

- 4) The learned Magistrate erred in law and fact by totally disregarding the submissions in support of the preliminary objection dated 22nd March 2024 and disregarding the cited binding authority of the High Court without giving any reasons.

Background

2. The deceased died on 23/7/2009. The appellant filed a Petition for letters of administration as the deceased's daughter in law. A grant of letters of administration was issued on 02nd August 2021. She filed summons for confirmation of the grant which was accompanied by an affidavit proposing that the estate of the deceased comprising of property title numbers Embu/Gangara/573 and 427 be inherited by her solely. The grant was confirmed and the appellant was named as the sole beneficiary of the whole estate. A certificate of confirmation of grant was issued on 24th February 2022 indicating this position.
3. The respondent, a sister to the deceased, filed a summons for revocation of grant dated 03rd November 2022, It sought, *inter alia*, an order for revocation of the certificate of confirmation of grant issued on 24th February 2022. The summons also sought an order of inhibition and cancellation of subdivisions of the properties inherited by the appellant. The application was premised on grounds that the grant was obtained through misrepresentation and concealment of material facts; the proceedings towards obtaining the grant were defective; and that the grant was obtained fraudulently by making false statements.
4. In the supporting affidavit to the application, the respondent deposed that the appellant had colluded with the area chief to issue a favourable introductory letter before she instituted succession proceedings in Siakago Law Courts. Since the family of the deceased had agreed that the respondent petition for a grant, she also petitioned for a grant at Runyenjes Law courts. That court issued her with a grant which was confirmed on 22nd July 2022.
5. When the respondent went to pursue distribution of the estate as ordered by the Runyenjes Court, she found out that another grant had been issued in the same estate and it had already been effected through the Lands Office. It was on that basis that she sought revocation of the certificate of confirmation of grant issued in the Runyenjes Court since she objected to the distribution. She stated that if she had known about the proceedings, she would have filed the necessary objections on time.

Preliminary Objection

6. The appellant filed a preliminary objection dated 22nd March 2024, objecting to the summons for revocation of grant on the following grounds:
- 1) That the court was *functus officio* upon confirming the grant and issuing a certificate of confirmation;
 - 2) That the probate court had no jurisdiction to issue the inhibition orders sought through the summons; and
 - 3) That there is no provision of the Law of Succession Act informing revocation of a certificate of confirmation of grant.

Reply to the Preliminary Objection

7. The respondent filed a replying affidavit to the preliminary objection stating that the mode of distribution was not agreed upon by the members of the deceased's family. That the family of the deceased met and agreed that the respondent would file succession proceedings in the estate of the deceased in Runyenjes. Regardless, the appellant went on to petition for a grant in Siakago Succession Cause No.122 of 2020 while the respondent filed another succession cause in Runyenjes Succession Cause No.E133 of 2021. None of the parties involved each other in the 2 separate proceedings.
8. Through Runyenjes Succession Cause No.E133 of 2021, the respondent inherited property title numbers Embu/Gangara/573 and 427 while the appellant inherited property title No. Kyeni/Mufu/666 through the Siakago Succession Cause No.122 of 2020. In light of the summons for revocation, the respondent threatened to seek revocation of the grant issued to appellant in the Runyenjes succession proceedings since she reneged on the family's agreement. She stated that the appellant was always aware of the succession proceedings in Siakago but no objections or protests were filed, hence the summons for revocation are belated and should be struck out.

Finding of the Trial Court

9. The preliminary objection was disposed of by way of written submissions which the court considered. In a one-page ruling, the trial court relied on the case of **Salome**

Wambui Njau (Suing as an Administratrix of the Estate of Peter Kiguru Njuguna (Deceased)) v Caroline Wangui Kiguru [2013] KEHC 2061 (KLR) and found that the objection had no merit and that the court had jurisdiction to revoke the grant. The preliminary objection was dismissed and the matter was listed for further directions.

Submissions on the appeal

10. The appeal herein was canvassed by way of written submissions.
11. The appellant submitted that the trial court misapprehended section 76 of the Law of Succession Act to mean that the court could also revoke a certificate of confirmation of grant. She relied on the case of **Odaria Wanja v Charles Kinyua Njoka [2021] KEHC 2295 (KLR)** where the court held that a certificate of confirmation of grant cannot be revoked based on the provisions of section 76 of the Law of Succession Act.
12. The respondent submitted that the rest of the deceased's family was not involved in the succession proceedings and they did not renounce their right to the estate. She urged that the grant was illegal and she relied on the cases of **Selle & Another v Associated Motor Boat Co Ltd & Others [1968] EA 123** and **Scott v. Brown, Doering, McNab & Co. Slaughter (1892) 2 QB 724**. She urged the court to revoke the grant *suo moto* as she relied on the case of **Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] eKLR**. She argued that the trial court did not err in its finding since it was a discretionary finding. Further reliance was placed on the case of **In re Estate of Kipkorir arap Chebogooyo (Deceased) [2021] KEHC 771 (KLR)**. The respondent urged the court to uphold the trial court's finding.

Issue for Determination

13. The issue for determination is whether the trial court erred in dismissing the preliminary objection.

Analysis and Determination

14. The appellate court makes its decision based on the record of the trial court as was held in the case of **Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123**, thus:

"...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled.

Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

15. The appellant’s preliminary objection was dismissed in a brief ruling by the trial court where it stated that the court had the relevant jurisdiction to determine the summons for revocation. In its ruling, the trial court did not give reasons for its findings, hence the appellant’s grievance herein.

16. For a preliminary objection to hold, it is paramount that a point of law be raised therein, such that if the objection succeeds, the suit will be determined altogether. In **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696 at 700**, the Court of Appeal held:

“...So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises out of clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit....A preliminary objection is in the nature of a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct.”

17. The appellant, in her preliminary objection, contended that following issuance of the certificate of confirmation of grant, the trial court had become *functus officio*, therefore lacking jurisdiction to entertain the summons for revocation. The application sought for an order that the certificate of confirmation of grant be revoked and that an inhibition be placed on the land that had been inherited by the appellant through the certificate of confirmation of grant.

18. An application for revocation of a grant under section 76 of the Law of Succession Act refers to a grant of representation in the context of sections 53 and 54 of the Law of Succession Act as follows:

“53. Forms of grant

A court may—

(a) where a deceased person is proved (whether by production of a will or an authenticated copy thereof or by oral evidence of its contents) to have left a valid will, grant, in respect of all property to which such will applies, either—

(i) probate of the will to one or more of the executors named therein; or

(ii) if there is no proving executor, letters of administration with the will annexed; and

(b) if and so far as there may be intestacy, letters of administration in respect of the intestate estate.

54. Limited grants

A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.”

19. The phrase ‘grant of representation’ does not, strictly speaking, include a certificate of confirmation of grant, which is an order of the court confirming the mode of distribution to beneficiaries of the estate of the deceased. A confirmed grant is not a grant of representation that may be revoked. However, since it is an order of the court, it may be the subject of review or appeal. In **In re Estate of Prisca Ong’ayo Nande (Deceased) [2020] KEHC 6553 (KLR)**, W. Musyoka, J. when faced with an application for revocation of a certificate of confirmation of grant, held thus: -

“Grants of representation take the form stated in sections 53 and 54 of the Law of Succession Act. They are either a grant of probate or of letters of administration intestate or of letters of administration with will annexed or limited grants. A certificate of confirmation of grant does not take any of those forms, and it cannot possibly, therefore, be a grant of representation. It is a document extracted from the orders that a court makes after confirmation of a grant under section 71 of the Law of Succession Act, as evidence the fact that a grant of representation has been confirmed. It should be emphasized that the confirmation process does not produce another grant. The grant sought to be confirmed, through that process, remains intact, after confirmation. Whereas a grant of representation appoints personal representatives or administrators, the certificate of confirmation does not do anything of that sort. All what it does is to confirm that the court has approved the persons appointed under the grant to continue to administer the estate, with a view to distribute it in accordance with the distribution schedule approved. A

certificate of confirmation of grant is akin to that order or decree that is extracted from a ruling or judgement made by a court; it is an extract of the orders that the court makes on an application for confirmation of grant. Quite clearly, therefore, a certificate of confirmation of grant is not a grant of representation, and for that reason it is not available for revocation under section 76 of the Law of Succession Act..... Clearly, therefore, there is no proper application before me for revocation of the grant of letters of administration intestate made in this matter.”

20. It is these grants of representation provided for under sections 53 and 54 of the Law of Succession Act that may be revoked at any time under section 76 Law of Succession Act, either on the court’s own motion or at the behest of an interested party. It means that a succession court may revoke a grant where the grounds for revocation are proved, at any time. At no point does the court lose its jurisdiction to determine the issue of revocation. Section 76 of the Law of Succession Act provides:

“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...”

21. The instant summons was filed under section 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules which provide for revocation of a grant. From a reading of these two provisions, the intention is clear that the summons for revocation of a grant be specific/limited to the grounds for revocation and the same be proved. Rule 44(2) of the Probate and Administration Rules provides thus regarding summons for revocation of grant and the accompanying:

“(2) There shall be filed with the summons an affidavit of the applicant in Form 14 for revocation or annulment identifying the cause and the grant and containing the following particulars so far as they are known to him—

(a) whether the applicant seeks to have the grant revoked or annulled and the grounds and facts upon which the application is based; and

(b) the extent to which the estate of the deceased has been or is believed to have been administered or to remain unadministered, together with any other material information.”

22. The grounds prompting an application for revocation should stand out and preferably be isolated from other issues. For instance, the inhibition prayer should properly have been sought through a separate application under section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules invoking the inherent powers of the court.
23. It appears that the prayer for revocation of the certificate of confirmation of grant was accompanied by other orders whose effect is to forbid the appellant's enjoyment of the property inherited from the estate and as provided in the certificate of confirmation of grant. Even if the court was to entertain the summons for revocation as filed, none of the prayers seek the setting aside of a grant of representation as the case should be.
24. The prayer for revoking a certificate of confirmation of grant as presently formulated, is baseless and should not be entertained by a succession court moved under section 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules. This is because it contains no prayer for revocation of the grant of representation, and the remaining prayers are not determinable through revocation proceedings.
25. The appellant, in the preliminary objection, argued that the court lacked jurisdiction to entertain the other prayers because it had become *functus officio* after issuing the certificate of confirmation of grant. The trial Magistrate did not, correctly so, agree with this position. However, the trial court intended to give further directions on the summons for revocation, presumably because revocation of a grant can be done at any time before or after confirmation, and also at the court's own instance.
26. As already stated hereinbefore, the court's jurisdiction to revoke a grant of representation under section 76 of the Law of Succession Act is limited to revocation and nothing else. In this case, there is no prayer for revocation of a grant of representation under section 76 of the Law of Succession Act, therefore, the other prayers sought through the summons for revocation are without legal basis.
27. Based on this reasoning, the trial court did not err in disregarding grounds (a) and (b) of the preliminary objection. The only ground of objection that has weight is (c): which states that there is no law based on which a certificate of confirmation of grant can be annulled/revoked. This ground is sufficient to validate the preliminary objection since it is a point of law that determines the summons for revocation of grant *in limine*.

Disposition

28. In light of all the foregoing discussion, and in the circumstances of the case, the summons for revocation of grant is for striking out. It is so struck out and the preliminary objection is hereby allowed.
29. The replying affidavit raised serious issues and asserts the undenied position that there are two (2) grants issued in the same estate by two different courts. This is an issue that can and should be addressed by the High Court by directing a transfer of the file to Siakago and consolidation of the case in Runyenjes Succession Cause No.E133 of 2021 with Siakago Succession Cause No.122 of 2020. The Court does hereby so direct on its own motion under section 18(1) of the Civil Procedure Act. Any parties seeking any orders may move the Siakago court with both files being present before that court.
30. In the meantime, the two grants issued separately by the two lower courts are hereby cancelled, as the existence of the same amounts to an obvious illegality. The said grants shall, forthwith, have no effect pending further orders of the Siakago Court, in which court, both files shall be placed.
31. 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. Githinji holding brief for Ithiga for Appellant
2. Murimi – For Respondent
3. Francis Munyao - Court Assistant