



**Gikingo & Others v Kathilu (Family Appeal E007 of 2024)
[2025] KEHC 14870 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14870 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
FAMILY APPEAL E007 OF 2024
NIO ADAGI, J
OCTOBER 16, 2025**

BETWEEN

JOHN GIKINGO & OTHERS APPELLANT

AND

COSMAS MUINDE KATHILU RESPONDENT

JUDGMENT

1. The Respondent petitioned the Magistrate’s court for a limited grant for purposes of being substituted as Plaintiff in Machakos ELC Case No. 16 OF 2018 between Cosmas Muinde Kathilu vs Peter Wanjohi Kamau & Others. The Respondent described himself as Nephew to the deceased, and attached the Chiefs letter which described him as nephew to the deceased as per the sale agreement dated 14/3/2003 and owner of land parcel No. Mavoko Town Block 12/141, the suit property subject of the ELC case.
2. The Appellants who are Defendants in ELC case upon realizing that the Respondent had obtained the Limited Grant ad litem limited to prosecuting the ELC case as the Plaintiff following the death of Cosmas Muinde Kathilu, filed at the Magistrate’s court Summons for revocation of the limited grant dated 29th January 2024 under Section 76 of the Law of Succession Act “the Act” and Rule 73 of Probate Rules.
3. Appellants cited material concealments and contradictions alluding to the two positions of the Respondent had given being a son and nephew to the deceased.
4. The Appellants’ said application was dismissed prompting the filing of this appeal vide a Memorandum of Appeal dated 24th July 2024 raising 4 grounds of appeal which basically fault the trial Magistrate for declining to revoke and set aside the limited grant issued to the Respondent under Section 76 of the Act for false statement, concealment of material facts and untrue allegation of fact made in ignorance and or inadvertently.



5. The Appellants' position is that under Section 76 of the Act, if a Petitioner makes false allegations of facts whether by ignorance or in inadvertence then the grant may be revoked. That the Respondent had made materially false statements by describing himself a Nephew to the deceased in the Petition filed in 2022 yet one (1) year later in ELC No. 16 of 2018, he described himself as Son to the deceased.
6. The Appellants also contend that the Respondent's witness statement and Further Affidavit in the ELC case were exhibited to demonstrate the misrepresentation of the facts of being a Nephew and shifting later in ELC as the Son of deceased. Therefore, the Respondent had made a false statement and or concealment of material facts by describing himself as Nephew in the Petition and Son in the main ELC suit.
7. The Appellants contend further that a Nephew has no capacity to petition for a grant unless they demonstrate the absence of other close relatives such as spouse, children, grandchildren etc under Section 66 of Act. That the Chief's letter which was presented before court by the Respondent described him as Nephew and purchaser of the suit property in main ELC No. 16 of 2018.
8. The Appellants challenge the Respondent's capacity to petition for the grant as a Nephew as he had to not demonstrated that the deceased had no spouse, children, grandchildren, siblings and other persons of close consanguinity ahead of him as the nephew under Section 66 Act.
9. The Appellants also asserted that the court lacked jurisdiction ab initio, as the pecuniary value of the suit property before the ELC is Ksh.30,000,000/=
10. The Appellants urge this court as the appellate court to review and re-evaluate the evidence and allow the appeal by revoking the limited grant issued to the Respondent on the two key issues; first making false misrepresentations of being nephew in magistrates court, and later taking a divergent view before the ELC as son to deceased. Secondly failure to exclude other consanguinity relatives for a grant to be issued to a nephew, irrespective of whether such errors or omissions was done inadvertently.
11. The Respondent opposed the application by the replying affidavit dated 26th March 2024 stating that the Appellant had no locus to file the application as he is neither a beneficiary, dependent nor creditor of the deceased estate. The Respondent contended that he did not make any fraudulent allegations, misrepresentation of facts and or conceal any material facts when applying for the letters of administration ad litem in the Petition as he provided the Chief's letter which stated his relationship with the deceased. Further, the Appellant failed to place before court any material evidence to support proof of the allegation on the value of the property thus the application lacked merit and was for dismissal with costs to the Respondent.
12. The appeal was canvassed by way of written submissions and both parties filed their respective submissions. The Appellants' submissions are dated 11th December 2024 whilst the Respondent's submissions are dated 22nd January 2025.
13. I have carefully perused the Record of Appeal and considered the rival submissions filed by the Parties' counsel. It is not in dispute that the Respondent had obtained a grant of letters ad litem issued on 17th June 2022 in Machakos Chief Magistrate's Court Misc. Succession Cause No. E099 of 2022.
14. Revocation of grants in 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.



15. According to the Appellants, the Respondent allegedly made a false statement and concealed material facts as at the time of applying for the limited grant ad litem alluding to the two positions the Respondent had given being a son and nephew to the deceased.
16. The record shows that the Respondent in applying for the Limited grant ad litem, pleaded that he was a nephew to the deceased which fact is confirmed by the Chief's letter. The said Chief's letter has not been challenged or rebutted. The position as was held by the trial Magistrate is that regardless of what has been pleaded elsewhere stands. The Appellant having failed to adduce proof of other existing relatives of the deceased other than the Respondent, the Appellant cannot be heard to be claiming that failure to include other consanguinity relatives for a grant and have it issued to a nephew, amounts to fraud and concealment of important matter, or obtaining by an untrue allegation of a fact essential to the point.
17. It is clear that the grant issued to the Respondent was "limited" for the purpose of representing the deceased Plaintiff in Machakos ELC Case No. 16 of 2018. In this regard, the Respondent approached the trial court under the provisions of Paragraph 14 of the 5th Schedule to the Law of Succession Act which provides that:-

“when it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution”.
18. The Respondent herein is the nephew of the deceased as expressed in the Petition for the limited grant ad litem under the 5th Schedule hereinabove, wherefore, in the absence of proof that other relatives of the deceased existed ranking higher in consanguinity to the nephew herein, it is my considered view that the trial Magistrate rightly dismissed the Appellants' application seeking to revoke the Respondent's valid Limited grant ad litem issued to him on 17th June 2022.
19. In the result, it is my finding that the Appellants' appeal lacks merit. The same is dismissed with costs to the Respondent.
20. Orders accordingly.

JUDGMENT WRITTEN, DATED & SIGNED AT MACHAKOS THIS 16TH OCTOBER 2025

NOEL I. ADAGI

JUDGE

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 16TH OCTOBER 2025

In the presence of :**

Mr. Nyende for Appellant

Mr. Nzei for Respondent

Milly-Court Assistant

