

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO. 379 OF 2011
IN THE MATTER OF THE ESTATE OF LUCHERI KWALANDA (DECEASED)
AND
REBECCA MICHELLE
MARK.....PETITIONER/RESPONDENT
VERSUS
EVALINI NASHIMIYU
KHAKAYA.....OBJECTOR/APPLICANT
RULING

1. The application before this Court is a Summons for Revocation of Grant dated, brought by Evalyne Nashimiyu Khakaya. The Applicant seeks the following orders:
 - a. THAT the application be certified as urgent and service be dispensed with in the first instance.
 - b. THAT a prohibitory order be issued against title No. S.KABRAS/CHEMUCHE/565 & 2148.
 - c. THAT the grant of letters of administration and certificate of confirmation issued to Rebecca Michelle Mark be revoked.
 - d. THAT all subsequent activities undertaken after the issuance of the said grant be declared void.
 - e. THAT the costs of the application be provided for.
2. The application is supported by the annexed affidavit of the applicant and is premised on the grounds that the grant was obtained fraudulently through the concealment of material facts and the making

of false statements, and that the proceedings to obtain it were defective in substance.

3. The complicated history of this matter, as observed from the court record and affidavits, reveals a troubling pattern of inconsistencies and potential mischief in the administration of the estate of the Deceased.
4. There is a conflicting evidence on death and beneficiaries. The record contains two death certificates for the same deceased person, indicating different dates of death, that is, 4th October 2009 (Cert. No. 253381) and 29th March 1976 (Cert. No. 68 534).
5. Furthermore, there are three conflicting lists of beneficiaries from official sources. A Chief's letter dated 15th March 2011 lists 9 beneficiaries, including 5 daughters and 3 daughters-in-law. An affidavit by Zipporah Katambani dated 13th June 2011 lists 10 beneficiaries, all described as daughters or daughters-in-law. Another Chief's letter dated 12th June 2009 states the deceased died in 1976 and left only two beneficiaries, that is, Zipporah, the daughter-in-law, and Rebecca also a daughter-in-law.
6. There are questionable grant proceedings where Zipporah Katambani initially petitioned for letters of administration, claiming all other beneficiaries had renounced their rights in her favour.
7. Allegations of fraud and exclusion is expressed by Wayeta Lucheli, who claims to be a biological daughter of the deceased. She has filed a witness statement asserting that she and her sister, Jane Nanzala,

were excluded from the succession process entirely. She avers that the administrators are selling the land without consulting the true beneficiaries. The applicant, Evalyne Nashimiyu, claims to be a surviving daughter-in-law, who had been married to the deceased's son, Nandi Chikamai (deceased) who was also deliberately excluded from the process. She alleges the respondent has since remarried and has no rightful claim to the estate, yet has proceeded to sell portions of the land.

Analysis

8. The application is brought pursuant to **Section 76 of the Law of Succession Act (Cap 160)**, which provides grounds for the revocation of a grant, including:

“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

(ii)to proceed diligently with the administration of the estate”

9. The scope and application of section 76 was expounded by the court **In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR** where it was stated that:

“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.”

10. It is mandated that letters of administration cannot be granted to an applicant except where a notice has been issued to every person of priority in relation to the list of beneficiaries. This was **held in re Estate of Chabari M'Barigi (Deceased) (Succession Cause 315 of 2015) [2025] KEHC 4653 (KLR) (25 March 2025)**, that:

“Rule 26 (1) of the Probate and Administration Rules provides that:

Letters of Administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant. The rule further requires that where a person is applying for grant of letters of administration intestate, he must get consent from persons of equal or lower priority than him.”

11. Furthermore, the duty of an administrator is to represent the interests of the entire estate and all its beneficiaries. The conduct of the administrators in this case must also be measured against Section 83 of the Law of Succession Act, which outlines the duties of a personal

representative, including the obligation to administer the estate according to law and to provide a full and accurate inventory of the assets and liabilities. In re Estate of **John Muraya Githinji (Deceased)** [2025] KEHC 3351 (KLR), the court held that:

“Section 83(e)(f) and (g) of the Law of Succession Act, provides for duties of administrators as follows:

(e)within six months from the date of the grant, to produce to the Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

(f)subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;

(g)within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.”

Findings

12. The grant was obtained fraudulently and through concealment. The existence of multiple, irreconcilable lists of beneficiaries, all purportedly from official sources, points to a deliberate effort to mislead the court. The exclusion of the applicant and Wayeta Lucheli, who have presented prima facie evidence of their status as

dependants, constitutes a material concealment. This is a classic case falling squarely within the ambit of Section 76(b) of the Law of Succession Act. The grant is fundamentally tainted. Regarding allegations of fraud and forgery in succession matters, in **Vijay Morjaria v Nansingh Madhusingh Darbar & Another [2000] eKLR**, the court held:

“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 facts.”

13. The proceedings were defective in substance as the petition for the grant was founded on an incomplete and inaccurate presentation of the deceased's family. A proper and complete list of all the children and dependants of the deceased was never established. This failure renders the entire process defective under Section 76(a) of the Law of Succession Act. The court cannot sanction a process that disinherits individuals who may have a legitimate claim. This is in line with what was held **In Re Estate Of Julius Ndubi Javan (Deceased) [2018] Eklr**, where the court stated that:

“The primary duty of the probate court is to distribute the estate of the deceased to the rightful beneficiaries.”

14. On the aspect of failure in administration, the allegations that the administrators have been selling land without the knowledge or consent of all beneficiaries, if proven, constitute a gross abuse of the trust reposed in them as administrators. This is a further ground for revocation.

Orders

15. In the interest of justice and to preserve the sanctity of the succession process, this court must intervene decisively to protect the estate for the benefit of all rightful claimants. The application by Evalyne Nashimiyu Khakaya has substantial merit.

16. Accordingly, I hereby allow the application in the following terms:

a. A prohibitory injunction is hereby issued against the properties known as Title No. S.KABRAS/CHEMUCHE/565 and 2148. The Land Registrar, Kakamega County, is hereby directed to register a caveat against the said titles, forbidding any sale, transfer, charge, lease, subdivision, or any other dealing whatsoever in the said properties until this succession cause is fully and finally determined, and a proper grant issued and confirmed. This order is essential to preserve the subject matter of the litigation.

- b. The grant of letters of administration issued to Rebecca Michelle Mark and the subsequent certificate of confirmation of grant, are hereby revoked and annulled.
 - c. All transactions, including any purported sale of 4.3 acres to Emily Atsinga Ambundo and 2 acres to Peter Lucheli, conducted on the basis of the now-revoked grant, are hereby declared null and void ab initio.
17. No new grant of letters of administration shall be issued until the following conditions are met to the satisfaction of this Court:
- a. A fresh, comprehensive, and verified letter from the Chief of East Kabras Location shall be filed, clearly identifying all the surviving children and dependants of the late Luchiri Kualanda.
 - b. Any person named as a beneficiary who wishes to renounce their interest in the estate must file a written and signed renunciation document in the prescribed form.
 - c. All identified beneficiaries with a beneficial interest shall be required to be physically present at the mention of this case for the court to ascertain the remaining beneficiaries and their respective consents.
18. The Applicant appointed as the administrator, to file fresh summons for confirmation within 90 days.
19. Mention 13.5.2026 for further directions.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS
26TH DAY OF NOVEMBER, 2025.**

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a