



In re Estate of Mark Kimani Kago - Deceased (Succession Cause 94 of 2012) [2025] KEHC 14015 (KLR) (8 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 94 OF 2012**

RK LIMO, J

OCTOBER 8, 2025

BETWEEN

- BERNARD KAMANU KIMANU 1ST APPLICANT**
- PATRICK KAMINJA KIMANI 2ND APPLICANT**
- VERONICA NJERK 3RD APPLICANT**
- LUCY WAMORO 4TH APPLICANT**
- CATHERINE WANGARE 5TH APPLICANT**
- PETER MWASI 6TH APPLICANT**
- SUSAN MUKUHE 7TH APPLICANT**
- JAMES MUCHEMI 8TH APPLICANT**

AND

- JANET WANJA KAGO 1ST RESPONDENT**
- ALBERT NDEGWA KIMANI 2ND RESPONDENT**

RULING

1. Patrick Kaminja Kimani and 7 others have vide an amended summons for revocation of grant dated 24/7/23 moved this court for the following;
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. That the judgment issued on the 10/12/2018 be reviewed and/or set aside.



- v. That the grant issued on 30/10/2014 and confirmed on 13/5/2019 be revoked and/or annulled and resultant titles be cancelled.
 - vi. Costs of this application be provided.
2. The applicants have listed the following grounds on the face of their application;
- a. That they are biological children of the deceased and that the deceased had 2 wives namely Wanja Kimeri and Mary Wambui (now deceased).
 - b. That Mary Wambui Kimani (deceased), the 2nd wife to the deceased is yet to be buried because the administrators stopped the burial on the parcel No.Lari/Kirenga/882 which they claim comprises the estate.
 - c. That the deceased had 2 wives and children as follow;
 - 1. 1st House
 - Wanja Kimeru Mundia – 1st wife
 - Scolastica Wambui
 - Njeri Kimani children
 - Francis Wango Kimani
 - Mary Wangui Kibue
 - 2. 2nd House
 - Mary Wambui Kimani – 2nd wife
 - Benard Kamanu Kimani
 - Patrick Kaminja Kimani children
 - James Muchemi
 - Veronicah Njeri
 - Peter Mwasi
 - Wamara Kimani
 - Catherine Wangari
 - Susan Mukuhi
 - d. That from the confirmed grant the 2nd house was left out in the distribution of the estate.
 - e. That the respondents and the 1st house took the entire estate and never involved the 2nd house in the succession proceedings.
 - f. That the 2nd house only got to know about the succession proceedings when their mother Mary Wambui passed on and when they organized for funeral and burial of their mother in Parcel No.Lari/Kirenga/882 in Kiambu the respondents blocked them vide Limuru SPM’s Court ELC No.E010 of 2023.
 - g. They claim that Lari/Kirenga/882 has not been distributed and that the respondent used the grant to lodge proceedings against them in Limuru SPM’s Court.



- h. In their view this court is the only court seized with the jurisdiction to hear and determine issues related to succession pursuant to section 47 and 72(2) of Law of Succession Act. They aver that the property is still registered in the name of the deceased.
 - i. They aver that the respondents fraudulently obtained a grant by leaving out other rightful beneficiaries including the applicants.
 - j. It is their case that the late Mary Wambui Kimani had been residing on Lari/Kirenga/882 since 1962 while the 1st house has been residing in Trans-Nzoia/Suwerwa/1972 adding that it is unfair to render the 2nd house homeless.
 - k. That they were not involved or aware of the succession proceedings and did not know that they were required to come and establish their dependency on the estate.
3. The applicants have supported the above grounds with affidavit jointly sworn on 24/7/2023 by Bernard Kamanu and Patrick Kaminja. In the affidavit they have majorly reiterated the above grounds. They aver that as the 2nd family they are incurring daily morgue fees because their mother has not been buried owing to the suit filed by the respondents in Limuru SPM's Court.
 4. They state that they have been suffering emotional and psychological torture because of being unable to bury their mother.
 5. They have exhibited several photographs to demonstrate that their late mother and the deceased in this case lived together as husband and wife.
 6. They fault the respondents for failing to disclose that the deceased had other children or dependants and thereby disinherited them.
 7. The respondents through their counsel Kaosa & Co Advocates in response to the summons for revocation of grant dated 24/7/2023, filed a preliminary objection dated 31/7/2023. The respondent terms the application herein as inept, misconceived and an abuse of court process.
 8. The 1st respondent's main gist in the preliminary objection is that the applicants filed the summons for revocation of grant dated 5/4/23 and this court had already given directions on how the matter was to proceed, when again they preferred this application as amended summons for revocation of grant enjoining other parties without first seeking leave of court.
 9. The 2nd respondent through Mwaura Shairi & Co Advocates also in his part raised another preliminary objection dated 16/1/24 and the grounds raised is that the summons for revocation of grant dated 5/4/23 and 24/7/23 are Res Judicata as the dispute was heard through viva voce evidence and vide a ruling dated 12/3/2014 the court rendered itself. The 2nd respondent pleads that the summons or revocation of grant offends section 7 of the Civil Procedure Act.
 10. This court directed that in light of the two preliminary objections raised, the same be canvassed first by written submissions. The following are the submission by all the parties through their respective counsels.
 11.
 - (i) The 2nd respondent's submissions to the preliminary objection dated 16/1/24.
 The 2nd respondent contends that Mary Wambui Kimani (deceased) the mother to the applicants did lodge an application for revocation of grant dated 24/10/2012 asking the court to revoke the grant dated 16/7/2012. He contends that the main prayer raised in the said



application was revocation of grant issued on 16/7/2012. He submits through counsel that Justice Karanja rendered himself vide a ruling delivered on 12/3/2014.

12. He submits that the assets comprising the estate are the same ones mentioned in the present application and that the mother to the 1st applicant and the 2nd applicant herein Mary Wambui Kimani represented the applicants. He contends that the parties in the present application and the former application are the same. That there is no dispute that the court that determined the application in 2014 and 2018 had jurisdiction to adjudicate over the dispute and render a decision.
13. He points out that in a judgment delivered on 10/2/2018, the mother to the applicants was given 2 acres and that the 2 acres granted to her was for her and her children. He submits that the two parcels mentioned in the present application were the same subject matter in the judgment delivered on 10/12/2018. That the court heard the parties through oral evidence and delivered ruling dated 12.3.2014 and judgment delivered on 10/12/2018 adding that no appeal has been filed against either the ruling or the judgment.
14. He contends that the ruling and judgment have been implemented through a certificate of confirmation issued in 2019 with the mother of the applicants getting 2 acres as determined by court.
15. He submits that the doctrine of Res Judicata applies because the issues raised in the present application had been raised in the previous application and the issues dealt with adding that this court is now functus officio.
16. The 1st respondent through Kaosa Advocate, concurred with Mr Gacheru's sentiments. The 1st respondent also relied on her own written submissions dated 30/5/25 done through her counsel.
17. The 1st respondent contends that the genesis of the issues at hand is that when she was issued with a grant in respect to the estate herein, the late Mary Wambui applied for revocation vide summons for revocation of grant dated 24/10/2012. That at same time the 2nd applicant Patrick Kaminja Kimani applied for a fresh grant vide Succession Cause No.110/12.
18. According to her the application dated 24/10/2012 was dismissed but the applicant was found to have been a former wife. That Succession No.110/12 was consolidated with this cause and the grant issued in Succession Cause NO.110/12 nullified because the court found that it had been overtaken by events in this cause because all the parties had been heard in this cause.
19. She contends that Mary Wambui (deceased) was given 2 acres and she never appealed against the finding that she was a former wife.
20. The 1st respondent submits that Wambui's children were always with their mother in court because they were claiming under their deceased mother.
21. She further contends that this matter was put to rest by Justice Chemitei and new title deeds issued. It is her position that the applicants are not biological children of the deceased and insists that the court found their mother not to have been a wife to the deceased. She submits that in any event Judge Chemitei in his judgment dated 10/12/2018 found that the applicants could only claim their mother's share.
22. She contends that James Muchemi one of the children of Wambui came to court asking to be enjoined but the court found that he was not a son to the deceased after hearing the matter via viva voce evidence.
23. The 1st respondent submits that the present application is a repetition of a previous one which was fully determined by the court and there was no appeal preferred.



24. The applicants through Kamuiru Advocate have opposed the preliminary objection raised. They have filed written submission dated 12/3/2024. They insist that their application is to have judgment dated 10/12/2018 reviewed and set aside.
25. According to the applicants their application for review has never been heard and therefore the doctrine of Res Judicata cannot apply. They contend that for Res Judicata to apply it must be shown that they participated in the previous proceedings. They submit that the initial applicant who was their mother was applying for revocation of grant as a former wife and that section 29 of Law of Succession Act gives a right to the children to apply as dependants.
26. They insist that they have applied for review as children to the deceased.
27. Counsel for the applicants submits that a chief's letter was used in the proceedings leading to the issuance of grant and that they have evidence proving that the letter was not issued by the right chief.
28. This court has set out the issues raised in the application dated 24/7/2023 and respective preliminary objection raised by the respondents and the response by the applicants through counsel.
29. It is quite clear from the prayers sought in the cited application that the substantive reliefs sought are;
 - a. Review and setting aside of judgment made on 10/12/2018 and
 - b. Revocation/annulment of grant issued on 30/10/2014.
30. The respondents' main gist of the preliminary point raised is that the prayers/issues raised in the application dated 24/7/23 are Res Judicata because they have been adjudicated upon and a determination made. The main issue before this court is whether the application dated 24/7/23 is Res Judicata and side issue raised is whether an application for review can be sustained.
31. To get a clear perspective on this matter, a little background is essential for proper determinaitn of issues at hand.
32. The petition for letters of administration herein was commenced by Janet Wanja Kago sometime in 2012 as the daughter in law to the deceased. The petitioner was granted letters of administration on 16/7/2012. On 24/10/2012, Mary Wambui Kimani (now deceased) filed summons for revocation of grant dated 24/10/2012 where she deponed that she had allowed her sons to file Succession Cause No.110 of 2012 and that she was the 2nd wife of the deceased but owing to her age, she instructed her sons to pursue letters of administration.
33. She averred that she and her children were beneficiaries of the estate of deceased and therefore sought for revocation on grounds that the petitioner was not the first person in priority to apply for letters of administration. She also pointed out that she was a wife to the deceased and that the petitioner concealed that fact. She averred that her children Francis Wango Kimani and Patrick Kaminja Kimani were also dependants not mentioned by the petitioner.
34. It is apparent that Succession Cause No.110/12 and this cause were consolidated on 19/11/2013.
35. The record shows that Justice Karanja vide a ruling dated 12/3/2014 rendered himself on the summons for revocation of grant dated 24/10/2012. The court nullified the grant in P&A Cause NO.110/12. In that ruling Justice Karanja found that the relationship of Mary Wambui to the deceased was broken by elders in 1999 and held that "the status of Mary Wambui was that of a former wife who could apply for reasonable provisions from the estate under section 26 of Law of Succession Act".



The court declined the application to revoke the grant. The court then appointed Janet Wanja Kago and Albert Ndegwa Kimani as the administrators of the estate and a grant issued to that effect on 30/10/2014.

36. On 14/1/2015 the appointed administratrix and administrator applied for confirmation of the said grant and the court confirmed the grant vide a certificate of confirmation dated 19/3/2015 distributing the estate as follows:-
- A. Trans-Nzoia/Suwerwa/278
- i. Albert Ndegwa Kimani – 5 acres
 - ii. Wanja Kimeri Mundia - 9 acres
 - iii. Mary Wangui Kabue - 7 acres
- (B) Lari/Kirenga/882
- (i) Albert Ndegwa Kimani - 2 ½ acres
 - (ii) Scolastica Wambui Kimani - 1 acre
 - (iii) Francis Wango Kimani - 1 acre
37. Another application to revoke the grant was filed on 19/1/2016. In the summons for revocation of grant dated 19/1/2016 James Muchemi Kimani applied for revocation of grant claiming that he was a son of the deceased and stated that the court had determined that a “reasonable provision” be given to them but the same had not been done.
38. The record shows that the application for revocation proceeded by way of viva voce evidence before Justice Chemitei. James Muchemi Kimani testified that their mother Mary Wambui Kimani was deceased and that she left 8 children (4 boys and 4 girls). Justice Chemitei also heard from the respondent Albert Kimani and his witnesses.
39. In his judgment dated 10/12/2018 Justice Chemitei echoed the findings of Karanja J that Mary Wambui was “a former wife and could only apply for reasonable provision and her children could only derive any provision from their mother’s provision if they are blood children of the deceased”. The judge then determined that Mary Wambui Kimani would be given 2 acres in Trans-Nzoia/Suwerwa/278 and the remainder of the parcel “to go to the household of Grace Mukuhi Kimani”. What is significant in the decision by the said judge is the finding that the children of Mary Wambui “cannot be ascertained that they belonged to the deceased. All of them were born in Central Province. No evidence was adduced to show they were born of the deceased. Nobody came forward to demonstrate that the deceased stayed with Mary Wambui (deceased) in Central Province as husband and wife”. The judge stated that the 2 acres given to Mary Wambui was “ex-gratia” and that she was not entitled to anything more. What is interesting is that in her affidavit sworn on 24/10/2012 in support of her summons for revocation of grant Mary Wambui only mentioned Francis Wango and Patrick Kaminja Kimani as her children.
40. The two decisions above i.e. Justice Karanja’s decision of 12/3/2014 and decision of Chemitei in 2018 has not been challenged by way of any appeal.
41. The applicants have now moved the court through summons for revocation of grant dated 5/4/23 which they later amended to 24/7/23 and they are seeking to have the grant issued on 13/5/2019 revoked and the judgment made on 10/12/2018 reviewed.



42. This court has already set out the grounds upon which the summons for revocation of grant dated 24/7/2023 is made. It is quite apparent that the issues in the instant application were raised in both applications dated 24/10/2012 and 19/1/2016. The issues related to Mary Wambui being a 2nd wife and being left out together with her children from the succession proceedings yet they felt they were dependants.
43. The provisions of section 7 of *Civil Procedure Act* encapsulate the doctrine of Res Judicata. it states;
- “No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”.
44. This court finds that to the extent that the status of Mary Wambui as ‘wife’ of the deceased herein having been determined with finality by Justice Karanja that she was not a wife but a “former wife”, that issue is now Res Judicata and cannot be re-opened for re-litigation. There was no appeal preferred to that ruling dated 12/3/2014. The finding by Karanja J is binding.
45. It is quite apparent that the applicants’ claim herein flows from the fact that they are children of Mary Wambui. The issue of whether Mary Wambui’s children could stake claim in extent as dependants under section 29 was expressly determined by Justice Chemitei in his judgment dated 10/12/2018. This is his finding;
- “.....the children born cannot be ascertained that they belong to the deceased. All of them were born in Central Province. No evidence was adduced to show that they were born of the deceased. Nobody came forward to demonstrate that the deceased stayed with the objector in Central Province as husband and wife”.
46. To the extent that the issue of applicants being considered as dependants under section 29 was heard via viva voce evidence and fully determined as per the above cited decision, the same issue raised in the instant application is Res Judicata. This court cannot re-try the issue again because of the principle that litigation must come to an end.
47. The applicants cannot claim ignorance when the 1st, 2nd and 8th applicants have previously made attempts to have the grant revoked in vain.
48. The applicants through counsel obviously fully aware about the principle of Res Judicata tried his best albeit mischievously to introduce a prayer for review to avoid or dodge the Res Judicata Rule. But a look at the grounds raised (a) to (k) reveals that there is no new facts or evidence that has come to the knowledge of the applicants and which were not within their knowledge after exercise of due diligence when the summons for revocation dated 24/10/2012 and 19/1/2016.
49. On the prayer for review, Order 45 Rule 1 provides as follows;
- Any person considering himself aggrieved—
- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed,



and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

50. The prayer for review by the applicants in light of the above provisions cannot be sustained because there is nothing new that has been raised. There is no clerical mistake or error on the face of the record pointed out or any other sufficient cause shown to warrant review.
51. In the end this court finds that the application dated 24/7/23 is frivolous, incompetent and bad in law for the aforestated reasons. The same is struck out with costs.

DELIVERED, DATED AND SIGNED AT KITALE THIS 8TH DAY OF OCTOBER, 2025.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Ruling delivered in open court

In the presence of

Kaosa for 1st Respondent

Ms Muriuki holding brief for Kamuiru for Applicant

Gacheru for 2nd Respondent

Duke/Chemosop – court assistants

