

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

HCF MISC. NO. 010 OF 2025

IN THE MATTER OF THE ESTATE OF FRANCIS MWANGI

KAGUORA (DECEASED)

RULING

1. This matter was placed before me with a view of giving directions pursuant to **Section 49(1) of the the Law of Succession Act**, which provides thus;

The Magistrate's Court within whose area a deceased person had his last known place of residence shall, if the gross value of the estate of the deceased does not exceed the pecuniary limits set out in section 7(1) of the Magistrates' Courts Act (Cap 10), have in respect of that estate the jurisdiction conferred by section 48.

Provided that—

- (i) the magistrate may, with the consent or by the direction of the High Court, transfer the administration of an estate to any other Magistrate's court where it appears that the greater part of the estate is situated within the area of that other magistrate or that there is other good reason for the transfer;*
- (ii) if the deceased had his last known place of residence outside Kenya, the High Court*

shall determine which magistrate shall have jurisdiction under this section;

2. I did peruse the file to enable me act accordingly. To institute a Succession Cause, it is a requirement for a letter from the area chief where the deceased resided and /or domiciled prior to his demise which lists the beneficiaries of the deceased.
3. This is a matter where the deceased passed away intestate. Proposed beneficiaries could only be established as genuine ones upon the area chief verifying that fact. **Davin Waithira Mwangi**. The Petitioner deposed that the deceased died intestate leaving her surviving him. Assets left were indicated as Kshs.4,000,000/-in Barclays Bank of Kenya Limited Account No. (withheld).
4. The affidavit of justification of proposed sureties (Form P&A 11) was sworn by people who did not provide copies of their Identification documents as per the practice. The index card of application for grant (Form 59 (Rule 4(2))) bears the name of the deceased as **Muriithi Weru** and the Title of proceedings is **MC SUCC 51 of 2025** opposed to **Francis Mwangi Kiogora**.
5. Prior to the matter being referred for directions, M/s Igati advocates had approached court through summons general bringing to its knowledge the fact of the Petitioner having obtained the grant of letters of Administration fraudulently by making false statement and concealing material facts from the court as she failed to disclose that the Estate of the deceased had already been administered in **Naivasha**

CM'S Court Succession Cause No. 51 of 2016, where letters Administration were issued to **Munyutha Kariuki** and a certificate of confirmation of the grant issued on 20th April 2018.

6. What transpired was a procedural irregularity that called for correction (**See Article 165(6) of the Constitution**).

7. Section 76 of the Succession Act provides that:

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.

8. Clearly, the Petitioner, ***Davine Waithera Mwangi*** obtained the grant of letters of administration Intestate fraudulently by concealing the fact of there having existed a succession cause in Naivasha court where she was one of the beneficiaries. In addition, the fact of the subsequent Petition having been filed in Nyahururu when the deceased died domiciled at Kikopey sub location within the jurisdiction of Naivasha court and not within the territorial jurisdiction of this court.

9. As afore stated, the grant of letters of administration was obtained irregularly which made it null and void ab initio hence in operative at the inception. Having not availed the letter from the area chief, the petition should have been

outrightly rejected by the probate registry and the petition declined.

10. The upshot is that a matter which should have been declined at the outset for being null and void cannot be transferred. Therefore, I do revoke the grant of letters of Administration issued herein, ***suo moto***. Respective parties may seek rectification of grant in the Petition filed regularly in the Naivasha Court.

11. It is so ordered.

Dated, signed and delivered virtually this 6th day of November, 2025.

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L.N. MUTENDE

JUDGE