



**Muriuki & another v Makara & another (Succession Cause  
328 of 1996) [2025] KEHC 11292 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11292 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 328 OF 1996**

**DKN MAGARE, J**

**JULY 28, 2025**

**IN THE MATTER OF THE ESTATE OF JOHN MAKARA  
MURIUKI ALIAS MAKARA MURIUKI (DECEASED)**

**BETWEEN**

**JANE WAMBUI MURIUKI ..... 1<sup>ST</sup> APPLICANT**

**SAMUEL MAINA MURIUKI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**ROSEMARY WAMBUI MAKARA ..... 1<sup>ST</sup> RESPONDENT**

**ANN MUTHONI NDUNG’U ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the Summons for Revocation of Grant filed by the Applicants on 3.12.2024. The summons is undated. The Summons seeks for the following reliefs:
  - a. The Grant of Letters of Administration issued to Rosemary Wambui Makara, Charles Maina Mwangi and Ann Muthoni Ndungu on 30.1.2017 be annulled to the extent:-
    - i. That distribution of shares in Tetu/Unjiru/784 and Tetu/Unjiru/781 were wholly entitled to the Applicants on behalf of themselves and the siblings of Joseph Muriuki Makara (deceased) representing the 3<sup>rd</sup> House.
  - b. A fresh grant be confirmed taking into consideration the distribution of the 3<sup>rd</sup> house as Moses Maina Makara holding the 3<sup>rd</sup> house share in trust for himself and the children of the deceased has no interest whatsoever on the aforementioned parcels which are developed by the Applicants.



- c. That LR Tetu/Unjiru/782 and Tetu/Unjiru/785 be redistributed and confirmed to Rosemary Wambui Makara and Ann Muthoni since the Applicants herein have no interest in land belonging to the 2<sup>nd</sup> House.
2. The application is supported by the affidavit of the Applicants sworn on 3.12.2024 and is premised on the following grounds:
    - a. The Applicants are daughter in law and grandson of the deceased.
    - b. The Applicants are from the 3<sup>rd</sup> house and administrators of Joseph Muriuki Makara (deceased).
    - c. When Joseph Muriuki Makara died, the Applicants did not substitute him because they were not aware of the proceedings.
    - d. Moses Maina Makara filed no pleadings and was not listed as beneficiary of the 3<sup>rd</sup> house.
    - e. The grant was obtained through untrue allegation of facts.
  3. The Respondents did not file responses or submissions to the application. The Applicants reiterated the grounds in the summons for revocation and submitted that the application should be allowed as prayed.
  4. The court herein decided as follows on 30.1.2017, in a decision reported as *In re Estate of John Makara Muriuki (Deceased)* [2017] eKLR. The court decided as follows:
    - a. Similarly, in the absence of evidence regarding the deceased's third widow, the third house's share shall be transferred in the name of Moses Maina Makara who shall hold it in trust for himself and for the benefit of deceased's children in the third house. For avoidance of doubt the deceased's net intestate estate shall be transmitted as follows: -
      - LR. Tetu/Unjiru/780
      - LR. Tetu/Unjiru/783
 Shall be transferred in the names of Charles Mwangi Maina, absolutely.
      - LR. Tetu/Unjiru/781 (measuring 0.108 ha)
      - LR. Tetu/Unjiru/782 (measuring 0.128 ha)
      - LR. Tetu/Unjiru/784 (measuring 0.44 ha)
      - LR. Tetu/Unjiru/785 (measuring 0.4 ha)
 Each of these properties shall be shared equally shared between Rosemary Wambui Makara and Ann Muthoni Ndungu on the one hand and Moses Maina Makara on the other hand. Each of the shares due to Rosemary Wambui Makara and Ann Muthoni Ndungu shall be registered in their names as proprietors in common. The third house's share be registered in the name of Moses Maina Makara in trust for himself and for the benefit of the deceased's children in the third houses:
      - b. A savings account at the Kenya Commercial Bank Ltd, Nyeri Branch.
 

Any funds in this account shall be shared equally between Rosemary Wambui Makara and Ann Muthoni Ndungu on the one hand and Moses Maina Makara on the other hand. Moses Maina Makara shall hold the third house's share in trust for himself and for the benefit of the deceased's children from the third house.



- c. Shares at Kenya Breweries Limited shall be transferred to Eustus Mwangi Ndungu.
  - d. The grant made on 16th May, 2008 in the joint names of Charles Maina Mwangi, Rosemary Wambui Makara and Ann Muthoni Ndungu shall be confirmed accordingly.
  - e. Considering that this has been a long-drawn family dispute, there shall be no order as to costs. It is so ordered.
5. Rosemary Wambui Makara filed a protest against which Joseph Maina Makara filed a response dated 21.05.2005, stating that the father had already subdivided the land. In that response, the 1<sup>st</sup> petitioner stated that plot number 12, Mutwo Mahigi, Unjiru Farm was in names of different persons. Subsequently, the said Joseph Maina Makara died on 4.01.2007. He was survived by 4 children and a widow Ann Muthoni Ndungu.
  6. The deceased's progeny was disclosed in the letter dated 2.11.2015. Later, the court revoked 2 grants in three separate causes except this file. Letters were issued in favour of two petitions.

### **Analysis**

7. The issue before me for determination is whether the grant issued on 30/1/2017 should be revoked or annulled. The grounds for revocation or annulment of grant of Letters of Administration are set out in Section 76 of the Law of Succession 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.
8. The Applicants filed a similar application dated 27.9.2019 denoted as Summons General. The application was opposed by the Replying Affidavit of Moses Maina Makara on the ground that the matters raised therein were determined in the judgment of court. The application dated 27.9.2019 was subsequently amended on 6.11.2024 and the amendments were filed by Gor Ombongi &



- Co. Advocates who filed their notice of appointment of advocates dated 6.11.2024. The amended application was withdrawn. It is unknown why the Applicants again filed this application in person.
9. Be that as it may, the Applicants are widow and son to Joseph Muriuki Makara. It is not contested that the said Joseph Muriuki Makara is now deceased and was from the 3<sup>rd</sup> house. In the judgment of this court dated 30.1.2017 that yielded the disputed certificate of conformation of grant, the learned judge, Ngaah, J, declared inter alia that Moses Maina Makara was to hold the share given to the 3<sup>rd</sup> house in trust for himself and the benefit of the children from the 3<sup>rd</sup> house.
10. Jane Wambui Muriuki and her son Samuel Maina Muriuki now request this court to direct that LR Tetu/Unjiru/784 and LR Tetu/Unjiru/781 wholly be allocated to the Applicants. The two properties are part of the 4 properties that this court directed vide its judgment to be allocated to the 2<sup>nd</sup> and 3<sup>rd</sup> wife equally, and this issue was settled. I therefore find no basis to re-litigate a matter that was settled by judgment of this court, for litigation must come to an end. The Court of Appeal in the case of *M/S Portreitz Maternity v James Karanga Kabia*, Civil Appeal No. 63 of 1997 held thus:
- “...litigation must come to an end. It is a rule to counter the all-too human propensity to keep trying until something gives. It is meant to provide rest and closure, for endless litigation and agitation does little more than vex and add to costs. A successful litigant must reap the fruits of his success and the unsuccessful one must learn to let go.”
11. On the merits of revoking the grant, the power to seek revocation of the grants and for this court to revoke a grant is stipulated in the first part of section 76 of the [Law of Succession Act](#) as doth:
- 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.
12. Consequently, any interested party has legal standing to apply for revocation or annulment of grant on the basis of grounds as was also held in *Matbeka and Another v Matbeka* (2005) EA 251. Therefore, the [Law of Succession Act](#) does not limit standing to apply to a beneficiary, administrator, survivor, dependant, and/or creditor of the estate of the deceased.
13. The main ground cited by the Applicant for seeking revocation of the grant herein is that confirmation of the grant was obtained through untrue allegation of material facts, namely through the omission of the other beneficiaries in the distribution of the estate. The court however notes no manner in which the omission was done. It is clear that the 2<sup>nd</sup> and 3<sup>rd</sup> houses were to equally share LR No. Tetu/Unjiru/781, LR No. Tetu/Unjiru/782, LR No. Tetu/Unjiru/784 and LR No. Tetu/Unjiru/785. If the Applicants were to challenge the finding that Moses Maina Makara should hold the property given to the 3<sup>rd</sup> house, the same cannot be said to be a ground to annul a grant.
14. In the case of [Jamleck Maina Njoroge v Mary Wanjiru Mwangi](#) (2015) eKLR the court discussed circumstances when a grant can be revoked. The court observed:
- “ 11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”



15. The Applicants' case therefore fails since there is no evidence of fraud, concealment of material fact or misrepresentation of facts on the part of the Respondent. The court also notes that the applicants have failed to establish that the grant is by any means inoperative. I am thus unable to exercise discretion to revoke the grant based on the material placed before the court. In the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No.158 of 2000, the Court stated as follows:
- “(13) 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 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.”
16. The Applicants therefore have failed to prove any ground upon which this court should revoke the impugned grant. In *Evans Nyakwana – v- Cleophas Bwana Ongaro* [2015] eKLR it was held that:
- “As a general preposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail if no evidence at all were given as either side.”
17. Nevertheless, the matter does not seem to come to an end. The third house has 7 beneficiaries, that is:
- a. Muriuki Makara (Deceased).
  - b. Esther Wangechi Makara
  - c. Moses Maina Makara
  - d. Dennis Wachira Makara
  - e. Ibrahim Munyiri Makara
  - f. James Wanjohi Makara
  - g. Lucy Njoki Makara
18. I have also seen an application attempting to remove the trust from Moses Maina Makara and make the ownership absolute. Given the attempt to breach trust, Moses Maina Makara can no longer be trusted to shepherd the third house. It is not lost that the judgment given on 30.1.2017 was appealed against and confirmed. The third prayer was sought in the Court of Appeal and dismissed. This court cannot thus deal with it.
19. Whereas the application lacks merit, I take cognizance of the finding of the court of appeal as follows in the appeal, recorded, *Ndungu v Makara* (Civil Appeal 114 of 2017) [2023] KECA 1575 (KLR) (27 October 2023) (Judgment) as follows:



In view of the express provisions of that section, we cannot fault the learned trial Judge for finding that the deceased's estate was to be divided equally amongst his children, including those who had not raised any complaints. From the record, the deceased intended to leave the land to the respondent's son and not to the respondent. However, the law does not make provision for the exclusion of any of the deceased's children, unless this is stated in a valid will, which we have found did not exist.

20. In order to effect the judgment of the court below and the court of appeal, and in view of the acrimony that is apparent, I will not allow the application for rectification. In the circumstances, however, I rectify the grant in relation to the third house only, without changing the entitlement, to go to individual beneficiaries in those houses.
21. I make the following orders:
  - a. The court sets aside trust in the name of Moses Maina Makara in respect of the following properties:
    - a. LR. Tetu/Unjiru/781 (measuring 0.108 ha)
    - b. LR. Tetu/Unjiru/782 (measuring 0.128 ha)
    - c. LR. Tetu/Unjiru/784 (measuring 0.44 ha)
    - d. LR. Tetu/Unjiru/785 (measuring 0.4 ha)
  - b. In lieu thereof the third house's share in LR. Tetu/Unjiru/781, LR. Tetu/Unjiru/782, LR. Tetu/Unjiru/784 and LR. Tetu/Unjiru/785, shall be shared equally among the following:
    - a. Muriuki Makara (Deceased).
    - b. Esther Wangechi Makara
    - c. Moses Maina Makara
    - d. Dennis Wachira Makara
    - e. Ibrahim Munyiri Makara
    - f. James Wanjohi Makara
    - g. Lucy Njoki Makara
22. In respect of the savings account at the Kenya Commercial Bank Ltd, Nyeri Branch, if still available, the funds in respect of the third house shall be shared equally among the following:
  - a. Late Muriuki Makara (Deceased).
  - b. Esther Wangechi Makara
  - c. Moses Maina Makara
  - d. Dennis Wachira Makara
  - e. Ibrahim Munyiri Makara
  - f. James Wanjohi Makara
  - g. Lucy Njoki Makara



23. The prayer for revoking the grant is dismissed. The prayer to award different shares is equally dismissed. It is my sincere hope that the third house finds the elusive peace they have been looking for.
24. This file has been active for the last 29 years. In order to avoid any other delaying tactics in the file, the administrators should transmit the entire estate within 6 months. In the unlikely event any person does not sign the transmissions where there are more than 4 beneficiaries in respect of one parcel, the Deputy Registrar to do so and same should be registered in trust for themselves and the others.
25. Each party will bear their own costs.

### **Determination**

26. In the upshot, I make the following orders:
  - a. In order to effect the judgment of the court below and the court of appeal, and in view of the acrimony that is apparent, I will not allow the application for revocation. In the circumstances, however, I rectify the grant in relation to the third house only, without changing the entitlement, to go to individual beneficiaries in those houses:
  - b. The court sets aside trust in the name of Moses Maina Makara in respect of the following properties:
    - e. LR. Tetu/Unjiru/781 (measuring 0.108 ha)
    - f. LR. Tetu/Unjiru/782 (measuring 0.128 ha)
    - g. LR. Tetu/Unjiru/784 (measuring 0.44 ha)
    - h. LR. Tetu/Unjiru/785 (measuring 0.4 ha)
  - c. In lieu thereof the third house's share in LR. Tetu/Unjiru/781, LR. Tetu/Unjiru/782, LR. Tetu/Unjiru/784 and LR. Tetu/Unjiru/785, shall be shared equally among the following:
    - h. Muriuki Makara (Deceased)
    - i. Esther Wangechi Makara
    - j. Moses Maina Makara
    - k. Dennis Wachira Makara
    - l. Ibrahim Munyiri Makara
    - m. James Wanjohi Makara
    - n. Lucy Njoki Makara
  - d. In respect of the savings account at the Kenya Commercial Bank Ltd, Nyeri Branch, if still available, the funds in respect of the third house shall be shared equally among the following:
    - h. Muriuki Makara (Deceased)
    - i. Esther Wangechi Makara
    - j. Moses Maina Makara
    - k. Dennis Wachira Makara
    - l. Ibrahim Munyiri Makara



- m. James Wanjohi Makara
- n. Lucy Njoki Makara
- e. The prayer for revoking the grant is dismissed. The prayer to award different shares is equally dismissed. It is my sincere hope that the third house finds the elusive peace they have been looking for.
- f. This file has been active for the last 29 years. In order to avoid any other delaying tactics in the file, the administrators should transmit the entire estate within 6 months. In the unlikely event any person does not sign the transmissions where there are more than 4 beneficiaries in respect of one parcel, the Deputy Registrar to do so and same should be registered in trust for themselves and the others.
- g. Each party will bear their own costs.
- h. File is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 28<sup>TH</sup> DAY OF JULY, 2025.**

Ruling delivered through Microsoft Teams Online Platform.

**KIZITO MAGARE**

**JUDGE**

In the presence of: -

Mr. Kebuka Wachira for the 2<sup>nd</sup> Respondent

Pauline Mwangi for the Respondent

Mr. Kibicho for the Administrator Samuel Maina Muriuki

Court Assistant – Michael

