

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO 441 OF 2002
IN THE MATTER OF THE ESTATE OF THE LATE JOSHUA MANGULA
OSORE (DECEASED)

ALBERT SORE MANGULA.....
PETITIONER

VERSUS

JOSPHAT WANANGWE NASITSI.....
OBJECTOR

AND

MALLACK MISIKO
ANANGWE.....APPLICANT

RULING

1. The Applicant, Mallack Misiko Anangwe, by a Summons dated 19th April 2023, seeks the following orders:
 - a. That the grant of letters of administration issued to Albert Sore Mangula on 23rd October 2013, and confirmed on 27th March 2014, be revoked and/or annulled.
 - b. That a fresh grant be issued jointly to Albert Sore Mangula and Mallack Misiko Anangwe as co-administrators.
2. The application is grounded on allegations of concealment of material facts, false statements, exclusion of beneficiaries, and that Albert Sore, has attempted to evict the applicant and his family from the suit land MARAMA/LUNZA/54.
3. The issues for determination are:

- a. Whether the grant issued to the petitioner was obtained through concealment of material facts or misrepresentation.
 - b. Whether the succession cause was filed without the knowledge and participation of all beneficiaries.
 - c. Whether the grant should be revoked under Section 76 of the Law of Succession Act.
 - d. Whether a fresh grant should issue jointly to the parties.
4. Section 76 of the Law of Succession Act, provides that:

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;

5. On concealment of material facts, the chief's letter dated 2nd September 2002 that was relied upon listed only three children of the deceased. Evidence now before the court, including the corrected

letter from the Chief dated 13th March 2015, witness statements from relatives and neighbours, the applicant's affidavit, and the Land Registry records of 23rd February 2016, demonstrate that the deceased had five children, namely:

- a. Nathan Namayi (Deceased)
- b. Albert Osore,
- c. Wilsham Mangula (Deceased)
- d. Evelyne Matseshe (communicated that she wished not to be included in the succession plan)
- e. Beletina Makhokha (Deceased)

6. In the case of **Albert Imbuga Kisigwa v Recho Kawai Kisigwa, Succession Cause No.158 OF 2000**, Mwita J. made remarks on the guiding principles for the revocation of a grant. He stated;

“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 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 beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

7. It is not disputed that the two daughters moved out after marriage but that does not extinguish their status as survivors of the deceased. This was established **in re Estate of Kipyegon Arap Chepkwony (Deceased) (Succession Cause E018 of 2020) [2025] KEHC 1239 (KLR)**, that:

“ It is the finding of this court that the resolution by the panel of elders is an affront to the principles of equality entrenched in the Constitution and therefore the estate of the deceased should be distributed in accordance with section of 38 the Law of Succession Act which provides as follows; “Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.” The said section mandates equal inheritance for all the children of the deceased irrespective of gender. In re Estate of Francis Andachila Luta (Deceased) (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment) Musyoka J stated as follows; “Let me revisit section 38 of the Law of Succession Act. It provides for equal distribution of the estate amongst the children. The language of section 38 is gender neutral. It does not classify children into male and female, nor sons and daughters, nor men and

women. There is no discrimination nor differentiation nor classification nor categorization along gender lines. That would mean that sons and daughters of a dead person are entitled on equal basis to a share in the estate of their dead parent. Section 38 does not make marriage a factor in the distribution of the estate of a dead parent. Gender and marital status are factors under customary law, but not under the Law of Succession Act. The estate herein is not subject to customary law, for the reasons that I have discussed in paragraphs 13, 14 and 15 a foregoing. The estate is subject to the Law of Succession Act, which is blind on biases founded on gender and marital status.”

The petitioner therefore concealed material facts.

8. Further, the Albert Sore allegedly stated that Wilsham objected to the succession in 2002, yet Wilsham died in 1992, that is ten years earlier. This is a clear misrepresentation, contrary to Section 76(a) & (b) of the laws of Succession Act. In the case of Jamleck Maina Njoroge v Mary Wanjiru Mwangi (2015) eKLR the court discussed circumstances when a grant can be revoked. The court observed:

“ 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.”

9. It is established that there was lack of participation of beneficiaries as the applicant, and even the widow of Nathan Namayi, testified that they were not aware of the succession cause, did not sign any consent forms, were living on the suit land at the time, and that they were later evicted after confirmation of the grant. A grant obtained without notifying all beneficiaries is irregular, as held in **Re Estate of Prisca Onyango Nande (deceased) (2020)** that:

“A grant 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 of letters of administration intestate was made instead of a grand of probate or vise vesa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such where some survivors are not

disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second is where the grant was obtained procedurally but he administrator failed or fails to apply for confirmation of grant within the time allowed. The third is where the grant has become useless and inoperative following subsequent circumstances...”

The omission goes to the root of the process and invalidates the grant.

10. On whether the suit parcel belonged to the deceased, the land record shows that MARAMA/LUNZA/54 was registered in 1967 in the name of Joshua Mangula and subsequently, the Respondent as administrator. MARAMA/LUNZA/52 was separately owned by Wilsham. Other parcels, MARAMA/BUCHENYA/475 and MARAMA/LUNZA/51, were acquired independently by other family members and thus not part of the estate. Therefore, MARAMA/LUNZA/54 is the only estate property and should have been shared among all children of the deceased.

11. The following are proved:

- a. False statements regarding number of beneficiaries;
- b. Misrepresentation that Wilsham Mangula objected in 2002;
- c. Exclusion of beneficiaries;
- d. Improper inclusion of properties.

This aligns with Section 76(a), (b) and (c) of the Laws of Succession Act.

12. The law is clear that grandchildren can inherit the estate of their grandparents through their parents. In the case of **Re Estate of Florence Mukami Kinyua (Deceased) (2018) eKLR** Matheka J stated:

“A grandchild is a direct heir to the estate of the grandparent where the parent predeceased the grandparent. The grandchildren get into the shoes of their deceased parents and take the parents’ share in the estate of the grandparents. This was stated in Re Estate of Wahome Njoki Wakagoto (2013) eKLR where it was held:-Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

13. In **Re Estate of Wahome Njoki Wakagoto (2013) eKLR** it was held:

“Under Part V, grandchildren have no right to inherit their grandparents who died intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

- 14.** In the instant case, the applicant, in the summons for revocation of grant, is a child of a dead son of the deceased herein. The applicant is claiming directly by dint of **In re Estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR (Musyoka J)** and **In re Estate of Florence Mukami Kinyua (Deceased) [2018] eKLR (T. Matheka J)**, and does not require to take out letters of administration to intervene in the estate of her late grandfather, where her own parents are dead. Secondly, apart from case law, the provisions of the Law of Succession Act cover these situations. Section 39 of the Law of Succession Act makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Section

41 of the Law of Succession Act is the provision that enables grandchildren to step into the shoes, of their own parents, and to step into those shoes they need not take out letters of administration.

15. \Given the history of eviction, disputes, and mistrust, a joint grant is appropriate. Each branch of the family needs representation

16. In **Re Estate of Makokha Idris (2019) eKLR**, Justice Musyoka stated as follows concerning the position of administrators:

“It must be stated that even though there are four administrators in places in law there is only one administration or representation to the estate of the deceased. The four administrators hold one grant, which appoints all four of them as administrators. None of them holds a grant which makes them the sole administrators of the estate. Since there is only one administration, and not four, it behaves the four administrators to act as one with regard to managing the estate of the deceased. Responsibilities and duties must be shared. They must agree on the management of the assets. They must take a common stand on the expenses of administration and on the settlement of liabilities and debts and other outgoings. It should not be the business of one or a section of the administrators to make decisions on behalf of the estate, that falls upon all four of them... The powers conferred on administrators by section 82 of the Law of

Succession Act are exercisable by all the four administrators named in the grant, and all the duties imposed on administrators by section 83 of the Act fall on all four the administrators. The four cannot purport to act singly or solely, unless, of course, there has been delegation of responsibility.

17. The applicant has established valid grounds under Section 76 of the Law of Succession Act. The grant issued to the Respondent on 23rd October 2013, and confirmed on 27th March 2014, was obtained by concealment and misrepresentation, and without involvement of all beneficiaries.

ORDERS

18. The grant of letters of administration intestate issued on 23rd October 2013 to Albert Sore Mangula is hereby revoked.

19. The certificate of confirmation of grant dated 27th March 2014 is similarly annulled.

20. A fresh grant of letters of administration intestate shall issue jointly to:

- a. Albert Sore Mangula, and
- b. Mallack Misiko Anangwe.

21. The new administrators shall, within 60 days, file:

- a. A full inventory of all assets and liabilities of the estate, and
- b. A proposed mode of distribution strictly compliant with the Law of Succession Act.

22. Pending re-distribution, status quo on occupation of MARAMA/LUNZA/54 shall be maintained.
23. Costs of the application shall be in the cause.
24. Right of Appeal 30 days.
25. Mention 13.5.2026.

**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

Parties present.