

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE NO. 291 OF 2013
IN THE MATTER OF THE ESTATE OF ROBERT NDIRITU
KARONJI alias ROBERT NDERITU KARONJI (DECEASED)

PUBLIC TRUSTEE..... PUBLIC
TRUSTEE

VERSUS

MARGARET WANJIRU NDERITU.....
APPLICANT

JUDGMENT

1. By the summons for revocation of grant dated 24.2.2021, the Applicant sought for the following reliefs:
 - a) That the Grant of Letters of Administration Intestate made to the Public Trustee and confirmed on 30.7.2014 be revoked and/or annulled and the same be issued to the Applicant herein alone or with another beneficiary.
 - b) The title deed issued to the beneficiaries herein be cancelled
 - c) The costs be provided for.

2. The summons was supported by the Affidavit of the Applicant and was based on the following Grounds:

- (i) The Applicant was a daughter of the deceased and beneficiary of the estate.
- (ii) The proceedings were defective
- (iii) The Grant was issued through concealment of material facts
- (iv) The Grant was conformed based on forged consent
- (v) The Applicant was disinherited
- (vi) The Applicant recently learnt of the succession completion from one Charles Karonji Nderitu who had returned from serving a prison term.

3. The Public Trustee as Respondent filed a Replying Affidavit 22.8.2025 and sworn by the state counsel, Laura Bwagasi by which it was deposed as follows:

- a) That the Applicant was listed as a beneficiary but she failed to bring and furnish her national identity card when required to do so.
- b) The Applicant also refused to attend a meeting with the Public Trustee on 5.3.2014 when the family agreement was executed.
- c) The distribution was in accordance with the wishes of the deceased of which the Applicant was aware.
- d) The public trustee only executed instructions received from the beneficiaries.
- e) Nothing prevented the Applicant from visiting the public trustee office for information.

f) The public trustee conducted the process diligently and lawfully.

Submissions

4. The Applicant filed submissions dated 28.5.2025. it was submitted that the Applicant was entitled to a share in the estate. she was only given Ksh. 51,000/= out of the estate.
5. The Applicant submitted that there should be a provision for the Applicant as an entitled heir of the deceased. No authorities were, however cited.
6. The Public Trustee did not file submissions.

Analysis

7. The Applicant, daughter of the deceased questioned the Grant as confirmed. The issue for determination is whether the summons for revocation should be allowed and the mode of distribution done by the Public Trustee set aside. Section 51 of the Law of Succession Act, requires a person seeking to administer the estate of a person who died in 1980, as in this case where the deceased died on 28.8.2011 has to comply with section 51(2)(g) of the Law of Succession Act and Rule 7(1)(e) of the Probate and Administration Rules, which require disclosure of all the children of the deceased.

8. A perusal of the summons for confirmation of grant dated 28.5.2014 reveals that the Applicant was listed as a daughter and beneficiary. The Public Trustee has not disputed this fact.
9. The deceased is also said to have left 5 children. There is no information on the widow or widows.
10. The reason the Public Trustee gave as to justify the exclusion of the Applicant who was daughter of the deceased from the summons for confirmation of grant and the distribution list was that the Applicant declined to present her national identity card despite requests. The court finds no reason why the Public Trustee contented that the Applicant was a daughter of the deceased and beneficiary but contest that she was entitled to share as a beneficiary due to failure to avail a national identity card. There was no evidence that the Applicant renounced her share in the estate. The Applicant was one of the three daughters and two sons of the deceased and I note the other two daughters received a share from the estate.
11. Therefore, this court has to establish a basis to revoke the grant and interfere with the mode of distribution proposed in the certificate of confirmation of grant as urged by the Applicants. The Grounds for revocation or

annulment of grant of Letters of Administration are set out in Section 76 of the Law of Succession as follows:

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.

12. It is the proven case of the Applicant that she was disinherited. I decline the allegation that the Applicant was disinherited because she did not present a national identity card. A national identity card was not superior to the right to inheritance. In any event, it was not in dispute that she was the daughter of the deceased and had not renounced her right to inherit from her father. Nonetheless, there was no material placed before the court to demonstrate that the Public Trustee requested the Applicant to furnish a national Identify Card. What if she did not have the National Identity Card at that moment? I do not classify the reason granted by the Public Trustee to carry weight enough to warrant disinheriting the Applicant. I find basis in revoking the grant. The law governing applications for confirmation of grant is section 71 of the Law of Succession Act and Rules 40 and 41 of the Probate and Administration Rules. The proviso to section 71, as read together with Rule 40(4),

is that the administrator applying for distribution must satisfy the court that they have properly ascertained the persons beneficially entitled to a share in the estate and have properly ascertained the shares due to such beneficiaries. The effect of it is that the court then incurs a duty to be satisfied, before it confirms the grant, that the administrator asking for confirmation, has properly ascertained the persons beneficially entitled to a share in the estate and the shares due to such beneficiaries.

13. The public trustee had to exercise discretion on the basis of the law and not on their own aspiration of what the justice of the case would be. Court of Appeal, in Elizabeth Chepkoech Salat v Josephine Chesang Chepkwony Salat [2015] eKLR, held that: -

...Where a matter is contentious and the parties have not reached a consent judgment, the court is bound to apply the statutory provisions. More specifically, the court has no power to substitute the statutory principles for its own notion of what is an equitable or just decision. However, court has a limited residuary discretion within the statutory provisions to adjust the share of each house or of a beneficiary where, for instance, the deceased had during his lifetime settled any property to a house or beneficiary or to decide which property should be disposed of to pay liabilities

of the estate or to determine which properties should be retained by each house or several houses in trust.

14. The proceedings were therefore defective in substance for failure to provide for a beneficiary who was clearly entitled.

15. To cater for the interest of the Applicant, I set aside the confirmed grant and cancel the title deeds that may have emanated from the faulty succession process. I also direct the proceed to commence a fresh taking in to account the interest of the Applicant.

16. Based on the above disposition, the summons for revocation of grant is merited.

Determination

17. In the upshot, I make the following Orders:

- (i) The Grant of Letters of Administration dated 12.06.2013 is revoked.
- (ii) A fresh Grant is hereby issued to the Public Trustee as administrator of the estate of the deceased to commence distribution of the estate a fresh.
- (iii) The registration and transfer the following parcels of land, if already completed pursuant to the aforesaid Grant is hereby cancelled and the same to revert to the name of the Deceased Robert Ndiritu Karonji alias Robert Nderitu Karonji:

- (a) LR No. Mweiga/Block II/Ikumari/527
 - (b) LR No. Laikipia/Ngobit/Supuko/Block II
(Wiumiririe)/ 2114
 - (c) LR No. Mahiga/Kihome/632
 - (d) LR No. Laikipia/Ngobit/Supuko/Block 2
(Wiumiririe)/ 1535
 - (e) LR No. Laikipia/Ngobit/Supuko/Block 2
(Wiumiririe)/ 2359
 - (f) All shares in ICDC Investment Company and Kenya
Breweries Limited
- (iv) The Public Trustee shall within 60 days hereof file fresh summons for confirmation of the grant naming all properties and beneficiaries of the deceased with their respect shares taking into regard the share of the Applicant.
- (v) Each party to bear own costs.

DELIVERED, DATED and **SIGNED** at Nyeri, Virtually on this **19th** day of **November, 2025**. Judgement delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Kimani for the applicant

No appearance for the Respondent

Beneficiaries present
Court Assistant - Michael