



In re Estate of the Late Donald Mwanza Mutua (Deceased) (Miscellaneous Succession Cause E003 of 2023) [2025] KEHC 13636 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13636 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS SUCCESSION CAUSE E003 OF 2023
RC RUTTO, J
SEPTEMBER 30, 2025
IN THE MATTER OF THE ESTATE OF THE
LATE DONALD MWANZA MUTUA (DECEASED)**

BETWEEN

DAVID MWANZIA NDUNDA 1ST APPLICANT

DANIEL MUTUA MWANZA 2ND APPLICANT

AND

LOISE NTHENYA MWANZA 1ST RESPONDENT

PHOEBE MUTHOKI NGALAKA 2ND RESPONDENT

RULING

1. The applicants' joint Summons for Revocation of Grant dated 15th May 2023 is before this court for determination. Pursuant to the provisions of section 76 of the *Law of Succession Act* and rules 44 and 49 of the Probate and Administration Rules, the applicants seek the following orders:
 1. That the grant of letters of administration intestate made to Loise Nthenya Mwanza & Phoebe Muthoki Ngalaka in Machakos CMSC No. E132 of 2020 on 2nd September 2021 be revoked;
 2. That costs of this application be in the cause.
2. The application is based on the grounds set out the Notice of Motion and the supporting affidavit of the 1st applicant. The applicants, asserts that they are the sons of the late Donald Mwanza Mutua and have attached copies of their birth certificates in support of that claim. Following of the death of their mother on 27th August 2003, the 1st applicant and the deceased were appointed administrators of her estate. Copies of the certificate of confirmation, the grant and the letter from the chief were annexed.



3. The 1st applicant deposed that the respondents secretly petitioned for letters of administration without involving or obtaining consent from the applicants. They only became aware of the proceedings upon receiving a response from the respondents to their citation in Machakos HC SC No. E001 of 2021 dated 27th January 2021. Copies of the pleadings were annexed. He further claimed that the 2nd respondent was not a child of the deceased and therefore ought not to benefit from the estate.
4. The applicants alleged that the respondents grossly undervalued the estate, which they claimed is worth more than Kshs.40,000,000,00 with prime plots situated in Mumbuni area. They also stated that properties valued at Kshs.13,000,000.00 were excluded from the estate. A copy of a valuation report was annexed. Consequently, they urged that, the value of the estate was beyond the jurisdiction of the subordinate court. The 1st applicant added that the deceased had allocated specific plots to each of the applicants, which they had taken possession of and had absolute ownership at the time of the deceased's untimely demise.
5. The applicants urged this court to allow the application for the following reasons: the proceedings to obtain the grant were defective in substance; the grant was obtained fraudulently by making false statements, concealment of facts material to the case and making untrue allegations; the respondents deliberately excluded the applicants as beneficiaries of the estate; the respondents developed a hostile attitude towards the applicants with clear intention to disinherit them from the estate; and the 2nd respondent, a co-administrator to the estate of the deceased was a stranger to the deceased's estate and therefore not suitable to administer the estate of the deceased.
6. The Summons was opposed by the 1st respondent through a replying affidavit sworn on 30th June 2023. She stated that she is a widow of the deceased and the grant of letters of administration was lawful and properly issued following due process. She claimed the applicants deliberately failed to raise objections within the stipulated timelines and dismissed the inclusion of properties valued at Kshs. 13,000,000.00 as baseless and without merit.
7. The 1st respondent challenged the validity of the valuation report describing it as unfounded, unsubstantiated, based on conjectures, unreliable and inadequate. She maintained that the subordinate court had jurisdiction over the matter and that referring the case to the High Court lacked justification.
8. The 1st respondent further recalled that during the succession proceedings in the subordinate court, the applicants were invited to participate in court annexed mediation but failed to attend. In its view, the applicants had willfully failed to cooperate and were in defiance of court orders and forum shopping. She urged this court to dismiss the valuation report or alternatively, appoint an independent valuer to verify the accuracy of the valuation report. She also requested that the matter be referred back to the subordinate court for resolution through alternative forms of dispute resolution mechanisms.
9. In response, the applicants filed a further affidavit sworn by the 1st applicant on 20th February 2025. He urged that it was impractical to participate in a proceeding that were conducted secretly. He noted that the issue of the 2nd respondent not being a beneficiary remain unaddressed. He asserted that the 1st respondent lacked the qualification to refute the valuation report and emphasized that they had participated in the mediation process in good faith. They reiterated that the subordinate court lacked the jurisdiction to determine the succession proceedings on account of the high value of the estate.
10. The Summons was canvassed through written submissions. The applicants, filed their written submissions dated 20th February 2025, arguing that they had met the threshold set out in section 76 of the *Law of Succession Act*. they cited the secretive nature of the proceedings were taken out, the 2nd



respondent's lack of entitlement to the estate, and the gross undervaluation of the estate as grounds for revocation of the grant.

11. The applicants cited the cases of Nicholas Ogutu vs. Ochiel Mugoye Okumu & another [2017] eKLR and Macharia & another vs. Kenya Commercial Bank Limited & 2 others [2012] KESC 8 (KLR) to support their application for revocation of the grant. They urged that the grant was obtained without their consent and that the subordinate court lacked jurisdiction to entertain the succession proceedings on account of pecuniary jurisdiction.
12. Additionally, the applicant contended that the respondents had concealed material facts by failing to disclose that the applicants were sons of the deceased. They also submitted that they were unaware of any mediation proceedings sanctioned by the court. They prayed that their application be allowed.
13. The respondents filed their respective written submissions dated 5th May 2025. They argued that the application had failed to meet the threshold under section 76 of the *Law of Succession Act*. She submitted that the 1st respondent, as the surviving spouse of the deceased, claimed priority in applying for letters of administration. They further challenged the applicant's claim of paternity, asserting that birth certificates alone were not conclusive proof of paternity.
14. On the issue of jurisdiction, the respondents submitted that section 23 of the Magistrate's Court Act amended section 48 (1) of the *Law of Succession Act* thereby conferring jurisdiction upon subordinate courts to revoke grants. They argued that rule 44 of the Probate and Administration rules being subsidiary legislation, was overridden by the statutory provisions. Citing *Musine vs. Osamo (Sued as co-administrator of the Estate of Stephen Osamo (Deceased))* [2023] KEHC 2017 (KLR), *Turfena Anyango Owuor & another vs. Mary Akinyi Dengo* [2018] eKLR and *In re Estate of Dickson Olonde-Deceased* [2024] KEHC 5773 (KLR), they urged this court to find that this court lacked jurisdiction to determine the subject matter and prayed for dismissal of the application with costs.
15. I have carefully considered the application, the supporting affidavit, annexures thereto as well as the respondent's response. I have also reviewed the parties' written submissions. The applicants seek to revoke the grant issued in CMSC No. E132 of 2020 on 2nd September 2021. Section 76 of the *Law of Succession Act* provides the legal basis for revocation or annulment of grants where the court is satisfied that the grounds set out therein have been established.
16. Before addressing the merits or otherwise of the application, it is prudent to first determine the jurisdictional issue raised, whether this court has the requisite jurisdiction to determine the application. It is undisputed that a grant of letters of administration in question was issued in favor of the respondents by the subordinate court in CMSC No. E132 of 2020. The critical question therefore, is whether this court has jurisdiction to revoke a grant issued by that subordinate court?
17. In *Musine vs. Osamo (Sued as co-administrator of the Estate of Stephen Osamo (Deceased))* (Supra) the court held as follows:

“The law, with respect to revocation of grants in succession causes pending before the Magistrate's Courts, had changed. Prior to January 2, 2016, the High Court enjoyed exclusive jurisdiction to revoke all grants of representation, whether made by itself or the Magistrate's Court. The Magistrate's Court had no jurisdiction to revoke grants that it had power to make. However, all that changed on January 2, 2016, when the *Law of Succession Act* was amended, by the coming into force of the *Magistrates' Courts Act*, No 26 of 2015.

Section 23 of the *Magistrates' Courts Act*, 2015, amended section 48(1) of the *Law of Succession Act*, which had granted exclusive jurisdiction to the High Court to revoke grants



made by the Magistrate’s Court, and extended that jurisdiction to the Magistrate’s Court. That meant that the exclusive jurisdiction conferred on the High Court to revoke all grants, regardless of the court that had made them, was ended, and jurisdiction was extended to the magistrates, who, effective from January 2, 2016, got jurisdiction to revoke the grants made by them. That meant the High Court could only revoke grants made by itself, but not those made by magistrates. The High Court lost the original and exclusive jurisdiction to revoke grants made by magistrates, and it could only deal with them in exercise of its appellate jurisdiction with respect to decisions by magistrates revoking grants made by them.”

18. This court adopts the same reasoning. I find that since the grant was not issued by this court, this court lacks the jurisdiction to revoke it. Consequently, I am unable to proceed to determine the merits of the application. Thus, the Summons for Revocation of Grant dated 15th May 2023 is therefore incompetent. It is hereby struck out. The applicants are at liberty to pursue their application CMSC No. E132 of 2020. I further direct parties to each bear their own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 30TH DAY OF SEPTEMBER 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Selina Court Assistant

