



REPUBLIC OF KENYA



**In re Estate of Benjamin Kihuto Ngure (Deceased) (Succession Cause 1942 of 2005)
[2024] KEHC 14162 (KLR) (Family) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14162 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1942 OF 2005
SN RIECHI, J
NOVEMBER 14, 2024
IN THE MATTER OF THE ESTATE OF BENJAMIN KIHUTO NGURE (DECEASED)**

BETWEEN

MARGARET MUMBI KIHUTO (DECEASED) PETITIONER

AND

CHARLES KINYUA KIHUTO APPLICANT

AND

PETER NGURE KIHUTO 1ST OBJECTOR

JOHN KARIITHI KIHUTO 2ND OBJECTOR

JUDGMENT

1. Benjamin Kihuto Ngure the deceased died on 26.3.2023 leaving behind a widow Margaret Mumbi Kihuto and six children namely:
 - a. Margaret Mumbi Kihuto (Widow)
 - b. Peter Ngure Kihuto (son)
 - c. Charles Kinyua Kihuto (son)
 - d. John Kariithi Kihuto (son)
 - e. Joyce Wanjiku Kihuto (daughter married)
 - f. Anne Wanjiru Kihuto (daughter married)
 - g. Veronicah Wanja Kihuto (daughter married)



2. The Widow Margaret Mumbi Kihuto petitioned for Letters of Administration which were granted to her on 12th November, 2003. Peter Ngure Kihuto (son) and John Kariuki Kihuto objected to the grant and filed an affidavit of Protest to confirmation of grant. Upon hearing the protests and several applications, Onyiego J. on 29th September, 2017 ordered:
3. Accordingly, the protest herein filed by the 2nd protestor fails and the same be and is hereby dismissed and the partial certificate of confirmation of grant issued on 14th May, 2013, amended and or rectified so as to reflect the proposal in the application for confirmation as follows:-
 - a. Konyu/Baricho/647 to be registered in the name of Margaret Mumbi Kihuto to hold in trust for herself and on behalf of her children equal share.
 - b. Plot No. Konyu/Baricho/700/3 to be registered in the name of Margaret Mumbi Kihuto to hold in trust for herself and on behalf of her children in equal share.
 - c. Plot No. 28102/172 Nairobi to be registered in the name of Margaret Mumbi Kihuto to hold in trust for herself and on behalf of her children subject to a refund of the equivalent to two additional bed seaters done by John Kariithi Kihuto after a joint valuation report.
 - d. In the alternative to order (c), Plot No. 28102/172 Nairobi be sold and proceeds less the additional developments done by John Kariithi Kihuto of two additional bed seaters be shared out equally amongst all beneficiaries (children of the deceased).
 - e. In taking into account the developments made and valuation done,
4. Before the Widow Margaret could complete transmission of the property she died on 7.4. 2020. Charles Kinyua Kihuto then filed this summons dated 30.5.2024 seeking the following orders:
 1. That the Grant of letters of Administration to MARGARET MUMBI KIHUTO made on the 12th November, 2003 and Confirmed on 29th November, 2017 be Revoked (or annulled) on the ground that the Grant has become useless and inoperative through the death of the said Administrator on 7th April, 2020.
 2. That a new Grant of letters of Administration be made to me CHARLES KINYUA KIHUTO the Proposed Petitioner herein.
 3. That the new Grant of Administration be confirmed.
5. This Court on 15.10.2024 issued the following directions
 1. The application be canvassed by way of written submissions.
 2. Parties to file respective submissions which should include the names of the administrators within 14 days.
6. The parties filed written submissions:
7. Revocation of grant is provided for in section 76 of the *Law of Succession Act*. It provides:

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. This application is made under 76 (e) on the grounds that the grant has become useless and inoperative through subsequent events:

(Re: estate of Prisca Ongayo Nande 2020 eKLR

9. 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.
10. In this application, the grounds for the revocation is that the sole administrator Margaret Mumbi Kihuto to whom the grant was confirmed by Onyiego J. has since died. A certificate of death No. 166/920 annexed shows that she died on 7.4.2020 at Consolata hospital aged 84 years old. The widow to whom the confirmed grant was issued had not completed the transmission of the estate. In order to complete the distribution of the estate. The grant issued to her has to be revoked and fresh grant issued to Administrator/administrators to complete the process.



11. The applicant Charles Kinyua Kihuto seeks to be the sole administrator. The Respondent propose
12. I have considered the application and note that there are 6 beneficiaries of the estate:
 1. Charles Kinyua Kihuto (son)
 2. Peter Ngure Kihuto (son)
 3. John Kariithi Kihuto (son)
 4. Joyce Wanjiku Kihuto (daughter married)
 5. Anne Wanjiru Kihuto (daughter married)
 6. Veronicah Wanja Kihuto (daughter married)
13. I hereby revoke the grant issued to Margaret Mumbi Kihuto. A fresh grant to issue jointly to:
 1. Charles Kinyua Kihuto
 2. Peter Ngure Kihuto
 3. John Kariithi Kihuto
 4. Joyce Wanjiku Kihuto
14. The new Administrators are hereby directed to file fresh Summons for Confirmation within 60 days.

DATED AT NAIROBI THIS 14TH DAY OF NOVEMBER, 2024.

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S. N. RIECHI

JUDGE

