



**In re Estate of John Ottenyo Amwayi (Deceased) (Succession Cause 2345 of 1995)  
[2025] KEHC 17742 (KLR) (Family) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17742 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2345 OF 1995  
CJ KENDAGOR, J  
NOVEMBER 27, 2025  
IN THE MATTER OF THE ESTATE OF JOHN OTTENYO AMWAYI (DECEASED)**

**BETWEEN**

**EVAH NANGA AMWAYI ..... 1<sup>ST</sup> APPLICANT**

**STEPHEN ANANDA AMWANYI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MARGARET EKUYI AMWAYI ..... 1<sup>ST</sup> RESPONDENT**

**DAVID NICKSON TUTI AMWAYI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This estate relates to John Ottenyo Amwayi who died on 28<sup>th</sup> June, 1995. Letters of administration intestate were granted to Margret Ekuyi Amwayi and David Nickson Tuti Amwayi and subsequently confirmed on 27<sup>th</sup> April, 2016.
2. The application dated 15<sup>th</sup> August, 2025 is the subject of this Ruling. It was filed by Evah Nanga Amwayi and Stephen Ananda Amwayi, who are listed as beneficiaries in the application for the grant and certificate of confirmation of the grant. It seeks the following orders;
  - i. That this application be certified urgent and heard on a priority basis;
  - ii. That pending the hearing and determination of this summons application inter partes, a preservation order in the nature of an injunction be and is hereby issued restraining the Respondents herein either by themselves or through their agents, servants, employees, or any 3<sup>rd</sup> party claiming through them from sub-dividing, alienating, disposing of, or otherwise engaging in wasteful activities on the following estate properties:



- a. Isukha/Shirere/1906;
  - b. East/Bunyore/Ebuchitwa/454;
  - c. East/Bumyore/Ebuchitwa/2363;
  - d. Kitale Municipality Block 17/Bidii/1048;
  - e. Kitale Municipality Block 17/Bidii/1047.
- iii. That the grant of letters of administration intestate issued on 29<sup>th</sup> November, 1995 and confirmed vide certificate of confirmation of grant dated 27<sup>th</sup> April, 2016 to the respondents herein be and is hereby revoked/annulled;
  - iv. That fresh grant of letters of administration intestate with respect to the Estate of John Ottenyo Amwayi (Deceased) be and are hereby issued to the Applicants herein jointly;
  - v. That the purported subdivision of the parcel of land known Kitale/Municipality Block 17 (B1011)/23 and the resultant title deeds either in the name of the respondents herein, the Applicants or a third party be and are hereby nullified and/or cancelled;
  - vi. That title deeds issued to the 1<sup>st</sup> and the 2<sup>nd</sup> respondent over Isukha/Shirere/1906; East/Bunyore/Ebuchitwa/454, and East/Bunyore/Ebuchitwa/2363 are hereby nullified and/or cancelled;
  - vii. That costs for this application be provided for.
3. The application was served upon the Respondents who are the Administrators of the estate. The 2<sup>nd</sup> Respondent did not respond to the application despite service. The 1<sup>st</sup> Respondent on the other hand filed a replying affidavit dated 22<sup>nd</sup> October, 2025. The response did not oppose the grant of the orders sought in the application.
  4. The grounds on the face of the application are as follows;
    - a. The proceedings to obtain the grant issued in this matter were defective in substance, marred with fraud, falsehood, concealment of material facts from the court, untrue allegations, and intentional non-disclosure of information.
 

Particulars of fraud, concealment of material facts, and falsehood-

      - i. When petitioning for the grant of letters of administration intestate, the respondents described the 2<sup>nd</sup> applicant herein as a “minor” when in fact he was an adult of sound mind;
      - ii. The respondents, through fraud, misrepresentation, deception and intentional concealment of material facts caused the applicants to sign consents for the distribution of the estate properties, in the absence of counsel. The applicants did not know that through the consents the entire estate was to be vested in the name of the 1<sup>st</sup> respondent;
      - iii. The respondents ignored the 1<sup>st</sup> and 2<sup>nd</sup> applicants’ opinion during the distribution of his late father’s estate asset, despite being adults at the time of confirmation of the grant.



- b. Resultantly, all estate assets were vested in the 1<sup>st</sup> respondent through a certificate of confirmation of the grant dated 27<sup>th</sup> April, 2026;
  - c. The 1<sup>st</sup> and 2<sup>nd</sup> respondent have since transferred the assets into their names and refused and/or ignored to diligently administer the deceased's estate in the best interest of all beneficiaries;
  - d. The delay in making this application was not intentional but was due to the fact that the applicants were not aware that the grant had been confirmed and a certificate to that effect issued as they were kept away from the legal counsel representing the estate;
  - e. It is only just, fair and reasonable that the application herein be certified urgent and the orders sought granted.
5. The 1<sup>st</sup> Respondent in her replying affidavit acknowledged the error in the petition that listed Stephen (2<sup>nd</sup> Applicant) as a minor at the time of filing of the application. She also acknowledged that the transfer of the properties was done to the 2<sup>nd</sup> Respondent, who is the eldest son.
  6. The 1<sup>st</sup> Respondent, however, denied the allegations of fraud, concealment, or misuse of the estate. She is not opposed to the two applicants being appointed as Administrators.
  7. I have considered the application before me. It is regarded as unopposed, with the 1<sup>st</sup> Respondent's concession and the 2<sup>nd</sup> Respondent's failure to respond despite service.
  8. There are two issues for determination;
    - a. Whether the application meets the threshold for the revocation of a grant within the meaning of Section 76 of the *Law of Succession Act*.
    - b. Whether the applicants have established a case for the orders concerning the registration of the estate properties after the confirmation of the grant;
  9. The law on revocation of grant is Section 76 of the *Law of Succession Act*. The Section enumerates the several grounds under which a Court can revoke a grant and provides 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.”

10. The Court In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR expounded on above provision in the following terms;

“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.”

11. The issue of Stephen's age in the application for the Grant has been clarified, and I find it plausible. Besides, he duly signed the consent to the confirmation of the Grant, and so did Evah.
12. The consent for the distribution clearly indicated that the estate was to go to Margret, their mother, as a whole. At the time of the Confirmation of the Grant, the Court was informed that the administrators and the Applicants were all present, and the Court, in its wisdom, confirmed the Grant and ordered that Margret hold the immovable properties (land) in trust for the other beneficiaries.
13. Whereas the Applicants plead fraud and concealment of material facts, the consent to the distribution shows otherwise. By the time the Grant was confirmed in 2016, all the beneficiaries were adults. Evah was around 32 years old (listed as 11 years old in 1995), and Stephen was approximately 39 years old (based on his statement of being 18 years old in 1995).
14. I do not find the argument that they were not involved plausible.
15. I have also examined the properties and how the parties state that the same were transferred. It is not clear how the subdivisions in Kitale Municipality Block 17 (B1011) 23 were carried out; the Applicants, while asserting this, have provided the titles for three subdivisions - 1049 and 1047.



16. The title for 1049 shows that it was transferred to the 2<sup>nd</sup> Respondent's name in 2023 and subsequently charged to Discount Capital Limited for KShs.12,000,000/= and the charge was entered in reference to an agreement that has not been availed.
17. 1047 shows that it is in the name of one James Mwaura Karugi and subsequently charged to Cooperative Bank of Kenya for KShs.15,000,000/=.
18. 1048 is in the name of the 1<sup>st</sup> Applicant.
19. The Applicants have not provided evidence which shows that the Kitale Municipality Block 17 (B1011) 23 property was not, in the first instance, registered in the name of the 1<sup>st</sup> Respondent (their mother) as per the certificate of confirmation of grant to hold in trust, as is captured in the property Isukha/Shirere/1906.
20. Similarly, the search certificates for E/Bunyore/Ebuchutwa/2363 and E/Bunyore/Ebuchutwa/2363 show registration in 2021, but there is no record of the transmission and registration from the name of the deceased.
21. I am inclined to find that the Applicants have approached the Court because of the subsequent transactions that have since occurred in the titles 1047 and 1049, by the encumbrances, which further include third parties who are presently not parties in these succession proceedings. If that is the case, then this is not the appropriate forum to do so.
22. The High Court, in its succession jurisdiction, has the power to order the cancellation of title deeds as a consequence of revoking a grant. However, the Applicants must demonstrate that their application meets the threshold as set in the Law of Succession Act for the revocation of the Grant.
23. Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules grant the Court powers to issue a wide range of necessary orders to manage and safeguard an estate.
24. This Court orders that the allegations of fraud and collusion between the administrators concerning the transfer of the properties that were vested in the name of the 1<sup>st</sup> Administrator (1<sup>st</sup> Respondent) to hold in trust for the other beneficiaries to the estate of the deceased herein shall be investigated by the Directorate of Criminal Investigations (DCI) who will report to the Court within 120 days and take such appropriate action as the investigations will reveal.
25. The Deputy Registrar of the Court shall effect service of the order upon the Director of Criminal Investigations, together with the furnished contacts of the parties involved in this case.
26. The orders of the status quo previously issued following the consent of the Applicants and the 1<sup>st</sup> Administrator are lifted. The parties are free to lodge cautions or restrictions as they wish with the Lands Registries.
27. The determination of the application seeking revocation of the grant and the cancellation of the titles is stayed pending the report by the DCI, and the parties are granted leave to file further affidavits as the parties may wish to file upon the preparation of the above report.
28. Each party is at liberty to apply for further orders/directions.
29. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**C. KENDAGOR**



**JUDGE**

In the presence of:

Court Assistant: Beryl

