



REPUBLIC OF KENYA



**In re Estate of Samuel Kibui Mwangi (Deceased) (Succession Cause  
1584 of 2002) [2025] KEHC 10916 (KLR) (Family) (8 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10916 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1584 OF 2002  
CJ KENDAGOR, J  
JULY 8, 2025  
IN THE MATTER OF ESTATE OS SAMUEL KIBUI MWANGI – DECEASED**

**BETWEEN**

**ROSE WANJIRA KIBUI ..... PETITIONER**

**AND**

**WILFRED MWANGI KIBUI ..... OBJECTOR**

**RULING**

1. The Deceased, Samuel Kibui Mwangi, died on 29<sup>th</sup> October, 2001. The Applicant is a son of the Deceased, while the Respondent claimed to be a widow of the Deceased. The Court issued Letters of Administration intestate to the Applicant and the Respondent on 20<sup>th</sup> August, 2002 and the same was confirmed on 20<sup>th</sup> September, 2016.
2. The Applicant brought the instant Summons for Revocation dated 26<sup>th</sup> February, 2025 in which he sought the following orders;
  1. Spent;
  2. That the Letters of Administration Intestate issued to the Petitioner herein and confirmed on 20<sup>th</sup> September, 2016 be revoked and/or annulled.
  3. That Rose Wanjira Kibui be removed as the administratrix of the estate of the late Samuel Kibui Mwangi
  4. That the names of Rose Wanjira Kibui be removed as a beneficiary of the Estate of the Late Samuel Kibui Mwangi and the Estate be subdivided afresh among the legal beneficiaries.



5. That alternatively this Honourable Court be pleased to Set Aside, Revisit, and/or Review the Orders leading to the confirmation of the grant herein and same be amended to reflect the true and fair shares of each and every beneficiary.
6. That costs of this application be provided for.
3. The grounds of the application were enlisted on the face of the application. The Applicant stated that the grant was obtained and confirmed fraudulently by use of false statements and concealment of material facts. He stated that this succession cause was filed as an intestate succession despite the availability of a Will written by the Deceased. He claimed that the Respondent has been economical with the truth and material facts, which facts need to be brought to the fore for determination by this Court.
4. The application was supported by an affidavit sworn by the Applicant dated 26<sup>th</sup> February, 2025. He stated that the Respondent was a stranger to the estate of the Deceased and should be removed from the list of beneficiaries. He deponed that the Deceased and the Respondent have never been married nor have they ever stayed together as husband and wife. He stated that the Respondent deliberately introduced a non-existent marriage certificate (indicating that she was married to the Deceased) to mislead the Court into confirming the grant. He also claimed that the confirmation, as it is, granting parcel no Dagoretti/Uthiru/1033 to the Respondent, renders the rest of the beneficiaries homeless.
5. The Respondent filed a Replying affidavit sworn by her and dated 28<sup>th</sup> February, 2025. She stated that she was not a stranger to the Estate of the Deceased and that she lived with the Deceased as man and wife from 1995 until his demise in 2001. She also stated that this Court through its judgment dated 9<sup>th</sup> October, 2009 found that she was married to the Deceased under common law and declared her his widow. She claimed that the issue of her marriage to the Deceased is Res Judicata and there is no basis for the Court to review its earlier decision. She stated that the Applicant's application seeks a second bite at the cherry and does not meet the test for revocation of grant.
6. The Application was canvassed by way of written submissions.

#### **Applicant's Written Submissions**

7. The Applicant submitted that the grant should be revoked. He argued that the Respondent concealed vital information that would have altered the decision of this Court in granting the grant of letters. He argued that the Respondent applied for the grant using a copy of marriage certificate which indicated that she was the wife of the Deceased. He submitted that the copy of the marriage certificate has since been proved to be non-existent, not genuine, and unverified. For these reasons, he argued that the Respondent is not a bona fide beneficiary of the Deceased's estate and should thus be excluded.
8. He also submitted that one of the beneficiaries, Elizabeth Kibui is conspicuously missing in the schedule yet there was no documentation to show that she had relinquished her share of the Estate. He argued that the said Elizabeth Kibui did not sign neither was she available during the hearing, and that no reasons for her non-attendance was tendered.

#### **Respondent's Written Submissions**

9. The Respondent submitted that the application should be dismissed. She argued that all the issues raised by the Applicant in the present application have been heard and determined by this Court and are therefore res judicata. She argued that this Court delivered a judgment dated 9<sup>th</sup> October, 2009 in which it found that she was a wife of the Deceased and a beneficiary of his Estate. She argued that the Applicant is aware of the Court's previous findings and any new attempt to contest those findings is



nothing more than an abuse of the judicial process. She also submitted that Elizabeth Wanjira Kibui was adequately provided for by the Court as per the Court’s ruling dated 15<sup>th</sup> September, 2016.

### **Issues for Determination**

10. Having looked at the grounds of the Application, the various affidavits, and the submissions by the parties, there are two issues for determination;
  - a. Whether the Applicant’s Application meets the threshold for the revocation of a grant within the meaning of Section 76 of the *Law of Succession Act*.
  - b. Whether the Applicant’s application meets the legal threshold for review of the orders leading to the confirmation of the grant.

### **Whether the Applicant’s Application meets the threshold for the revocation of a grant within the meaning of Section 76 of the *Law of Succession Act***

11. The law on revocation of grant is Section 76 of the *Law of Succession Act*. The Section enumerates the several grounds under which a Court can revoke a grant and provides as follows;

“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.”
12. The Court in *In re Estate of Amos Kiteria Madeda-Deceased* (Probate & Administration E004 of 2021) [2022] KEHC 12950 (KLR) (21 September 2022) (Ruling) interpreted the said provision in the following terms;
    21. The grounds upon which a grant may be revoked or annulled are thus statutory and it is incumbent upon any party making an application for revocation or annulment of a grant to



demonstrate the existence of any, some or all the above grounds. A reading of Section 76 shows that the grounds can be divided into the following categories: - (a) the propriety of the grant making process; (b) mal-administration or (c) where the grant has become inoperative due to subsequent circumstances.

13. Similarly, the Court *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR expounded on above provision 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 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.”

14. Similarly, the court *in In re Estate of Michael Sule Obuola (Deceased)* (Miscellaneous Succession Cause E001 of 2024) [2024] KEHC 7072 (KLR) held as follows;

“From the above provision of the law and case law, it is clear that a party seeking to have a grant revoked must prove either, or, all the grounds listed under Section 76 of the *Law of Succession Act*”.

15. The Applicant argued that the grant should be revoked and he enumerated several grounds to support his claim. He argued that the Respondent is not a bona fide beneficiary of the Deceased's Estate and should thus be excluded from the estate. He argued that the Respondent secured the grant on account of a forged marriage certificate to mislead the court that she was married to the Deceased. He argued that the marriage certificate was not genuine and that she concealed the said information. He also claimed that the Respondent and the Deceased never married nor have they ever stayed together as husband and wife.
16. This Court is being invited to analyze these facts and determine whether they meet the threshold for revoking a grant under Section 76.
17. I have looked at the record of the Court. The issue of the authenticity of the Marriage Certificate was canvassed at length by this Court in a judgment delivered by K.H. Rawal, J (as she was then) on 9<sup>th</sup> October, 2009. The Court in the same judgment also determined the question of whether the



Respondent was a wife to the Deceased. The Court heard parties on these two issues, witnesses testified, and a judgment was rendered.

18. In the said judgment, the Court found that the evidence of the Marriage Officer (from the Registrar of Marriages) did not conclusively disprove the validity of the marriage certificate. The Marriage officer, who testified as DW3, had been called to explain to the court about the circumstances under which the disputed marriage certificate was acquired and its validity. The Court also found that, nonetheless, there was a presumption of marriage between the Deceased and the Respondent. It found that the two were married under common law by virtue of cohabitation.
19. I note that the Court delivered the judgment on 9<sup>th</sup> October, 2009. I have also noted that the Applicant did not appeal or seek review of the said judgment. In my view, the findings of the Court on these two issues are binding to this Court and this Court should not re-open these issues, unless where it has been moved to review the same. The Applicant has not requested this Court to review the said judgment delivered on 9<sup>th</sup> October, 2009. Therefore, the Applicant's claim that the Marriage Certificate was forgery and that the Respondent was not a wife to the Deceased cannot stand.
20. I have looked at the Applicant's affidavit to see whether it discloses fraud or concealment of material facts on the part of the Respondent. In my view, I could neither attribute any fraud on the part of the Respondent nor find any deliberate concealment of material facts on her part. The Court has previously found that the evidence from the Registrar of Marriages did not conclusively disprove the validity of the marriage certificate. Besides, the Court found that the Respondent and the Deceased were married in common law by virtue of cohabitation and declared her his widow.
21. The Applicant also argued that the process of confirmation of the grant was defective. He argued that the consent upon which the grant was confirmed was signed by one Elizabeth Njeri Kibui who is a person of lucid mind. I have perused the Judgment delivered on 9<sup>th</sup> October, 2009 with a view to determining what transpired. It occurs to me that the Court addressed itself to the question of whether the said Elizabeth Njeri Kinui had the requisite capacity to sign the consent. The court observed as follows;

One Elizabeth Njeri who is alleged to be of unsound mind has affixed her thumbprint after certificate from an Advocate was given as to her understanding of the contents of the document. In any event, I do not have any medical report as to the mental incapacity of Elizabeth and/or its extent. In view thereof, I shall not disregard her consent given and annexed to the petition which was filed on 26<sup>th</sup> July, 2002.
22. I have already found that the Applicant did not appeal or seek review of the said judgment in which the above findings were made. That being the case, this Court is bound by the previous Court's finding that Elizabeth Njeri had the requisite capacity to sign the consent document. This Court cannot reopen this issue unless where it is exercising its review jurisdiction. Thus, the Applicant's claim that Elizabeth Njeri did not have capacity to sign the document cannot stand.
23. Based on these facts, it is my considered view that the Applicant has, thus, not disclosed any grounds under Section 76 to warrant the revocation of the grant.

**Whether the Applicant's Application meets the legal threshold for review of the orders leading to the confirmation of the grant**

24. In the alternative, the Applicant asked this Court Set Aside, Revisit, and/or Review the Orders leading to the confirmation of the grant herein and same be amended to reflect the true and fair shares of each



and every beneficiary. This Court is being invited to determine whether the Applicant’s application meets the legal threshold for review of the orders leading to the confirmation of the grant.

25. Review is provided for in Section 80 of the [Civil Procedure Act](#) and Order 45 of the Civil Procedure Rules. Section 80 of the [Civil Procedure Act](#) states as follows;

“Any person who considers himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

26. Order 45 of the [Civil Procedure Rules](#) provides as follows;

“1.

(1) Any person considering himself aggrieved—

- (a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

27. The Court in [Josiah v Nyaga](#) (Civil Appeal 34 of 2021) [2023] KEHC 2054 (KLR) interpreted the above provisions and observed as follows;

“Courts have the discretion to allow review on three grounds; where there is discovery of new and important matter of evidence, where there is an apparent error on the face of the record and where there is sufficient reason to do so. The application for review must be made without undue delay. The applicant herein has pleaded that there was an error on the face of the record which warrants this court to exercise its discretion and review the orders issued on October 3, 2022”.

28. Similarly, the Court in [Ribiru v Mwaniki & 2 others](#) (Civil Appeal 37 of 2023) [2024] KEHC 10417 (KLR) interpreted the law on this area and held as follows;

“It then follows that Order 45 provides for three circumstances under which an order for review can be made. The applicant must demonstrate to the court that there has been



discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. Secondly, the applicant must demonstrate to the court that there has some mistake or error apparent on the face of the record. The third ground for review is worded broadly; an application for review can be made for any other sufficient reason”.

29. I have perused the record to ascertain the orders of the Court leading to the confirmation of the grant. The Court delivered a ruling dated 20<sup>th</sup> September, 2016, in which it distributed the Estate of the Deceased amongst his beneficiaries. It gave parcel Dagoretti/Uthiru/1033 to the Respondent and directed the Applicant and his siblings to move therefrom in 90 days. It directed the Applicant and his siblings to equally share each of the following properties; Dagoretti/Uthiru/1035; Dagoretti/Uthiru/1044; proceeds at Kenya Commercial Bank account; Shares at NACICO; Death gratuity at Nairobi City Council, and the 2 acres at Ngwataniro Mutukanio.
30. The Applicant argued that the issue of the redistribution of the estate should be revisited. He argued that parcel Dagoretti/Uthiru/1033 should not be given to the Respondent on grounds that they reside on the said parcel and that giving it to the Respondent would render them homeless. He also claimed that parcel Dagoretti/Uthiru/1035 is a family cemetery whereas parcel Dagoretti/Uthiru/1044 is located near a quarry. He argued that the confirmed grant represents unfair distribution of the Deceased’s Estate.
31. I have relooked at Applicant’s application with a view to determining whether there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. I have also examined the said ruling to determine whether it has any mistake or error apparent on the face of the record or whether the Applicant has disclosed any other sufficient reason to warrant review.
32. In my analysis, the Applicant has not shown that he has discovered new and important matter or evidence after the delivery of the ruling. Although the Applicant claimed that this succession cause should not have been filed as an intestate succession due to the availability of a Will written by the Deceased, he did not produce the said Will before this Court. He has also not shown that there is some mistake or error apparent on the face of the record. Lastly, he has not shown any other sufficient reason to warrant review. The distribution of the Estate appears to me to have been equitable because all the beneficiaries were fairly and equally provided for, including Elizabeth Wanjira Kibui.
33. It is my considered view that the Applicant has not met the threshold of grant of orders of review. Accordingly, the Application dated 26<sup>th</sup> February, 2025 lacks merit and is hereby dismissed.
34. Each party to meet its own costs of this application.
35. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 8<sup>TH</sup> DAY OF JULY, 2025.**

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**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl



Advocate Molla for Applicant

Advocate Gathoni for Respondent

