



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Karisi Getanguthi (Deceased) (Succession Cause
364 of 2008) [2025] KEHC 13651 (KLR) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13651 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 364 OF 2008
RM MWONGO, J
OCTOBER 1, 2025**

IN THE MATTER OF THE ESTATE OF KARISI GETANGUTHI (DECEASED)

BETWEEN

**ALICE GICUKU 1ST APPLICANT
NJIRU NJINE 2ND APPLICANT
JOHN NYAGA 3RD APPLICANT
EMILIO NJERU 4TH APPLICANT**

AND

**SILVANO NJIRU NJERU 1ST RESPONDENT
NJIRU JOTHAM NJERU 2ND RESPONDENT**

JUDGMENT

Summons for Revocation of Grant

1. The matter for determination herein is the summons for revocation of grant dated 27th July 2023. Through it, they seek that the grant issued to the respondents and confirmed on 25th February 2013 be revoked and/or annulled on the grounds that:
 - a. The grant was obtained fraudulently by making of false statements and/or concealing from court something material to the cause;
 - b. The proceedings to obtain the grant were defective in substance;
 - c. The grant was obtained by means of untrue allegations of fact essential in point of law to justify the grant;



- d. The applicants are the wife and sons of the deceased who were not involved in the succession proceedings and were disinherited;
 - e. The applicant was neither included in the succession nor was she consulted, hence the person to whom the grant was issued was not the proper person; and
 - f. The whole estate was given to an outsider illegally and without justification.
2. The 1st applicant stated in the supporting affidavit that she is the wife of the deceased but the grant was issued to 4 administrators without her knowledge, even though she ranks highest amongst the people to whom the grant should have been issued. She deposed that the 2nd respondent is a stranger to her and in the estate, yet he was allocated property belong to the deceased.

Replying Affidavit

3. In their replying affidavit, the respondents deposed that the 2nd applicant, who is a son of the 1st applicant is one of the administrators of the estate. That the 1st applicant is a beneficiary thereof and she was not excluded from the proceedings. They stated that the 2nd applicant refused to sign the transfer documents and the Deputy Registrar signed them to enable transmission of the estate to the beneficiaries. According to them, the grant was issued and the estate distributed more than 10 years ago and that the summons for revocation is brought too late in time.
4. The respondents' argument is that the beneficiaries have already settled on their portions of the estate and they have since extensively developed the same. Consequently, the summons for revocation has been overtaken by events. They deposed that the proceedings have not been challenged on appeal and that the applicants have not been vigilant in the eyes of equity, hence equity should not benefit them. That the applicants only filed the summons for revocation after they were evicted from the land.

Further Affidavit

5. In response, the 1st applicant filed a further affidavit stating that when the 4 administrators were appointed, she was not involved particularly with distribution of the estate of her late husband, the deceased herein. That in as much as she did not challenge the distribution on appeal, the distribution was not done according to the confirmed grant. She stated that the fact that the Deputy Registrar had to sign the transfer documents means that the beneficiaries were not in agreement with the distribution. She stated that the distribution should not have been done such that the applicant would have to be evicted from the place where she was living to another place. She stated that she was forced to abandon the home where she lived with her late husband. In the result, she stated, the grant was therefore obtained illegally and it should be revoked because distribution was not done in accordance with the confirmed grant.

Submissions on the summons for revocation

6. The summons was canvassed by way of written submissions as directed.
7. The 1st applicant submitted that the distribution of the estate was not fair since she received a very small portion of land to share with her 12 daughters. That the 1st respondent gave the 2nd respondent a big piece of land yet he is a stranger in the estate. She stated that only the 1st respondent administered the estate yet there were 4 administrators in total and he excluded the remaining 3 administrators. She further argued that before the deceased died, he had shown his sons where they would build their homes and they did.



8. After the grant was obtained, the 1st respondent forced everyone to move to a different portion of land and start afresh. The 1st applicant stated that she is very old and sickly. Thus, it is a tall order to force her to move from the place where she has settled on the land to another place. She argued that even if the court fails to find grounds for revoking the grant, she beseeched the court to order that she is not removed from the place where she has settled because she does not have the resources to start afresh in another portion of land. She stated that the respondents have not developed their land and they have never occupied the same.
9. The respondents relied on section 76 of the *Law of Succession Act* and the cases of *Aviation and Allied Workers Union v Kenya Airways Limited* [2013] KEELRC 796 (KLR) and *Jesse Karaya Gatimu v Mary Wanjiku Githinji* [2014] KEHC 4697 (KLR). They stated that the applicants have filed the summons for revocation far too long after the grant was issued and there are no grounds for revoking the grant.

Issues for Determination

10. The issue for determination is whether the grant issued in the estate of the deceased should be revoked.

Analysis and Determination

11. A perusal of the court's records reveals as follows: the deceased had 4 wives who all had children. The 1st applicant was named as one of the wives and a beneficiary of the estate. On 29th January 2009, W. Karanja J. (as she then was), recorded that 'the petitioners and all other beneficiaries present and have agreed that the grant of letters of administration be issued jointly to the 4 of them, each representing his mother's house. The 4 are as hereunder: Njiru Njine, Silvano Njiru, Peter Njiru and Njagi Njeru'.
12. The 1st applicant was in court during the hearing of the petition for the grant, and she was involved from the start. She did not file any objection to issuance of the grant to the 4 administrators (representing their respective mothers) one of whom is her son.
13. The court then ordered that the 4 administrators file summons for confirmation of the grant. They filed the summons but failed to agree on distribution. The record indicates a lengthy back and forth at the point of confirmation. The 1st applicant participated in negotiating for her portion of land for her children. She was present in court during the proceedings throughout the confirmation process. In fact, the court record of 27th September 2012, shows that the 1st applicant stated;

“I confirm what Njiru Njine has stated and we have catered for every child. We shall give the daughters after the distribution. All the widows except me are dead’.
14. Thereafter, the court delivered a ruling dated 22nd November 2012 in which H.I. Ong’udi J. ordered that each of the identified 10 sons to get 0.3Ha of Gaturi/Nembure/3661 which measures 3.65Ha. The court also ordered that the balance to be shared equally among daughters whose names appear in the Chief’s letter and the surviving widow Alice Gichugu. A certificate of confirmation of grant was issued on 25th February 2013 reflecting this ruling of the court
15. Looking at the summons for revocation of grant, the grounds that the grant was obtained without involving the applicants is entirely unfounded given the record of the court. The main issue seems to be one of distribution of the estate. From the court’s record, however, it is clear that the 1st applicant participated in the confirmation of the grant and the court gave its ruling accommodating her views. The certificate of confirmation of grant reflects the true orders of the court in its ruling on confirmation.



16. When determining whether or not a grant should be revoked, it is critical to identify and separate the issues arising. Revocation is governed under section 76 of the [Law of Succession Act](#) which provides the grounds as follows:

“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.”

17. This provision concerns revocation of a grant of representation as contemplated under section 53 of the [Law of Succession Act](#), and does not at all concern the certificate of confirmation thereof, which is a distribution order. In *In re Estate of Prisca Ong’ayo Nande (Deceased)* [2020] eKLR, W. Musyoka, J. after analyzing section 76 and discussing the meaning of a grant within the provisions of the laws governing succession in Kenya held thus: -

“17. I have very closely perused through the provisions of the [Law of Succession Act](#), and I have not come across any provision that provides a remedy to a person who is aggrieved by confirmation orders. Sections 71, 72 and 73 of the [Law of Succession Act](#), which deal with confirmation of grants, do not address the question of redress for parties who are unhappy with the confirmation process, nor do they deal generally with flaws in the confirmation process. As stated above, section 76 has nothing to do with the confirmation process, and provides no relief at all to any person unhappy with the confirmation process. In the absence of any provision in the [Law of Succession Act](#), for relief or redress for persons aggrieved by such orders, the aggrieved parties have only two recourses under general civil law, that is to say appeal and review, to the extent that the same is permissible under the [Law of Succession Act](#). I would



believe that one can also apply for the setting aside or vacating of confirmation orders, where the same are obtained through abuse of procedure.”

Conclusions

18. I note that none of the grounds for revocation listed under section 76 can be found in this case. An issue of disagreement on distribution should not and cannot be challenged through revocation proceedings. That can only be done through an appeal or review where necessary. This was not done.
19. Through her submissions, the applicant has raised issues about wanting to keep her current residence on the ground such that she should not be displaced as she is too old and sickly and cannot afford to build another home in another place. These issues had already been raised and canvassed through another application determined by this court. In a notice of motion dated 27th July 2023, the applicants herein moved the court for stay of execution and use of the grant issued in the estate and sought an order restraining the respondent from evicting her from land parcel numbers Gaturi/Nembure/16109,16110 and 14624. Through that application, the 1st applicant contended that the portion of land that she had been allocated as inheritance was too small compared to the other beneficiaries.
20. Following distribution, the 1st respondent had moved to have the deceased’s land subdivided in accordance with the confirmed grant so as to enable beneficiaries to take up their portions. This move meant that the 1st applicant would be relocated out of the land where she had lived all her life with the deceased. The 1st respondent obtained an eviction order through Runyenjes ELC Case No. E003 & E004 of 2021. The applicant prayed that the court allows her to have the portion of land allocated without having to displace her through an eviction. The court heard the application and dismissed it through its ruling delivered on 18th October 2023, determining the issue of eviction. There is no evidence that an appeal was preferred on the issue.
21. On this basis, the grant cannot be revoked and the certificate of confirmation of grant cannot be set aside through the revocation proceedings instituted herein.

Disposition

22. Accordingly, there is no basis for revoking the grant. The summons for revocation is therefore dismissed with no order as to costs.
23. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 1ST DAY OF OCTOBER, 2025.

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R. MWONGO

JUDGE

Delivered in the presence of:

1. Ms. Wanjiku holding brief for Njiru Mbogo for Respondent
2. No Representation for Momanyi for Applicants
3. Francis Munyao - Court Assistant

