



REPUBLIC OF KENYA



In re Estate of Fleciah Wairimu Mwangi (Deceased) (Succession Cause 66 of 2021) [2025] KEHC 9538 (KLR) (2 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9538 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 66 OF 2021**

PN GICHOHI, J

JULY 2, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE
FLECIAH WAIRIMU MWANGI (DECEASED)**

IN THE MATTER OF

PETER MWARANGU MWANGI 1ST APPLICANT

DAVID MWANIKI MWANGI 2ND APPLICANT

RULING

1. The background of this Ruling is that there are two files herein in regard to different estates. The first to be filed was High Court Succession Cause No 479 of 2004 in the Estate of John Mwangi Mwariri (Deceased). Letters of administration were issued to his widow Fleciah Wairimu Mwangi on 8th July 2005 and ultimately confirmed on 23rd June 2006 and all the property went to her.
2. Fleciah Wairimu Mwangi later died on 11th March 2015 upon which Peter Mwarangu Mwangi and David Mwangi Mwaniki filed High Court Succession No 66 of 2021 in regard to her estate. A Grant of letters of Administration was issued on 8th November 2021 to both Peter Mwarangu Mwangi and David Mwangi Mwaniki.
3. On 5th December 2022, Peter Mwarangu Mwangi and David Mwangi Mwaniki filed Summons for Confirmation of Grant citing the two Succession Cause files as reflected in the heading of that Summons. They sought that the Grant issued to their mother Fleciah Wairimu Mwangi (deceased) be confirmed.
4. In support of that Summons, the beneficiaries, who are all children of the two deceased parents were listed as Peter Mwarangu Mwangi, David Mwangi Mwaniki, Sammy Muriithi Mwangi, Catherine Faith Wachera Mwangi and Martha Wangari Mwangi.



5. They attached the mode of distribution of the property of the estate of their father John Mwangi Mwariri and filed a consent to the mode of distribution which included alleged property that was not mentioned in the confirmed grant issued to their late mother Fleciah Wairimu Mwangi.
6. When they appeared before T.Odera J, Mr. Bosire Advocate intimated to the Court that the Succession Cause No 479 of 2004 in respect of John Mwangi Mwariri was pending and sought that the two files be merged. The Court therefore directed that the said file be availed.
7. The file being Succession Cause No 479 of 2004 was ultimately availed and in that file, the Court was moved by an application titled “Summons” and brought pursuant to Section 47 and 74 of the Law of Succession Act. The Applicants sought for the following Orders:-
 1. That Peter Mwarangu Mwangi and David Mwaniki Mwangi be appointed as the administrators of the deceased Estate herein in place of Fleciah Wairimu Mwangi(Deceased).
 2. Nakuru Teachers Housing Co-operative Society Limited Plot No 000747, Barclays Bank of Kenya Limited 240 shares, Motor Vehicle KAP 211A Land Rover and Plot No 145 Ebururu Settlement Scheme be included as assets of the deceased herein and be inherited by Peter Mwarangu Mwangi and David Mwaniki Mwangi in trust of the beneficiaries herein.
 3. Nakuru/Municipality Block 9/104 registered jointly in the names of Eustase Gitonga Muhonyo and John Mwangi Mwariri be included as an asset of the Deceased herein and the Deceased part be inherited by Peter Mwarangu Mwangi and David Mwaniki Mwangi in trust of other beneficiaries and the same registered in the name of Eusticus Gitonga Muhonyo and Peter Mwarangu Mwangi and David Mwaniki Mwangi.
 4. Nakuru Municipality Block 2/731 and Nakuru Municipality Block 2/732 registered in the names of John Mwangi Mwariri (Deceased) and Wairimu Mwangi Fleciah (Deceased) be included as assets of the Deceased herein and the same be inherited by Peter Mwarangu Mwangi and David Mwaniki Mwangi in trust of other beneficiaries.
 5. This Succession Cause be consolidated with Nakuru High Succession Cause No E066 of 2021; In the matter of the Estate of Fleciah Wairimu Mwangi (Deceased).
 6. Grant of Letters of Administration intestate be rectified and re-issued in the names of Peter Mwarangu Mwangi and David Mwaniki Mwangi.
 7. That cost of this application be in the cause.
8. The grounds are on the face of the application and supported by the Affidavit of the Applicants sworn on 8th November, 2021.
9. The Applicants stated that the deceased herein (John Mwangi Mwariri) is their biological father and the husband of Fleciah Wairimu Mwangi (their Mother-also deceased).
10. They stated that upon demise of their father, their mother was appointed the sole administrator in his Estate and a grant of Letters of Administration was issued to her on 8th July, 2005 and later confirmed on 23rd June, 2006.
11. They stated that their mother died on 11th March 2015, before distribution of their father’s estate hence leaving their father’s Estate un-administered.



12. The Applicants confirmed that the beneficiaries for both Estates are the same and added that they have all agreed to have them, Peter Mwarangu Mwangi and David Mwaniki Mwangi, appointed as Administrators of the estate of their Deceased father therein in place of their deceased mother.
13. The Applicants further stated that some properties such as Nakuru Teachers Housing Co-operative Society Limited Plot No 000747, Barclays Bank of Kenya Limited 240 shares, Motor Vehicle KAP 211A Land Rover, Plot No 145 Ebururu Settlement Scheme and Nakuru /Municipality Block 9/104 were erroneously excluded as assets of the deceased and thus should be included as properties of the deceased.
14. It was explained that Nakuru /Municipality Block 9/104 is jointly registered in the name of the John Mwangi Mwariri and Eustace Gatonga Muhunyo and the same should devolve to the Applicants to hold in trust for the other beneficiaries.
15. The Applicants concluded by asking this Court to rectify the Grant of Letters of Administration issued to their late mother on 8th July, 2005 and the Certificate for Confirmation of Grant issued on 23rd June, 2006 and reissue the same to them as prayed in this application.
16. In Succession Cause No E066 of 2021, the Applicants filed a “Further Affidavit in support of Summons for confirmation of Grant” dated 2nd March 2025 where they deponed that the Letters of Administration had been made to them and that six months had since lapsed and no objection had been raised or filed. They urged the Court to confirm the Grant as prayed and as per the attached mode of distribution.

Analysis and Determination .

17. From the above material, the issues arising for determination are:-
 - a. Whether the Applicants herein can be appointed by this Court as administrators of the Estate in place of Fleciah Wairimu Mwangi (the deceased sole Administrator in succession Cause No 497 of 2004).
 - b. Whether the Grant should be rectified and re-issued in the name of the Applicants.
 - c. What properties should be included to the Estate of the deceased.
 - d. Whether the prayer for consolidation of the two succession files is merited.
18. On the first issue, the Applicants argued that Fleciah Wairimu Mwangi (their deceased mother) was the sole administrator of the Estate herein (belonging to their deceased father) and was granted letter of Administration intestate on 8th July, 2005, which Grant was confirmed by issuance of Certificate for confirmation of that Grant on 23rd June, 2006 . However, that their mother died before distribution was affected. It is on that basis that they urged this Court to appoint them as the Administrators of the Estate of the deceased herein in place of their mother.
19. The Applicants aver that all the other beneficiaries have consented to have them replace their late mother as administrators of the Estate of their deceased father herein. In essence, the Applicants are asking this Court to order for substitution of the sole deceased Administrator.



20. However, the Law of Succession Act does not provide for substitution of a deceased administrator (s). Indeed, Section 81 of the Act, provides that:-

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them...”

21. That means that in the event of the death of one or more of joint administrators, where there are several administrators, the surviving administrator or administrators would then have the mandate to continue with their duties to completion without the need to replace the deceased ones.

22. In this case, Fleciah Wairimu Mwangi (now deceased), was indeed the sole Administrator of the estate of her late husband (John Mwangi Mwariri) and therefore, Section 81 of the Act is not Applicable. The confirmed grant issued to her shows that she held whole share of the properties of the deceased listed as hereunder:-Kiambogo/Kiambogo Block 2/ 206 (Mwariki)Nyandarua /Ngolika/1.Kiambogo/Miroreni Block 1/400 ().Nakuru Municipality Block 2/731.Nakuru Municipality Block 2/732.N.B.K A/C No 0124319976/xxx Nakuru.B.B.K Kericho A/C No.1065xxx.

23. If it is proved that the above property was not eventually transferred to her before her death, then there is no room for substitution of the Administrator (Fleciah Wairimu Mwangi) with any person including the Applicants herein.

24. In effect, the Grant issued to her and finally confirmed becomes inoperative and is for revocation in line with Section 76 (e) of the Law of Succession Act as read with Rule 44 of the Probate and Administration Rules. Indeed, the Court of Appeal in *Florence Okutu Nandwa & another v John Atemba Kojwa*, Kisumu Civil Appeal No 306 of 1998, made it clear that:-

“A grant of representation is made in personam. It is specific to the person appointed. It is not transferable to another person. It cannot therefore be transferred from one person to another. The issue of substitution of an administrator with another person should not arise. Where the holder of a grant dies, the grant made to him becomes useless and inoperative, and the grant exists for the purpose only of being revoked. Such grant is revocable under section 76 of the Law of Succession Act. Upon its revocation, a fresh application for grant should be made in the usual way, following procedures laid down in the Law of Succession Act and the Probate and Administration (Rules)...”

25. In light of the above, the Applicants ought to have applied for revocation or annulment of the Grant issued to their deceased mother, the grounds being that the Grant has become useless and inoperative. That would pave way for petitioning for the appointment of new administrators to take over the administration of the Estate as provided for under Sections 51 to Section 66 of the Law of Succession Act. In the circumstances herein, the prayer for substitution of Fleciah Wairimu Mwangi (deceased) with the Applicants herein is untenable and therefore disallowed.

26. Even though no application for revocation was made, Section 76 (e) of the Law of Succession Act allows this Court to *suo moto* revoke a grant in that it 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;



(e) that the grant has become useless and inoperative through subsequent circumstances.”

27. Similarly, having established that the sole Administrator of the Estate herein (Fleciah Wairimu Mwangi) died 11th March, 2015, the Grant issued to her on 8th July, 2005 and confirmed on 26th June, 2006 has become useless and inoperative. On its own motion, and in the interest of justice and expediency, this Court hereby revokes the same.
28. It is noted that despite Mr. Bosire Advocate for the Applicants herein seeking merger of this Succession Cause with Succession Cause No 479 of 2004, there was no such order made. In any event, these are two different Estates and there can never be consolidation of the two.
29. In such circumstance, Musyoka J had this to say in an application *in Re Estate of Ikutwa Ashiundu (Deceased)* [2021] KEHC 13597 (KLR) while handling an application for review of an order consolidating two causes: -

“The two causes relate to estates of two different individuals. It is not permissible that estates of different individuals are handled within one cause, for that is what consolidation means or results in. That is so as each individual has a separate estate, in terms of the assets that comprise the estate and the persons who are beneficially entitled to shares in those assets. It does not matter that the different estates are of spouses or of a parent/child, the estates are of different persons and ought to be handled separately, and therefore, the consolidation ordered on 30th January 2020 was by error, and should be reviewed. It matters not that the estates relate to the same assets, what matters is that an estate relates to a single individual. It a matter in the estate of that person. One grant ought to be made to the estate of one individual, there cannot be one grant in respect of two estates. There can be simultaneous handling of two or more related causes, but consolidation of the causes is something that should not be contemplated. It could be a conceptual absurdity to have estate of different persons consolidated.”

30. In the circumstances, the prayer for consolidation of the estate of John Wangi Mwariri (deceased) and the Estate of Fleciah Wairimu Mwangi (deceased) is untenable and therefore denied.
31. The Applicants have intimated that they have since realised that as at the time their mother filed Summons for Confirmation of the Grant in regard to their father’s estate, some properties were left out hence their prayer for rectification of grant and re-issuance in the name of the Applicants . That too is not tenable in light of the fact that they are not yet administrators of the estate of their late father.
32. Having revoked the grant issued to Fleciah Warimu Mwangi in the Succession Cause No 497 of 2004, then that file remains as pending and not abandoned as implied by the Applicants.
33. In those circumstances, and considering that all the children of the deceased are in agreement that the Applicants herein be appointed as Administrator of the Estate of their late father, the Applicants herein should therefore file a new application for Grant of Letters of Administration intestate to the Estate of the deceased herein (John Mwangi Mwariri) in the normal way for consideration by this Court.
34. As regards Succession Cause No 66 of 2021, it is evident that the Applicants were appointed as Administrators of the Estate of their mother Fleciah Wairimu Mwangi (Deceased). They are at liberty to file for Confirmation of Grant of her estate in regard to any property that she held alone. Otherwise, the file would be marked a s closed .
35. In conclusion , this Court makes the following Orders:-



1. The Grant of Letters of Administration issued to Fleciah Wairimu Mwangi on 8th July, 2005 and confirmed on 23rd June, 2006 in regard to Succession Cause No 479 of 2004 is hereby revoked.
2. The Applicants herein to file a fresh application for Grant of Letters of Administration regarding the Estate of John Mwangi Mwariri in Succession No 479 of 2004.
3. The Applicants to file Summons for Confirmation of Grant issued to them on 8th November 2021 in regard to Succession Cause No 66 of 2021 for the Estate of Fleciah Wairimu Mwangi only otherwise that file will be marked as closed.
4. No orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 2ND DAY OF JULY, 2025.

PATRICIA GICHOHI

JUDGE

In the presence of :-

Mr. Bosire for the Applicants absent

All beneficiaries

Ruto, Court Assistant

