 2025.
8. Vide letters dated 24th June and 26th November 2024, they sought to have the estate distributed as per the certificate of confirmation of grant. They urged that the administrators were under an obligation to complete the administration within 6 months, something they had failed to do; for that reason, they prayed that the grant be revoked.
9. In her reply affidavit sworn on 31st January 2025, Florence Wellington and Kenneth Chiko Mwalungo denied that they had failed to administer the estate faithfully. They averred that they had distributed all the assets of the deceased, except for the two plots. They blamed the delay in completion on the unavailability of Benjamin Mwadzoyo Rondo's death certificate and interference by the applicants. The administrators thus prayed that the application be dismissed.
10. The Court notes that the draft transfers annexed to the replying affidavit are undated. Their provenance and evidentiary value are, therefore, highly in doubt.
11. The application was canvassed by way of Written Submissions under the direction of this Court issued on 11th February 2025.
12. The submissions of the Applicants are dated 28th February 2025. According to the said submissions, it was urged that the administrators had failed to faithfully administer the estate, even after due notice was given to them. Counsel for the applicants urged that the administrators had not subdivided the two parcels of land, the funds in the accounts had never been distributed, and the ground rent receivable from Airtel had not been shared among the beneficiaries as per the schedule of distribution.
13. It was submitted that sufficient notice was issued to the administrators, but that notwithstanding, they failed to proceed with the administration.



14. The applicants identified the sole issue to be determined as whether the grant should be revoked. The counsel for the applicants argued that the administrators failed to proceed diligently with the administration of the estate despite notices having been issued to them. Reliance was placed on the provision of Section 76 (d) (e) of the *Law of Succession Act*.
15. It was also urged that under Section 83 of the *Law of Succession Act*, the administrators had the duty of completing the distribution of the estate within 6 months of the confirmation of the grant. Counsel relied on the case of Violet Wamaitha Weru vs Samuel Kariuki Weru & another [2016]eKLR. It was argued that the administrators had failed to complete the administration, had not provided an explanation for their failure, and that, for this reason, the grant should be revoked.
16. Counsel for the applicants thus urged that the application be allowed and that the grant issued to the administrators be revoked.
17. In submissions filed on 6th April 2025, the administrators denied that they had failed to administer the estate faithfully. They urged that since the grant had been confirmed, the first ground of the application was no longer viable. Counsel for the respondents urged that there was no impropriety on their part. He submitted that they had tried their best to have the transfer by assent effected, but that the 1st applicant intermeddled.
18. It was submitted that the applicants abandoned their prayer for the provision of accounts, which, to the administrators' counsel, implied that there had been proper administrators of the estate.
19. Counsel relied on the case of re Estate Laban Keigi Waweru [2022]KEHC 10669 (KLR) (Ruling); re Estate of Mzee Ismail [2024]KEHC 7988 (KLR) (Ruling); re Estate of Agwang Wasiro [2020]eKLR, and re Estate of Benjamin Kiregenyi Muiri [2022]eKLR.
20. Mr Lijoodi, learned counsel for the respondents, thus prayed that the application be dismissed.
21. I have reviewed the summons for revocation of grant dated 1st July 2024, the responses thereto, the annexures, and the written submissions of the parties. It appears to me that the sole issue for determination is whether the grant issued to the administrators should be revoked on the grounds that they failed to faithfully administer the estate despite being given due notice.
22. It is a common ground that the grant herein was issued on 3rd June 2009. This was confirmed on 30th July 2010. The period that has lapsed since then is almost 15 years. Despite the passage of time, the estate has not been fully administered. It is also agreed that the applicants filed a succession cause in the Kilifi Senior Principal Magistrate Court and were issued a grant. Although the summons for confirmation of the Grant was withdrawn, the petition is nevertheless still subsisting in the said Court.
23. The *Law of Succession Act* imposes duties on administrators. These suits are set out in section 83 of the *Law of Succession Act* as being the following:-
 - “Personal representatives shall have the following duties-
 - (a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;
 - (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;



- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account; and
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

24. My understanding of the foregoing provision is that an administrator, with a confirmed grant, must distribute the estate within 6 months of the confirmation of the grant and should account for their activities. In this case, it isn't contested that the estate hasn't been fully administered, notwithstanding the amount of time that has passed. No statement of account has been filed either. Are these failures sufficient to justify a revocation of the grant?

25. Section 76 of the *Law of Succession Act* provides that:-

“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;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-



- (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.”

26. The ground relied upon in this case is that the administrators failed, despite being given due notice, to administer the estate properly. Is that the case? The notice was given on 24th June 2024. The Summons herein was filed on 1st July 2024, 7 days later. Could a 7-day notice amount to due notice? Although what amounts to due notice hasn't been defined in the Act, it would appear to me that due notice must be such notice as would enable a party upon whom a notice is served to comply with it. Compliance in this case would involve transferring landed properties and the funds in the bank accounts, and providing accurate accounts of the estate. I am not convinced that such actions could be taken within 7 days, nor do I think that the applicants could reasonably expect that remedial action could be undertaken within such a short time.

27. I must point out that a grant may be revoked under section 76 (d)(ii) only if a due notice is issued. Without due notice, the grant may not be revoked.

28. In the circumstances, I am unable to agree with the applicant that the grant issued herein may be revoked for the reason they have given.

29. The foregoing notwithstanding, I note that a grant may be revoked either on application of a party or by the Court on its own motion. Revocation of a grant is an exercise of discretionary power by the Court, as stated by Mwita, J, in the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR. The Court stated as follows:-

“13. Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

30. In the case of *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] KEHC 6553 (KLR), W Musyoka, J stated as follows:-

“8. Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory



procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

31. In this case, more than 14 years have lapsed since the grant was confirmed. I did not see any convincing evidence of attempts by the administrators to transfer the properties and funds in bank accounts to the beneficiaries, nor to account for monies received from Airtel. What was provided were draft transfers, which, with due respect, appeared to me to have been generated fairly recently.
32. Notwithstanding the foregoing, I note that the administrators did not involve all family members in the petition for the grant of representation. There are no consents by beneficiaries with equal right to apply for the grant. The application was made surreptitiously. In the circumstances, I am persuaded that the grant herein should be revoked for having been made under proceedings that were incurably defective in substance.
33. Given the circumstances of this case, I revoke the grant issued to Florence Wellington and Kenneth Chiko Mwalungo on 3rd June 2009. In the interest of justice, I hereby grant to Shallet Zawadi Mwalungo and Phoebe Mnyazi Mwalungo. The said grant shall be confirmed forthwith.
34. I order Florence Wellington and Kenneth Chiko Mwalungo to provide a statement of account of the estate from the time they were appointed as administrators up to date. The statement of account should state:-
 1. What incomes accrued to the estate during the time they were administrators?
 2. What happened to the balances in the bank/sacco accounts?
 3. Ground rent received from Airtel/Celtel Kenya Ltd and its use;The accounts must be provided within 30 days of the date hereof.
35. Order that the new administrators complete the administration of the estate within 120 days of the date hereof and comply with section 83(g) of the *Law of Succession Act*.
36. In exercise of my supervisory powers under Article 165 (6) and (7) of *the Constitution*, I revoke the grant issued in the Senior Principal Magistrate’s Court at Kilifi in Succession Cause No 28 of 2023; re Estate of Wellington Mwalungo on 18th May 2023. I order that the said file be closed forthwith.



37. As this is a succession matter, I make no orders as to costs.

38. It is so ordered.

DATED AND SIGNED AT MOMBASA THIS 12TH DAY OF JUNE 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

No appearance for the Applicants;

No appearance for the Administrators/Respondents; and

Arthur – Court Assistant.

