

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
SUCCESSION CAUSE NO E002 OF 2023
IN THE MATTER OF THE ESTATE OF JACKSON KURIA NGURE
(DECEASED)

JOSEPH NGURE KURIA.....
APPLICANT

VERSUS

JOSEPH NGURE KURIA.....1ST
RESPONDENT

MONICA WANJIRU KURIA.....2ND
RESPONDENT

R U L I N G

1. A grant of letters of administration intestate in this cause was issued on 09/10/2023 to **Joseph Ngure Kuria** and **Monica Wanjiru Kuria**, the Respondents herein. The grant was subsequently confirmed and a certificate of confirmation of grant dated 03/12/2024 issued. Under that certificate, the Respondents herein and **Margaret Wangari Kuria** and **Isabel Wangari**

Kuria were named as the beneficiary of the estate of the deceased comprising the following properties;

- i. Title No. LR 4762/1 and 4762/8/3

2. A summons for revocation of grant dated 19/05/2025 was subsequently filed by the Applicant herein. In the summons, the Applicant is seeking for orders that;

- i. Grants of letters of administration issued to the Respondents on 09/10/2023 and confirmed on 03/12/2024 be revoked or annulled.
- ii. Another grant of letters of administration in respect of the estate of the late Jackson Ngure Kuria be issued in the joint names of the administrators and the Applicant.
- iii. Costs of this application be provided for.

3. The application is based on the grounds on the face thereof and is supported by an affidavit sworn by the Applicant. He deponed that his late father, Joseph Ngure Kuria had married another wife, Margaret Wangari Kuria who filed a succession case at *Nairobi Succession cause No. 222 of 2000* and he was not included in that suit and when he approached his step mother, she promised him that he would get an acre of land from the

portion bequeathed to Jackson Ngure Kuria, the deceased herein being plot No. L.R No 4762/1 and 4762/8/3. That she made it clear that that was her wish and he attached the recorded wishes dated 03/07/2014 of his stepmother. That his stepbrothers and step sisters are aware of this arrangement and in various meetings, the children of the deceased herein were informed of their grandmother wishes and they did not seem to have any objection. That he was surprised that the succession case was filed without involving him and involved their mother who had been declared persona non grata on the family estate. That the grant was obtained fraudulently by stating that Monica Wanjiru Kuria was the deceased's widow according to the gazette notice dated 08/09/2023 whereas she is a daughter of the deceased. That he has an interest in the stated deceased's properties hence the grant should be revoked so that his interest is noted and he bequeathed the same.

4. In opposing the application, the Respondents filed a replying affidavit dated 24/06/2025. They deposed that the Applicant is a stranger having no known involvement with the deceased or their family and did not produce documentary

evidence to demonstrate the alleged connection to the deceased nor did he establish his status as a lawful beneficiary of the estate. That he lacks *locus standi* as he does not fall under the category of beneficiaries contemplated under **section 29** of the **Law of Succession Act** as he was not a child of the deceased, spouse nor was he ever maintained by the deceased during his lifetime and therefore, he has no legal or equitable claim against the estate.

5. That his claim on the promise made by the deceased's mother bequeathing him one acre from the deceased's estate is vague and legally untenable as it is unsupported by any valid or binding legal instrument and has failed to provide any cogent or corroborative evidence to support the existence or enforceability of such trust or promise. That there was delay in filing the application as the deceased died in 2014 and the grant was confirmed in 2025 and he has not offered an explanation why he waited for a decade to file this claim. Further, he has failed to satisfy the conditions under **section 76(c)** of the **Law of Succession Act**.

6. They further deponed that the attached document allegedly authored by Margaret Wangari Ngure is not a valid testamentary instrument within the meaning of **section 11** of the **Law of Succession Act** since it was not authored by the deceased himself, does not meet the requirements of a valid will and the same cannot operate to dispose of property belonging to another person as it is a fundamental principle of law that one cannot will away or distribute property they do not own. Hence, the alleged promise made by Margaret Wangari Ngure cannot create enforceable rights against the estate of the deceased. That allowing the application will cause serious prejudice to the lawful beneficiaries who have already acted upon the confirmed grant and it will introduce unnecessary confusion, instability and conflict into a process that has already been finalised.

7. The Applicant filed a further affidavit and maintained that he is not a stranger to the family as he was the deceased's step brother. That his stepmother was the administrator of their father's estate and therefore she left clear instructions that he get one acre from the deceased's estate since the deceased had benefited more from the estate than any other person and the

family has always agreed that that was the position and he waited to be informed of the filing of the cause but they filed behind his back.

8. The application was canvassed by way of written submissions. The Applicant submitted that the Petitioners lied to this court when they described the 1st petitioner as a widow to the deceased whilst she was a daughter and this was meant to hoodwink the court since during the deceased's lifetime, the two were living separately and there were clear instructions that she should not have any interest in the deceased's estate. That a family meeting was held and it was acknowledged that his stepmother had left clear instructions that he be bequeathed one acre hence the Respondent's herein are estopped from denying the existence of his claim. That the instructions were given and documented in the presence of Hellen Wanja Ngure, Patrick Gitonga Ngure and Stephen Kabira and this constituted an oral will as she died hardly 3 months afterwards. That he can be termed as a creditor to the deceased's estate as his step mother had bequeathed him the one acre and the same is held in trust by the administrators herein.

9. The Respondents on the other hand submitted that the Applicant lacks locus standi in law as he alleges to be a step brother to the deceased and this does not entitle him to a share of the estate under **section 29** of the **Law of Succession Act** as he does not fall under the categories of beneficiaries contemplate under the said section. He is a complete stranger to the Respondents having no known involvement with the deceased or their family during the deceased's life time. That he alleged that he was a son to the late Joseph Ngure Kuria whose succession was undertaken in *Succession Cause No. 222 of 2000* hence he ought to pursue the said succession cause and not through an indirect challenge to the estate of the deceased herein. That upon confirmation of grant in the Estate of Joseph Ngure Kuria dated 12/03/2013, properties forming part of his estate were duly distributed and passed to the deceased herein hence the property forming part of this succession cause legally belongs to the deceased herein and the Applicant and his mother cannot lay claim or attempt to revoke the grant in order to will away the property that does not belong to them.

10. Counsel submitted that the Applicant has failed to satisfy the conditions under **section 76(b)** and **(c)** of the **Law of Succession Act** and he failed to offer a plausible reason why he waited nearly a decade to file this claim. This court is functus officio as it had already made its decision. That the Respondents did not misrepresent or falsify the identify of Monica Wanjiru Kuria as the documents filed in court including the chief letter identified her as a daughter of the deceased and not a spouse. Additionally, it is on record that the deceased's wife has not participated in this succession cause and has not been listed or considered as a beneficiary or dependent hence, the Applicant's claims are not only false but a deliberate attempt to discredit the integrity of the succession process and divert the court's attention from the substantive issues.

11. He submitted that the document attached by the Applicant falls short of a valid will as it was not authored by the deceased herein and failed to meet the requirements of a valid will including capacity of the testator, proper execution and attestation. Furthermore, it cannot operate to dispose of property belonging to another person hence such promises made by

Margaret Wangari Ngure do not create enforceable rights against the estate of the deceased. Further, the document is falsified since at the material time the Applicant alleges the written wishes were authored, Margaret Wangari Ngure was medically incapacitated and admitted in hospital rendering her incapable of drafting, signing or communicating such intentions. That she passed on 11/07/2014 contrary to the Applicant's assertions that she was discharged from hospital on 15/07/2014.

12. I have considered the application, the response by the Respondents and the rival submissions by the parties herein. The issue for determination herein is whether the Applicant's application meets the threshold for the revocation of a grant within the meaning of **Section 76 of the Law of Succession Act**. The section states as follows;

76. Revocation or annulment of grant

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.”

13. The court in ***re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR)*** expounded on the grounds for revocation of grant and held as follows;

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process

of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

14. In ***Albert Imbuga Kisigwa v Recho Kavai Kisigwa, Succession Cause No.158 OF 2000***) the court view was that the power to revoke grant is discretionally and stated thus;

“The power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound 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 for revocation or annulment of a grant. And when a court is

called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice."

15. The Applicant invited this court to revoke the grant for reasons that his step mother, Margaret Wangari Ngure and who was the deceased's mother had stated that he acquires one acre of land from the deceased's estate. He attached the written promises and he submitted that the same constituted an oral will as she died three months thereafter. He further stated that the Respondent lied to this court since they had described the 2nd Respondent as a widow of the deceased in the gazette notice whereas she was a daughter.

16. It is to be noted that the pleadings on record shows that the 2nd Respondent is stated to be a daughter to the deceased. The gazette notice however stated that she was a widow and I believe this was an error. It is also noted that though the deceased's widow was mentioned in the chief's letter and she gave consent as to the distribution of the deceased's estate, she is not a beneficiary as per the confirmed grant.

17. With respect to the fact that his step mother had wished that he gets one acre of land from the deceased's share, it

is to be noted that the deceased herein legally acquired the subject property from the estate of his father Joseph Ngure Kuria in *Succession Cause No. 222 of 2000* filed in Nairobi as there is a certificate of confirmation of grant on record dated 12/03/2013. Having so acquired, the subject property legally belonged to him and so the mother to the Applicant, Margaret Wangari Kuria could not bequeath the subject property to the Applicant herein. As submitted by the Respondents, the principle of *nemo dat quod non habet* (one cannot give what they do not have) applies here.

18. If the Applicant believed that he is entitled to the properties of their father, Joseph Ngure Kuria, his claims lies in that estate and not the estate of the deceased herein.

19. The Applicant urged this court that he be treated as a creditor and made a proposition that the promises that the said Margaret Wangari made constitute an oral will.

20. Section 9 (1) of the Law of Succession Act provides;

No oral will shall be valid unless:

(a) It is made before two or more competent witnesses and

(b) The testator dies within a period of three months from the date of making the will.

21. The Applicant claimed that Margaret died hardly three months after making the utterances and that the instructions were given and documented in the presence of Hellen Wanja who was a daughter, Patrick Gitonga who was a son and Stephen Kabira who was a family friend. It is to be noted that none of these witnesses filed an affidavit to substantiate his claim. In any event, a person with the potential of benefitting from an estate is not qualified as a witness to Will.

22. The Court of Appeal in ***Ngoima v Wambeti & another*** [2025] KECA 1477 (KLR) held that;

“Moreover, under Section 51(3)(b) of the Law of Succession Act where it is alleged that the deceased left a valid oral will “the names and addresses of all alleged witnesses shall be stated in the application.” No such information was provided. Furthermore, Section 9(1) of the Law of Succession Act provides that no oral will shall be valid unless it is made before two or more competent witnesses; and the testator dies within a period of three months from the date of making the will. To buttress the importance of proof with respect to oral wills, it is provided in Section 10 of the Act that if there is any conflict in evidence of witnesses as to what was said by the deceased in making an oral will, the oral will shall not be valid except so far as its contents are proved by a competent independent witness. In that regard, no independent witnesses were called. As the learned Judge correctly stated the initial administrators did not call

independent witnesses to testify on the said oral will and “in the absence of competent independent witnesses (not beneficiaries) who testified, this Court cannot confirm the existence of such Will and its validity.”

23. The law of succession Act is explicit on the rightful beneficiaries of a deceased's estate on intestacy. Where a deceased is survived by a spouse and children, the surviving spouse/spouses get a life interest with the children becoming entitled to the ultimate inheritance. If there be no wife or children, the estate devolves to other relatives in the order; parents, siblings, half siblings, descendants of siblings all the way to the 6th degree of consanguinity.

24. Our courts have time without number laid the matter to rest on who is a rightful beneficiary. **In Re Estate of Lenah Wanjiku Gathuri (deceased) 2021 eKLR**, the court while addressing a claim by a grandchild stated that in the absence of a valid will, such a child was not entitled to claim directly from the estate.

25. In **Re Estate of Kiboi Waiganjo**, the court rejected attempts by a daughter in law and a grandson to lay a claim on the estate of the deceased.

26. For the Applicant in this matter to have any locus to seek the revocation of the grant herein, he was bound to establish that he was an entitled beneficiary and the grant was obtained without involving him. He has failed to establish the former and the later becomes a non-issue.

27. The legal requirements for revocation of a grant provided under Section 76 of The Law of Succession Act have not been met, and in the circumstances, the application herein cannot see the light of day.

28. With the result that the application lacks merit and is dismissed. I direct that each party bears its own costs.

Dated signed and delivered virtually this 28th day of November 2025.

A.K. NDUNG'U

JUDGE