

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**SUCCESSION CAUSE NO. 159 OF 2001**

**REGINA NDITHI PETER .... 2<sup>ND</sup>**  
**ADMINISTRATOR/APPLICANT**

**VERSUS**

**MUTUKU MUTUA ..... 1<sup>ST</sup>**  
**ADMINISTRATOR/RESPONDENT**

**AND**

**COLLINS KASYOKA PETER ....INTENDED INTERESTED**  
**PARTY**

**RULING**

1. Before this court are two applications for determination. The first is a Chamber Summons Application dated 18<sup>th</sup> February 2025, filed by the 2<sup>nd</sup> Administrator/Applicant. She seeks the revocation or annulment of the certificate of confirmation of grant issued on 19<sup>th</sup> July 2018 dated 6<sup>th</sup> August 2018. The applicant further prays that a fresh summons for confirmation be filed within specified period and that all beneficiaries within land parcel number Machakos/Kiandani/199 be included.

2. This is supported by grounds set out on the face and the supporting affidavit sworn by the Applicant. The crux of the application is that, following the confirmation of the grant, the Applicant discovered material non-disclosure and concealment of facts. She claims that her advocate did not attend court during the confirmation proceedings and, being unfamiliar with the legal procedures, it erroneously recorded that the family had agreed to share the property Land parcel number Machakos/Kiandani/199 equally. According to her, the actual agreement was to divide the remaining 30% of the land based on the existing physical boundaries. She further deposes that, over 70% of the said property is currently occupied by purchasers and the family of her step-brother, while the remaining 30% has been partially disposed of approximately 20% with the residual portion consisting of about one acre being where she resides. The rest is occupied by her co-wife and two other beneficiaries. She asserts that there is, no unallocated portion left within land parcel number Machakos/Kiandani/199 and that the other beneficiaries' brothers to the 1<sup>st</sup> Administrator/Respondent have already disposed of their respective shares. That the purchasers have erected permanent structures on the land, making eviction impractical and frustrating the distribution of the estate as per the confirmed grant.

3. In the interest of justice, she requests that a surveyor be appointed to conduct a site visit, prepare a report, and file it in court to facilitate proper distribution and implementation of the certificate of confirmation issued on 6<sup>th</sup> August 2018. She also prays that the court sets a date for a site visit prior to the hearing and determination of the application.
4. In opposition to the said application, the 1<sup>st</sup> Administrator/Respondent filed a Replying Affidavit sworn on 10<sup>th</sup> April 2025. He states that the application dated 18<sup>th</sup> February 2025 is *res judicata*, as the Applicant had previously filed a similar summons for revocation and annulment of the grant dated 20<sup>th</sup> November 2019, seeking revocation of the certificate of confirmation of grant issued on 8<sup>th</sup> August 2019. That earlier application was heard on its merits and subsequently dismissed by a ruling delivered on 26<sup>th</sup> September 2022.
5. He contends that this court lacks jurisdiction to entertain and determine the same issues already adjudicated by a court of concurrent jurisdiction, and that the Applicant's only remedy lies in an appeal. The Respondent further states that no one is currently selling, disposing, leasing, sub-dividing, or otherwise dealing with the subject property. He accuses the Applicant of being uncooperative in the administration of the estate and the final distribution to the beneficiaries. As a result of her uncooperative conduct, the Respondent filed summons seeking orders directing the

Applicant to sign the transmission documents, or in the alternative, that the Deputy Registrar of the Court do so. These orders were granted in a ruling delivered on 4<sup>th</sup> December 2023.

6. He also alleges that it is the Applicant and her children who have sold portions of the subject property and have encroached onto areas belonging to the family of Phillip Nzuki Mutua, falsely claiming ownership. He asserts that this is the real reason behind her opposition to the equal division of the land between her family and that of Phillip Nzuki Mutua. He adds that the dispute was referred to mediation, but the process failed due to violent conduct by the Applicant and her children.
7. The second application dated 14<sup>th</sup> March 2025, was filed by the Intended Interested Party seeking to be joined in the succession proceedings. The application is supported by the grounds set out on its face and the supporting affidavit sworn by the Intended Interested Party. He claims to be the son of the late Peter Nzuki Mwalai, a biological brother of the deceased and a cousin to the 2<sup>nd</sup> Administrator. He alleges that the administrators have failed to properly manage the estate and have concealed material facts, resulting in prolonged litigation.
8. The Intended Interested Party further asserts that the subject property was originally left to their grandfather but

was registered in the name of the deceased, Phillip Mutua Nzuki, to hold in trust for himself and his siblings. He expresses willingness to present material evidence to assist the court in establishing the true facts surrounding the estate. In opposition to the Intended Interested Party's application, the 1<sup>st</sup> Administrator filed a Replying Affidavit sworn on 19<sup>th</sup> June 2025. He contends that the Intended Interested Party is, actually, the biological son of the 2<sup>nd</sup> Administrator and has not demonstrated any independent legal or beneficial interest in the estate of the late Phillip Mutua Nzuki. He argues that any interest the Intended Interested Party may have is already adequately represented by his mother, the 2<sup>nd</sup> Administrator, who is the widow of the deceased and an active co-administrator in these proceedings.

9. The Respondent views the application as a backdoor attempt to delay the finalization of a matter that has been pending for over two decades and has already undergone extensive litigation. He also points out that the Intended Interested Party has never participated in the proceedings since their inception in 2001 and has not provided a reasonable explanation for his sudden interest. When the application dated 14<sup>th</sup> March 2025 came up for hearing on 5<sup>th</sup> June 2025, counsel for the 1<sup>st</sup> Administrator informed the court that the application had been overtaken by events, as

the Deputy Registrar had already signed the transmission forms.

10. The parties were directed to file their submissions; however, as at the time of preparation of this ruling, none had been filed.

### **Analysis and Determination**

11. Upon carefully considered both applications and the affidavits filed by the parties the following three issues arise for determination;

**a.) Whether the application dated 18<sup>th</sup> February 2025 is *res judicata*.**

**b.) Whether the threshold for revocation or annulment of a confirmed grant Section 76 of the Law of Succession Act has been met.**

**c.) Whether the Intended Interested Party in the application dated 14<sup>th</sup> March 2025 should be joined in these proceedings.**

### **Whether the application dated 18<sup>th</sup> February 2025 is *res judicata*.**

12. The doctrine of *res judicata* bars courts from re-adjudicating matters that have already been heard and conclusively determined by a court of competent

jurisdiction. It serves to uphold the finality of litigation and judicial precious time and resources.

13. The 1<sup>st</sup> Administrator/Respondent contends that the 2<sup>nd</sup> Administrator's Application dated 18<sup>th</sup> February 2025 is res judicata, having raised similar issues to those in her earlier summons dated 20<sup>th</sup> November 2019. That application culminated in a ruling delivered on 26<sup>th</sup> September 2022. I have reviewed the court's record for the Ruling in question. The summons application dated 20<sup>th</sup> November 2019 sought revocation and annulment of the confirmed grant issued on 8<sup>th</sup> August 2019, citing grounds such as the absences of the 2<sup>nd</sup> administrator's during confirmation proceedings, lack of understanding of the schedule of distribution and alleged inequitable distribution of land parcel Machakos/Kiandani/199. These grounds mirror those raised in the present application, specifically, on alleged non-disclosure, lack of legal representation during confirmation and inequitable distribution of land parcel Machakos/Kiandani/199.

14. Given that the court, in its ruling delivered on 26<sup>th</sup> September 2022, comprehensively, addressed and determined the merits of the earlier application, the 2<sup>nd</sup> Administrator cannot now relitigate the same issues that were conclusively determined. . This court lacks jurisdiction to rehear the same matter that have been conclusively

adjudicated. The appropriate recourse available to the Applicant was to appeal the 2022 ruling, not to bring a similar application framed in slightly different language.

15. Accordingly, I find and hold that the application dated 18<sup>th</sup> February 2025 is *res judicata* and is hereby dismissed.

**Whether the threshold for revocation or annulment of the grant has been met**

16. Without prejudice to the earlier finding on re judicata, I proceed to address the merits for completeness. **Section 76 of the Law of Succession Act** outlines the grounds upon which a court may revoke or annul a grant. These include where the proceedings to obtain the grant were defective in substance, or where the grant was obtained fraudulently by making false statements or concealing material facts.

17. In the present case, the Applicant alleges that her advocate did not attend court during confirmation proceedings and that she was not aware of the manner of how the confirmation of grant was conducted. She further claims that 70% of the land has been taken up by purchasers, rendering the property no longer divisible in accordance with the confirmed grant.

18. However, these allegations do not meet the statutory threshold under Section 76. First, the grant was confirmed

in 2018, and the Applicant has not provided a satisfactory explanation for the delay in filing this fresh application. Secondly, she has not demonstrated any deliberate concealment of material facts or fraudulent conduct by the 1st Administrator during the confirmation process. It is worth noting that the Applicant was a co-administrator at the time and actively participated in the administration of the estate. The mere fact that the Applicant now faces practical challenges in executing the confirmed mode of distribution does not, in itself, invalidate the grant.

19. In ***Re Estate of Prisca Ong'ayo Nande (Deceased)*** [2020] eKLR, the court emphasized that:

*“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.

20. Therefore, revocation of a grant is a serious judicial action and must be based on clear evidence of fraud, misrepresentation, or procedural irregularity. Mere

dissatisfaction with the outcome of distribution is not a ground for revocation.

21. Consequently, even if the matter were not barred by the doctrine of res judicata, I find that the Applicant has failed to meet the legal threshold under Section 76 of the Law of Succession Act to warrant revocation or annulment of the confirmed grant. The application, therefore, lacks merit on both procedural and substantive grounds.

**Whether the Intended Interested Party should be joined in these proceedings.**

22. The second application dated 14<sup>th</sup> March 2025 was filed by the Intended Interested Party seeking to be joined in these succession proceedings. He claims to be the son of the deceased's brother and asserts that he therefore has a beneficial interest in the estate. However, upon careful examination of the affidavit in support of the application, the Intended Interested Party has not produced any documentary evidence to prove his relationship to the deceased or demonstrate any legal or beneficial interest in the estate of the deceased.

23. The 1<sup>st</sup> Administrator opposed the application asserting that the Intended Interested Party is actually the biological son of the 2<sup>nd</sup> Administrator and is therefore already adequately represented in these proceedings. While this assertion is also unsupported by evidence and the 2<sup>nd</sup>

Administrator has not responded to it, the Court cannot rely on the Respondent's claim alone.

24. That said, the law requires that any party seeking to be joined must demonstrate a prima facie interest in the subject matter. The Supreme Court in **Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling)** held that;

**“37. From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements: The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the**

**satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.**

25. Similarly, in the case of **Judicial Service Commission v Speaker of the National Assembly & another [2013] KEHC 1569 (KLR)** an interested party was defined as one that;

**“An interested party..... Is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings”.**

26. Applying these principles, the Intended Interested Party has failed to demonstrate a clear, direct, and proximate interest in the estate. He has not produced any evidence to confirm his alleged relationship to the deceased, nor has he explained his prolonged absence from the proceedings, which have been ongoing for over two decades. The timing of his application casts doubts on its bona fides and

suggests it may be an attempt to delay the final resolution of the matter.

27. The Intended Interested Party has first merely claimed to be the son of the late Peter Nzuki Mwalai which no sufficient proof to confirm his clear and direct stake in the matter. Further, no plausible explanation has been given for his two-decade long absence in the succession proceedings and the timing of his application raises doubt as to its bona fides. On this alone, I find that the Intended Interested Party has not met the threshold for joinder and that his application amounts to unwarranted attempt to delay the finalization of this matter.

28. Based on the foregoing, I make the following orders;

- a) The Chamber Summons application dated 18<sup>th</sup> February 2025 is dismissed.
- b) The Chamber Summons Application dated 14<sup>th</sup> March 2025 by the Intended Interested Party is dismissed.
- c) Each party to bear their own costs.

Orders accordingly.

**Dated, signed and delivered at Machakos this 30<sup>th</sup> day of September, 2025.**

**RHODA RUTTO**

**JUDGE**

**In the presence of;**

..... 2<sup>nd</sup> Administrator/Applicant

.....1<sup>st</sup> Administrator/Respondent

.....for Intended Interested Party

Selina Court Assistant

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