



**In re Estate of Isaac Kimene Nabea (Deceased) (Succession Cause
18 of 2019) [2025] KEHC 16596 (KLR) (10 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 18 OF 2019**

**SM GITHINJI, J
NOVEMBER 10, 2025**

IN THE MATTER OF THE ESTATE OF ISAAC KIMENE NABEA (DECEASED)

BETWEEN

MICHELLE KENDI KIMENE 1ST PETITIONER

PATRICK KITHINJI KIMENE 2ND PETITIONER

AND

M'INOTI M'NABEA OBJECTOR

RULING

1. For determination is the Summons for revocation of grant dated 16/9/2024 under section 76 of the Law of Succession Act and section 68 of the Land Registration Act, seeking that;
 1. Spent
 2. The Honourable court be pleased to annul/voke the grant herein issued on 31st October 2019 and confirmed on 14th June 2023.
 3. Spent
 4. The Honourable court be pleased to issue an order cancelling land title No Nyaki/Kithoka/334 and the same to revert to deceased name ISAAC KIMENE NABEA pending hearing and determination of this revocation.
 5. The Honourable court be pleased to issue such other and or better orders for the interests of justice.
2. The application is premised on the grounds on the face of it and supported by an affidavit sworn by the applicant on even date. He averred that the deceased herein was his younger brother, while the petitioners are his niece and nephew respectively. The deceased herein was given the title to L.R No.



Nyaki/Kithoka/334 (hereinafter referred to as the suit property) for safekeeping for his son, namely Dedan Gituma alias Isaac Gituma Nabea (now deceased), which he fraudulently registered in his name. His said son was given the land by his grandfather, and as such, the suit property does not form part of the estate of the deceased herein, and unless the grant is revoked, the rightful beneficiaries stand to be disinherited.

3. The petitioners opposed the application vide a replying affidavit sworn by the 2nd petitioner on 1/4/2025. He averred that the applicant sued his father, the deceased herein, wherein judgment was entered in favour of the former. They appealed against the said judgment, which appeal was dismissed, and they escalated their dissatisfaction to the Court of Appeal, where status quo orders were issued, pending the determination of the appeal. The deceased acquired title to the suit property in 1983, and his name was rectified from Isack Gituma Nabea to Isaack Kimene Nabea. The applicant is not a beneficiary of the estate and therefore he is not entitled to a share thereof.
4. The application was directed to be canvassed by way of written submissions, which were duly filed.

Disposition

5. Having considered the application, the replying affidavit, the submissions on record and the authorities relied on, I find the issue for determination to be whether it is merited.
6. Section 76 of the *Law of Succession Act* stipulates that a grant of representation, whether or not confirmed, may at any time be revoked or annulled, either on application by any interested party or of its own motion if: “(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.”
7. The applicant sued the deceased herein seeking substitution of his name with that of the deceased in the register, wherein judgment was entered in favour of the applicant. Dissatisfied with that decision, the deceased moved to the Environment and Land Court to challenge it, and in its judgment dismissing the appeal, the ELC court (C.K Nzili J), espoused that, “52. Concerning the preceding binding case law, I think the appellant failed to rebut the presumption of trust in the manner that the respondent acquired the land for value in 1967 and registered it in the name of his son then a minor. In my view, the facts here and the evidence point to the appellant’s father as occupying the position of a trustee, who abused his position and removed the respondent’s late son’s name from the title to the land in 1983, under unclear circumstances. Trust abhors misuse of the law and steps in to correct those out to enrich themselves unjustly. In my view, I am unable to find how the trial court deviated from the pleadings and issues arising therefrom. It is also the appellant who misapprehended the nature of trust pleaded in the plaint, as if it was customary trust based on ancestral land. It is the appellant, also in his written witness statement dated 19.9.2022, who introduced the issue of his late father inheriting the land from his grandfather. In paragraph 5 of the witness statement, which the appellant adopted as his evidence in chief, he was aware of the history of the land acquisition and registration by the respondent prior to 1983. In my considered view, the trial court looked at the pleadings, issues raised, evidence tendered,



written submissions and the law. On the contrary, it is the appellant who misconstrued the facts, issues, evidence, and the law applicable to the issues as derived from the cause of action that the respondent and his late father pleaded. The upshot is that I find the appeal both incompetent and lacking merits. The same is dismissed with costs.”

8. Evidently the question of the ownership of the suit property has already been settled by the trial court and upheld by the Environment and Land Court.
9. I find that the petitioners are indeed guilty of non-disclosure of the material fact that the applicant was properly declared to be the owner of the suit property, by two courts with competent jurisdiction, and the grant, as confirmed, cannot stand.
10. I am aware that there exists a consent order by the Court of Appeal, which reads in part that, “An order do issue maintaining and preserving status quo of the suit property; L.R. No. Nyaki/Kithoka/334 pending hearing and determination of Appeal No. 132 of 2024. For avoidance of doubt, the current status quo is that the respondent is in occupation of the suit property, whereas the title deed is in the appellant’s name.”
11. Invariably, I find merit in the summons for revocation of the grant dated 16/9/2024, and it is hereby allowed in the following terms:
 1. The grant issued on 31/10/2019 and confirmed on 14/6/2023 is hereby revoked.
 2. The revocation hereinabove decreed is in respect of L.R No. NYAKI/KITHOKA/334 only.
 3. The inhibition hereinbefore issued shall subsist pending the hearing and determination of the appeal before the Court of Appeal.

DATED AND DELIVERED AT MERU THIS 10TH DAY OF NOVEMBER, 2025

S.M. GITHINJI

JUDGE

Miss Wambulwa for the Applicants/Objector (present).

Mr. Igweta for the 2nd & 3rd Petitioners (absent).

