



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Leah Wanjiru Waweru (Deceased) (Succession Cause
284 of 2012) [2025] KEHC 10003 (KLR) (Family) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10003 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 284 OF 2012
PM NYAUNDI, J
JULY 10, 2025
IN THE MATTER OF THE ESTATE OF LEAH WANJIRU WAWERU (DECEASED)

BETWEEN

DANIEL WAWERU GICHUHI 1ST APPLICANT
ELIZABETH MUTHONI KAMAU 2ND APPLICANT
RISMARK PROPERTY MANAGEMENT LIMITED 3RD APPLICANT

AND

FELISTER NYOKABI WAWERU RESPONDENT

RULING

1. Before Court for determination are two applications. The first application is dated 18th November 2024 brought by Felister Nyokabi Waweru. She seeks the following orders;
 1. Spent.
 2. Spent.
 3. Spent.
 4. An injunction do issue against the 1st, 2nd and 3rd Respondents to restrain them whether by themselves or their agents, servants or any other person (s) acting on their behalf from collecting, receiving or in any manner whatsoever dealing with and/or appropriating the proceeds in respect of the property known as Dagoretti/Riruta/5368 registered in the name of the Deceased.



5. An injunction do issue against the 3rd Respondent to restrain it whether by itself or its agent, servants or any other person(s) acting on its behalf from continuing to collect or further remit to the 1st and 2nd Respondents or any other parties any rental proceeds collected in respect of Dagoretti/ Riruta/5368.
 6. An order be given that the Applicant (in her capacity as the Administratrix of the Estate of Leah Wanjiru Waweru) be at liberty to appoint a property agent of her choosing to collect rent on Dagoretti/Riruta/5368.
 7. The 1st and 2nd Respondents in their capacity as the previous legal representatives of the Estate of Leah Wanjiru Waweru be ordered to give full account of rent collected on Dagoretti/ Riruta/5368 as well as to provide evidence of the manner in which such rent was disbursed to the beneficiaries for the entire time the said parties were administrators.
 8. An order be issued compelling the 3rd Respondent to hand over to the Applicant or her advocates all rent collection and disbursement records with respect to Dagoretti/Riruta/5368.
 9. The 1st and 2nd Respondents be ordered to fully co-operate with the applicant in the process of:
 - a. Transferring by way of vesting assent the said property known as Dagoretti/ Riruta/5368 to the beneficiaries named in the certificate of confirmation of grant.
 - b. Handing over to the applicant all of the deceased's original titles as are in their possession or control including the original titles for;
 - i. Dagoretti/Riruta/5368.
 - ii. Ruiru/Kiu Block 13/617.
 - iii. Plot No. 581/Mwihoko Housing Company Limited.
 10. An order be issued that a licensed surveyor be allowed to go to the ground at Dagoretti/ Riruta/5368 to verify the location of the beacons and boundaries with respect to the beneficiaries entitlements on the said property and to file the survey report in this Honourable Court in preparation for the subdivision/partitioning of the said property.
 11. In default of the 1st and 2nd Respondents complying with any order granted and prayer no. 9 above, the Deputy Registrar of this Honourable Court be authorized to sign all necessary documents for the process of vesting the suit property Dagoretti/Riruta/5368 to the beneficiaries.
 12. Such other or further orders as this Honourable Court may consider fit and just to grant in the circumstances be granted.
 13. The costs of this application be awarded to the applicants.
2. The summons was premised upon Sections 2, 45, 47 and 82 of the *Law of Succession Act*, Rules 73 and 49 of the *Probate and Administration Rules* and all other enabling provisions of the law and was supported by the Affidavit of even date sworn by the Respondent.
 3. The Respondent avers that on 3rd October 2014, this court gave orders that the deceased's estate be distributed as follows: Dagoretti/Riruta/5368 be shared into six portions between Raphael Karuga Gichuhi, Elizabeth Muthoni Kamau, Daniel Waweru Gichuhi, Lucy Njeri Kamau, Anne Nyambura Gichuhi and Felister Nyokabi Waweru; LR Number Ruiru/Kiu Block 13/617 be transferred to herself; and Plot No. 581 Mwihoko Housing Company Limited be transferred to Daniel Waweru Gichuhi.



Lucy Njeri passed and her name was removed from the certificate of confirmation of grant. Her share was to be divided between her two daughter (Salome Nyawira Kioi and Leah Wanjiru Waweru). That the 1st and 2nd applicants who were the administrators had indicated to the court that a licensed surveyor would be appointed to place beacons on Dagoretti/Riruta/5368. She argues that there was unreasonable and inordinate delay in distributing the deceased's estate which prompted her to file an application for revocation of grant and an order that the 1st and 2nd applicants be ordered to render a true and just account on the rental income received from 18th June 2012 to date.

4. On 26th February 2024, this court gave orders that: The administrators were ordered to conclude administration of the estate within 120 days and to furnish court with accounts of rental income received from 18th June 2012 to 31st December 2023 within 90 days in default, the grant shall be revoked and issued to Felister Nyokabi Waweru. The 1st and 2nd Applicants did not comply with the court orders and the grant issued to them was revoked and a new grant was issued in her name.
5. She argues that the applicants have been uncooperative in joining her to finalise the administration of the estate. They have filed an application for revocation of grant date 2nd September 2024. They argue that she cannot administer the estate because she resides in the United States of America. She argued that the applicants have commenced the process of converting the Dagoretti property. The application was rejected by the Land Registrar because it was not done properly. She averred that she is now the administrator of the estate and any dealings of the estate should be done by her.
6. She argued that the statements of account filed by the 3rd Respondent do not tally with the amount she has received. She averred that there is need for a fresh survey to be done and a report to be filed. That there is need to place new beacons on the Dagoretti property because there are errors on the ground which will be rectified after sub division. She urged the court allow the application as prayed.

Response.

7. In response, the applicants filed the following grounds of opposition dated 10th December 2024;
 1. That this application is incompetent and an abuse of court process.
 2. That the application herein is seeking an equitable remedy which is governed by equitable principles that are applicable for the grant of injunction orders.
 3. That the Applicant has not established a prima facie case, and that she would suffer irreparable loss which may not be compensated by an award of damages and the balance of convenience does not fall in her favour.
 4. That the parcel of land known as Dagoretti/Riruta/5368 is registered in the Deceased's name and forms part of the estate of the deceased herein which shall be distributed among all the dependents' of the deceased herein.
 5. That the issue of the Applicant being an Administratrix of the estate herein is still an issue that is yet to be determined by the court as there is a pending application dated 2nd September, 2024 challenging the same.
 6. That the Applicant has not stated any irreparable loss she will suffer which cannot be compensated by an award of damages if the 3rd Respondent continues to collect rent in respect of Dagoretti/Riruta/5368.
 7. That in any event, the 3rd Respondent is collecting rent in respect of Dagoretti/Riruta/5368 on behalf of all the dependants hence it is in the interest of justice that it continues to do so.



8. That the instant succession cause has been in court since 2012 and the Applicant was aware of the fact that the 3rd Respondent was collecting rent in respect of Dagoretti/Riruta/5368 on behalf of all the dependants since then and no evidence has been availed before this Honourable Court to justify why the status quo should be altered in regards to rent collection.
9. That the application dated 18th November 2024 is misconceived and an abuse of court process.
10. That it is in the interest of justice that the application be dismissed to save the time of this Honourable court and in the interests of timely justice.

Application Dated 2nd September 2024

8. Daniel Waweru Gichuhi and Elizabeth Muthoni Kamau (the 1st and 2nd applicants) filed an application for revocation of grant dated 2nd September 2024. The application seeks the following orders;
 1. The grant of letters of administration to the deceased's estate which was made to Felister Nyokabi Waweru on 26th February 2024 be revoked and annulled forthwith.
 2. Spent.
 3. That the costs of this application be in the cause.
9. They averred that they complied with the orders of 26th February 2024 which ordered them to complete administration of the estate within 120 days and to file statements of accounts within 90 days. They even initiated the transmission process. They argue that the transmission cannot be stopped mid-way. When the matter came up for mention 10th July 2024, the file was missing in court. The matter was given another mention date for 20th August 2024 but the file was still missing. They argue that the grant issued to the Respondent was issued by this court on the mistake that they had not complied with the court orders of 26th February 2024. They urged the court to revoke the grant issued to the Respondent on that ground.

Response

10. The Application was opposed through the following grounds of opposition dated 16th September 2024;
 - a. That the said Application dated 2nd September 2024 has been made by Daniel Waweru Gichuhi and Elizabeth Muthoni Kamau who are the former Administrators of the Estate of the deceased.
 - b. That notwithstanding the fact that the grant was issued to the aforementioned Administrators on 18th June 2012 and confirmed on 13th October 2015, they unreasonably failed and/or refused to complete the administration of the estate of the deceased, resulting in the Respondent's application of 17th July 2023 seeking *inter- alia*, substitution of the previous Administrators with the Respondent.
 - c. That on 26th February 2024, this Honourable Court ordered the prior Administrators to conclude the Administration of the Estate of Deceased within 120 days in default of which the Grant of Letters of Administration would be revoked and issued to the Respondent "Felister Nyokabi Waweru".



- d. That the 120 days came and went by without the Administration of the Estate of the deceased being concluded and by operation of the Law, the previous Administrators' grant was revoked and issued to the said Respondent.
- e. That the Applicants have openly admitted in their Application of 2nd September that they did not comply with the Order to conclude the Administration of the Estate, though they attempted to justify their failure to conclude the Administration as ordered.
- f. That even if any alleged or purported justification existed for the Applicants' failure to comply with this Honourable Court's Orders, it has been almost 10 years since the grant was confirmed and there can be no excusable justification for such a delay in concluding the Administration of the Estate of the deceased.
- g. That in any event, even if there were legitimate justifications for the Applicants' failure to comply with this Honourable Court's Orders, such reasons should have been brought before the Court and an extension sought to comply with the Order to conclude Administration.
- h. That as it stands, the 120-day timeline lapsed without extension and the Applicants are coming after the horse has already bolted the stable.
- i. That the Grant issued to the Applicants having already been revoked for failure to administer the Estate of the deceased within legal timeframes, it is unreasonable for them to apply to again be re-issued with the Grant as they are likely to continue to default on the conclusion of the Administration of the Estate of the deceased.
- j. That apart from defaulting on the Order to conclude the Administration of the Estate of the deceased, they have also defaulted on the order to provide the Court with full accounts of the Rental income received from the 18th June 2012 to 31st December 2023.
- k. That the Applicants have not come to Court with clean hands and should therefore not be entitled to the orders sought.
- l. That the Grant having already been issued to the Respondent, the Applicants have not laid forth any legal grounds that would justify the revocation of the Grant at this juncture.
- m. That the Respondent prays that the Applicant's Application of 2nd September 2024 be dismissed.

Applicant's Submissions.

11. The applicants contend that there was a grant in place and that the court was misled to believe that they had not complied with the orders of 26th February 2024.
12. They sought to rely on Section 76 of the *Law of Succession Act* and the decisions in *In Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR and *In re Estate of Amos Kiteria Madeda-Deceased* (Probate & Administration E004 of 2021) [2022] KEHC 12950 (KLR) and argued that they had established the grounds for revocation of grant. They argued that they had proved that the Respondent misled the court to believe that they had not complied with the orders of 26th February 2024.

Respondent's Submissions.

13. The Respondent submitted that the Applicants have not established any of the grounds for revocation as stipulated in Section 76 of the *Law of Succession Act*. She argued that the court issued orders that the applicants administer the estate within 120 days and file statements of accounts within 90 days failure



to which the grant issued to them stands to be revoked. That the applicants failed to comply with the said orders and she was issued with the grant. She argued that the court should not re-issue the grant to them since they had failed to comply with the court orders and had failed to administer the estate over nine years after the grant had been confirmed.

14. She further submitted that the 3rd Respondent continues to collect rent from Dagoretti/Riruta/5368 and disburses it to the beneficiaries of the estate. She argues that the statement of income filed by the 3rd Respondent is not comprehensive: it does not show how many rental houses there are and how much each tenant is paying. She denies receiving Kshs. 2,163,700 from the 3rd Respondent. She argued that the 3rd Respondent continues to collect rent and acts on the instructions of the 1st and 2nd Respondents which amounts to intermeddling with the estate of the deceased according to Section 45 of the *Law of Succession Act*.
15. The respondent submits that the administration of the estate should come to an end since all the parties are agreeable to the mode of distribution. She argued that there is need to re-survey Dagoretti/Riruta/5368 and beacons be placed on the ground. That the 1st and the 2nd applicants have refused to share any information with her or hand over the title deeds in order for her to administer the estate as the administrator.

Analysis and Determination

16. The issues for determination are;
 - i. Whether there are sufficient grounds to revoke the grant.
 - ii. Whether the application dated 18th November 2024 has merit.

Whether there are sufficient grounds to revoke the grant.

17. Section 76 of the *Law of Succession Act* 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.”

18. Section 76 was clearly expounded on by the court *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where it was stated that:

“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.”

19. The ground on which the Applicant seeks revocation of the Grant is that, the grant of letters administration was obtained by making false and misleading statements, as they had already complied with the orders of the Court requiring that the administrators furnish accounts and that they complete transmission. It is submitted that the accounts were lodged on 24th May 2025 and the process of transmission had commenced as per the screen shots taken of the Ardhi Sasa platform and evidence of communication showing process of subdivision had commenced in 2022.

20. In the case of *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa* [2016] eKLR, the court held as follows;

The power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 of the *Law of Succession Act* and order for revocation of or annulment of a grant. Besides, 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

21. This is not the first time that concerns have been raised with the diligence of the administrators in completing distribution of the estate. The grant herein was confirmed on 13th October 2015. Section 83 (g) of the [Law of Succession Act](#) requires that Administrators finalise the administration of the Estate within 6 months of Confirmation of the grant. Section 76 of the [Law of Succession Act](#) states the Court may revoke a grant where the administrators fail to proceed diligently in the administration of the Estate. It was my finding that the previous administrators failed to comply with Section 83(g) even when I extended time for them to finalise transmission. The grant was therefore properly revoked. The accounts as presented by the administrators were by the estate agent and not the administrators. The accounts are a summary of collections by the estate agent but do not detail how the funds were applied and specifically whether they were remitted to the beneficiaries. It is not an account of the dealing of the administrators with the estate.

Whether the Application Dated 18th November 2024 is Merited.

22. The Application of the Respondent who is the current administrator of the estate of the deceased calls for a restatement of the limits of the mandate of the Probate Court. The Courts mandate is limited to distributing the free estate of a deceased person among the rightful beneficiaries of the Estate and once the certificate of confirmation issues, the court will except in exceptional circumstances such as revocation or rectification of the grant be functus officio.
23. The grant herein has already been confirmed. The Administrator is vested with the power to transmit the estate. The Court does not have the mandate after the grant is confirmed to issue the orders she seeks, such as the termination or appointment of the estate agent or his supervision. After the grant is confirmed the disputes that she presents are not within the mandate of the probate court. If she feels money payable to the estate has been withheld she can pursue this from a court with the requisite jurisdiction.
24. The Court will only step in to ensure that the transmission of the estate proceeds in accordance with the summons of confirmation of grant, this does not include determining whether the beacons are rightly placed. This rests with the Land Registrar or the Environment and Land Court.
25. The only orders therefore that this Court will have the jurisdiction to make
- i. Is to compel the respondents, Daniel Waweru Gichuhi and Elizabeth Muthoni Kamau to surrender to the Applicant within 14 days, titles for
 - i. Dagoretti / Riruta/ 5368
 - ii. Ruiru/ Kiu Block 13/ 617
 - iii. Plot No. 581/ Mwihoko Housing Company Limited. In default the Registrar of Lands to Dispense with the requirement that the originals be presented.
 - ii. The Respondents will execute all the documents to facilitate the transfer of the above captioned parcels of land within 14 days of presentation to them. In default the Deputy Registrar will execute the same on their behalf.
 - iii. The Administrator will finalise transmission of the Estate within 6 months.
26. Parties are at liberty to exercise their right of appeal, within 30 days.



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

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 10TH DAY OF JULY, 2025.

M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Mbogori for Administrator/Applicant

Ms. Chebet for Mbuthia Kinyanjui for Applicants

Fardosa Court Assistant

