



In re Estate of Aydagne Zelleke Woldermariam (Deceased) (Succession Cause E360 of 2024) [2025] KEHC 14010 (KLR) (Family) (2 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14010 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E360 OF 2024
PM NYAUNDI, J
OCTOBER 2, 2025
IN THE MATTER OF THE ESTATE OF AYDAGNE
ZELLEKE WOLDERMARIAM (DECEASED)**

BETWEEN

LEMLEM AREGAY NEGUSSIE PETITIONER

AND

ZINASH ZELEKE WOLDERMARIAM OBJECTOR

RULING

1. Zinash Zelleke Woldermariam (the Applicant/objector) filed summons for revocation of Grant dated 27th November, 2024 seeking the following orders:-
 1. That the Grant of Letters of Administration intestate issued on 13th August 2024 by Hon. L.S. Lesootia (sic) to Lemem Aragey Negussie be revoked be revoked as it was obtained through material non-disclosure of facts and parties be directed to petition afresh for Grant of Letters of Administration.
 2. That any other order that this court may deem just and expedient.
 3. The costs of this Application be provided for in the cause.
2. The summons was supported by the Affidavit of even date sworn by the Applicant.
3. In opposing the summons for revocation of grant, Lemlem Aregay Negussie, the respondent lodged, the following grounds of opposition;
 1. The petition for Letters of Administration intestate dated 6th February, 2024 was properly made and in accordance with the law, with no procedural defects.



2. The petitioner herein did not make any false statements, nor did she conceal any material facts from the court.
 3. All beneficiaries to the estate of the deceased were aware of and consented to the petition.
 4. The objector does not have the legal standing to challenge the petition, as she was not a dependent of the deceased and therefore does not qualify as a dependent under the [Law of Succession Act](#). The Objector will therefore not suffer any prejudice or harm if the grant is issued.
 5. The Summons for Revocation or Annulment of Grant dated 27th November 2024 should be dismissed with costs to the objector.
 6. That the property the objector is contending for does not form part of the estate of the deceased.
4. In addition, the respondent also swore a replying affidavit in which she avers that she is the sole surviving beneficiary of the Estate and in the alternative avers that the property; Apartment Number 4C L.R. No. 1870/1/633, does not comprise part of the Estate of the deceased as it was registered as a joint tenancy between her and the deceased and that by virtue of the operation of the doctrine of survivorship the assets vests in her absolutely.

Background

5. This cause relates to the Estate of Aydagne Zelleke Woldemariam (the deceased) who died intestate on 12th June 2022.
6. In the affidavit in support of petition for letters of administration intestate, the deceased is said to be survived by the following;
 - a. Lemlem Aregay Negussie- wife.
7. The Estate of the Deceased is said to be comprise of one property known as;
 1. Property apartment marked as Number 4 C situated in Land Reference Number 1870/1/633 valued at Kshs. 28,000,000.00.
8. The Respondent in her capacity as the wife of the deceased petitioned for letters of administration which was issued to her on 13th August 2024. The grant is yet to be confirmed.
9. Zinash Zelleke Woldemariam in her affidavit in support of the summons for revocation she states that the deceased was survived by the following beneficiaries;
 - i. Kassahun Zelleke Woldemariam- sister.
 - ii. Fikre Zelleke – brother.
 - iii. Zinash Zelleke Woldemariam
 - iv. Rahel Zelleke Woldemariam- sister.
10. She concedes that the deceased was married to the Applicant and that they did not have a child. She states that the Applicant misled the Court by not disclosing that she was a dependant of the deceased and therefore a beneficiary of his estate.
11. The Summons was canvassed via written submissions.



Applicant's Submissions.

12. The Applicant frames the following as the issues for determination-
 - a. Whether the Objector/ Applicant has met the threshold for revocation of a grant
 - b. Whether the Objector/ Applicant is entitled to the orders sought
 - c. Whether the suit property is a joint tenancy or tenancy in common
13. It is submitted that the process leading to the grant was defective as the Respondent failed to make material disclosures. It is therefore submitted that the grant be revoked and reasonable provision be made for the Applicant in accordance with Section 26 and 27 of the *Law of Succession Act*. Reference is made to the decision in *Re Estate of Albert Musyoka Mueti (Deceased)* [2021] eKLR.

Summary Of Respondent's Submissions

14. The Respondent frames the following as the issues for determination-
 - a. Whether the Petition for Grant of Letters of Administration filed by the Petitioner/ Respondent concealed material facts by failing to disclose or acknowledge the interests of other potential beneficiaries, including the objector;
 - b. Whether the Objector has established any rightful claim as a dependant of the deceased;
 - c. Whether the matrimonial home forms part of the estate available for distribution.
15. It is submitted while referencing the decisions in *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR and *Albert Imbuga Kisigwa v Recho Kavai Kisigwa* [2016] eKLR that the Applicant has not met the legal threshold for revocation of grant.
16. It is further submitted that in the absence of evidence showing that the Applicant was provided for by the deceased her claim for provision as a dependant must fail, reference is made to the decisions in *Re Estate of Bipin Naran Patel (Deceased)* [2023] KEHC 471 (KLR). In conclusion, the Respondent submits that in any event the property at issue does not comprise the estate of the deceased as it was registered as a joint tenancy and accordingly vests in her by virtue of the doctrine of survivorship. She relies on the decision in *Re Estate of Johnson Njogu Gichobi (Deceased)* [2018] KEHC 4520 (KLR) and *Isabel Chelanget vs Samuel Tiro* [2012] eKLR.

Analysis And Determination

17. Having considered the pleadings herein, submissions filed, authorities cited and the relevant law, I frame the following as the issues for determination-
 - a. Whether or not the grant issued to the respondent should be revoked?
 - b. What if any are the consequential orders that the Court should make?
 - c. Who should bear the costs of this suit?
18. Section 76 of the *Law of Succession Act* gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It states that:-

“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 has ordered or allowed; 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
 - iv. The grant has become useless and inoperative through subsequent circumstances.

19. The circumstances in which a grant can be revoked were discussed in the case of *In the Matter of the Estate of L.A.K. (Deceased)* [2014] eKLR :-

“Revocation of grants is governed by Section 76 of the [Law of Succession Act](#). The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”

20. Notably, the power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the persuasive decision in [Albert Imbuga Kisigwa vs Recho Kavai Kisigwa](#) Succession Cause No. 158 of 2000 where Mwita J stated:-

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. 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”.

21. Section 66 of the [Law of Succession Act](#) provides;

“Preference to be given to certain persons to administer where deceased died intestate.

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration



shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V; 25 [CAP. 160 Law of Succession](#) [Rev. 2022]
- (c) the Public Trustee; and
- (d) creditors: Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will”.

22. As observed [In re Estate of William Kamiri Ngeru \(Deceased\)](#) [2025] KEHC 9256 (KLR) Section 66 of the [Law of Succession Act](#), ranks the surviving spouse in priority over the other relatives of the deceased including siblings of the deceased. The Applicant seeks that the grant be revoked and reissued to her. The law does not support that proposition. Accordingly, I decline to revoke the grant.

23. With regard to the consequential orders, the Applicants claim is for provision as a dependant. The Respondent now submits that the asset does not compromise the estate of the deceased, while the Applicant argues that it was held by the deceased and the Respondents as tenants in common. Given that there is now contestation on the ownership of the property: Apartment 4 C situated in Land Reference Number 1870/1/633, I am compelled to down my tools and defer confirmation of the grant and distribution of the Estate until this issue is resolved.

24. In so doing I am guided by the decision of the Court in Re Estate of [Mbai Wainaina \(Deceased\)](#) [2015] eKLR, where W. Musyoka J, held as follows:-

“ Even if there was material establishing that there was such a trust, I doubt that the resolution of this issue would be a matter of the probate Court. The mandate of the probate Court under the [Law of Succession Act](#) is limited. It does not extend to determining issues of ownership of property and determination of trusts. It is not a matter of the probate Court being incompetent to deal with such issues but the provisions of the [law of succession](#) and the relevant subsidiary legislation do not provide a convenient mechanism for determination of some issues. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land Court. Consequently, and for the reasons above stated, I wish to find and hold that this Court has no mandate to resolve the proprietary interest on land based on the alleged trust”.

25. The matter will be mentioned on 26th November, 2025 before the Deputy registrar to confirm that the parties have moved the appropriate forum, to determine ownership of the property, and to take further directions.

26. On account of the relationship between the parties there shall be no order as to costs.

27. Leave to appeal is granted. Any party exercising their right of appeal to do so within 30 days

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF OCTOBER, 2025.



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P. M. NYAUNDI

HIGH COURT JUDGE

In the Presence of:

Court Assistant – Fardosa

Karanja for Applicant

