



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of Wilson Mbai Mwangi (Deceased) (Succession Cause  
19 of 2019) [2025] KEHC 12731 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12731 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 19 OF 2019  
RN NYAKUNDI, J  
SEPTEMBER 18, 2025  
IN THE MATTER OF THE ESTATE OF WILSON MBAI MWANGI (DECEASED)  
BETWEEN  
JOHN KIPLAGAT KIPROP & 38 OTHERS & 38 OTHERS ..... APPLICANT  
AND  
DAMARIS WANJIRU MBAI & ANOTHER & ANOTHER ..... RESPONDENT**

**RULING**

1. This is an application dated 21<sup>st</sup> day of July 2025 seeking the following orders: -
  - a. Spent.
  - b. That Notice to show cause do issue to the respondents why they should not execute transmission documents and avail original title deed for purposes of transferring the estate to the beneficiaries
  - c. That in default and or in the alternative, the duty registrar do execute documents to facilitate subdivision and transfer documents vesting the applicant's parcels of land as set out in certificate of confirmation of grant issued on 3<sup>rd</sup>/8/2022 and the land registrar be ordered to dispense with production of the titles and do proceed to process and issue title to the applicants.
  - d. That costs be in the cause
2. It is further annexed with a supporting affidavit sworn by Sylvia Chemutai Rotich which states as follows: -
  - a. That I am one of the applicants herein and do swear the affidavit on my own account and on behalf of the other applicants hence competent to swear this affidavit.



- b. That the late Wilson Mbai Mwangi who died on 2.2.1999 owned land parcel No parcel No Uasi Gishu/Kimumu/450, parcel No Uasin Gishu/Kimumu 451 and parcel No Uasi Gishu/Kimumu/511-519
- c. That the respondent are the administrators of the estate of the deceased
- d. That Succession proceeding in this cause was concluded which culminated to confirmation of grant issued on 3.8.2022
- e. That on several occasions, I and co applicants have approached the administrators to execute transmission documents and release the original title deed to the land office, for purpose of implementing the certificate of conformation of the grant
- f. That the administrators have always shifted goa posts on why they could not sign the transmission documents and avail documents to facilitate transfer which has not been forthcoming
- g. That the confirmation having been done in 2022 which is more than three years it would be in the best interest of justice that the court directs the deputy registrar executes transfer documents vesting the said property upon the applicant.
- h. That I thus swear the affidavit in support of the application.
- i. That I thus swear this affidavit in support of the application
- j. That what I have stated is true to the best of my knowledge, information and belief.

### Decision

3. On 3.8.2022 Damarice Wanjiru Mbai duly appointed as an administrator under Section 66 of the [Law of Succession Act](#) to administer the intestate estate of the deceased Wilson Imbai Mwangi was issued with a certificate of confirmation of grant which contained the details of the distribution matrix and appropriate devolution of shares to the beneficiaries
4. The record is crystal clear that the administrator is yet to comply with the decree of the court on transmission of the legitimate shares of the assets of the deceased as ordered by the probate court. This obviously is a violation of the legislative law on succession which sets very clear timelines upon which the estate ought to be administered so that it can be liquidated within 6 months as provided for under Section 83(g) of the aforesaid [Act](#).
5. The [Law of Succession Act](#) provides expressly under Section 76 that any such grant shall be capable of being revoked or annulled. Thus:

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

6. In this case, since the 3.8.2022 the succession proceedings have stalled notwithstanding the certificate of confirmation of grant detailing the beneficiaries and shares allocated to each one of them. There has been inordinate delay by the administrator to comply with the provisions of the Act which sets a timeline of six (6) months to complete the transmission and thereafter file a probate account for the estate to be liquidated and her role as an administrator be revoked and discharged appropriately. In the matter of this estate, the effect of it is that it may be just to revoke the grant for being useless and in operative by the very conduct of the administrator who is even alleged by the instant application of withholding title deeds to the estate to obstruct the enforcement of the certificate of confirmation of grant dated 3.8.2022. What the administrator forgets is that the court will never be at the mercy of her feet and no beneficiary is mandated to limit any constitutional rights under Section 40 of the *Act* without justification. This is what the court in the case of *Goods of William Loveday* (1900) P. 154 observed. “The real object which the court must always keep in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto, and I can see no good reason why the court should not take fresh action in regard to the estate where it is made clear that the previous grant has turned out abortive or Inefficient. If the court has in certain circumstances made a grant in the belief and hope that the person appointed will property and fully administer the estate and it turns out that the person so appointed will not or cannot administer, I do not see why court should not revoke an inoperative grant and make a fresh grant.”
7. In the matter at hand, this grant in question is in violation of the law and it can to the very best of this court be described as useless and inoperative which should be revoked and new administrators be appointed unless the saving grace clauses in the application dated 21.7.2025 should be taken advantage of by the administrator to move with speed and remedy the impasse. In the circumstances, I find no compelling reason why the administrator is withholding titles in the matter of the estate of Wilson Mbai Mwangi. I therefore put her on notice that unless the title deeds are released within 14 days to facilitate implementation of the certificate of grant, her role as an administrator will be revoked under Section 76 of the *Law of Succession Act*. In the event she considers this ruling just a threat with no sanctions upon expiry of the 14 days period, it will be just to revoke her appointment as an administrator and new nominees be appointed from the list of the beneficiaries provided for in the respective affidavits. In the alternative in order to guarantee and protect the rights of the beneficiaries, the Deputy Registrar would be appointed to work closely with any of the legitimate heirs under Section 29 of the *Law of Succession Act* to FastTrack the transmission of the property rights as per the law established. In this same instance, in default of surrendering the title deeds to the Uasin Gishu County



Registrar, an order is hereby made that the Registrar takes appropriate steps to cancel the titles in the arms of the administrator to pave way for the certificate of confirmation of grant dated 3.8.2022 to proceed in adherence to the law with the newly appointed administrators by this court.

8. There shall be a Status Conference to monitor compliance on the 2.10.2025.

**DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

.....

**R. NYAKUNDI**

**JUDGE**

