



**In re Estate of Kiura Kathagana (Deceased) (Succession Cause
385 of 2007) [2025] KEHC 13642 (KLR) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13642 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 385 OF 2007
RM MWONGO, J
OCTOBER 1, 2025
(FORMERLY EMBU PM SUCCESSION CAUSE NO. 240 OF 1997)
IN THE MATTER OF THE ESTATE OF KIURA KATHAGANA (DECEASED)**

BETWEEN

LUCY KAWIRA KIAMBATA APPLICANT

AND

SAMUEL NDWIGA KIURA 1ST RESPONDENT

MOSES NYAGA KIURA 2ND RESPONDENT

JUDGMENT

Summons for Revocation

1. The applicant filed summons dated 31st May 2023 seeking revocation of the grant issued to the respondents on 19 December, 2019. It is premised on the grounds that the proceedings to obtain the grant were defective in substance.
2. The application is supported by the facts deposed in the supporting affidavit. th August 1998 to her late mother-in-law, the same was confirmed and the estate distributed. Her late husband was allocated 4 acres out of the deceased's parcel number Kaagari/Weru/514 and 2 acres out of land parcel number Nthawa/Riandu/995.
The applicant stated that she is a daughter-in-law of the deceased and that her husband, Joseph Kariuki Kiura, a son of the deceased is also dead. It was her case that the when the initial grant was issued on 20
3. The applicant had just learned, at the time of the application, that the grant was rectified on 01st October 2019 through an application by the respondents. She stated that the respondents did not



inform her of these rectification proceedings which resulted in the issuance of an amended certificate of confirmation of grant which disinherited her late husband and by extension, herself.

4. Her husband's portion of the inheritance as had been distributed initially, was subsequently given to other beneficiaries. She stated that she did not consent to the rectification and the redistribution of the estate that resulted therefrom is unfair since it disinherited a legitimate beneficiary. She stated that her only recourse is revocation of the grant, failing which, her family will suffer irreparable loss and they will have been condemned unheard. That it is in the interest of justice that the grant be revoked.

Reply to the application

5. The 1st and 2nd respondents filed separate replying affidavits whose contents were identical. Through these affidavits, they denied knowledge of the applicant as their late brother's wife since there is no proof of such marriage. They termed her as a stranger and that she had failed to prove that she was married to their late brother. They stated that the summons for revocation was an afterthought, malicious, fraudulent and full of lies. That the allegations made by the applicant are fueled by some disgruntled members of the family whom the court had adjudged as intermeddlers through its ruling delivered on 20th November 2018.
6. Boniface Mwaniki Njiru, in his replying affidavit, stated that he bought 5¾ acres of land parcel number Kaagari/Weru/514 from Moses Nyaga Kiura, Joshua Njue Kiura and Sarah Sigei. He produced sale agreements for the land with these 3 beneficiaries of the estate. He stated that he had developed the land. He deposed that he had bought the first 2 portions directly from Moses Nyaga Kiura and Joshua Njue Kiura, beneficiaries who had inherited through the first confirmed grant. He bought the third portion of land from one Sarah Sigei who sold it to him after the grant was amended. In the case of the land he bought from Sarah Sigei, he was a second purchaser from the estate since Sarah Sigei had acquired the land from Salesio Munyi Kiura, a beneficiary of the estate. He had no problem with implementation of the amended certificate of confirmation of grant.

Applicant's Further Affidavit

7. The applicant, through her further affidavit, referred to the introductory letter by the chief in which she was recognized as a wife of the late son of the deceased and she is the legal representative of his estate. She deposed that at her husband's funeral, none of the family members disputed that she was a wife of the deceased beneficiary who also sired her daughter.

Evidence at the hearing

8. The court took viva voce evidence in the matter.
9. PW1 was the applicant who stated that the respondents knew her as the wife of their brother and they welcomed her to their home when she got married. That the 1st respondent gave her a house to live in with her husband since he did not have a house of his own at the time. It was her contention that the respondents did not involve her when they filed rectification proceedings which resulted in the disinheritance of her late husband and his family. Initially, her late husband had been allocated 4 acres out of the deceased's parcel number Kaagari/Weru/514 and 2 acres out of land parcel number Nthawa/Riandu/995. However, after the rectification, he was not allocated any property and whatever he had been allocated was taken over by the 1st respondent.
10. Since the death of her husband, she has continually followed up on her late husband's inheritance but her requests for the land have been fruitless. On cross-examination, she stated that she was born in 1975



and got married to the late Joseph Kariuki in 1990; and that her husband gave her father Kshs.2,000/= as dowry.

11. That their union was blessed which one child called Brillan Mwendu who was initially named Sarah. By the time she attained the age of majority, her father was already dead and she was given her maternal grandfather's surname. She stated that she was excluded from the burial arrangements for her husband and the 1st respondent chased her away from the house where she lived with her late husband. She did not know who Boniface Mwaniki was, and she stated that she did not mind any other person's interest in the land besides that of her late husband.
12. PW2 was Margaret Thaara Samuel, a daughter of the deceased and a sister-in-law of PW1. She stated that PW1 was indeed married to her brother in the late 1980's and they were blessed with 1 child called Brillan Mwendu who was also known as Sarah. When they got married, the 1st respondent gave them a home to live in since PW1's husband had not yet built a house. After her brother died, PW1 was recognized as his wife even in the eulogy and nobody raised an objection.
13. She stated that she was also not informed of the rectification proceedings and the 1st respondent chased her away from her mother's home where she was living. Following the rectification, PW1's husband was disinherited by the respondents. Before rectification, he had been apportioned a part of the deceased's land. PW1 has visited the 1st respondent severally to enquire about the estate but he was hostile to her.
14. In cross-examination, she stated that the respondents evicted her from the home where she used to live and she reported the matter at the police station causing the 2nd respondent to be arrested. She does not know Boniface Mwaniki but she heard that her brother had sold part of the land. She denied having attended any succession proceedings. She did not support revocation of the grant but would like the distribution be reverted to the mode ordered on 28th April 2018.
15. PW3 was Boniface Kiura Njeru, grandson of the deceased and the son of Harun Njeru Kiura. He stated that PW1 was married to his uncle the late Joseph Kariuki and they had one child. He stated that the late Joseph Kariuki had been allocated land through succession but the mode of distribution was later rectified causing him to be disinherited and his inheritance was taken over by the respondents. On cross-examination, he stated that the respondents have since sold part of the deceased's land to buyers who have developed it. He claimed he had also been disinherited after rectification and he asked that the land initially given to PW1's husband be given to her.
16. RW1 was the 1st respondent who stated that the applicant is a stranger to him. He stated that his brother Haron Njeru had sold their land and they sued him. That it was then that the applicant began claiming the land too. In cross-examination, he stated that his late brother Joseph Kariuki Kiura died in 2010 while living with his parents. He said that he only heard of the applicant in 2023 but succession was filed in 1998 and the deceased's wife was appointed the first administrator.
17. He confirmed that when the grant was confirmed, the late Joseph Kariuki was given 3 acres out of the deceased's parcel number Kaagari/Weru/514 and 4 acres out of land parcel number Nthawa/Riandu/995. In 2014, that grant was revoked and reissued to the respondents jointly and they called for a meeting of all the beneficiaries and agreed on a mode of distribution which was adopted in the certificate of confirmation. He stated that in the certificate of confirmation issued on 19th December 2019, the late Joseph Kariuki was not provided for because he was dead and did not leave a wife or children.
18. He said that at the same confirmation, he took the share of the land that had been given to his late mother for himself. That Boniface Mwaniki and other buyers had bought land from his brother and sister before the grant was revoked and so their titles were cancelled but they are still occupying the land.



- He said that anyone claiming land belonging to the late Joseph Kariuki should ask him (DW1). He stated that even though the sale of land parcel number Nthawa/Riandu/995 was cancelled, the land does not exist since it was already sold again to Githungu Njeru who has subdivided it into 9 portions.
19. David Kariuki Njuki who said he was a childhood friend of the late Joseph Kariuki and family friend of the deceased's family testified as RW2. He stated that the applicant was a stranger to him and to the best of his knowledge, the late Joseph Kariuki died unmarried. According to him during the burial of Joseph Kariuki, nobody claimed to be his wife. In cross-examination, he stated that the late Joseph Kariuki was known to him as a childhood friend and they remained friends even after they moved to different locations.
 20. RW3 was the 2nd respondent who relied on his statements made through the replying affidavit he filed. Upon being cross-examined, he stated that he was not involved in the late Joseph Kariuki's burial plans and that he did not know the applicant who was claiming to be his wife. He was aware that when the initial grant was issued and confirmed, the late Joseph Kariuki had been allocated land which he sold in part, but that the same has since been taken over by the respondents.
 21. He said that Boniface Mwaniki is not a son of the deceased and that he purchased part of the land belonging to the deceased after succession. Boniface Mwaniki has since developed the land he bought by building a house and planting miraa thereon between 1998-2014, there was in existence a confirmed grant on whose strength land was legally disposed by way of sale after subdivision. That when the land was sold to Boniface Mwaniki, he was given money and he spent it and title to the land was passed to the purchaser.
 22. RW4 was Zipporrah Rwamba, an aunt to the late Joseph Kariuki. She stated that when she got married to the deceased's brother, the late Joseph Kariuki was still a small boy and they lived in close proximity for many years. She stated that the late Joseph Kariuki was not married until the time of his death. She denied that the applicant was his wife and this is evident because of her confusion when it came to the naming of her daughter. On cross-examination, she stated that she was involved in the late Joseph Kariuki's burial plans but she did not pay attention to the eulogy. She knew Boniface Mwaniki as a purchaser who had settled on a part of the deceased's land after he bought it. She did not know whether the deceased had disposed his land to other strangers prior to his death.
 23. RW5 was Francis Njue Kabiros. He stated that the late Joseph Kariuki was his cousin and he was actively involved in his burial plans. He stated that he did not know the applicant as the wife of the late Joseph Kariuki or that her daughter was sired by him. On cross-examination, he stated that he was involved in the burial plans of the late Joseph Kariuki but he did not see the eulogy. He was not aware that Boniface Mwaniki had bought land from the estate of the deceased.
 24. The interested party, Boniface Mwaniki testified that he bought a part of land parcel number Kaagari/Weru/514 measuring 5 $\frac{3}{4}$ acres from the 2nd respondent, Joshua Njue Kiura and Sarah Sigei and he had sale agreements to prove this. He stated that he bought the land lawfully after confirmation of the grant the first time, and that the applicant cannot be prejudiced if the sale is upheld. In cross-examination, he stated that he has no connection with the deceased herein and that he bought the land from his children after they inherited it from his estate.
 25. He said that at the point of sale and purchase, he involved the family of the deceased but he did not have anything to prove this assertion. The land he purchased is 3 parcels of land bought at different times. He did not know the applicant at the time of purchase of the properties neither did he hear of her. He entered into a consent with the administrators when he learned that the grant had been revoked and his titles cancelled through a court order. He entered a consent with the administrators to the effect that he would keep the land he had bought. In 2019 when the fresh grant was confirmed, he was present



in court because he was intended to be a beneficiary and, eventually, he got his titles in his name. The administrators of the estate attended the Land Control Board Consent.

Parties' Submissions

26. The applicant submitted that the proceedings leading to rectification of the grant issued to the respondent were defective since she was not notified of the same, causing her to be disinherited. She argued that she was absent when the parties entered a consent to have the certificate of confirmation rectified. To that extent, she argued, the proceedings were defective. It was her argument that the interested party's case has no merit because he bought the properties in 2019 after the rectified certificate of confirmation had been issued, hence the sale was illegal. She relied on the case of *In re Estate of Mukhobi Namonya (Deceased)* [2020] KEHC 9045 (KLR).
27. The interested party submitted that the summons for revocation does not meet the threshold under section 76 of the *Law of Succession Act*. He stated that from the arguments made, the applicant is seeking revocation of a certificate of confirmation of grant and not a grant of representation. He relied on the case of *In re Estate of Samuel Kariuki Kiragu (Deceased)* [2023] KEHC 26573 (KLR) and urged the court to dismiss the summons since the threshold for revocation of a grant has not been met.

Issues for determination

28. From the foregoing, the issue for determination is whether there are grounds for revocation of the grant issued to the respondents.

Analysis and Determination

29. The summons for revocation is founded upon Section 76 (a) & (b) of the *Law of Succession Act* and Rule 44 of the P&A Rules. The sole ground cited for revocation is that "the proceedings to obtain the grant were defective in substance."
30. From a close perusal of the supporting affidavit to the summons, it immediately appears that the issue in contention is the distribution and redistribution of the estate of the deceased that occurred through the rectifications of the certificate of confirmation of the grant. There doesn't appear to be any issue regarding the proceedings leading to appointment of the respondents as administrators or the issuance of the grant itself.
31. Section 76 of the *Law of Succession Act* provides for instances when a grant of representation whether or not confirmed (not a certificate of confirmation of grant) may be set aside. It states:

"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.” [Emphasis added]

32. Clearly, what may be set aside is a grant of representation irrespective of whether it is confirmed. In the case of *In re Estate of Prisca Ong’ayo Nande (Deceased)* [2020] KEHC 6553 (KLR) the court extensively discussed the provisions of section 76 of the *Law of Succession Act* as follows:

“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.” [Emphasis added]

33. From the background of this case, it is evident that a grant had been issued to the deceased’s late wife. However, she died before execution of the confirmed grant. The respondents moved to court with this information and it became necessary that the first grant be revoked and another one was issued to the respondent. This was done procedurally and there was no contention about this, even from the applicant. What the respondents hold is a grant of representation which was obtained through a process that is legal and, in any event, uncontested.

34. Having been appointed administrators, the respondents filed summons for confirmation of the grant and the same was confirmed. They were well within their duty of office as administrators to apply for confirmation of the grant. After sometime, the respondents filed summons for rectification of the certificate of confirmation. They told the court that Joseph Kariuki had since died and he was not



- survived by a wife or children, hence his share in the estate as it had originally been given, ought to be redistributed. The summons for rectification was resolved by consent adopting the distribution mode proposed in the said summons. This became a consent order by the court and everyone walked away with their portion of land including the interested party who is a purchaser.
35. According to the applicant, the proceedings touching on the summons for rectification were defective in substance. This argument, unfortunately, cannot be made within the context of section 76 of the *Law of Succession Act*. This has been stated by the courts time and again. It must be well appreciated that summons for revocation of grant only applies to grants of representation and not the confirmation/distribution process. The confirmation process cannot stand on its own without a grant of representation being in place. This means that the *Law of Succession Act* provides only for revocation of a grant of representation because it automatically follows that the certificate of confirmation of grant will be rendered void once a grant has been revoked.
36. Where a party is aggrieved by the mode of distribution, the proper procedure for challenge is by way of objection or protest or other means. This excludes revocation under Section 76 of the *Law of Succession Act*.
37. In *In re Estate of Prisca Ong'ayo Nande (Deceased)* (supra), it was further held:
- “Section 76 of the *Law of Succession Act* has nothing to do with confirmation of grants. It carries no provisions which relate to what a court should do with confirmation orders or certificates of confirmation of grant. Indeed, the provision says nothing about the powers prescribed in it being used for the purpose of the court intervening in the confirmation process, once orders are made on a confirmation application. The only connection between confirmation of grants and revocation of grant is that set out in section 76 (d) (i) of the *Law of Succession Act*. It has nothing to do with a grant having been confirmed, rather it deals with situations where a personal representative or holder of a grant or administrator has failed to apply for confirmation of their grant. Section 76 of the Act relates to confirmation of grants to that very limited extent, not with confirmation itself, but the failure to apply for confirmation. A person who is aggrieved by the orders made with respect to a confirmation application, which are encapsulated in the certificate of confirmation of grant, has no remedy under section 76 of the *Law of Succession Act*, for that provision does not envisage revocation of certificates of confirmation of grants.” [Emphasis added]

Conclusions and Disposition

38. The issue of whether or not the applicant's husband was disinherited through distribution orders cannot be canvassed within a summons for revocation under section 76 LSA. It is also immaterial to go into the issue of how the interested party acquired his interest in the estate. If this were to be pursued to its logical conclusion under Section 76 LSA, the court would be misapprehending the law.
39. On its face, the summons seeks revocation of grant. The ground is that the proceedings to obtain the grant were defective in substance. However, nothing in the supporting affidavit raises substantive revocation issues within the ambit of section 76 of the *Law of Succession Act*. The jurisdiction of the court under that provision is extremely limited as earlier discussed and cannot be expanded to deal with confirmation issues even though the issues arising may appear legitimate. Such issues should be brought before the court under the correct provisions of law, and not through revocation proceedings under section 76 LSA.
40. In the result, the summons for revocation of grant herein is hereby struck out. No order as to costs is made this being a family matter.



41. Orders accordingly.

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

.....

R. MWONGO

JUDGE

Delivered in the presence of:

1. Ms. Nyaga holding brief for Ms. Mukami for Applicant
2. Mageto holding brief for Ndeke for beneficiary
3. Samuel Ndwiga Kiura – 1st Administrator in person
4. Moses Nyaga Kiura – 2nd Administrator in person
5. Francis Munyao - Court Assistant

