



REPUBLIC OF KENYA



**In re Estate of Tola Kofa Mugava (Deceased) (Succession Cause 29 of 2021)
[2025] KEHC 15711 (KLR) (Family) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15711 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 29 OF 2021

M THANDE, J

OCTOBER 31, 2025

IN THE MATTER OF THE ESTATE OF TOLA KOFA MUGAVA (DECEASED)

RULING

1. The proceedings herein relate to the estate of Tola Kofa Mugava (the deceased) who died on 22.11.19. He was survived by 2 widows and 10 children. A grant of letters of administration (the grant) was issued to Patrick Mgawa Kofa and Anderson Maro Hidavu on 16.11.21 (the Administrators) in their capacity as son and nephew of the deceased respectively. The grant was confirmed on 16.3.23 and the estate is to be distributed amongst all beneficiaries in equal shares.
2. By a summons dated 2.2.24, Tereziah Hamaro Kofa seeks revocation of the grant. The Applicant stated that she married the deceased on 13.4.14 and lived with him until his demise on 22.11.23. Further, that they were blessed with 2 children who are school going minors.
3. The grounds upon which the Application is premised are that the proceedings to obtain the grant were defective in substance for the reason that the same was obtained and confirmed without the consent of the Applicant. Further that a family meeting held on 12.12.21 deemed the petition filed as premature. Further, that the Administrators failed after due notice, to apply for the confirmation of the grant within the stipulated period. Additionally, that an objection had been filed which was not heard and determined. The Applicant contends that the equal distribution of the estate of the deceased will interfere with her minor school going children who are in need of a continuing trust. She further claims that she is apprehensive that Anderson Maro Kalu is out to defraud and disinherit her, as he is not a beneficiary of the estate and therefore not suitable or fit to be appointed as administrator of the estate.
4. The 1st Administrator filed a replying affidavit in opposition to the Application opposed the Application by the of who denied that the grant is defective. He averred that the Applicant was duly served with the petition and filed no objection thereto or apply to be co-administrator. Similarly, summons for confirmation of grant and the hearing thereof were duly served upon her but she did not file an affidavit of protest. It was averred that the Applicant was all along aware of these proceedings and that even at the family meeting of 12.12.21 called to discuss the estate, she agreed that the matter should



remain in court. It was further averred that not being a beneficiary of the estate does not disqualify the 2nd Administrator from being an administrator. On distribution of the estate, it was asserted that the same had not been done on account of the Application herein. Further that the Applicant and her children have not been excluded.

5. The 1st Administrator further stated that the Applicant is in physical possession of House No. 228 on Title No. Nairobi/Block 106/129 (the Nairobi house) and has failed to pay service charge and land rates on the same, thereby placing the property at risk of being auctioned by the County Government. Additionally, that the Applicant has failed to disclose to the whereabouts of the Toyota Hilux belonging to the estate that has been in her possession since the demise of the deceased. Further that she has failed to disclose that she has been receiving the deceased's pension since his demise and has not accounted for the same to the other beneficiaries.
6. In a rejoinder by way of a further affidavit sworn on 24.10.24, the Applicant reiterated her earlier averments and denied the 1st Administrator's allegations in his replying affidavit. She stated that she was the only surviving spouse of the deceased as the deceased and his wife Rachel Karemba Kofa (Rachel) separated long before his demise. Further that the deceased told her that he acquired a house in Kilifi county with Rachel which she registered in her name leading to their separation. She then stated that after her customary marriage to the deceased on 14.3.99, the deceased acquired a house at Hola Mission, Chewani location, Tana River vide an agreement dated 21.7.99; motor vehicle KAM 314Q vide a sale agreement dated 21.7.99; House on Plot No. TRCC/LZ/C/464 at Laza, Hola, vide and agreement dated 2.6.00 and the Nairobi house which she asked the Court to consider as matrimonial property and exclude the same from the estate of the deceased. She further stated that the certificate of confirmation adversely her children who are young and it would take them years to catch up with their siblings.
7. The Applicant further stated that the grant was obtained before pertinent issues were amicably settled by the elders. Further that the grant having been obtained without consent and authority of members/beneficiaries fundamentally undermines the principle of equity and that this is a basis for revocation.
8. The Applicant urged that the Nairobi house, the Hola houses and the motor vehicle which were left in her possession remain with her and her children and that the remaining properties be distributed equally among the dependants.
9. The jurisdiction of this Court to revoke a grant of representation is set out in Section 76 of the [*Law of Succession Act*](#) (LSA) as follows:

76 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.
10. The Court has power to revoke a grant at any time, whether or not confirmed. A party seeking revocation of a grant of representation must demonstrate the existence of any of the grounds set out in Section 76 of the Act. The Applicant's grounds for seeking revocation of the grant are that first, the same was obtained and confirmed without the consent and authority of all the family members/beneficiaries. Second, that the Administrators failed after due notice, to apply for confirmation of the grant within the stipulated time. Third, that the grant was confirmed notwithstanding that her objection was not heard and determined. Fourth, that the 2nd Administrator is not suitable or competent to be appointed as such. Fifth, that the equal distribution of the estate amongst beneficiaries will adversely affect her minor children who are in need of a continuing trust.
11. It is not disputed that the Applicant is a wife of the deceased. As a wife of the deceased, she was entitled to apply for the grant in priority to the Administrators who are son and nephew respectively, of the deceased. Section 66 of the Act stipulates the list of persons given preference to administer the estate of a deceased intestate as follows:

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;
12. Rule 26 of the Probate and Administration Rules (P & A Rules) provides:
 1. Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
 2. An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.
13. Rule 26 places a requirement upon an applicant to notify and obtain the consent of persons who are entitled to the grant in a degree equal to or in priority to such applicant. Applying the above provisions to the present case, it was obligatory for the Administrators to notify the Applicant of the application for the grant and obtain her consent. This is because as wife to the deceased, she ranked higher in priority to the Administrators in as far as entitlement to obtain the grant is concerned.



14. The power of the Court to revoke a grant of representation is discretionary. Section 76 of the Act is not couched in mandatory terms. This discretion must however be exercised judicially, not losing sight of the fact that the ultimate goal is to arrive at a decision that meets the ends of justice. In *In the Matter of the Estate of Elizabeth Wanjiku Munge (Deceased)* [2015] eKLR, Musyoka, J. stated as follows, and I agree with him entirely:

I note, however, that the power granted under Section 76 of the Act for revocation of grants is discretionary. Where a case is made out for revocation of a grant under Section 76, the court has the option to either revoke the grant or make other orders as may meet the ends of justice.

15. The Court notes that the consent of the Applicant was not obtained at both the application for the grant and confirmation thereof. While this is sufficient reason to revoke the grant. I am not persuaded that the ends of justice will be best served by the revocation of grant on this ground. This is because in the exhibited minutes of the family meeting held on 12.12.21 which discussed matter relating to the estate of the deceased, it is indicated that the Applicant was given an to give her opinion on the matter, and she agreed that the matter remains in court. In any event, there has been no demonstration of fraud on the part of the Administrators.
16. I now turn to the ground that the Administrators have failed after due notice, to apply for confirmation of the grant within the stipulated time. Section 76(d)(i) provides that a grant may be revoked on the ground that the person to whom the same was made has failed, after due notice and without reasonable cause, to apply for confirmation of the grant within 1 year from the date thereof, or such longer period as the court order or allow. The grant herein was issued on 16.11.21 while the summons for confirmation of grant was filed on 1.8.22. This is a period of less than 9 months. The allegation of failure on the part of the Administrators to seek confirmation of the grant within the stipulated time is without basis.
17. On the ground that the grant was confirmed notwithstanding her objection, the record shows that the Applicant did indeed file a notice of objection to the making of the grant, which she says which was not heard and determined. It is envisaged under Section 68 of the LSA that a notice of objection to the making of a grant is to be filed before the grant is issued. However, the notice of objection herein was filed on 9.3.23, a year and over 3 months after the grant herein was issued. Accordingly, the same was a nonstarter and could not be legally heard. This ground also fails.
18. The Applicant takes issue with the 2nd Administrator. She stated that because he is not a beneficiary of the estate. This contention is clearly a misapprehension of the law. Section 66 of the LSA provides that 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. There is nothing in law that bars a non beneficiary to be an administrator of an estate. Any person including a creditor may be appointed administrator of the estate of an intestate. The order of preference in Section 66 is a general guide that a court is required to accept in the exercise of its discretion. Notably, the Applicant, a wife of the deceased has not asked, in the Application, to be appointed administrator of the estate but only seeks revocation of the grant. Her allegation that the 2nd Administrator is out to defraud and disinherit her, is not backed by evidence. Accordingly, this ground is thus rejected.
19. The Applicant further contends that the equal distribution of the estate amongst beneficiaries will adversely affect her minor children who are in need of a continuing trust. To begin with, at the time of filing the present Application on 2.2.24, both the children were adults. The exhibited birth certificates indicate that Mugawa Kofa was born on 4.10.99 and was 25 years old while Israel Maro who was born



on 20.9.05 was 19 years old. Accordingly, the Applicant's claim that her children were minors is clearly misleading and incorrect.

20. On distribution of the estate, the Applicant seeks that 4 properties, namely the Nairobi house, the 2 houses in Hola and the motor vehicle be deemed to be matrimonial property and be excluded from the estate. It is well settled that the basis upon which property, matrimonial or otherwise, is divided between spouses, is contribution. Section 7 of the Act makes provision relating to ownership of matrimonial property as follows:

Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved. (emphasis)

21. In *JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae)* (Petition 11 of 2020) [2023] KESC 4 (KLR) (Family) (27 January 2023) (Judgment), the Supreme Court reaffirmed this principle of contribution and stated:

The guiding principle, again, should be that apportionment and division of matrimonial property may only be done where parties fulfill their obligation of proving what they are entitled to by way of contribution.

22. A party seeking a share in matrimonial property must thus demonstrate that they have contributed to the acquisition or development of the said property. The Applicant did not provide any evidence that she contributed to the acquisition or development of the properties. Indeed, she stated that it was the deceased who purchased the same. The fact alone of the Applicant's marriage to the deceased, does not justify the passing of property rights from the deceased to the Applicant (see *JOO v MBO supra*). I accordingly find no basis for excluding the properties from the estate of the deceased.

23. In the Application for grant, the Administrators indicated that the deceased was polygamous. The Applicant averred that the deceased and his wife Rachel Karemba Kofa separated many years prior to his demise and that she was the only surviving wife. No evidence was however adduced to support this allegation.

24. Section 40 of the LSA makes provision for division of the estate of a polygamous intestate as follows:

1. Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

25. Under Section 40, the estate of a polygamous intestate is divided equally amongst all the children of the deceased with any surviving wife being added as an additional unit. The available evidence shows that the deceased was polygamous and died intestate. The Court has already rejected the claim by the Applicant that her children are minors. In the premises, the distribution of the estate equally amongst all beneficiaries namely, the 2 widows and all 10 children of the deceased is as provided under Section 40 of the LSA.



26. The Applicant's challenge to the distribution of the estate ought to have been done by way of an affidavit of protest under Rule 40(6) of the P & A Rules which provides:

Any person wishing to object to the proposed confirmation of a grant shall file in the cause in duplicate at the principal registry an affidavit of protest in Form 10 against such confirmation stating the grounds of his objection

27. It is not clear to the Court why this was not done and no reason was proffered.

28. In the end, and in view of the foregoing, the Court makes a finding that the summons for revocation of grant dated 2.2.24 lacks merit and the same is dismissed. The circumstances herein do not call for an award of costs.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 31ST DAY OF OCTOBER 2025

M. THANDE

JUDGE

