



**Kanegene v Mugo & 2 others (Civil Appeal E070 of 2024)
[2025] KEHC 15294 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15294 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E070 OF 2024
RM MWONGO, J
OCTOBER 29, 2025
IN THE MATTER OF THE ESTATE OF KANEGENE MWENDA (DECEASED)**

BETWEEN

JOYCE GICUKU KANEGENE APPELLANT

AND

SALESIUS KARIUKI MUGO 1ST RESPONDENT

MOSES MWANIKI 2ND RESPONDENT

JOYCE MATHIGA NJERU 3RD RESPONDENT

(An appeal from the decision of Hon. M.N. Gicheru CM delivered on 18th January 2021 in Embu MC Succession Cause no. 361B of 2018 (formerly Embu HC Succession Cause No. 5 of 1988))

JUDGMENT

The Appeal

1. By a memorandum of appeal dated 31st August 2024, the appellant is seeking for orders that the ruling of the trial court be set aside, the appeal be allowed entirely and the costs of the appeal and at the lower court be awarded to the appellant. The appeal is premised on the following grounds:
 1. The learned Trial Magistrate erred in Law and in fact when he revoked the grant and found that the parents of the 3 respondents did not give their consents to confirmation of grant;
 2. The learned trial Magistrate erred in Law and In fact when he found that the parents to the respondents were not given an opportunity to be heard before the summons for confirmation of grant was heard contrary to rule 41(1) of the Probate and Administration Rules;
 3. The Learned trial Magistrate erred in both Law and in fact by finding that the honourable court did not comply with the provisions of rule 40(8) of the Probate and Administration Rules.



4. The learned trial magistrate erred in law and in fact by revoking the grant whereas all the beneficiaries of the deceased had given consents before the administration and distribution of the estate happened; and
5. The learned trial magistrate erred in law and in fact by revoking the grant whereas the respondent did not prove any ground to warrant revocation as per the provisions of section 76 of the *law of succession Act*.

Background & Summons for revocation

2. The deceased died on 10th September 1980. His son, Mbogo Kanegene (deceased), petitioned for a grant of letters of administration in the estate and the same was issued to him 08th September 1988. He filed summons for confirmation proposing that the estate be distributed equally between him and the appellant. The deceased had 5 children but at that point in time, only 2 of them were alive. The court allowed this distribution and issued a certificate of confirmation of grant on 14th March 1989.
3. The respondents are grandchildren of the deceased. Through summons dated 09th November 2020, the respondents sought for revocation of a grant that had been issued in Succession Cause No.5 of 1988 and confirmed on 14th March 1989 be issued to the 1st and 2nd respondents in place of Mbogo Kanegene(deceased) who died on 02nd June 1990. The grounds for revocation were that the grant was obtained by the appellant without their knowledge as grandchildren of the deceased; that the proceedings for obtaining the grant were defective and that they were disinherited.
4. The respondents stated that the grant issued to Mbogo Kanegene (deceased) was obtained without their involvement yet they had a rightful claim to it. That the respondents stand in the places of their deceased parents who were the children of the deceased and so they ought to inherit a part of the estate alongside the appellant. They proposed that the estate be distributed equally amongst the 4 surviving grandchildren of the deceased and the appellant as the only surviving child.

Replying Affidavit

5. The appellant filed a replying affidavit and defended the position that the succession proceedings were fair and involved all the relevant parties. She acknowledged that the respondent are children of her late sisters who were all alive when the deceased died. That the respondents were not excluded from the process because their parents were alive at the time and they gave their consent for distribution. She argued that the respondents cannot be made administrators of the estate of the deceased while she is still alive.

Ruling on Summons for revocation

6. Through a ruling delivered on 18th January 2021, the trial court allowed the summons for revocation of grant. The trial magistrate reasoned that the court's record did not indicate what happened at the confirmation hearing such that the estate was only distributed to 2 of the deceased's children. The court queried the procedure for confirmation as provided under Rule 41(1) of the Probate and Administration rules and found that this procedure was not followed. Further, that not all the dependants of the deceased gave their consents to distribution as demanded by Rule 40(8) of the Probate & Administration Rules. It was on this basis that the grant was revoked.
7. Following the revocation, a grant of letters of administration was issued jointly to the 1st and 2nd respondents on 16th November 2023. These administrators went on to file summons for confirmation of grant and the estate, which comprised of property parcel number Ngadori/Ngovio/703, was



divided equally amongst the appellant, the respondents and Anderson Gichovi Mbogo. An amended certificate of confirmation of grant was issued on 15th November 2023 reflecting this distribution.

8. It is this ruling that is the subject of the appeal herein.

Parties' Submissions on the appeal

9. The appeal herein was canvassed by way of written submissions.
10. The appellant submitted that all her siblings were disclosed to the court and they had a chance to be heard before it. That with reference to section 76 of the *Law of Succession Act*, no grounds for revocation were disclosed to warrant revocation of the grant. That in any event, the court revoked a grant that does not exist since no grant was issued on 14th March 1989. She stated that if the issue concerned distribution, it would have been sufficient for the certificate of confirmation of grant to be set aside. On this point, she relied on the case of *In re Estate of Samuel Kariuki Kiragu (Deceased) [2023] KEHC 26573 (KLR)*. It was her argument that the respondent did not demonstrate that their parents were deceased by producing grants ad litem as this would have informed the court when their parents died. To this end, she argued that the respondents did not have legal capacity to move the court. She urged the court to allow the appeal.
11. The respondents submitted that they are legitimate grandchildren of the deceased and that their parents died before the succession cause was determined. That they were summoned by the court and they confirmed to the court that they are grandchildren of the deceased. They supported the trial court's findings and current distribution of the estate of the deceased which they said was fair.

Issue for Determination

12. The issue for determination is whether the appeal should succeed.

Analysis and Determination

13. 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...”

14. Following the death of Mbogo Kanegene, the first administrator of the estate of the deceased, the appellant, filed summons dated 06th December 2018 seeking rectification of grant to replace Mbogo Kanegene's name with that of Anderson Gichovi Mbogo, his son. In the pendency of the first application for rectification, she filed a notice of motion dated 28th August 2019 seeking to replace the deceased administrator so that she could administer the estate of the deceased. Both applications were dismissed through a ruling delivered on 14th October 2019. In that ruling the court directed the disgruntled members of the family to file summons for revocation of grant.
15. By this time, the administrator of the estate of the deceased was long dead, and so the estate remained without an administrator. The right thing to do at that point was to seek revocation of grant, as rightly



directed by the trial court, because following the death of a sole administrator, the grant becomes useless and inoperative pursuant to section 76(e) of the *Law of Succession Act*.

16. The respondents filed summons for revocation on grounds other than this ground. They argued that they had not been informed of the succession proceedings but the appellant stated that there was no need to inform them because their parents were alive at the time of petitioning for the grant.
17. According to the record of proceedings, on 24th April 2019, the respondents appeared in court and said that all their mothers, who are daughters of the deceased, were dead. They sought time to prove this. Salesius Kariuki Mugo swore an affidavit on 10th May 2019 stating that his mother, Sophia Maitha Mugo died on 28th July 2013 and he produced a certificate of death serial no. 0764084 in her name together with a burial permit. There is also on record the certificate of death of Naomi Ciumwari Njue who died on 25th August 2012. She was the mother of Moses Mwaniki.
18. Form 5 of the petition for the grant of letters of administration indicates that the deceased was survived by 5 children namely Mbogo Kanegene, Sophia Maitha, Naomi Gicuku, Naleah Ngendo and Joyce Gicuku. Both the petitioners and the respondents stated that the respondent's parents are the 3 sisters of the appellant and they are all dead. The only question is, did they die before or after the deceased? From the petition documents, it is evident that the 3 sisters of the deceased died after the death of the deceased. It means that they were alive when Mbogo Kanegene petitioned for the grant.
19. Shortly after confirmation of the grant, Mbogo Kanegene died, leaving the estate without an administrator. Noting this, the arguments made as to confirmation of the grant became immaterial given that the administrator was deceased. Either way, the grant was ripe for revocation at that point: when the death of the administrator was disclosed to the court. In fact, the trial court should have moved on its own motion to revoke that grant but it allowed the parties to bring a motion to revoke it. Such a suo moto revocation by the court, on its own motion, is provided for under these circumstances by section 76 of the *Law of Succession Act* 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)

.....

(e) that the grant has become useless and inoperative through subsequent circumstances.” [Emphasis added]

20. From the trial court proceedings, it is therefore not true that the respondents were not made aware of the proceedings because it did not concern them as a priority before their parents died. Through their motion for revocation, this is not sufficient ground. It is also not sufficient to argue that they were disinherited because that argument falls outside the ambit of section 76 of the *Law of Succession Act*. Challenging a certificate of confirmation of grant is not the same as challenging the grant itself in the eyes of section 76 of the *Law of Succession Act*.
21. 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* which are 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.”

22. The phrase ‘grant of representation’ does not include a certificate of confirmation of grant, which is an order of the court confirming distribution of the estate of the deceased. It 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.”

Conclusions and Disposition

23. 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, 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. In this case, there was a valid ground to revoke the grant either on the court's own motion or by application by a party. However, this ground is not one of the grounds included by the respondents in their summons. The valid ground lies in section 76(e) of the *Law of Succession Act* by reason of the sole administrator's death, leaving the estate incapable of being executed.

24. The path taken in this appeal and that taken by the trial court are different but they lead to the same destination eventually. The grant was ripe for revocation either way one looks at it. To this end, the trial court did not err in its findings.
25. Accordingly, the appeal is hereby dismissed with no order as to costs.
26. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 29TH DAY OF OCTOBER, 2025.

.....

R. MWONGO

JUDGE

Delivered in the presence of:

1. Kamochu holding brief for M. Ndeke for Appellant
2. Salesius Kariuki – Respondent
3. Moses Mwaniki – Respondent
4. Joyce Njeru – Respondent
5. Francis Munyao - Court Assistant

