

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**(FAMILY DIVISION)**

**SUCCESSION CAUSE NO. E.078 OF 2024**

**IN THE MATTER OF THE ESTATE OF HEINZ RUBI (DECEASED)**

**RULING**

1. I have considered the two applications before this court, dated **17th July 2025** and **15th September 2025**, filed by the **objectors** and the **administrator**, respectively.
2. I note that this court issued a grant of letters of administration intestate to **Marco Rubi** on **6<sup>th</sup> February 2025**. Counsel for the administrator contends that the previous firm of advocates for the administrator erred by filing a petition for estate of administration intestate, when they should have petitioned for a grant of probate, as the deceased had a written will. Mr **Wamae**, learned counsel for the administrator, conceded that the grant should be revoked on that ground. He also acknowledged that the petitioner was not in Mombasa on **20<sup>th</sup> September 2024** when he was supposed to have signed the petition for letters of administration intestate and deposed to the affidavit in support of the petition.
3. Grants can be revoked by Courts, on their own motion or upon being moved by an interested party, pursuant to the provisions of Section 76 of the Law of Succession Act. As was stated in the case of *In re*

Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR), a grant of representation can be revoked on three general grounds. Musyoka, J, in his decision in the said case, stated the 1<sup>st</sup> ground as being where the process used in obtaining the grant was defective. In this case, it is clear and has been admitted by both parties that the process was defective. The petitioner filed a petition for letters of administration intestate, whereas he ought to have sought a grant of probate, as there is supposedly a will in existence.

4. It is also the case that there was fraud in the process of filing the petition, as the administrator was not in Mombasa and could not have deposed to the affidavit in support of the petition.
5. The upshot of the foregoing is that the grant was obtained pursuant to a defective process. The process was also marred by fraud and misrepresentation. In the circumstances, I revoke the grant issued on the **6th day of February 2025**. By dint of the said action, the application for amendment, dated **15<sup>th</sup> September 2025**, is dismissed; the same cannot be sustained.
6. Having dismissed the application for amendment, it follows that Mrs Fundi's application is moot. It has already been conceded that Mr **Marco Rubi** was not in Mombasa at the time he supposedly signed the petition and made his deposition in support of the same. There is therefore no need for him to be cross-examined in respect of an occurrence that is now admitted as not having happened.

7. In view of the foregoing, the orders that commend themselves to me are the following:-

- a. I **revoke** the grant issued on the **6<sup>th</sup> day of February 2025**; and
- b. Given the conduct of the **petitioner/administrator**, which in my view is reprehensible, I award the objectors the costs of this application.

8. It is so ordered.

**Dated and signed in Mombasa, this 4<sup>th</sup> day of November 2025.**

**Delivered** virtually through **Microsoft TEAMS**.

**Gregory Mutai**

**JUDGE**

In the presence of: -

Mr Wamae, for the Petitioner/Administrator;

Mrs Fundi, for the Objectors; and

Arthur – Court Assistant.