In re Estate of William Njuguna Kabi Mucira (Deceased) (Succession Cause 2480 of 2004) [2025] KEHC 13180 (KLR) (Family) (25 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13180 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 2480 OF 2004

HK CHEMITEI, J

SEPTEMBER 25, 2025

IN THE MATTER THE ESTATE OF WILLIAM NJUGUNA KABI MUCIRA (DECEASED)

BETWEEN

ELIZABETH WATURI ..... 1ST APPLICANT

ESTHER WANJIRU RUBIA ..... 2ND APPLICANT

AND

HENRY KABI NJUGUNA ..... RESPONDENT

JUDGMENT

1. This ruling relates to the application dated 27TH May, 2015 filed by the Applicants, Elizabeth Waturi and Esther Wanjiru Rubia, seeks for orders that:-
    1. The grant of letters of administration made to Henry Kabi Njuguna and Wambui Njuguna be revoked.
    2. New administrators be appointed.
    3. The costs of this application be provided.
2. The application is based on the grounds thereof and supported by affidavit and supplementary affidavit sworn by Elizabeth Waturi and Esther Wanjiru Rubia on 27th May, 2015 and 25th July, 2016.
3. They aver inter alia that the deceased had two wives, Esther Wanjiru Njuguna and Margaret Wambui Njuguna. Margaret died in 2010 and Esther in 2008. Margaret had been appointed co-administrator of the estate, yet both she and her children were beneficiaries of the estate of Esther, the deceased's first wife. The Applicants allege that the current administrators fraudulently obtained a grant of letters

of administration because Esther - who, as the first spouse, had priority to administer the estate - was neither notified of the succession proceedings nor served with citations.

4. They deponed that before his death, the deceased entered into an agreement granting each wife two plots measuring 100 by 100 feet, excised from his land Dagoretti/Kangemi/795. The area chief later wrote to the provincial surveyor requesting internal demarcation, after which the deceased physically subdivided the land. Each wife then took possession and developed her respective plots.

5. That despite this arrangement, the administrators presented a mode of distribution that ignored the deceased's intentions. A certificate of confirmation of grant issued on 19th October, 2005 allocated the first wife's house a parcel of 170 by 90 feet, while the second wife's house - of which the administrators are members - was to receive the remaining over 2.5 acres. Transmission has not been affected, suggesting the administrators' anticipated objections. The Applicants argue that the estate should have been divided equally between the two houses and that the administrators' proposal is unjust and contrary to law.

6. The administrators have allegedly threatened and harassed the first wife's descendants, even demolishing some of their houses and demanding rent from buildings erected by Esther on the land allocated to her by the deceased. They contend that the certificate of confirmation did not transfer ownership of these rental houses and that the administrators concealed rental income from the court. The Applicants, grandchildren of Esther, insist they are legitimate beneficiaries entitled to her share and not strangers to the estate. They maintain that the deceased's subdivision and allocation of land showed his true wishes and effectively revoked any earlier will.

7. Further that if a valid Will existed, they question why letters of administration were sought instead of execution by the named executor. They further assert that the chief's 1998 letter to the provincial surveyor, which supported subdivision, is authentic and not a forgery.

8. Given these alleged fraudulent dealings and breaches of trust, the Applicants ask the court to restrain the administrators from transferring or dealing with the deceased's property pending determination of their application for revocation of the grant.

9. The application is opposed vide notice of preliminary objection dated 2nd October, 2015, replying affidavit sworn and further supplementary affidavit sworn by Henry Kabi Njuguna on 14th October, 2015 and 18th April, 2024, respectively.

10. The notice of preliminary objection is based on the GROUNDS THAT:-

    1. The Applicants are not beneficiaries of the estate of the deceased William Njuguna Kabi Mucira and thus have no locus standi to bring the application to revoke of annul the grant.

    2. The Applicants do not have the letters of administration of the estate of Esther Wanjiru Njuguna (Deceased) to enable them file the current application in the name of her estate and therefore this application in the name of her estate and therefore this application amounts to intermeddling with the estate of Esther Wanjiru Njuguna.

    3. The application to revoke or annul the grant herein is an abuse of court process by the Applicants since it has no legal basis.

    4. It is in the interest of justice that the application to revoke or annul the grant be dismissed with costs to the Respondent.

11. In the replying affidavit and further supplementary affidavit aforementioned, he avers inter alia that he is the son of the deceased and a duly appointed co-administrator of the estate, having been appointed

with the written consent of Ashford Gathegu Kabi, the executor named in the deceased's Will, as permitted under the Law of Succession.

12. He maintains that the grant of letters of administration was properly obtained and that neither he, his co-administrator, nor anyone else concealed any material facts or made false statements. He argues that the Applicants - who are granddaughters of the deceased - are not direct beneficiaries of the estate and can only inherit through their parents. As such, they lack locus standi to seek revocation of the grant and their application should be dismissed with costs.

13. He denies concealing the existence of Esther Wanjiru Njuguna, pointing out that she is expressly listed as the deceased's first wife and was allocated property in the confirmed grant. According to the Respondent, the daughters of Esther Wanjiru, including Elizabeth Waturi Ngumi (mother of one of the Applicants), signed an agreement accepting the parcel measuring 170 x 90 feet as distributed by the deceased. He insists there was no agreement promising each Applicant plots of 100 x 100 feet and puts them to strict proof of that claim.

14. He went on to depone that the estate was distributed strictly in accordance with the valid Will, which was produced in court and annexed to the grant. He further notes that the property Dagoretti/Kangemi/795 has never been subdivided since 1998 and dismisses the Applicants' annexed document marked "EWR-2" as a forgery created for these proceedings.

15. He went on to accuse the first Applicant of illegally collecting rent from houses located on the parcel allocated to him under the Will - houses which were built by his late father - and states that he sought intervention from the Kangemi Chief and his advocates. He also claims the Applicants, aided by one David Mbugua, unlawfully demolished houses on his allocated land, prompting him to report the matter to Kabete Police Station (OB No. 41/7/4/2015), where investigations are ongoing. The Respondent asserts that the chief's letter annexed as "EWR-3" is also a forgery, having been superimposed on an official letterhead, and reiterates that a chief has no authority to subdivide private property.

16. He attributed the delay in transferring estate properties to the death of some beneficiaries and the failure of their heirs to pursue succession proceedings to appoint new administrators.

17. Finally, he emphasizes that his administration of the estate has been lawful and above reproach, that the grant was issued after the executor filed a consent dated 3rd July, 2004 and that there is no legal basis for revoking or annulling the confirmed grant.

18. The Applicants have filed written submissions dated 23rd April, 2024 placing reliance on the following:

    a. In re Estate of Hellen Wangari Wathiai (Deceased) [2021] eKLR where the court stated as follows: "Looking at both parties' submissions, my appreciation of the matter at hand is that the applicant herein brought this summons before court as a beneficiary of the estate of his late father who predeceased the deceased herein. A grand child is a direct heir to the estate of the grandparent where the parent predeceased the grand parent. The grand children get into the shoes of their deceased parents and take the parent's share in the estate of the grand parents as was enunciated in the case of Re Estate of Wahome Njoki Wakagoto (2013) eKLR where it was held: - "Under Part V, grand children have no right to inherit their grand parents who die intestate after July, 1981. The argument is that such grand children should inherit from their own parents. This means that the grand children can only inherit their grand parents indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grand children inherit directly from their grand parents is when the grand children's own parents are dead. The grand

children step into the shoes of their parents and take directly the share that ought to have gone to the said parents."

b. Matheka and Another vs Matheka (2005) IKLR 455 in which the following guidelines were provided:

"(1) A grant may be revoked either by application by n interested party or on the court's own motion.

(2) Even when revocation is by the court upon its 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 a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.

(3) The grant may also be revoked if it can be shown to the court that the person to whom the grant has been issued has failed to produce to the court such inventory or account of administration as may be required.

(4) The court has a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned be made but shall without prejudice to that discretion, accept as a general guide the following order of preference..."

19. The Respondent has filed written submissions dated 7th August, 2025 placing reliance on the following:-

a. Cleopa Amutala Namayi vs Judith Were [2015] eKLR where the court observed as follows: "Be that as it may, under Part V of the Act, grandchildren have no automatic right to inherit their grandparents... The argument behind this position is that such grand children should inherit from their own parents. This means that the grand children can only inherit their grandparents indirectly through their own parents... The children to the grandparents inherit first and thereafter the grand children can inherit directly from their grandparents is when the grand children's own parents are dead...."

b. Alfred Njau and Others vs City Council of Nairobi (1982) KAR 229 where the court pronounced itself as follows: "The term locus standi means a right to appear in court and conversely to say that a person has no locus means that he has no right to appear or be heard in such and such proceedings."

c. Adenuga vs Odumeru (2003) 4 S. C. it is stated as follows: "Locus standi denoted the legal capacity, based upon sufficient interest in a subject matter, to institute proceedings in a court of law to pursue a certain cause. In order to ascertain whether a plaintiff has locus standi, the statement of claim must be seen to disclose a cause of action vested in the plaintiff and also establish the rights and obligations or interests of the plaintiff which have been or are about to be violated, and in respect of which he ought to be heard upon the reliefs he seeks."

Analysis And Determination

20. I have read the application before this court, the responses thereto and the rival submissions; and the issues for determination, as crafted by the parties, are as follows:-

Applicants:

a. Do the Applicants have locus standi to bring this application?

b. Whether the Applicants have demonstrated sufficient ground for court to revoke the grant as provided for under Section 76 of the *Law of Succession Act*?

c. Whether the Will dated 11th June, 1998 was valid?

Respondent:

d. Whether the Applicants have capacity to institute proceedings regarding the estate?

e. Whether the deceased died testate leaving a valid Will?

f. Whether the grant of probate issued to Henry Kabi Njuguna and Wambui Njuguna (deceased) should be revoked?

21. In Obiero v Ogola (Environment and Land Appeal 18 of 2022) [2022] KEELC 14765 (KLR) (15 November 2022) (Judgment) the court pronounced itself as follows:-

> "... 16. Locus standi is the right to appear or be heard in court or other proceedings as noted in Chudasama case (infra). Thus, if one alleges the lack of the same in certain court proceedings, he means that party cannot be heard.
>
> 17. In Rajesh Pranjivan Chudasama vs Sailesh Pranjivan Chudasama (2014)eKLR, the Court of Appeal addressed itself on the issue of locus standi in succession matters as follows:-"... But in our view the position in law as regards locus standi in succession matter is well settled. A litigant is clothed with locus standi upon obtaining a limited grant or a full grant of Letters of Administration in cases of Intestate succession. In Otieno v Ougo (supra) this court differently constituted rendered itself thus;'.....an administrator is not entitled to bring any action as administrator before he has taken out Letters of Administration. If he does, the action is incompetent as of the date of inception." (Emphasis added)..."

22. In Kosgei v Cherono (Family Appeal E002 of 2023) [2024] KEHC 1337 (KLR) (16 February 2024) (Judgment) where the court pronounced itself as follows:

> "...23. On the issue of inheritance by grandchildren, although the Learned Magistrate did not make a determination thereof, the issue was in contention before him and has also again featured in this Appeal.
>
> 24. On that issue, my first port of call will be Section 41 of the *Law of Succession Act*, which provides as follows:" 41.Property devolving upon child to be held in trust Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate." (emphasis added)
>
> 25. In short therefore, Section 41 provides that where one of the children of the deceased is himself/herself deceased, and such deceased child is survived by a child or children of his/

her own, then the share due to him/her ought to devolve upon his/her said child, and where more than one, the children would take equally. This question was addressed in the case of Re Estate of Wahome Njoki Wakagoto (2013) eKLR where W. Musyoka J held as follows: "Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.

" 26. Further, the Court of Appeal in Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others [2014] eKLR held as follows: "Although Section 35 and 38 of the *Law of Succession Act* is silent on the fate of surviving grand children whose parents predeceased the deceased, the rate of substitution of a grandchild for his/her parent in all cases of intestate known as the principle of representation is applicable. The Law is section 41. If a child of the intestate has pre- deceased, the intestate then that child's issue alive or in centre as mere on that date of the intestate's death will take in equal shares per stirpes contingent on attaining the age of majority. Per stirpes means that the issue of a deceased child of the intestate take between them the share their parents would have taken had the parent been alive at the intestate's death".

23. In re Estate of Joshua Githiari Kibui (Deceased) [2021] eKLR the court stated as follows:-

" 18. For avoidance of doubt, Section 76 of the *Law of Succession Act* states as follows:

a. "76. Revocation or annulment of Grant

b. 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—

20. Further, In the Matter of the Estate of L A K – (Deceased) [2014] eKLR the court held that;

(a) Revocation of grants in governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs

(a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.

32. The court in the case of Jamleck Maina Njoroge v Mary Wanjiru Mwangi (2015) eKLR at paragraph 11 of its ruling in revoking a grant reiterated the grounds upon which a grant can be revoked. It stated as follows:-

a. "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."

33. In the case of Matheka and Another vs Matheka [2005] 2KLR 455 the Court of Appeal laid down the following guiding principles as to revocation of grants.

(a) "i. A grant may be revoked either by application by an interested party or by the court on its own motion.

(b) ii. Even when revocation is by the court upon its 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 the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate."

24. In Re Estate of Dorcas Wairimu Riitho (Deceased) [2013] eKLR the court stated as follows:-

" The law for testing the validity of a written Will is Section 11 of the *Law of Succession Act*. The said provision provides:-

"...No written will shall be valid unless -

(a) the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;

(b) the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;

(c) the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other

> person sign the will, in the presence and by the direction of the testator, or have received from the testator the personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."
>
> There are two documents that have been placed before me purported to be testamentary instruments. One is headed "Last Will and Testament", and is dated 10th February 1998. The other is headed "Codicil for the Last Will and Testament of Dorcas Wairimu Riitho," and is dated 17th April 1998. The validity of these documents should be tested the basis of on the provisions of Section 11 of the *Law of Succession Act*..."

25. A perusal of the deceased's Will dated 11th June, 1998, which has not been formally contested but instead its validity raised in submissions, reveals that it meets the legal threshold of a valid Will. As a matter of fact, I do not find the Applicants challenging the validity or otherwise of the said Will.

26. It appears however that for the reasons best known to the executor Ashford Gathegu Kabi, he ceded his rights to the Respondent who took up the mantle as an administrator of the estate. Since this was not an issue, I shall leave it there.

27. Moving to the certificate of confirmation of grant dated 19th October, 2005, I note that Esther Wanjiru Njuguna (deceased), who was the first wife and the Applicants' grandmother was allocated, "Parcel of land referred to 1 (i) (a) – L. R. No. Dagoretti/Kangemi/795 of approximate area 0.784 ha - above some 170 ft by 90ft, together with all the construction thereon. This plot of land will be adjacent to the plot that was excised from the land and sold."

28. From the Will dated 11th June, 1998, Esther Wanjiru Njuguna (deceased), was provided for as follows: "Parcel of land referred to 1 (i) (a) above some 170 ft by 90 ft, together with all the constructions thereon, which she can dispose of as and how she will. This plot of land will be adjacent to the plot that was excised from that land and sold."

29. The deceased's first wife and the Applicants' grandmother, Esther Wanjiru Njuguna was provided for under the deceased's Will. Her allocation under the Will dated 11th June, 1998 and the certificate of confirmation of grant dated 19th October, 2005 are the same.

30. Since this is the case, I do agree with the Respondent that the Applicants in the absence of letters of administration over the estate of Esther Wanjiru, do not have any locus to bring this application. The grant which had been confirmed passed the property to their grandmother who became the legal owner and proprietor.

31. Even if the transmission process has not been completed, if she was alive, she had all the rights of utilizing the same courtesy of the grant.

32. Consequently, the Applicants must first seek out letters of administration of her estate if they indeed desired to challenge the Respondent on behalf of the estate of their grandmother.

33. By extension as well the Respondent may not be in a position to transmit the parcel due to the estate to anyone else who has no capacity. Whichever way they must obtain letters of administration so as to benefit from their grandmother's estate.

34. For the above reasons I find that the preliminary objection is merited and the application ought to be dismissed.

35. On another note, I find that the Respondent ought to have transmitted the estate as per the grant immediately as there was no encumbrance. This will allay any fears from the beneficiaries who ought to enjoy the estate.

36. In the premises I direct as follows.

    (a) The application dated 27th May 2015 is dismissed with no order as to costs.

    (b) The Respondent is hereby directed to execute the grant within 90 days from the date herein.

    (c) The matter be mentioned before the Deputy Registrar of this court to confirm compliance.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 25TH DAY OF SEPTEMBER 2025.

H K CHEMITEI

JUDGE