



In re Estate of Nyambura Karanja Gachugu (Deceased) (Succession Cause E3426 of 2022) [2025] KEHC 10852 (KLR) (Family) (9 June 2025) (Judgment)

Neutral citation: [2025] KEHC 10852 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE E3426 OF 2022

CJ KENDAGOR, J

JUNE 9, 2025

IN THE MATTER OF THE ESTATE OF NYAMBURA KARANJA GACHUGU (DECEASED)

BETWEEN

RACHAEL NJOKI KARANJA 1ST APPLICANT

EVERLYNE NYAMBURA KARANJA 2ND APPLICANT

SAMUEL WANYIRI NDUNGU 3RD APPLICANT

AND

ROSE WANJIKU IRUNGU RESPONDENT

JUDGMENT

1. The Deceased, Nyambura Karanja Gachugu, died on 23rd April, 2016. The Court issued Letters of Administration Intestate with respect to her estate to Rose Wanjiku Irungu (the Respondent herein) on 28th February, 2023 and the same was confirmed on 23rd October, 2023.
2. The Applicants, Rachael Njoki Karanja and Everlyne Nyambura Karanja, are grandchildren of the Deceased. Their father, Stephen Karanja Thinda, was the son of the Deceased, but he had died before her in 2017. They were dissatisfied with how the grant was obtained, and confirmed and felt they had been excluded as beneficiaries.
3. They brought the instant application dated 2nd September, 2024 seeking the following orders;
 1. That the Grant of Letters of Administration issued and confirmed on 23rd October, 2023 to Rose Wanjiku Irungu the purported administrator of the estate of Nyambura Karanja Gachugu (now deceased), be revoked since the said Grant omits other beneficiaries being the Applicants herein who are the grandchildren of the deceased respectively.



2. That this Honourable Court be pleased to appoint the Applicant herein Rachael Njoki Karanja as a co-administrator to the Estate of the Deceased herein together with Rose Wanjiku Irungu.
 3. That this Honourable Court be pleased to issue an order of stay of execution of Certificate of Confirmation of Grant dated 23rd October, 2023 pending the hearing and determination of this application.
 4. That this Honourable court be pleased to issue a temporary injunction against the Respondent and/or her agents/assigns from sale, leasing, charging, subdivision, transmission and/or in any way dealing with the properties known as Nairobi/Block 105/10493 (formerly plot no. P.1198 Embakasi Ranching Company Limited) and LR No. 8/Gitura-Kairichi/388 pending the hearing and determination of this application.
 5. Any other order this court deems fit and just to grant.
 6. That the costs of this Application be provided for.
4. The Application was supported by an affidavit sworn by the 1st Applicant and dated 2nd September, 2024. She stated that they are grandchildren and dependants of the Deceased. She stated that they are daughters of Stephen Karanja Thinda, who is a son of the Deceased and who died on 18th November, 2017. She also stated that their late father had built his home on LR No. 8/Gitura-Kairichi/388 and that is where both their parents are buried. She averred that the Respondent concealed and excluded their names from the list of beneficiaries in the application for grant.
 5. She stated that the Respondent has advertised the property known as Nairobi/Block 105/10493 (formerly plot no. P. 1198 Embakasi Ranching Company Limited) on various platforms including Facebook. She deponed that they are rightfully entitled to inherit through their father's share to the estate. She stated that they are at risk of losing the only home they have known all their lives should this court fail to revoke the confirmed grant to enable all beneficiaries to be included in the estate and the family to agree on its distribution. She also prayed to be made a co-administrator to the Estate of the Deceased.
 6. Another application was lodged on 3rd September, 2024 by Samuel Wanyiri Ndungu (referred to as Objector herein). The Objector is a grandson of the Deceased. His father, Gibson Ndung'u Mwangi, was a son of the Deceased but had died before her.
 7. He was dissatisfied with how the grant was obtained and confirmed grant and felt he had been excluded as a beneficiary. He lodged an objection seeking revocation and annulment of the grant issued to the Respondent.
 8. In his application, he sought several orders, namely;
 - a. Spent.
 - b. That the Grant of Letters of Administration intestate issued on the 28th February, 2023 to Rose Wanjiru Irungu and the Certificate of Confirmation of Grant dated 23rd October, 2023 in the estate of Nyambura Karanja Gachugu who died on 23rd April, 2016 be revoked and/or annulled.
 - c. Spent.
 - d. Spent.



- e. The costs of this application.
9. The grounds of the application are enlisted on the face of the application. He stated that the Grant of Letters of Administration was issued fraudulently and by misrepresentation of facts. He stated that the Respondent failed to disclose that there were other dependents to the Deceased, who included him. He stated that he is the only son to the late Gibson Ndungu Robert Mwangi who was the son to the Deceased. He stated that he inherited a house from his father which is situated at one of the Deceased's properties Nairobi/Block 105/10493 and that he has been staying on the said property since his childhood to date.
10. He stated that he was not consulted when the process of filing succession begun and that the Respondent has since shown intention of selling the said plot by advertising for its sale in various platforms such as Facebook. He averred that the said sale will adversely affect him since his home is on the said property and has been living there for the past 25 years together with his family. He supported these grounds with an affidavit sworn by him and dated 3rd September, 2024. In the affidavit, he maintained that he was not provided for from the estate of the Deceased yet he was one of the dependants. He stated that the sale of the property will render him and his family completely homeless and destitute.
11. The Respondent filed a Replying affidavit sworn by her and dated 3rd October, 2024 in which she replied to the two applications brought by the Applicants and the Objector. Concerning LR No.8/Gitura-Kairichi/388, she stated that it is an ancestral land and that the parcel was to remain within the family so that any deceased family member was to be buried on the said parcel. She stated that the Applicants were not dependants within the meaning envisaged under the law. Thus, she stated that their application to have the grant revoked should be dismissed as well as their request to be joined in as co-administrators.
12. Concerning the Objector's application, the Respondent stated that it should be dismissed. She stated that the Objector is not a dependant of the Deceased within the meaning of the *Succession Act*. She argued that the Objector's paternity is a triable issue because he was not a biological child of her deceased sibling. She denied that she has attempted to sell off Nairobi/Block 105/10493 (formerly plot no. P.1198 Embakasi Ranching Company Limited) and accused the Objector of making such claims to obtain the sympathy of this court. She also stated that the Objector had on a few occasions planned to sell the parcel.
13. The Applicants filed a further affidavit dated 4th February, 2025 and sworn by the 1st Applicant. She agreed with the Respondent that LR NO.8/Gitura-Kairichi/388 was to remain/be retained within the family as an ancestral land. They averred that the Deceased supported them through school when their mother passed away, and that they were the only grandchildren residing on the said piece of land with the Deceased. They averred that they are dependants within the meaning envisaged under the *Law of Succession Act* and are rightly entitled to what belonged to their late father.
14. The twin applications were canvassed by way of written submissions.

Applicant's Written Submissions

15. The Applicants submitted that the Certificate of Grant issued to the Respondent should be revoked. They argued that the Grant was acquired fraudulently because the Respondent concealed and/or excluded their names from the list of beneficiaries. They argued that they got into the shoes of their late father upon his demise, acquiring equal rights with the Respondent to apply for the letters of Administration and inherit from the Estate of the Deceased. They argued that the Respondent is



unable to effectively administer the estate and that she should be appointed a co-administrator to protect the interest of other beneficiaries.

The Objector's Written Submissions

16. The Objector submitted that the Certificate of Grant dated 23rd October, 2023 should be revoked. He argued that he is a dependent of the Deceased because the Deceased recognized him as her grandchild and that his birth certificate indicates that he is a son to Gibson Ndung'u a son of the Deceased. He argued that he lived and still lives on the suit property before and after the demise of the Deceased. He submitted that the grant was acquired fraudulently because the Respondent did not disclose that there were other beneficiaries when she applied for the grant. He argued that this was material information that would have considerably influenced determination of this matter.

Issues for Determination

17. Having carefully considered the two applications, the supporting affidavits, and respective submissions, I find that there are three issues for determination;
- a. Whether the Applicants are dependants under the *Law of Succession Act*.
 - b. Whether the Objector is a dependant under the *Law of Succession Act*.
 - c. Whether the court can set aside the confirmation of the grant.

Whether the Applicants are dependants under the *Law of Succession Act*

18. The parties disputed whether the Applicants are dependants of the Deceased under the *Law of Succession Act*. The Applicants argued that they are grandchildren and dependants of the Deceased, and thus the Respondent should not have excluded their names from the list of beneficiaries in the application for grant. On the other hand, the Respondent argued that the Applicants were not dependants within the meaning envisaged under the law.
19. The Applicants stated that they are grandchildren of the Deceased. They stated their father, Stephen Karanja Thinda, was a son of the Deceased and that he (their father) died before the Deceased in 2017. They produced the Death Certificate of their father indicating that he died on 18th November, 2017. They also produced their respective Birth Certificates indicating that they were both daughters of Stephen Karanja Thinda. In addition, they produced a copy of the Deceased's Eulogy, which indicated that their father was a son of the Deceased.
20. They also stated that their father was the one who resided in the property LR No.8/Gitura-Kairichi/388 and that they continued to reside there after her demise as this was the family home.
21. The Respondent did not controvert this evidence. I have read the Respondent's Replying Affidavit dated 3rd October, 2024. The Respondent did not dispute the Applicants' claims that their father was a son of the Deceased. She did not dispute that the 2 applicants are daughters of Stephen Karanja Thinda, her deceased brother. Based on these facts, I am inclined to find that the Applicants are grandchildren of the Deceased and that their father was a son of the Deceased. I also find that their father died before the Deceased in 2017.
22. Having found as such, what then are the interests of the applicants in the estate of the Deceased. This court is being invited to determine whether the applicants are dependants of the Deceased as per the law. The law on the rights of grandchildren in interstate succession is well-settled. Courts have particularly settled the issue of the rights of a grandchild whose parent predeceased the Deceased.



23. The starting point on this issue is Section 41 of the *Law of Succession Act*, which provides as follows;

“41. Property devolving upon child to be held in trust Where reference is made in this Act to the “net intestate estate”, or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.”

24. The Court of Appeal in *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others* [2014] eKLR interpreted the above Section in the following terms;

“Although Section 35 and 38 of the *Law of Succession Act* is silent on the fate of surviving grand children whose parents predeceased the deceased, the rate of substitution of a grandchild for his/her parent in all cases of intestate known as the principle of representation is applicable. The Law is section 41. If a child of the intestate has pre- deceased, the intestate then that child’s issue alive or in centre as mere on that date of the intestate’s death will take in equal shares per stirpes contingent on attaining the age of majority. Per stirpes means that the issue of a deceased child of the intestate take between them the share their parents would have taken had the parent been alive at the intestate’s death.”

25. Similarly, the court *in Re Estate of Wabome Njoki Wakagoto* (2013) eKLR interrogated the same issue and held as follows;

“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

26. Lastly, the court in *Kosgei v Cheronono* (Family Appeal E002 of 2023) [2024] KEHC 1337 (KLR) faced a similar question and observed as follows;

25. In short therefore, Section 41 provides that where one of the children of the deceased is himself/herself deceased, and such deceased child is survived by a child or children of his/her own, then the share due to him/her ought to devolve upon his/her said child, and where more than one, the children would take equally.

28. In my view, having described himself as a grandson of the deceased and it not being in dispute that the Appellant’s father died before distribution of the estate of the Appellant’s grandfather, I find that the Appellant disclosed a legally recognized interest. I do not agree that the said interest was dependent on his being a legal representative. The only burden that the Appellant was to discharge was to prove the allegations made in his Summons.



31. In the circumstances, I find that the Appellant, claiming as a grandson of the deceased and claiming his own late father's share of the grandfather's estate, had the prerequisite locus standi to apply for Revocation of the Grant.
27. Based on the above authorities and the facts of the case, I am inclined to find that the Applicants are dependants of the estate of the Deceased. They are entitled to claim their own late father's share of the grandmother's estate.

Whether the Objector is a dependant under the Law of Succession Act

28. The Objector claimed that he is a dependant of the estate of the Deceased and the Respondent ought to have consulted him when she filed for grant. He claimed that he is a grandson of the Deceased because his father, Gibson Ndung'u Mwangi, was a son of the Deceased. He also claimed that his father had died before the Deceased. He produced a Death Certificate indicating that Gibson Ndungu died on 10th November, 2000. He also produced a Birth Certificate indicating that his father was Gibson Ndungu Robert Mwangi. I have seen the said birth certificate. It was issued on 30th May, 2011.
29. On the other hand, the Respondent claimed that her later brother Gibson met the Objector's mother when the Objector was already 9 years old. She therefore argued that the Objector is not her late brother's offspring and therefore should not be regarded a beneficiary to the estate of the Deceased.
30. The central issue for determination turns out to be whether the Objector is a child of the late Gibson as per the Law of Succession Act. I have reviewed the documents filed to support the Objector's claims that he is a child of the late Gibson and, therefore, a grandson of the Deceased. There is no paternity test available; however, in its absence, I am relying on other available evidence, namely the birth certificate and the Respondent's acknowledgement that her deceased mother cared for the objector since when he was a child of tender years. The respondent has confirmed, as she did for the other two applicants, that the objector benefited from the estate of the deceased (Nyambura Karanja) both during her lifetime and after her passing. The evidence indicates that the objector currently resides on the property in question.
31. I conclude that the objector is a dependent of the deceased's estate. He is entitled to claim his late father's portion of his grandmother's estate.

Whether the court can set aside the confirmation of the grant

32. The grounds upon which a Grant may be revoked are set out in Section 76 of the Law of Succession Act which provides as follows;

“76. 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;”

33. The Court in *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR interpreted the above section in the following terms;

“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 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.

34. The framework for applications for grants of representation is set out in Section 51 of the *Law of Succession Act*. The relevant portions, for the purpose of these instant applications, is subsection (2) (g), which provides as follows:

“51. Application for Grant

- (1)
- (2) Every application shall include information as to—
.....
(g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;
.....

35. Courts have also interpreted Section 76 (b) of the *Law of Succession Act* on circumstances where false statements or the concealment of material facts may constitute a ground for revoking a grant. *In Re Estate of Ndinguri Karugia (Deceased)* [2017] eKLR, the court held as follows;

“From the detailed chronology of the documents that the Respondent lodged for grant of letters of administration intestate, she did not disclose all the children and family of the Deceased.

The non-disclosure of all beneficiaries of the deceased’s estate amounted to concealment of material facts. The Grant and the confirmed Grant were fraudulently obtained by means of an untrue allegation or fact essential in point of law to justify the Grant.



36. Similarly, the Court *in Re Estate of Wabome Mwenje Jackson* [2016] eKLR faced a similar issue and held as follows;

“The evident deliberate failure by the Respondent to involve the applicants at the time of filing these proceedings, failing to list them among the beneficiaries or seek their consent or renunciation was in my view bad faith and amounted to concealment of material facts. My conclusion is that the proceedings leading to the issuance of the grant are defective in substance and that material information was not disclosed to the court in that had the court been made aware that there were other beneficiaries who were interested in the deceased’s estate the court would have hesitated to issue the grant”

37. I have seen the Respondent’s affidavit in support of her Petition for the grant of letters of administration. The same is dated 10th November, 2022 and was sworn by the Respondent. She stated in the affidavit that the Deceased was survived by three children, namely herself, John Mwangi, and Cecilia Wambui. I note that she did not disclose the existence of the applicants, who are children of her late sibling, Stephen Karanja Thinda. It is clear to this court that the Respondent was aware of the applicants’ existence at the time of applying for the grant. In my view, her failure to include them in the list of beneficiaries amounted to concealment of material facts.

38. The Applicants in this case come later in order of priority. The court declines to revoke the grant and the administrator can remain. However, this Court sets aside the confirmation of the grant and directs that the application for confirmation be redone.

Disposition

39. These are the final orders of the Court.

- a. The confirmation of the grant is hereby set aside.
- b. The Administrator shall file a fresh application for confirmation of the grant that includes the applicants Rachael Njoki Karanja, Everlyne Nyambura Karanja, and Samuel Wanyiri Ndungu as dependants.
- c. In the interest of justice, the status quo on the estate of the deceased shall not be interfered with pending the hearing and determination of the application for confirmation of the grant. The Administrator is prohibited from interfering with the current occupation and use of the properties. Additionally, the properties of the estate shall not be sold, transferred, or charged pending the hearing and determination of the new application for confirmation.
- d. As this is a family matter, I make no orders regarding costs.

40. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 9TH DAY OF JUNE, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl



Ms. Mango, Advocate for the Applicants Rachael and Everlyne

No attendance for the objector

No attendance for the Respondent

