



**In re Estate of Wanjohi Mwangi Mucine (Deceased) (Succession Cause E048 of 2023) [2025] KEHC 13120 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13120 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE E048 OF 2023**

**G MUTAI, J**

**SEPTEMBER 19, 2025**

**IN THE MATTER OF THE ESTATE OF WANJOHI MWANGI MUCINE (DECEASED)**

**BETWEEN**

**CATHERINE NJERI KABIRU ..... OBJECTOR**

**AND**

**WHITNEY CLARK ..... ADMINISTRATOR**

**RULING**

1. Before this court is a notice of objection to the making of the grant dated 6<sup>th</sup> May 2024, vide which the protestor objects to the confirmation of the grant of representation of the estate of the deceased herein made to the administrator in 2023 on several grounds. Although she is indicated as the objector in the notice of objection, I shall refer to her as the protestor in this ruling, as this court issued the grant on 12<sup>th</sup> April 2024. The grant was due for confirmation.
2. The said grounds are that the protestor is the widow of Wanjohi Mwangi Mucine, the deceased person whose estate is the subject of these proceedings. The protestor contends that the administrator is the daughter of the deceased and that she, the administrator, filed a petition for letters of administration intestate for the deceased's estate without the knowledge or the consent of the objector and other beneficiaries. The protestor states that the administrator filed a petition for letters of administration intestate for the deceased's estate, yet the deceased died testate. It is her case that as the widow of the deceased and a beneficiary to the deceased's estate, she was not consulted by the administrator before the filing of the instant petition. She denied that she and other beneficiaries consented to the petitioner filing the petition and stated that she was never served with any citation.
3. The protestor further contended that as the widow of the deceased and the beneficiary of the deceased's estate, she ranks in priority to the administrator and that she has never renounced that right. Further, the estate involves minors, and as such, it is contrary to the law for only one administrator to be appointed. The protestor urged that the administrator did not consult the other beneficiaries of the



- estate of the deceased and that her actions are malicious and were aimed at dispossessing the protestor and the other beneficiaries of their rights to inherit their share of the estate of the deceased; and that the actions of the administrator are discriminatory to her as the protestor.
4. The objection is supported by the affidavit of the protestor, sworn on 6th May 2024, vide which she reiterated the position in the grounds in support of the application. She urged the court to add her as a co-administrator of the estate of the deceased, together with the administrator, and to have the estate distributed in accordance with the last will of the deceased dated 22<sup>nd</sup> January 2016.
  5. In response, the administrator filed an answer to the objection to the making of the grant, sworn on 26<sup>th</sup> September 2024. She stated that despite having priority in the administration of the deceased's estate, the protestor did not take any steps since the death of the deceased on 20th September 2020, forcing her to move the court through Citation Cause No. E27 of 2022.
  6. She stated that the petition does not include the minors, as she was unable to get information about them for the protestor. She stated that her action was made without malice, with the intention to secure the deceased's estate.
  7. It was contended that the objection filed herein offends the provisions of Section 68(i) of the Law of Succession Act, as the publication of the notice of petition for the grant was done on 8<sup>th</sup> March 2024.
  8. She urged the court to order the protestor to produce full accounts of rent collected from the Plot No. MOMBASA/BLOCK XX/62.
  9. The protestor filed a further affidavit sworn on 11<sup>th</sup> October 2024 in which she denied the allegations made by the administrator in the answer to the objection and stated that she is not aware of any citation proceedings. She contended that the administrator is being economical with the truth as she is aware of her siblings and the subject will, which recognised all the heirs. The protestor averred that the administrator willingly left them out of the petition. She urged the court to appoint her as a co-administrator of the estate of the deceased, together with the administrator.
  10. The objection was canvassed by way of written submissions. I shall give a precis of each party's submissions below.
  11. The protestor, through advocates Sky Advocates LLP, filed her written submissions dated 13<sup>th</sup> May 2025. Counsel submitted on two issues, namely, whether the grant issued to the administrator should be revoked as prayed and whether the deceased left a will. It was submitted that the proceedings were defective for material non-disclosure of all existing beneficiaries of the estate. Counsel relied on section 51(2) of the Law of Succession Act and averred that the grant was obtained fraudulently by failure to seek consent of the other beneficiaries and to disclose their existence.
  12. Counsel further relied on Section 66 of the Act and submitted that the protestor ranks higher than the administrator as she was the widow of the deceased. Therefore, the grant issued to the administrator should be revoked.
  13. On the second issue, counsel submitted that the same is not contested and that the deceased did not die intestate; however, he did not appoint an executor. Counsel urged the court to appoint the objector and administrator as the administrators of the estate of the deceased herein.
  14. The administrator, through her advocates, Muthoni Kiruriti & Co. Advocates, filed written submissions dated 7<sup>th</sup> July 2025. Counsel submitted on two issues, namely, whether the deceased left a valid will and whether the grant ought to be revoked.



15. On the first issue, counsel submitted that the administrator is not contesting the wishes of the deceased contained in the document.
16. On the second issue, counsel relied on Section 76 of the Act and submitted that the petitioner acted in good faith and on the information available at the time, as there was no communication between her and the objector. She contended that there was no evidence showing that the omission was fraudulent or intentional, and therefore, none of the grounds for revocation of the grant had been met.
17. Does the notice of the objection to the making of the grant have merit? What orders should this Court issue? I note that the protestor has used a procedure unknown to law by purporting to object to the confirmation of the grant or, in the alternative, to have the grant revoked. A notice contemplated by Rule 17 of the Probate and Administration Rules is one that a party seeking to object to the making of the grant files after the petition is gazetted and before the grant is issued. At this stage of the proceedings, the protestor should either have filed a protest or sought to have the grant revoked and or annulled. Having said this, the Court notes that this is a succession matter and thus the court should pay heed to the substance, rather than the form of the proceedings.
18. Section 76 of the [Law of Succession Act](#) provides for grounds of revocation 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.”
19. My understanding of the above provision is that the Court may revoke a grant on the application of “any interested party” or on its own motion, if the conditions stated in section 76 of the [Law of Succession Act](#) are met.



20. What powers does the Court have under section 76 of the *Law of Succession Act*? In the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] KEHC 1528 (KLR), the Court stated that:-

“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 wrongdoing 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.”

21. In the case of *re Estate of Prisca Ong’ayo Nande (Deceased)* [2020] KEHC 6553 (KLR), the Court expounded on the grounds for revocation under section 76 of the *Law of Succession Act*, and stated as follows:-

“8. 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.” (emphasis added).

22. In this case, there is a common ground that the deceased did not die intestate; rather, he had a will. Although he did not appoint an executor in the said will, the right thing for the administrator to have done was to file a petition for letters of administration with a written will annexed. In my view, therefore, the procedure adopted by the administrator was defective. That alone justifies the revocation of the grant.



23. The administrator has been accused of failing to disclose material information. The court in the case of *In re Estate of Julius Ndubi Javan (Deceased)* [2018] KEHC 8523 (KLR) observed as follows on non-disclosure of material facts from the court:-

“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case, including in succession cases. This general rule of law emphasizes utmost good faith (*uberimae fidei*) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law.”

24. It is a common ground that there are minors who are dependants of the deceased. It would therefore be necessary that there be at least two administrators. This is in compliance with the provision of section of section 71(2A) of the *Law of Succession Act*, which provides that:-

“(2A) Where a continuing trust arises and there is only one surviving administrator, if the court confirms the grant, it shall, subject to section 66, appoint as administrators jointly with the surviving administrator not less than one or more than three persons as proposed by the surviving administrator which failing as chosen by the court of its own motion.”

25. In this case, there is no dispute that the administrator herein omitted the protestor and her children in her petition for the grant of letters of administration. Her statement that she did not know about them is most likely not truthful, as the children are kin. Failing to disclose the names of all the dependents of the deceased in the petition rendered the petition defective and thus liable for revocation.

26. Although the protestor approached the Court using a defective process, it is nevertheless clear that the grant issued by the Court ought to be revoked on the ground that the administrator used the wrong procedure and that she failed to disclose all the material information. In the circumstances, I find and hold that there are sufficient grounds for this Court to revoke the grant on its own volition.

27. In the circumstances, I revoke the grant made by this Court on 12<sup>th</sup> April 2024. I direct the administrator and the protestor to jointly move the court for a fresh grant, listing all the beneficiaries and assets of the estate of the deceased within the next 45 days from the date hereof.

28. I direct that Succession Cause No E012 of 2024; re Estate of Wanjohi Mwangi Mucine (deceased) be closed forthwith.

29. As this is a succession matter between close family members, I order that the parties bear their own costs of the application.

30. Orders to issue accordingly.

**DATED AND SIGNED AT MOMBASA, THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Ms Kiruriti, for the Administrator/Respondent;



Ms Akinyi, for the Protestor/Applicant; and  
Arthur - Court Assistant.

