



**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 973 OF 2019**  
**IN THE MATTER OF THE ESTATE OF LINDA BERNADETTE**  
**LOMONACO (DECEASED)**

**ROBERTO RAFFALE LOMONACO .....**

**APPLICANT**

**VERSUS**

**BILL ARNOLD BLACKBEARD ..... 1<sup>ST</sup>**

**PETITIONER/**

**RESPONDENT/TRUSTEE**

**GENEVIVE MARY CARPENTER ..... 3<sup>RD</sup>**

**PETITIONER/**

**RESPONDENT/TRUSTEE**

**RULING**

1. This ruling relates to the application dated **10<sup>th</sup> September, 2024** filed by the Applicant, Roberto Raffalelo Monaco, seeking for **ORDERS THAT** the grant of probate to Bill Arnold Blackbeard, John Carpenter Hiuhu and Genevieve Mary Carpenter as Executors/ Trustees of the deceased be revoked or annulled.

2. The application is supported by affidavits sworn by Roberto Raffaele Lomaco on **10<sup>th</sup> September, 2024** and **4<sup>th</sup> June, 2025**.
3. He avers *inter alia* that the deceased died on **28<sup>th</sup> July, 2019**, a grant of probate with written Will was issued on **31<sup>st</sup> May, 2021** to Bill Arnold Blackbeard, John Carpenter Hiuhu and Genevive Mary Carpenter and confirmed on **20<sup>th</sup> June, 2022**, directing distribution as per the Will dated **15<sup>th</sup> November, 2017**.
4. That under clause **10** of the Will, cash legacies were to be paid from the deceased's Barclays Bank current and fixed deposit accounts. Under clause **11**, the remainder of these funds - after payment of all clause **10** bequests - was bequeathed absolutely to the Applicant, if he survived the deceased.
5. The Trustees recovered **Kshs. 19,522,109.20** on **29<sup>th</sup> September, 2022** and settled clause **10** legacies, the last two being paid on **28<sup>th</sup> March, 2023**. The balance of **Kshs. 12,592,420.90** arose under clause **11**, which the Applicant claims belonged to him absolutely.
6. However, the Trustees withheld part of the funds and made deductions for legal and professional fees, which the Applicant disputes. He alleges double deduction of legal fees, from both his cash legacy and the rental income of properties bequeathed to his minor children, amounting to **Kshs. 6,992,016.00**, of which **Kshs. 1,963,370.00** was paid to Sonal Raval Advocates.
7. The Respondents' letter of **8<sup>th</sup> March, 2023** sought to rely on clause **17.2** regarding administration expenses and requested clarification on advances previously made to

the Applicant and his spouse. They also declared that motor vehicle **KCA 176X** forms part of undisposed estate property and may be sold under clause **17.1**.

8. In his response of **17<sup>th</sup> March, 2023**, the Applicant maintains that clauses **10** and **11** constitute a specific bequest, not a residuary one, and therefore should not be subjected to clause **17.2** expenses.
9. He asserts that **Kshs. 13,671,436.90** should have been paid to him in full and urges that any funds obtained from the sale of undisposed assets such as motor vehicles **KCA 176X** and **KAT 239Q** be applied toward expenses.
10. He also disputed title conversion charges of **Kshs. 1,290,048.00** and **Kshs. 430,016.00** and demands full justification. He states that rental income from **L.R. 209/3310** and **L.R. 209/3216**, belonging to the minors, funded school fees and maintenance and should not reduce his legacy.
11. He further claims entitlement to dollar funds under clause **12**, which he requests to be remitted to his spouse's Stanbic Bank account. He challenges the Trustees' late and partial payments, amounting to **Kshs. 5,000,000.00** on **25<sup>th</sup> April, 2023** and **Kshs. 4,700,000.00** on **11<sup>th</sup> April, 2024**, leaving an outstanding balance of about **Kshs. 2,350,607.00** under clause **11**.
12. He further accuses the Trustees of mismanaging the estate, prioritizing their own legacies, failing to promptly invest rental income for the minors, leading to a claimed loss of **Kshs. 424,638.15**, and delaying or denying maintenance funds and medical support for his children.

13. He invoked section **83** of the Law of Succession Act, arguing that administration expenses should come from the estate as a whole and not from his specific bequest. He notes that he had a power of attorney over **USD 211,910.30** from the deceased before her death, showing her trust in his competence to manage her affairs.
14. The Applicant expresses concern that he and his minor children may never receive their full entitlements and therefore seeks: revocation/annulment of the current grant issued to the present Executors/Trustees; appointment of himself and his spouse, Lilian Aswani, as administrators of the remaining parts of the estate; immediate payment of the outstanding balance of his clause **11** legacy; and proper accounting and investment of the minors' rental income in line with the Will and the Trustee Act.
15. The application is opposed through a replying affidavit and further affidavit sworn on **19<sup>th</sup> May, 2025** and **27<sup>th</sup> September, 2025** by Genevive Mary Carpenter, who avers *inter alia* that she has the 1<sup>st</sup> Respondent's authority to swear on his behalf.
16. The Applicant she deposed has been regularly provided with audited estate accounts, bank statements and responses to all information requests; and that the Trustees have consistently paid school fees, medical costs and maintenance for the minors, including **Kshs. 50,000.00** for a medical emergency involving the Applicant's son in 2023.
17. Initially, estate accounts were operated jointly by all three Trustees, but after the death of the 2<sup>nd</sup> petitioner on **2<sup>nd</sup> September, 2023**, they were operated by herself and the

- 1<sup>st</sup> Respondent. Rental income has been prudently invested in treasury bonds i.e. **Kshs. 5,000,000.00** on **13<sup>th</sup> June, 2024** and **Kshs. 1,500,000.00** on **26<sup>th</sup> March, 2025**, to benefit the minors.
18. Following confirmation of the grant on **20<sup>th</sup> June, 2022**, the estate funded school fees, medical expenses and maintenance, amounting to **Kshs. 3,149,050.00**, but payments later ceased in 2023 after the Applicant allegedly shifted the entire of his family's expenses to the estate, risking the depletion of the minors' inheritance. The Trustees therefore began consolidating and investing funds.
19. The Applicant's bequest under clause **11** is a residuary legacy, payable only after clause **10** specific legacies and administrative expenses were settled. Total estate funds amounted to **Kshs. 19,522,109.10**, of which **Kshs. 5,850,000.00** went to clause **10** beneficiaries. Only motor vehicle **KCA 176X** qualified under clause **17** for liquidation towards expenses, but after initially agreeing to its sale, the Applicant objected citing that the vehicle was being used to ferry his kids to and from school.
20. As such, administrative costs, debts and funeral expenses were paid from estate funds, consistent with section **83** of the Law of Succession Act. She states that the Applicant has already received **Kshs. 9,700,000.00** as full payment of his entitlement i.e., **Kshs. 5,000,000.00** in **2023** and **Kshs. 4,700,000.00** in **2024**.
21. A further **Kshs. 139,821.60** was allocated for the gravestone, out of which **Kshs. 66,872.00** was paid to

him in December 2024, while **Kshs. 70,000.00** was reserved for the gravestone and bank charges.

22. Legal fees of **Kshs. 1,963,370.00** is said to be lawful administration expenses; although initially deducted from rental income, the Trustees later refunded that amount back to the rental account, once estate accounts became accessible. This was explained in the advocates' letter of **15<sup>th</sup> January, 2024**.
23. The Respondent asserts that despite receiving full payment, the Applicant remains dissatisfied and continues to make demands. He has admitted to being unemployed and resides with his family in House No. **10, L.R. 209/8874/36**, valued at **Kshs. 150,000.00** per month, thereby relying on the estate for his upkeep, which the Trustees fear may erode the minors' inheritance.
24. Accordingly, they propose that the Public Trustee be appointed as joint administrator together with the Applicant and his spouse, for the protection of the minors' interests. She further states that ABSA Account No. **2046771136** (Nanyuki Branch) has been operational since **28<sup>th</sup> July, 2022** and was jointly held by all three Trustees until the death of Mr. Hiuhu. The Applicant's claim that it was newly opened is refuted, and supporting correspondence from ABSA and Standard Chartered Bank is annexed.
25. The Applicant's legacy is affirmed to be residuary, payable only after demonstrative legacies and administration costs pursuant to section **83** and Schedule **1** of the Law of Succession Act.

26. Motor vehicle **KAT 239Q** was allegedly sold during the deceased's lifetime and never formed part of the estate. The Trustees deny any double-deduction of legal fees and assert that all legal and financial actions were conducted lawfully and transparently, in compliance with the will and statute.
27. Finally, she accuses the Applicant of interfering with estate administration, including making unauthorized visits to tenants and reiterates that the Trustees have acted in good faith, within the will and according to the Law of Succession Act.
28. The Applicant has not filed written submissions.
29. The Respondents have not filed written submissions placing reliance on, *inter alia*, the following:
  - a. **In Re Estate of JNG (Deceased) [2021] KEHC 2755 (KLR)** where the court stated as follows: “... ***since the bequests are to be held in trust, it is upon this court to ensure that the monies are not otherwise wasted or squandered at the behest of the subject minors. 36. In any event, under Article 53 of the Constitution, the Applicants also have equal parental responsibility over the subject minors. It is therefore not for them to rely entirely on the minors' bequests for the maintenance and upkeep of the minors. The Applicants should be alive to the fact that the person who worked and maintained these minors in a certain standard of life has long since died and the***

***Applicants must learn to cut their coat according to the cloth at hand.”***

- b. **Kennedy Opiche Olela v William Ogida Ochuodho & another [2014] KEHC 8809 (KLR)** where it was held as follows: ***“The Applicant has a duty to prove that any grounds set out in section 76 of the Law of Succession Act before the grant issued is revoked.”***

### **ANALYSIS AND DETERMINATION**

30. I have looked at the application before this court, the responses thereto and the filed submissions.

31. **In re Estate of Joshua Githiari Kibui (Deceased) [2021] eKLR** the court stated as follows:

***“18. For avoidance of doubt, Section 76 of the Law of Succession Act states as follows:***

***a. “76. Revocation or annulment of Grant***

***b. 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—***

***20. Further, In the Matter of the Estate of L A K - (Deceased) [2014] eKLR the court held that;***

***(a) Revocation of grants in governed by Section 76 of the Law of Succession Act. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.***

***32. The court in the case of Jamleck Maina Njoroge v Mary Wanjiru Mwangi (2015) eKLR at paragraph 11 of its ruling in revoking a grant reiterated the grounds upon which a grant can be revoked. It stated as follows:-***

***a. “11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the***

**grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”**

**33. In the case of Matheka and Another vs Matheka [2005] 2KLR 455 the Court of Appeal laid down the following guiding principles as to revocation of grants.**

***(a) “i. A grant may be revoked either by application by an interested party or by the court on its own motion.***

***(b) ii. Even when revocation is by the court upon its own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.”***

32. There is no dispute that the grant was properly obtained and confirmed on **20<sup>th</sup> June, 2022**. The legacies under clause **10** of the will legacies were duly paid. The Applicant has admitted receiving **Kshs. 9,700,000.00**. The Respondents have provided audited accounts & bank statement. Legal fees were later refunded though belated but actual investment of minors’ funds was done.

33. In view of the provisions of **Section 76** of the Law of Succession Act, the threshold for revocation of a grant is high and is only justified where there is fraud, concealment of material facts, defective proceedings, failure to diligently administer the estate or failure to render accounts.
34. From the facts provided, the Respondents have substantially administered the estate. Clause **10** legacies were paid, partial payment of the Applicant's clause **11** entitlement was made, audited accounts and bank statements were provided and investment of minors' rental income was eventually undertaken - all of which demonstrate ongoing administration.
35. While delays in payment, alleged double deductions of legal fees, late investment of minors' funds and inconsistent accounting may indicate administrative lapses, they do not, on their own, meet the legal threshold for total revocation.
36. I have strived to see whether the above minor lapses which I do not find they were caused by the Respondent's negligence sufficient reasons to allow the application. I do not think so. Every issue that has been demanded by the Applicant from the Respondent has been answered.
37. More importantly the Applicant has not questioned the audited accounts which were provided by the Respondent's and are contained in the replying affidavit. The accounts would have been a basis to confirm any wastage on the part of the executors.
38. If for instance the costs of tombstones were exaggerated the Applicant ought to provide what he thought was

reasonable and appropriate. It is not enough to say that the cost was high without counteracting with another option.

39. The sum total of my finding is that the Executors in the circumstances have remained within the Will of the deceased. It must be noted that the interest of the deceased grandchildren is paramount in this cause.
40. The debts and other liabilities as clearly submitted and as provided by the Act is always a priority in an estate.
41. The legal fees form part of that and the explanation of why there was double payment was sufficient in my view.
42. In the premises I do not find merit in the application. The suggestion of bringing in the Public Trustee to co-administer for now is premature.
43. **The application is otherwise disallowed with no order as to costs.**

**Dated signed and delivered at Nairobi via video link  
this 27<sup>th</sup> day of November 2025.**

**H K CHEMITEI  
JUDGE**