



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Harrison Dawson Mganga (Deceased) (Succession Cause 151 of 2002) [2025] KEHC 8338 (KLR) (3 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8338 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 151 OF 2002**

G MUTAI, J

JUNE 3, 2025

**IN THE MATTER OF THE ESTATE OF HARRISON DAWSON MGANGA
(DECEASED)**

RULING

1. The deceased, whose estate is the subject of these proceedings, was a retired magistrate. At the time of his demise, he was 60 years old. He died on 28th July 2001 at Kwale Hospital after being involved in a road traffic accident. The cause of death was given as “cardiopulmonary failure due to head injury/ internal haemorrhage due to RTA”.
2. The deceased was survived by 10 beneficiaries:-
 1. Loice Mkavita Mganga – widow;
 2. Grace Mghazo – Daughter;
 3. Eric Mjomba – Daughter;
 4. Rosemary Wakesho – Daughter;
 5. Ken Mdoma – Son;
 6. Phoebe Wakio – Daughter;
 7. Michael Ibura – Son
 8. Josephine Shighadi – Daughter;
 9. Lucy Wambugha – Daughter; and
 10. Victor Mkala – Son.
3. The widow filed a petition for the grant of a letter of administration intestate on 6th June 2002. The grant was issued on 14th January 2004. Upon her application and with the consent of all the beneficiaries, a certificate of confirmation of grant was issued by this Court on 11th October 2006. It



was stated in the Certificate of confirmation of grant that “all the beneficiaries agreed and gave consent that the applicant be given all the assets”. The beneficiaries signed a consent dated 1st December 2003 to that effect.

4. The administrator died on 8th February 2015. The cause of her death was described in the death certificate as being “CPA due to severe malaria, bacterial sepsis asthma hypertension.” She was 67 at the time of her death.
5. In the Vide Summons for Revocation and/or Annulment of Grant dated 14th March 2024, the applicants herein sought to have the grant issued to Loice Mkavita Mdoma, also known as Loice Mkavita Mganga, revoked and for Phoebe Wakio (hereinafter “Phoebe”) and Eric Mjomba (hereinafter “Eric”), together hereinafter called “the applicants”, to be appointed administrators in her stead. Their reason for seeking revocation and appointment was that the grant had become useless and inoperative due to the death of Loice Mkavita Mdoma, as well as due to subsequent circumstances.
6. The applicants averred that four out of six beneficiaries had agreed that Phoebe and Eric would be administrators. At the same time, two, Josephine Mganga (hereinafter referred to as “Josephine”) and Rose Mganga, (hereafter together referred to as “the Respondents”) had declined to attend family meetings to sign the consent or surrender the title documents in their possession.
7. Josephine was accused of holding family properties and collecting rent therefrom, which the applicants stated amounts to intermeddling with the estate of the deceased. It was thus urged that allowing the application would be in the interest of justice.
8. The application was opposed. Ms Josephine Mganga filed a replying affidavit sworn on 23rd August 2024, in which she accused the applicants of not having involved them in the convening of the meeting. She accused the two applicants of having engaged in fraudulent conduct. She stated that the demand for her to surrender title documents in her possession was malicious and intended to further the applicants’ quest to be in control of the estate.
9. Ms Josephine Mganga deposed that she had always been in favour of mediation of the matter, but that her efforts to have the dispute referred to mediation were rebuffed. She accused the applicant’s lawyers of engaging in deceptive conduct. She averred that the premises where she runs her church are the same place Lucy, Phoebe, Rosemary, and Grace have apartments, while Eric collects rent from the Kwale and Taita properties.
10. She prayed that the Court appoint one other administration in addition to the two proposed, since the *Law of Succession Act* permits the appointment of 4 administrators. She blamed the current dispute on the non-existence of the administrators of the estate.
11. The matter was canvassed by way of written submissions. The applicant’s submissions are dated 17th February 2025. In the said submissions, the Applicant identified the following as the issues:-
 1. Whether the grant of representation had become useless and inoperative and therefore subject to revocation;
 2. Whether the confirmed grant had become inoperative and therefore subject to revocation; and
 3. Whether the applicants may be appointed as administrators.
12. In respect of the first two issues, it was argued that revocation of the grant is provided for under Section 76 of the *Law of Succession Act*. The Court was urged to pay attention to section 76(e) of the said Act, which says that a grant may be revoked on the basis that “the grant had become useless and inoperative through subsequent circumstances.”



13. The Court was urged to look at re Estate of George Ragui Karanja (deceased) [2016]eKLR and Florence Okutu Nandwa & another vs Joha Atemba Kojwa, Kisumu Civil Appeal No 306 of 1998. The applicant prayed that the grant issued to Loice Mkavita Mdoma be revoked by reason of her death.
14. On the third issue, counsel urged that the two recalcitrant beneficiaries were frustrating the administration of the estate. The applicants stated that they did not object to the estate being administered by the applicants, along with one of the respondents, to prevent a situation where the estate would be wasted. They called upon the Court to exercise its inherent power under Section 47 of the Act and Rule 73 of the Probate and Administration Rules to appoint new administrators.
15. The submissions of the Respondent are dated 7th April 2025. The Respondents' counsels urged, relying on the case of re Estate of Samuel Mbugua Gatheru (deceased) [2022]KEHC 2543 (KLR), re Estate of Kibowen Komen (deceased) [2022]KEHC 10810 (KLR), that since the administrator was deceased, the grant had automatically been revoked and hence that all that was left was for the Court to appoint an administrator to prevent the wasting away of the estate.
16. Regarding the appointment of an administrator, it was urged that the Court had the final say in determining who would become an administrator. Reliance was placed on section 66 of the Act and Rules 7(7) and 73 of the Probate and Administration Rules.
17. It was contended that the Applicants had breached their fiduciary duties by convening meetings secretly and maliciously excluding the Respondents from the deliberations. The Respondents urged that the consents entered into in their absence had no weight and ought to be disregarded.
18. Regarding who should be appointed as administrators, it was argued that all the children of the deceased were equal. Taking into account the fact that there were two factions in the family, it was suggested that one of the Respondents be appointed as an administrator.
19. I have considered the application filed herein and the response of the respondents. I have also taken into account the erudite submissions of the parties. In my view, the issues for determination are whether, due to the death of Loice Mkavita Mdoma, the grant issued to her has become useless and inoperative, and thus liable for revocation, and who should be the new administrators.
20. This being a Summons for Revocation of Grant, it is necessary that I set out the provisions of section 76 of the *Law of Succession Act*. The said section states 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;



- (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.”

21. From the following, it is evident that a grant may be revoked when it has become useless and inoperative through subsequent events. The purport of section 76 of the Act was defined by the Court in the case of *re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] KEHC 6553 (KLR), wherein it was stated that:-

“ 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.”



22. The power to revoke a grant is discretionary in the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR, it was held that:-

“ 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.”

23. In this case, the sole administrator is deceased. The estate is being wasted due to wrangling among siblings who are unable to agree on who should administer it. The beneficiaries have intermeddled with the deceased’s estate by dividing it among themselves and collecting rent without accountability. Clearly, there is a clear and present danger that the estate will be wasted away.

24. As already stated, the death of the sole administrator is a ground for revocation of the grant. In the case of *re Estate George Ragui Karanja (Deceased)* [2016] KEHC 6519 (KLR) W Musyoka, J held as follows:-

“ 22. It would appear to me that once all the holders of a grant die, section 81 of the Act would be of no application. Indeed, the said grant becomes useless and inoperative, and liable to revocation under section 76(e) of the *Law of Succession Act*, to pave the way for the appointment of new administrators. The appointment of fresh administrators to take the place of the previous ones following their death is subject to the provisions of sections 51 through 66 of the Act.

23. All the administrators of the estate of the deceased in this case have died. The circumstances arising therefrom cannot be addressed through section 81 of the *Law of Succession Act*. The grant made to the dead administrators has to be revoked to pave the way for the appointment of new administrators. There is no application before me, premised on section 76(e), for revocation of the grant herein on account of its having become useless and inoperative. However, section 76 gives the court discretion to revoke any grant of representation on its own motion. This should be a classic case where I can exercise such discretion.”

25. The Court’s power to appoint an administrator is given in section 66 of the *Law of Succession Act*, which provides as follows –

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference –

- a. Surviving spouse or spouses, with or without association of other beneficiaries;
- b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided in Part V;



- c. The Public Trustee; and
- d. Creditors.”

- 26. As stated in the aforesaid section, the Court’s power is discretionary. The court is not bound to follow the order given in the said section. It must, however, be borne in mind that the Court, while exercising its discretion, must do so judiciously and not capriciously.
- 27. Further to the foregoing, the Court has inherent powers under section 47 of the Act and Rule 73 of the Probate & Administration Rules to do such acts as would be in the best interest of justice.
- 28. I am clear that all the beneficiaries are of equal rank and that none can claim a higher right to administer the estate than the other. Administrators should be able to bring all the beneficiaries together and, in my opinion, ought to represent the diversity of opinion within the family.
- 29. In the circumstances, I am persuaded that it would be fair and just to appoint administrators.
- 30. The upshot of the foregoing is that I am convinced that the grant has become useless and inoperative upon the demise of Loice Mkavita Mganga, also known as Loice Mkavita Mdoma, under section 76(e) of the Law of Succession Act. It is evident to me that following her demise, the estate is being wasted away with almost all the beneficiaries of the estate intermeddling. This must stop.
- 31. In the circumstances, I revoke the grant issued to Loice Mkavita Mganga, also known as Loice Mkavita Mdoma, as it has become useless and inoperative. I issue a new grant to Phoebe Wakio and Eric Mjomba. To ensure that all the factions are represented, I appoint Josephine Mganga as the third administrator. The new grant shall issue forthwith. I order that the administrators consult all beneficiaries and file the summons for confirmation of the grant within 60 days of the date of this order.
- 32. I make no orders as to costs, as this is a succession dispute between close family members.
- 33. It is so ordered.

DATED AND SIGNED AT MOMBASA THIS 3RD DAY OF JUNE 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Mr Kinyua, for the Applicants:

Mr Okello, for the Respondents; and

Arthur – Court Assistant.

