



**In re Estate of Gabriel Mithamo Ndunyu (Deceased) (Succession Cause
246 of 1996 & Miscellaneous Case E017 of 2024 (Consolidated))
[2025] KEHC 16046 (KLR) (Family) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16046 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

**SUCCESSION CAUSE 246 OF 1996 & MISCELLANEOUS
CASE E017 OF 2024 (CONSOLIDATED)**

HK CHEMITEI, J

NOVEMBER 6, 2025

BETWEEN

TERESIAH WAMBUI APPLICANT

AND

FRANCIS KIARIE WAWERU RESPONDENT

RULING

1. This ruling relates to the applications dated 5th February, 2024 and 12th May, 2025
2. The application dated 5th February, 2024 filed by the Applicant, Teresiah Wambui; seeks for orders that:-
 1. Spent.
 2. Pending the hearing and determination of this summons inter partes, the honourable court be pleased to issue a temporary preservative order restraining the Respondent by himself, his agents, servants, representatives, assigns, proxies, employees and or any other person or entity exercising authority under him from intermeddling and interfering in any way with land parcel registration numbers Dagoretti/Kangemi/115, Dagoretti/Riruta/1771 and Dagoretti/Riruta/ 1774.
 3. Pending hearing and determination of this summons, the honourable court be pleased to issue a permanent preservative order restraining the Respondent by himself, his agents, servants, representatives, assigns, proxies, employees and or any other person or entity exercising



authority under him from intermeddling and interfering in any way with land registration numbers Dagoretti/Kangemi/115, Dagoretti/Riruta/1771 and Dagoretti/Riruta/1774.

4. The honourable court be pleased to issue an order that the certificate of confirmation of grant issued to Francis Kiarie Waweru and Priscilla Wamaitha Waweru (deceased) on 25th October, 2011 in Nairobi High Court Succession Cause Number 246 of 1996 be revoked and annulled.
5. The honourable court be pleased to issue an order that land parcel registration numbers Dagoretti/Kangemi/ 115, Dagoretti/Riruta/1771 and Dagoretti/Riruta/ 1774 currently registered in the name of James Waweru Kamau (deceased) be cancelled and reverted to the name of Priscilla Wamaitha Kamau (deceased).
6. The honourable court be pleased to direct the Officer Commanding Station Dagoretti Police Station, to ensure enforcement and compliance with the orders of this honourable court.
7. The honourable court be pleased to issue any other and further orders as it may deem fit and expedient in the interests of justice; and
The costs of this application be in the cause.
3. The application is based on the grounds on its thereof and supported by affidavit sworn by Teresiah Wambui on 5th February, 2024.
4. She avers inter alia that the grant of letters of administration intestate issued to the Respondent and the late Priscilla Wamaitha Waweru in Nairobi High Court Succession Cause No. 246 of 1996 be revoked and annulled pursuant to the provisions of Section 76 of the Law of Succession Act, on the grounds that it was fraudulently obtained through misrepresentation and concealment of material facts regarding the estate.
5. The proceedings culminating in the issuance of the said grant were substantively defective, as the assets forming the subject of the succession proceedings were, in fact, the absolute property of Priscilla Wamaitha Kamau.
6. The grant was procured through a false allegation of a material fact, thereby misleading the Honourable Court to believe that land parcel numbers Dagoretti/Kangemi/115, Dagoretti/Riruta/1771 and Dagoretti/Riruta/1774 belonged to the deceased. In truth, the deceased had fraudulently transferred the said properties into his name in 1982, falsely alleging that Priscilla Wamaitha Kamau was deceased. Consequently, all actions taken by the Respondent - being the surviving administrator of the estate of James Waweru Kamau - pursuant to the said grant and the certificate of confirmation thereof, which may have altered or affected the assets of the estate, ought to be declared null and void in law.
7. The court is further urged to declare that the assets in question were fraudulently transferred and registered in the name of James Waweru Kamau (deceased) and that the rightful beneficiaries of the estate of Priscilla Wamaitha Kamau - namely Virginia Wanjiru and Lucy Wamaitha - who were excluded from the original petition, are entitled to a share of the said estate.
8. The Applicant, being the administratrix and beneficiary of the estate of her late mother, Priscilla Wamaitha Kamau (who died on 18th August, 2009), and a sister to the late James Waweru Kamau (the deceased herein), brings this application in that capacity.
9. Owing to the fraud, misrepresentation and concealment perpetrated by the Respondent, the court was misled into issuing orders prejudicial to the rightful heirs, effectively disinheriting them from their lawful entitlement. The administration of the estate of Priscilla Wamaitha Kamau has therefore not



- commenced, owing to the Respondent's deceptive actions which caused the court to believe that the assets in question were the exclusive property of James Waweru Kamau (deceased), resulting in an erroneous transfer order in his name.
10. It is therefore in the interest of justice that the prayers sought herein be granted, so that the assets forming the subject of this application may be protected and administered lawfully in accordance with the *Law of Succession Act*.
 11. The application is opposed vide replying affidavit sworn by Francis Kiarie Waweru on 8th March, 2024.
 12. He avers inter alia that he is the duly appointed administrator of the deceased's estate. At the time the succession cause was filed, the petition was instituted by his grandmother, Priscilla Wamaitha Kamau and his aunt, Virginia Wanjiru Gachoka, as administrators of the estate of his late father, the deceased herein. In the petition - particularly in P&A Form 57, paragraph 4(h) and (j) - the petitioners were described as the mother and sister of the deceased respectively.
 13. Notably, the Applicant is also listed in the same petition as the sister to the deceased. The allegation that the grant was obtained fraudulently or through misrepresentation of material facts is therefore unfounded, as his grandmother fully participated in the succession proceedings. The grant was subsequently amended to remove the name of his grandmother (who had since passed away) and his aunt, Virginia Wanjiru Gachoka, in accordance with a court order dated 25th October, 2011.
 14. When it became apparent that his grandmother and aunts were not entitled to inherit the deceased's estate, they filed ELC Case No. 159 of 2007 (OS) before the Environment and Land Court, claiming ownership by adverse possession. Following the institution of that suit, the High Court in Succession Cause No. 246 of 1996 ordered those proceedings in the succession cause be stayed pending determination of the ELC matter.
 15. Subsequently, despite the stay order issued on 25th October, 2011, the Applicants filed a new succession cause - HCSC No. 1055 of 2012 - relating to the estate of Priscilla Wamaitha Kamau, without disclosing to the court that the properties listed therein were already the subject of Succession Cause No. 246 of 1996, which was still pending.
 16. The Applicant, together with his grandmother and aunt, also pursued the adverse possession claim against him in ELC No. 159 of 2007 (OS). However, before the matter could be concluded, his grandmother passed away. The Applicant then chose to abandon the suit, leaving Virginia Wanjiru Gachoka to proceed on her own, and she was subsequently awarded portions corresponding to her occupation in LR Dagoretti/Riruta/1771 and 1774.
 17. If indeed the suit properties lawfully belonged to Priscilla Wamaitha Kamau, she could not have been a party in ELC Case No. 159 of 2007 (OS) seeking ownership by adverse possession, which presupposes lack of title. The Applicant nonetheless filed HCSC No. 1055 of 2012 fully aware that his grandmother did not own the properties in question, and that they were therefore not available for distribution - which explains her inability to administer the estate.
 18. It is further denied that the suit properties were ever fraudulently transferred by the deceased, his father. Had there been any fraudulent dealings as alleged, Priscilla Wamaitha Kamau would have instituted a fraud claim against the estate of James Waweru Kamau during her lifetime. Instead, she elected to pursue the remedy of adverse possession in ELC No. 159 of 2007, confirming absence of fraud.
 19. The Respondent therefore denies that the Applicant and the two other persons she associates with are beneficiaries of the deceased's estate. They are not the deceased's children and, consequently, do not rank in priority in inheritance under the *Law of Succession Act*.



20. The Applicant has filed written submissions dated 12th August, 2025.
21. The Respondent has filed written submission dated 15th July, 2025, placing reliance on the following:
 1. *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR where it was stated as follows: “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”
 2. *Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of Sospeter Mukuru (deceased) vs Stephen Njoroge Macharia* [2020] eKLR where it was observed as follows: “In the instant case, the appellants needed to not only plead and particularize the fraud, but also lay a basis by way of credible evidence upon which the court would make a finding that indeed there was fraud in the transaction leading to the transfer and registration of the suit in the name of Janet all the way to the Respondent...”
 3. Succession Cause No. 158 of 2000: *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa* where it was stated as follows: ‘Power to revoke or uphold a grant is a discretionary power that must be exercised judiciously and only on such grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke Section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all the beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.’
22. The application dated 12th May, 2025 filed by the Applicant, Teresiah Wambui Kariuki; seeks for ORDERS THAT:
 1. Spent.
 2. A temporary order do issue pending hearing and determination of the objection in this matter allowing the Applicants, beneficiaries: Teresia Wambui Kariuki of ID NO. XXXXXXXXX, Lucy Wamaitha Njoroge of ID NO. XXXXXXXXX and Samuel Njoroge Kariuki of ID NO. XXXXXXXXX to collect the rents in the mentioned properties on behalf of the entire estate to help in paying the rents and rates.
 3. Monthly reports do file in court for the collected money and how the same is used to settle the government required rates henceforth.
 4. The administrators do file statements of accounts on how the estate funds collected in total, how the same has been used since the demise of the deceased James Waweru Kamau on behalf of the rest of the beneficiaries.
 5. Succession suit in the High Court of Nairobi Succession Case No. 1055 of 2012 in the Estate of Priscilla Wamaitha Kamau be consolidated in this suit for further court direction and determination.
 6. Any other order the honourable court deems fit to issue.
23. The application is based on the grounds thereof and supported by affidavit sworn by Teresia Wambui Kariuki, Lucy Wamaitha Njoroge and Samuel Njoroge Kariuki on 12th May, 2025.



24. They aver inter alia that the family estate is currently in a state of great uncertainty and faces the imminent risk of total loss. The Applicants, as administrators in High Court of Nairobi Succession Cause No. 1055 of 2012 concerning the estate of Priscilla Wamaitha Kamau (Deceased seek that the said cause be consolidated with the present matter for appropriate directions and determination by this Honourable Court.
25. The Applicants seek a limited grant of letters of administration for the specific purpose of collecting rental income and remitting land rates due to the County Government of Nairobi, in respect of the following properties: Dagoretti/Riruta/1771, Dagoretti/Riruta/1774 and Dagoretti/Riruta/115.
26. They further seek authority to undertake such actions as may be necessary for the preservation of the deceased's estate pending the grant of full representation. The above properties are registered in the name of their late grandmother.
27. James Waweru Kamau, the deceased herein, had irregularly transferred the said properties into his name. The Applicants are beneficiaries of both the estate of James Waweru Kamau (deceased) and the estate of Priscilla Wamaitha Kamau (deceased), and thus have a direct interest in the preservation of the disputed properties. By a letter dated 17th November, 2020, the County Government of Nairobi issued demand notices for payment of outstanding land rates on the aforementioned properties.
28. Previously, this Honourable Court issued a confirmation of grant in High Court Succession Cause No. 246 of 1996 on 25th October 2011, appointing Francis Kiarie Waweru and Priscilla Wamaitha Waweru (deceased) as joint administrators of the estate. That grant, however, has since been challenged under Section 76 (b) of the Law of Succession Act on grounds of fraud and the matter remains pending before this court. As a result of the said challenge, the estate presently lacks a lawful administrator, since the revocation proceedings allege fraud against Francis Kiarie Waweru, who had been the sole acting administrator. No alternative administrator has yet been appointed or authorized by the court.
29. In Succession Cause No. 1055 of 2012, the Applicants were confirmed as beneficiaries of the disputed properties, being Dagoretti/Riruta/1771, Dagoretti/Riruta/1774 and Dagoretti/Riruta/115. The County's notices demand payment of rates due on these parcels. However, due to the ongoing litigation and absence of a duly appointed administrator, no person is currently authorized to collect rent or manage the properties on behalf of the estate.
30. The lack of proper administration exposes the estate to imminent risk of wastage, as non-payment of the accrued land rates will attract heavy fines and penalties, thereby diminishing the value of the estate.
31. In view of the foregoing, the Applicants humbly pray that this Honourable Court be pleased to appoint them as administrators pendente lite (interim administrators) to temporarily manage and safeguard the estate, pending the determination of the ongoing challenge to the grant of letters of administration and to enable them to carry out essential administrative duties, including the payment of outstanding rates and preservation of the estate assets.
32. The application is opposed vide replying affidavit sworn by Francis Kiarie Waweru on 3rd June, 2025 who avers inter alia that the properties in dispute form part of the Estate of James Waweru Kamau (deceased), and the Applicants have no legal basis to interfere with the said estate, as they are not beneficiaries thereof.
33. The deceased, James Waweru Kamau, to whose estate the suit properties belong, was only related to the Applicants as a brother and cousin, respectively. The search certificates annexed and marked as TWK-02 (a, b and c) by the Applicants are questionable and of no evidentiary value, as the ownership of the suit properties remains vested in the late James Waweru Kamau (deceased).



34. He further states that he has no knowledge of any demand notices allegedly issued by the County Government of Nairobi to the Applicants for payment of land rates. It is within both his and the Applicants' knowledge that he remains the duly appointed administrator of the estate of the late James Waweru Kamau.
35. The pending application for revocation of the grant does not invalidate his administrative authority unless and until it is heard and determined by the court. It is also within the Applicants' knowledge that, following the stay of proceedings issued by this Honourable Court on 25th October, 2011, the Applicants - who were active participants in those proceedings - subsequently moved to the same court to file a separate petition for letters of administration intestate in respect of the estate of Priscilla Wamaitha Kamau (deceased), relating to the same properties, without disclosing to the court that there was an existing matter pending involving the same estate. This non-disclosure has consequently hampered the distribution of the estate to date.
36. The Applicant has filed written submissions dated 12th August, 2025. The Respondent has not filed written submissions.

Analysis And Determination

37. I have read the application before this court, the response thereto and the rival submissions.
38. The issues for determination, as crafted by the Respondent are as follows:
 - i. Whether the grant in HCSC No. 246 of 1996 was obtained by fraud and by concealment of material facts from the court relating to the estate.
 - ii. Whether the proceedings leading to the issuance of the letters of administration intestate were defective in substance.
 - iii. Whether the grant of letters of administration intestate was obtained by means of untrue allegations of fact essential in point of law to justify the grant.
 - iv. Whether the properties the subject of this suit were fraudulently transferred and registered in the name of James Waweru Kamau.
 - v. Whether the Applicant is entitled to a share of the estate as a beneficiary.
39. Although the above are generally the issues cleaned from the pleadings herein the court is of the considered view that the entire estate is convoluted. The issues are intertwined to the extent that one cannot make a meaningful and a final order in view of various applications which they all on the face of it meritorious.
40. The convolution goes as far as issues which the parties have litigated at the Environment and Land Court. The said court seems to have issued orders which unless the parties are heard and evidence produced it may end up issuing embarrassing decisions or countermanding the same.
41. The upshot therefore is to have the parties testify in court and each give their versions of evidence. As a matter of fact, the two estates seem related as well as beneficiaries.
42. Since there are allegations of fraud, this court will be better placed to hear the evidence constituting any fraud or concealment of issues. Affidavit evidence alone cannot suffice.



43. The grants issued by the courts earlier own unless set aside shall remain valid until the matters are determined. This therefore places the holders at a fiduciary responsibility to ensure that the estate is protected and to give account ultimately to this court and by extension the beneficiaries.
44. Consequently, I direct that:-
- (a) All the pending applications are held in abeyance.
 - (b) The objection proceedings shall be heard by way of oral evidence.
 - (c) The parties herein are granted 30 days to file and serve any witness statements and or affidavits upon each other.
 - (e) Costs shall await the outcome of the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS

6TH DAY OF NOVEMBER 2025.

H K CHEMITEI

JUDGE

