



REPUBLIC OF KENYA



In re Estate of John Kimachia Kahindi alias Kimachia Kahindi (Deceased) (Succession Cause 3044 of 2002) [2025] KEHC 17544 (KLR) (Family) (27 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17544 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 3044 OF 2002
PM NYAUNDI, J
NOVEMBER 27, 2025
IN THE MATTER OF THE ESTATE OF JOHN KIMACHIA
KAHINDI ALIAS KIMACHIA KAHINDI (DECEASED)

BETWEEN

FELISTA WAITHIRA CHEGE APPLICANT

AND

NG'ANG'A KIMACHIA RESPONDENT

RULING

1. Before this Court is the Chamber Summons dated 17th January 2025 in which the Applicant, FELISTA WAITHAKA CHEGE seeks the following orders;
 1. Spent.
 2. Spent.
 3. THAT the Respondent be restrained from transferring the estate properties without following due process with the consent of all the beneficiaries being obtained to replace the 1st petitioner WAMBOI KIMACHIA (deceased).
 4. THAT the grant of letters of administration issued to the Respondent and the late WAMBOI KIMACHIA on 4th March 2003 be revoked.
 5. THAT the court under its power do issue special citation to the applicant and/or any other person or persons to proceed with the succession cause for a just and prudent administration as the estate of the late KIMACHIA KAHINDI alias JOHN KIMACHIA KAHINDI for the best interests of the beneficiaries.



6. THAT costs of this application be provided for.
7. THAT the court to issue any other and/or further orders which would be for the best interest of the beneficiaries.
2. The summons premised upon Section 76 (d) and 83 of the *Law of Succession Act* and was supported by the Affidavit of even date sworn by the Applicant. She filed a supplementary affidavit sworn on 6th September 2024.
3. The Respondent opposed the summons through a Replying Affidavit sworn on 23rd April 2025.
4. The summons was canvassed by way of written submissions. The Applicant filed written submissions dated 19th July 2025 while the Respondents submissions are dated 26th June 2025.

Background

5. This succession cause relates to the Estate of John Kimachia Kahindi alias Kimachia Kahindi (hereinafter the deceased) who died intestate on 30th July 1998. Wamboi Kimasia and Ng'ang'a Kimachia petitioned for letters of administration intestate, the Petition was gazetted pursuant to Court order of 8th January 2003 and subsequently a grant issued to them on 4th March 2003. The grant was confirmed on 6th October 2003.
6. One of the administrators (Wamboi Kimasia) has since died and the sole administrator is currently Ng'ang'a Kimachia, he is a son to the deceased while the applicant is a daughter to the deceased.
7. The Application was canvassed via written submissions.

SUMMARY OF THE APPLICANT'S CASE.

8. The applicant case is that, she is the deceased's daughter and therefore, a beneficiary of the estate. She avers that the administrators of the estate did not inform her that they petitioned for letters of administration intestate. She denies signing the consent for confirmation of grant and argues that the signature appearing to be hers is forged. She also disputes the signature of John Gicheha who she claims disappeared without trace in 1986. She states that her late mother, Wamboi Kimachia and the Respondent who are the administrators of the deceased's estate sold a parcel of land belonging to the deceased without informing her. Efforts to call a family meeting to deliberate on the issue of replacing the 1st Petitioner, Wamboi Kimachia as an administrator have been futile. She argues that the Respondent is in the process of fraudulently transferring the estate properties before the deceased administrator has been replaced. She urged the court to allow her application.
9. Relying on Section 76 of the *Law of Succession Act* which provides for the grounds for revocation, it was her submission that the proceedings to obtain the grant were defective as there is no consent by people with equal or lesser priority as required by Rule 26 of the Probate and Administration Rules. She argues that consent by all beneficiaries is mandatory which is not the case in this matter and therefore, the grant should be revoked. She relies on the decision in *Re Estate of the Late Epharus Nyambura Nduati (Deceased)* eKLR.

Summary Of Respondent's Case.

10. The Respondent confirms that he is the sole surviving administrator. The grant was confirmed 22 years ago and the applicant has never raised an issue on how the grant was obtained. According to him, there has been unexplained and inordinate delay in filing the application. That revoking the grant is not in the best interest of the parties. He avers that the allegation of forgery has not been proved; no



handwriting expert report has been filed. He argued that this court should be guided by Section 81 of the Law of Succession which vests powers on the surviving survivors to administer the estate in the event that one of them dies. That the application does not meet the threshold set by Section 76 of the Law of Succession on revocation of grant.

11. The Respondent submitted that the applicant had failed to provide sufficient evidence or proof for grounds for revocation of a grant as stated in the case of *In re Estate of Prisca Ongayo Nande (Deceased) 2020 KEHC 6553 (KLR)*. He also cited Section 76 of the *Law of Succession Act* which states the grounds for revocation of grant. according to him, none of the grounds have been proved.
12. Finally, it was the respondent's submission that where there is a surviving administrator, that administrator should continue to administer the estate without the need of being replaced according to Section 81 of the *Law of Succession Act*.

Analysis And Determination

13. The issues for determination are;
 - i. Whether the grant herein ought to be revoked?
 - ii. Whether there is need to appoint another administrator.
14. Section 76 of the *Law of Succession Act*. That Section states;

“Section 76: 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 has ordered or allowed; 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.



15. The circumstances in which a grant can be revoked were discussed in the case of *In the Matter of the Estate of L.A.K. (Deceased)* [2014] eKLR :-

Revocation of grants is governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.

16. A preliminary issue is whether the delay in seeking to revoke the grant is inordinate. It is not denied that the grant herein issued on 4th March 2003 and was confirmed on 6th October 2003. The respondent's averment that the estate has since been transmitted to the rightful beneficiaries and revoking the grant as this stage would not be in the interests of justice. The exercise of this discretionary power by the Court always tends to safeguarding the best interests of the beneficiaries. This was succinctly stated in the in the persuasive decision in *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000* where Mwita J stated:-

Power to revoke a grant is a discretionary power that must be exercise 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.

17. The applicant does not disclose when she learnt of the Petition. This is a crucial detail. In the absence of which it is impossible to determine whether or not she had notice of the Petition. The record shows that the process for issuance of grant was duly complied with. The Petition was gazetted and since there was no objection the grant issued. This is water under the bridge. The applicant opted not to explain the 22 year period, between when the grant issued and when the application is being made for the revocation of the grant.
18. It does not help her that in a family 6 children she presents this application solely. The issue at hand is whether this Court is willing to write off the 22 year delay. In our justice system, time is of essence, especially in a succession cause where the confirmation of the grant vests in the beneficiaries proprietary rights. This application seeks to divest those beneficiaries of those rights. It is presented 22 years after the event, no explanation is offered.
19. In so doing the applicant has offended one of the non-negotiable pillars of our justice system. The firmest pillar of the right to access to justice is that litigants must present their claims timeously, promptly and without unnecessary delay. A party cannot emerge from their slumber after 22 years and seek to assert a right. In *re Estate of Samwel Muiruri Nganga (Deceased) (Succession Cause)* [2025] KEHC 179 (KLR), the facts were almost identical to the current case.
20. As in the current case, the applicant there alleged his signature was forged, he had not participated in the proceedings leading to the confirmation of the grant. The Grant therein was issued on 1st August 2013 and was confirmed on July 28, 2014. The applicant moved to revoke the grant by summons dated 2nd June 2021. The Court would not hear of it and in dismissing the application observed that the applicant herein had failed to explain the inordinate delay.
21. The unexplained delay is sufficient ground upon which to dismiss the application, I would add that the applicant herein alleges fraud but makes no move to establish the fraud. In *Estate of Muiruri Nganga*



(Supra) the Court reiterated that the burden lay on the party making allegations of fraud to establish the same and relied on the decision in *Re Estate of Julius Mimano (Deceased)* [2019] eKLR where it was held that the party must produce evidence from a qualified document examiner to support the claim.

22. On a separate limb the applicant prays that one administrator having died, another administrator ought to be appointed to work alongside the respondent. The respondent opposes this prayer. Section 81 of the [Law of Succession Act](#) provides for what happens where a co-administrator dies before transmission of the estate

S. 81 Powers and duties of personal representatives to vest in survivor on death of one of them Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them: Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.

23. The law provides for the surviving administrator(s) to continue and complete the administration, except in the case where there is a continuing trust. In the circumstances, I decline to make a further grant to any other person. The previous grant is revoked and a fresh grant issued to NGANGA KIMACHIA as sole administrator.
24. For the reasons above this summons is dismissed.
25. As this is a family matter there shall be no order as to costs.
26. Leave to appeal is granted, any party exercising their right of appeal to do so within 30 days.

DATED and DELIVERED VIRTUALLY at Nairobi this 27th Day of NOVEMBER 2025.

P. M. NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Waithaka Mwangi for Applicant

Asena for Respondent

