



**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 456 OF 2014**

**IN THE MATTER OF THE ESTATE OF M'ANAMPIU M'AMURI**

**ALIAS NAMAPIU AMUNDI(DECEASED)**

ROBERT  
MUGAMBI.....PETITIONER/RESPONDENT

VERSUS

REBECCA MUKOMERU  
M'ANAMPIU.....APPLICANT/OBJECTOR

HARRIET KATHAMBI.....  
.....RESPONDENT

**RULING**

1. Vide an Application dated 17<sup>th</sup> October,2023 brought under Sections 47 and 76 of the Law of Succession Act, the Objector seeks for ORDERS: -

1. Spent.

2. Spent.

3. That the Honourable Court be pleased to issue an order revoking the grant issued and confirmed on 2<sup>nd</sup> April,2015 and the consent order as the same were

obtained fraudulently without knowledge of the Applicant and other beneficiaries, and the distribution of the estate be applied for afresh.

4. That the costs of this Application be in the suit.
2. The Application is premised on the grounds on its face and supported by an affidavit sworn by Rebecca Mukomeru M'anampiu on the even date.
3. She deponed that she is the wife to the deceased and she lives in the land in question NKUENE/UKUU/544 and she has never been informed of this succession matter both prior to the confirmation of grant and after the alleged distribution of the deceased's estate.
4. She averred that she and her children, Juliet Kathure Anampiu, Linet Gatwiri Anampiu, Linet Gatwiri Anampiu, Evangeline Gakii Anampiu and Loice Kithira Anampiu who are also beneficiaries did not sign the consent order showing the distribution of the estate and therefore the consent order is irregular and fraudulent as the signatures therein are fake.
5. She asserted that she will suffer substantial loss and great prejudice if the orders sought are not granted.

6. The Respondent, Harriet Kathambi, swore a replying affidavit in opposition to the Application on 27<sup>th</sup> November, 2023.
7. She averred that the objector is her aged mother who is almost 90 years old and affected by age related vagaries including a stroke which has affected her movement, speech and mental disposition and therefore the instant application is the work of her sisters Juliet Kathure Anampiu, Linet Gatwiri Anampiu, Evangeline Gakii Anampiu and Loise Kathira Anampiu.
8. She contended that her said sisters are taking advantage of their mother's feeble health to drag her back to court without her knowledge.
9. She averred that contrary to the Applicant's averments, she had lodged an objection in these proceedings challenging Robert Mugambi's petition concerning her late husband's estate.
10. She stated that following the hearing of the objection, the court appointed the petitioner, the objector, and her late stepmother, Zipporah Kirugi Muthamia, as joint administrators of the estate.

11. She averred that the joint grant was confirmed by a consent order filed on 13<sup>th</sup> July,2016 where all the beneficiaries of the estate signed or affixed their thumbprints and that the Applicant, despite her advanced age, received a share of the estate.
12. She deposed that this application is based on lies and falsehoods, intended to hoodwink and waste judicial time, and is part of a scheme by her 4 sisters to tear the family peace for personal gains.
13. She prayed that the Application be dismissed for lack of merit and for being an abuse of the judicial time.
14. The Application was heard by way of viva voce evidence.

### **Objector's Case**

15. The Applicant was not called as a witness. She wholly relied on her affidavit dated 17.10.2023 as her evidence.
16. PW2, Evangeline Gakii, testified that the objector is her mother and that she was not aware of the distribution of the deceased's estate until 2022 when the objector was served

with an application dated 11<sup>th</sup> March,2022 in regard to the distribution of their late father's estate.

17. She stated that she had not attended the court before and that the grant was obtained fraudulently as her mother was given 2 acres while the other 2 wives got 2 ½ acres from Nkuene/Ukuu/544.

18. On cross examination, she confirmed that the objector was one of the administrators. She said she did not sign the consent order filed on 13<sup>th</sup> July,2016 and the signature appearing against her name is a forgery.

19. PW2, Juliet Kathure, relied on her statement dated 28<sup>th</sup> February,2024 wherein she stated that she was equally not aware of these proceedings until 2022 when the objector was served with an application with respect to the distribution of the deceased's estate.

20. She stated that she has never signed any consent to the confirmation of grant and that the signature attributed to her in the consent order is a forgery.

21. On cross-examination, she stated that the objector was allocated 2 acres instead of 2½ acres and that the family of

their late brother, Johnston, likewise received 2 acres instead of 2½ acres. She further stated that the respondent, Harriet, was given 1 acre, half of which ought to have been allocated to the objector. She therefore prayed that 1 acre be distributed equally between the objector and the family of Johnston.

22. PW3, Loice Kithira Anampiu, adopted her statement filed on 4<sup>th</sup> March 2024. She stated that she was never informed or involved in the distribution of the estate, never signed any documents relating to it and was never called to court to confirm the distribution. She added that her name was wrongly listed as Purity, which in her view, showed the haste and deceit in the process. She further maintained that the signature attributed to her in the consent is a forgery.

23. PW4 was Linet Gatwiri. It was her evidence that she was not aware of this cause until 2022 when the objector was served with an application for distribution of the deceased's estate. She equally stated that she did not sign the consent order and the signature attributed to her is a forgery.

## **Respondent's Case**

24. The respondent testified that the objector is one of the administrators of the deceased's estate and that consent order filed on 13<sup>th</sup> July, 2026 was signed by all her siblings.

25. She said the parties agreed that she be given 1 acre of the deceased's estate and that it was not true that the objector was entitled to 2 ½ acres.

## **Applicant's Submissions**

26. The Applicant reiterated the averments contained in her supporting affidavit in her submissions. Her submissions were principally that she had no knowledge of the succession proceedings particularly on the distribution of the estate and that her daughters too being the beneficiaries of the deceased's estate did not consent to the mode of distribution and the signatures attributed to them in the consent order are forgeries.

27. In buttressing her submissions, the Applicant relied on the following cases: -

1. **Benson Champu Kaparewo v Rabeca Chepkuto Kiperenge** [2019] eKLR- where the Court of Appeal held that the exclusion of a Beneficiary from succession proceedings amounted to concealment of material facts.
2. **Kihara v Kimani (Civil Appeal 218 of 2018)** [2023] KECA 1168 (KLR) (6 October 2023) **(Judgment)** where the court of Appeal cited their decision in the case of **Matheka and another v Matheka** [2005] 2 KLR 455 where it held that in an application under section 76, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.

3. **Albert Imbuga Kisigwa v Recho Kawai Kisigwa**

**Succession Cause No. 158 of 2000** where Mwita J stated that there must be evidence of wrong doing 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.

4. **In re Estate of Festo Lugadiru Abukira**

**(Deceased) [2019] eKLR** for the proposition that an administrator is bound to comply with the Rule 26 by notifying all the beneficiaries who are equally entitled to administration just like him/her of his/her application for representation.

5. **Kenneth Liswa Asega vs Alice Muhonja (2016)**

**eKLR** for the proposition that the court would revoke a grant where it is shown the same was procured through fraud or through concealment and misrepresentation of material facts.

6. **Njagi Kanyunguti ALIAS Karingi Kanyunguti & 4 others vs David Njeru Njogu**

**[1997] KECA 421 (KLR)** where the court held that it is trite law courts will only exercise its judicial discretion in favour of setting aside a judgment in order to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or errors, and will not assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.

28. On costs, the Applicant prayed that the same be awarded to her. In support of her submissions, reliance was placed on the case of **Republic vs Rosemary Wairimu Munene, Ex Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd, Judicial Review application no 6 of 2014** where the court held that costs follow the event is not to be used to penalize the losing party, rather, it is for compensating the successful party for the trouble taken in prosecuting or defending the case.

## **Respondent's Submissions**

29. On whether the Applicant proved the alleged fraud, the respondent submitted in the negative. She argued that there is no evidence to show that the Applicant reported the alleged fraud to the police for investigations. In buttressing her case, the respondent relied on Sections 107,108 & 109 of the evidence Act & the cases of **Denis Noel Mukholo Ochwada & Another v Elizabeth Murungari Njoroge & Another [2018] eKLR** where the court quoted the case of **R.G. Patel v. Lalji Makanji** where the Court of Appeal for Eastern Africa stated that ***Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.***; **Evans Nyakwana v Cleophas Bwana Ongaro [2015] eKLR**; **Vijay Morjaria -vs- Nasingh M. Darbar & Another [2000] eKLR** for the proposition that allegations of fraud are serious allegations which must be proved on a standard higher than a balance

of probabilities but not as high as beyond reasonable doubt;& **Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of Sospeter Mukuru Mbeere (deceased) v Stephen Njoroge Macharia [2020] eKLR** for the proposition that the onus to prove fraud in a matter is on a party who alleges it and that it is not enough to simply infer fraud from the facts.

30. With regard to whether the Applicant has met the threshold for revocation of grant, the Respondent submitted that there is no evidence tendered by the Applicant and her children to demonstrate that they were not informed of this Succession cause and that the grant of letters of administration was fraudulently obtained. To bolster her submissions, the Respondent referred this court to Section 76 of the Law of Succession Act and the cases of **Flora N. Wasike v. Destino Wamboko [1988] eKLR** where the Court of Appeal stated that a consent judgment or order has a contractual effect and can only be set aside on grounds that would justify setting aside a contract & **Teresia Kimani v Sokoro Plywood Limited [2014] eKLR** for the

proposition that a consent order is binding on all parties to the proceedings or action or those claiming under them.

31. On the issue of costs, the Respondent submitted that the Applicant and her three daughters should bear the costs of the application as the same is an afterthought, misconceived, bad in law and an abuse of the court judicial time.

### **Analysis & Determination**

32. A brief history of the matter is appropriate at this stage.

33. The cause commenced in the Senior Principal Magistrates Court at Nkubu where Robert Mugambi Matumbi, a son to the deceased, lodged a petition on 8th July 2014. Before the said court could issue a grant, this court, by an order issued on 27<sup>th</sup> August 2014, ordered that the cause be transferred to it. On 8<sup>th</sup> December 2014, a consent was recorded in court whereby the following persons were appointed as co-administrators;

34. Robert Mugambi

35. Rebecca Mukomeru (Applicant)

36. Zipporah Kingi Muthamia
37. By an application dated 25<sup>th</sup> October 2015, the said Robert Mugambi applied for confirmation of the grant. Similarly, by an application dated 24<sup>th</sup> November 2015 the applicant also sought to have the grant confirmed. On 13<sup>th</sup> July 2016, a consent was filed in court on the mode of distribution and subsequently, the confirmed grant was issued by the court on 15<sup>th</sup> September 2016.
38. Vide an application dated 1<sup>st</sup> December 2020, the applicant herein sought orders that the OCS Nkubu Police Station provide security to the land surveyor during the subdivision of the land in accordance with the grant.
39. On 29<sup>th</sup> October 2021, the applicant moved the court with an application that sought to have the grant revoked and the name of Zipporah Kirugi Muthamia be removed from it on account of her death. Subsequently, a “rectified” grant and confirmation of the grant were issued in the name of the applicant and the said Robert Mugambi.
40. Vide an application dated 11<sup>th</sup> March 2022, Harriet Kathambi moved the court seeking to have the applicant

removed as an administrator on the basis that she had refused to proceed with the distribution of the estate. Although the application had only sought the removal of the applicant herein as an administrator, the order issued on 18<sup>th</sup> October 2022 also removed Robert Mugambi as an administrator and replaced both of them with Harriet Kathambi as the sole administrator. A confirmed grant was then issued on 19<sup>th</sup> October, 2022 and due an error, it was rectified on 21<sup>st</sup> November 2022.

41. Thereafter, the applicant moved the court with the present application.
42. The issue for determination is whether the Applicant's application meets the threshold for the revocation of a grant.
43. Revocation of grant is provided for under section 76 of the Act. This section provides as follows: -

**“76. Revocation or annulment of grant.**

**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.”

44. A reading of the objector’s application leaves no doubt that the grounds cited fall under **section 76 (b)** above.

45. Section 76 was expounded on by the court **In re Estate of Prisca Ong’ayo Nande (Deceased) [2020]** eKLR where it was stated 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.”***

46. The court, in the case of **Jamleck Maina Njoroge vs Mary Wanjiru Mwangi (2015) eKLR** at paragraph 11 of its

ruling in revoking a grant reiterated the grounds upon which a grant can be revoked. It stated as follows:

***“. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”***

47. The Objector/Applicant put forth two major arguments:
- (i) that the Respondent did not seek the consent of all beneficiaries and forged her signature together with those of Juliet Kathure Anampiu, Linet Gatwiri Anampiu, Linet Gatwiri Anampiu,

Evangeline Gakii Anampiu and Loice Kithira Anampiu in order to obtain the grant; &

- (ii) She was never been informed of this succession matter both prior to the confirmation of grant and after the alleged distribution of the deceased's estate.

48. Rule 26(1) and (2) of the Probate and Administration Rules then provide as follows:

***“(1).Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.(2).An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equally or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”***

49. Rule 40(8) of the Probate and Administration Rules is premised in the following terms:

***“Where no affidavit of protest has been filed the summons and affidavit shall without delay be placed by the registrar before the court by which the grant was issued which may, on receipt of the consent in writing in Form 37 of all dependants or other persons who may be beneficially entitled, allow the application without the attendance of any person; but where an affidavit of protest has been filed or any of the persons beneficially entitled has not consented in writing the court shall order that the matter be set down as soon as may be for directions in chambers on notice in Form 74 to the applicant, the protester and to such other persons as the court thinks fit.”***

50. I have perused the record and note that the objector was very much aware of this matter. Indeed, on 8<sup>th</sup> December, 2014, she was duly appointed as one of the

administrators of the deceased's estate together with Robert Mugambi and Zipporah Kirugi Muthamia.

51. Regarding the allegations of fraud, it should not be lost that **Section 109** of the **Evidence Act** places the burden of proof on him/her who alleges. The Section provides that:

***“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie in a particular person.”***

52. The law on the proof of fraud allegations is well-settled. In the case of **Christopher Ndaru Kagina -V- Esther Mbandi Kagina & Another [2016] eKLR**, the court stated that:

***“It is trite law that he who alleges fraud must prove fraud. Allegations of fraud must strictly be proved. Great care must be taken in pleading allegations of fraud or dishonesty. In particular, the pleader needs to be sure that there is***

***sufficient evidence to justify the allegations. In the Case Central Bank of Kenya LTD -V- Trust Bank Ltd & 4 Others [26] the Court of Appeal in considering standard of proof required where fraud is alleged state that fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof is much heavier on the person alleging than in an ordinary Civil Case. The burden of proof lies on the applicant in establishing the fraud that he alleges.”***

53. It is important to note that save for the appointment of the respondent as the sole administrator the substance of the grant has not changed. What the respondent is implementing is what the applicant had sought when she was an administrator.

54. I have also perused the consent in issue. it was the one filed in court on 13<sup>th</sup> July 2016. I note that the objector herein thumb-printed the order, while her aforementioned children, Juliet Kathure Anampiu, Linet Gatwiri Anampiu, Linet Gatwiri

Anampiu & Evangeline Gakii Anampiu, wrote their first names in the spaces designated for signatures.

55. There is no evidence to suggest that the signatures of the objector and her aforementioned children were forged. The objector ought to have subjected the alleged forged signatures to testing by a handwriting expert or a document examiner but she did not.

56. As for Loice Kithira Anampiu, she told court that her name was wrongly listed as Purity Kithira which showed the haste and deceit in the process. The consent order in question indeed lists her as Purity Kithira, and the name "Purity" appears as her signature against the said entry. Even though the respondent did not respond to this assertion, I note that the applicant, in her own application applying for confirmation of the grant, still referred to Loice Kithira as Purity. I also note that the letter from the chief used to petition for the letters of administration indicates her name as Purity Kithira. Therefore, the applicant cannot use that purported error to justify a revocation of the grant that she obtained.

57. In agreement with the respondent, I find that the applicant is being dishonest. She is seeking to revoke a grant that she herself applied for its confirmation. All the beneficiaries, including her own children, appended their signatures on the consent. What the respondent is seeking to do is to merely implement the grant as issued, nothing more.

58. Accordingly, I find that the consent in support of distribution of the estate as required under Rule 40(8) of the Rules, filed on 13<sup>th</sup> July 2016, was duly signed by the Loice Kithira Anampiu using the name Purity Kithira.

59. In light of the above, I find the application is not merited. I hereby issue the following orders: -

- i. The application dated 17<sup>th</sup> October 2023 is dismissed.**
- ii. The grant issued and confirmed on 2<sup>nd</sup> April, 2015 is hereby affirmed.**
- iii. The Administrator/Respondent should proceed to conclude the distribution, if not done, within the next 90 days.**

**iv. There shall be no orders as to costs.**

**Dated, Signed and Delivered at Meru this 14<sup>th</sup> day of  
October, 2025.**

**H. M. NYAGA**

**JUDGE**