



REPUBLIC OF KENYA



**In re Estate of Mariam Ali (Deceased) (Succession Cause E2318 of 1998)  
[2025] KEHC 10951 (KLR) (Family) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10951 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E2318 OF 1998  
PM NYAUNDI, J  
JULY 25, 2025  
IN THE MATTER OF THE ESTATE OF MARIAM ALI (DECEASED)**

**BETWEEN**

**HASSAN SALEH ABDALLA ..... OBJECTOR**

**AND**

**ALI AHMED WAMRUNDE ..... PETITIONER**

**RULING**

1. Before this Court is for summons dated 24<sup>th</sup> October 2024 in which the Applicant, Hassan Saleh Abdalla sought the following orders:
  1. Spent.
  2. The proceedings, grant, and certificates of confirmation of grant issued to Ali Wamrunde Ahmed on 12<sup>th</sup> March 2020 and confirmed on 22<sup>nd</sup> February 2022 be revoked/ annulled and/ or set aside by this Honourable Court.
  3. Spent.
  4. Spent.
  5. The Petitioner/Respondent herein be ordered to produce a full and accurate account of all dealings therewith up to the day of the ruling of the court on this issue and to render the account in such time as the court shall stipulate.
  6. Upon revoking and or annulling the grant herein, the court do issue a fresh grant to Hassan Saleh Abdalla and do order that certificate or confirmation of grant be applied for within 30 days from the date hereof.



7. Costs of this application be borne by the Petitioner/Respondent.
8. Any other order this court deems fit to so grant.
2. The summons premised upon Sections 76 of the Law of Succession Act Cap 160, Rule 44 and 73 of the Probate & Administration Rules and Article 159 of the Constitution and all other enabling provisions of the law and was supported by the Affidavit of even date sworn by the Applicant. The applicant filed a further affidavit sworn on 4<sup>th</sup> June 2025.
3. The Respondent opposed the summons through his Replying Affidavit sworn on 12<sup>th</sup> May 2025.
4. The summons was canvassed by way of written submissions. The applicant's submissions are dated 24<sup>th</sup> June 2025 while the Respondent's submissions are dated 14<sup>th</sup> July 2025.

### **Summary of Pleadings**

5. This succession cause relates to the Estate of Mariam Ali (hereinafter the deceased) who died intestate on 5<sup>th</sup> July 1974. Hassan Saleh Abdalla and Fatma Saleh Abdalla petitioned this court for letters of administration Intestate and the grant was issued to them on 27<sup>th</sup> July 2007. The Respondent filed summons for revocation of grant dated 23<sup>rd</sup> April 2019 and on 12<sup>th</sup> March 2020, the grant was revoked and a fresh grant was issued to Ali Ahmed Wamrunde. The grant was confirmed on 25<sup>th</sup> February 2022.
6. The Deceased is said to be survived by the following persons;
  - i. Mohammed Sheikh Abdalla – son (deceased).
  - ii. Hussein Saleh – son (deceased).
  - iii. Ahmed Saleh- son.
  - iv. Hassan Saleh Abdalla – son (deceased).
  - v. Fatma Salleh- daughter (deceased).
  - vi. Sharif Mustafa Saleh- son.
  - vii. Ali Saleh Abdalla – son (deceased).
  - viii. Saida Abdalla- daughter.
7. She left the following assets;
  - a. Plot No. 323 Dandora – Nairobi.
  - b. Plot No. 38 Old Pumwani - Nairobi.
8. The applicant argues that after the grant was confirmed, the Respondent moved to the Kadhi's Court and filed Succession Cause No. E078 of 2022. The Kadhi's court issued another grant which was confirmed on 20<sup>th</sup> December 2023. That the beneficiaries in the said grant are not the true and legal beneficiaries of the estate. He avers that the application for revocation filed by the Respondent in this court was not served on the beneficiaries of the estate. Also, that the beneficiaries did not consent to confirmation of grant and if they did, those that consented do not fall in equal priority as true and legal beneficiaries of the estate of the deceased. That the Respondent failed to proceed with the succession proceedings in this court and without reasonable cause moved to the Kadhis Court. He avers that the Respondent's actions amount to non-disclosure and misrepresentation rendering the proceedings defective in substance and the same should be set aside.



9. The applicant further avers that the grant was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the succession cause herein by not disclosing the true and legal beneficiaries of the deceased's estate. He avers that the Respondent does not fall in priority under Section 66 on who should be issued with a grant. He argued that the court did not call the true and legal beneficiaries of the deceased's estate. He stated that the Respondent has no rights to collect and continue to collect rent from the deceased's estate. He urged the court to revoke the grant and appoint him the administrator of the deceased's estate.
10. The Respondent avers that the deceased, was his aunt and a sister to his late father were siblings. He argued that Plot No. 111 (formerly known as Plot No. 38 ) belonged to his late grandmother, Fatuma Binti Ibrahim. The Kadhis court in Succession Cause No. 8 of 1997 held that the deceased was entitled to a 1/5 of that property while his late father was entitled to 4/5 of the property. He avers that the succession proceedings in the Kadhis Court were limited to administering 4/5 share held by his late father. He argued that the Applicant has failed to demonstrate that the beneficiaries in the confirmed grant are not the true and legal beneficiaries of the deceased's estate. That the succession proceedings in this case have proceeded to conclusion. He avers that he falls in the degree of consanguinity to be issued with letters of administration.
11. He argues that the allotment letter issued on 20<sup>th</sup> January 1998, 24 years later after the deceased's death is fraudulent and erroneous. He denied intermeddling by collecting rent as he is the administrator of the estate. He urged the court not revoke the grant and if the grant will be revoked, the same should be issued to another person other than the applicant. He urged the court to dismiss the applicant's application with costs.
12. In a further affidavit sworn on 4<sup>th</sup> June 2025, the applicant denied the allegation that the deceased was only entitled to a 1/5 of Plot No. 111 (formerly known as Plot No. 38 Pumwani). He avers that the deceased perfected the allotment letter by paying standard premium of Kshs.14,890. He argued that the allotment letter was not issued to more than one person. He avers that the Kadhi's court did not have jurisdiction to determine issues relating to ownership of land. That the Respondent has not produced any evidence that the allotment letter is a fraud or has reported to the authorities. He argued that the certificate of confirmation states that the matter is in respect to the estate of Maria Ali and not the estate of the Respondent's father. That there cannot be two succession cases in two different courts with different beneficiaries and shares of assets.
13. He avers that a nephew falls within the 6<sup>th</sup> degree consanguinity and in this case, the deceased's children are still alive and therefore, the Respondent does not rank in priority. He argued that the Respondent is a stranger to the estate; the property is not registered in the name of his father. That the respondent did not disclose to the court that one of the co-administrators was dead.

### **Applicant's Submissions.**

14. The Applicant framed the following as issues for determination;
  - a. Whether the proceedings, grant and certificate of confirmation of grant issued to the Petitioner/ Respondent should be revoked/annulled/or set aside.
  - b. Whether the petitioner/respondent falls in priority of persons allowed to apply for grant or revocation of grant in the manner he did.
  - c. Whether the petitioner/respondent is entitled to continue collecting rent from 5 houses on 1/5 Plot No. 111 (formerly plot 38)



- d. Whether the petitioner/respondent has to produce a full and accurate inventory of the assets and liability of the deceased and a full and accurate account of all the dealings.
  - e. Whether a fresh grant should issue to the objector/applicant.
15. On the first issue, the applicant relied on Section 76 of the *Law of Succession Act*. It was his submission that there was non-disclosure and misrepresentation of material facts. He reiterated the averments in his supporting and further affidavit. Relying on the decisions in *Irene Marigu v Edward Yaga Karangi* [2020] eKLR, *Margaret Isutsa Kirui v Rosemary Sang* KLR and in *re Estate Prisca Ong'ayo Nande (Deceased)* [2020] eKLR, the applicant submitted that the grant should be set aside.
  16. On the second issue, the applicant relied on Section 66 of the *Law of Succession Act* and the decisions of in re Estate of Marie Annick Gachecheh (Deceased) Succession Cause E 151 of 2023 [2023] KEHC 22113 KLR, re Estate of Mzee Ismail (deceased) Succession Cause 1043 of 1992 [2024] KEHC 7988 KLR and argued that the respondent does not qualify to be issued with letters of administration and does not have priority over the children of the deceased as he is a nephew of the deceased.
  17. On the third issue, the applicant argues that the respondent did not obtain consent from the other beneficiaries when the grant was issued to him. He argued that he fact that the grant was obtained fraudulently, the act of collecting rent amounts to intermeddling with the deceased's estate.
  18. On the fourth issue, the applicant relies on the decisions in *Re Estate of Julius Minamo (Deceased)* [2019]eKLR and *Re Estate of David Kyuli Kaindi (Deceased)* [2015] eKLR and submits that the respondent as the administrator of the estate is obligated by law to produce a full and accurate inventory of the estate of the deceased.
  19. Lastly, the applicant argues that he has established that the respondent is guilty of non- disclosure and misrepresentation hence the grant should be revoked and a new grant issued to him.

### **Respondent's Submissions.**

20. The Respondent submitted that the applicant has not demonstrated that the grant was obtained by way of concealment or non- material disclosure. He argued that the applicant has not proved to this court that the beneficiaries listed are not the rightful beneficiaries of the estate or that some of the beneficiaries have been disinherited. That the court verified and identified the legal beneficiaries.
21. The Respondent further submits that he had an interest in the deceased's estate because his father was entitled to 4/5 of the share that was being held by the deceased. He argues that what was due to his father's estate was determined in 1997 before the allotment letter was issued and before this succession cause was instituted.
22. He submitted that as an administrator of the estate, he cannot be said to be intermeddling with the estate of the deceased by collecting rent.
23. He did not object to producing a full and accurate inventory if ordered by the court.
24. The Respondent argues that in the event that the grant is revoked, the same should not be issued to the applicant who was previously an administrator of the estate and had failed to administer the estate which was dormant for around 12 years.
25. Relying on the decisions in *Telcom Kenya Ltd . v. John Ochanda* [2014] eKLR and *Raila Odinga v IEBC & 3 Others*, Petition No 5 of 2013, the Respondent submitted that this matter is functus officio having rendered a final decision on the distribution of the estate.



## Analysis and Determination

26. Having considered the pleadings herein and submissions filed along with the relevant law, I deduce that the matter for determination is whether the grant issued to the respondent herein on 12<sup>th</sup> March 2020 ought to be revoked.
27. In arriving at my decision, I deem it necessary to lay out in detail, the chronological sequence of the proceedings in Court. The Grant herein was issued 27<sup>th</sup> July 2007 to Hussein Saleh Abdalla and Fatma Saleh Abdalla, son and daughter of the deceased. Unfortunately, Hussein Saleh Abdallah died and a fresh grant issued to Hassan Saleh Abdalla and Fatma Saleh Abdalla on 15<sup>th</sup> October 2008.
28. In the Petition for grant of letters of administration the assets of the deceased were said to be
  - a. Plot No. 323 Dandora- Nairobi
  - b. Plot No. 38 Old Pumwani- Nairobi (Plot 111- Nairobi)
29. It does not appear that the Administrators applied for summons for confirmation of Grant. In the interim, Ali Wamurunde Ahmed applied for the revocation of the grant, vide summons dated 22<sup>nd</sup> June 2010, on the basis that the grant was obtained fraudulently as the Petitioners had made a false statement as Plot No. 38 did not solely belong to the deceased. It was alleged that vide Kadhi's Case No 8 of 1997 (Nairobi) it had been determined that the deceased owned 1/5 share of the subject parcel of land.
30. The Parties in the Kadhi's case were; Hemedi Ali Hassan Hussein (Father to Ali Wamurunde) v Hussein Swaleh, Badi Swaleh, Hassan Swaleh (1<sup>st</sup> Applicant), Mustafa Swaleh, Fatma Swaleh (2<sup>nd</sup> Applicant), Mohammed Abdallah, Saida Abdallah and Ali Swaleh; Children of the deceased.
31. The 2<sup>nd</sup> Applicant swore replying affidavit dated 17<sup>th</sup> September 2010, attaching letter dated 6<sup>th</sup> March 1997 addressed to Ali Saleh Abdalla and Letter of Allotment dated 20<sup>th</sup> January 1998, both of which indicate that the deceased is the owner of Plot No. 38 (L) also referred to as UNS. Residential Plot 111- Nairobi.
32. The record shows that the applicants then counsel on record was present in Court on 26<sup>th</sup> April 2012 when the matter was fixed for hearing on 21<sup>st</sup> May 2012. On 21<sup>st</sup> May 2012, the matter proceeded to hearing with the respondent in the current application testifying in Court. The witness was stood down and matter adjourned to 2<sup>nd</sup> July 2012 and 26<sup>th</sup> September 2012, the matter did not proceed on both occasions.
33. It was mentioned on several occasions for directions and Mr. Khamati, Counsel who was on record for the current applicants was present in Court on a number of occasions. Ultimately on 28<sup>th</sup> January 2020, the Court directed that two administrators- the applicants herein- (who were not present) be served with summons to attend Court on 13<sup>th</sup> February 2020 'to show cause why they should not be punished for failure to distribute the property in accordance with the judgment of the Kadhi's Court. It appears they did not attend Court on 13<sup>th</sup> February 2020 and therefore fresh summons were issued for their attendance on 12<sup>th</sup> March 2020.
34. On 12<sup>th</sup> March 2020, the Court being satisfied that the respondents therein had been served proceeded to revoke the grant issued to the applicants in this application and issued a fresh grant to the respondent. The Court directed that the applicant file a summons for confirmation and serve it on all the beneficiaries, the matter was set for mention on 21<sup>st</sup> April 2020. The Summons for confirmation was filed dated 7<sup>th</sup> September 2020.



35. After mention in Court on several occasions, the grant was confirmed with the court directing that the 1/5 share due to the estate of the deceased be distributed in accordance with Islamic Law. Pursuant to that order Certificate of Confirmation of Grant issued dated 25<sup>th</sup> February 2022, with the identified beneficiaries being Saida Abdalla, Mustafa Saleh, Hassan Saleh, Fatma Saleh, Mohammed Abdalla ( Deceased, Hussein Saleh ( Deceased), Ali Saleh ( Deceased) and Ahmed Saleh (Deceased)
36. The 4/5 share of the Plot No. 111 was distributed by the Kadhi's Court in Succession Cause No. E078 of 2022 vide Certificate of Confirmation of Grant dated 20<sup>th</sup> December 2023.
37. In presenting this Petition the Applicant herein does not refer to the proceedings related to the summons for revocation dated 23<sup>rd</sup> April 2019. The inescapable conclusion is that the current application is an abuse of Court process. The issues that are raised in the current application are those canvassed in the Summons of 23<sup>rd</sup> April 2019. The Court determined this issue by upholding the decision in the Kadhi's Court as relates to the ownership of Plot No 38 ( Plot No.111) Old Pumwani. It is not disputed that the judgment of the court in Kadhi's Court No. 8 of 1997 delivered on 15<sup>th</sup> December 1998 was never appealed from.
38. The proof of ownership relied on by the applicant were issued prior to the judgment of the Kadhi's Court. The Applicant challenges the validity of the orders made in Kadhi Succession Cause no. E078 of 2022. For the reason that a formal application is yet to be lodged to revoke that grant, that challenge is not sustainable.
39. I note that the deceased herein died on 5<sup>th</sup> July 1974. This cause was filed in 1998. Litigation must come to an end, there must be closure. The applicants herein failed to seize the opportunities availed to them to assert the rights that they are pursuing.
40. The 1<sup>st</sup> was the failure to apply for summons for confirmation of grant within 6 months of issuance of grant as required by the Law of Succession Act.
41. The 2<sup>nd</sup> would be the failure to challenge the decision of the Kadhi's Court delivered on 15<sup>th</sup> December 1998. The provisions of Section 4 (4) of the Limitation of Actions Act provide-
 

An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.
42. The 3<sup>rd</sup> opportunity lost would be the failure to mount opposition to the Summons for Confirmation of Grant dated 23<sup>rd</sup> April 2019, which as I have observed above resolved the very issues that the applicant now seeks to canvass before the Court. The current application is therefore res judicata.
43. Section 7 of the Civil Procedure Act Cap 21 Laws of Kenya defines the doctrine of *Res Judicata* in the following terms: -
 

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
44. In the dicta in re Estate of Riungu Nkuuri (Deceased) [2021] eKLR the court stated as follows:



The test for determining the Application of the doctrine of res-judicata in any given case is spelt out under Section 7 of the *Civil Procedure Act*. In *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] eKLR, the Supreme Court while considering the said provision held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked. That is:

- (a) The suit or issue was directly and substantially in issue in the former suit.
- (b) That former suit was between the same parties or parties under whom they or any of them claim.
- (c) Those parties were litigating under the same title.
- (d) The issue was heard and finally determined in the former suit.
- (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.

45. The Applicant seeks that the respondent renders an account of the dealings with the estate. This is a requirement under the law. I will therefore order that the respondent, Administrator supply accounts of his dealings with the estate from 12<sup>th</sup> March 2020 to date within 45 days

46. The Respondent will also finalise transmission of the estate within 60 days from the date hereof.

47. The matter will be mentioned on 19<sup>th</sup> November 2025 to confirm compliance

48. On account of the relationship between the parties, there shall be no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS AT NAIROBI  
THIS 25TH DAY OF JULY, 2025.**

**P. M. NYAUNDI**

**JUDGE**

In the Presence of:

Mr. Odero for Objector/Applicant

Ngetich for Respondent/Petitioner

