

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO. 540 OF 2012
IN THE MATTER OF THE ESTATE OF KHAMISI CHIBETE - DECEASED

HASSAN MUTABACHI
WESONGA.....PETITIONER

VERSUS

BEATRICE NOMANO WERE.....APPLICANT

RULING

1. By a summons for revocation of Grant dated the 30th October 2024, Beatrice Were, seeks orders for the revocation of the grant of letters of administration intestate issued to Hassan Mutabachi on 18th January 2012 and confirmed on 16th April 2013. The applicant further prays for inhibition orders against titles N/WANGA/KHOLERA/4143 & 4145, and for a fresh grant to be issued to her.
2. The application is supported by the applicant's sworn affidavit deposited on the same date. The respondent, despite being served, failed to file any response or submissions in opposition, leaving the applicant's averments uncontroverted.
3. The uncontested facts deposed by the applicant are:
 - a. The deceased, Khamisi Chibete, died on 14th February 1973, intestate.
 - b. The applicant, Beatrice Were, is the deceased's biological daughter.
 - c. The respondent, Hassan Mutabachi, is the applicant's cousin.

- d. In 2011, the applicant sought the respondent's guidance on succession matters and gave him her father's death certificate.
 - e. The respondent, allegedly representing himself to the area chief as the applicant's biological brother, obtained a letter dated 20th June 2011 listing himself and the applicant as children and beneficiaries of the deceased.
 - f. Using this letter, the respondent petitioned for and was issued with a grant of letters of administration, Mumias SRMCC Succession Cause No. 54 of 2011, later transferred to this Court as HC Succession Cause No. 540 of 2012.
 - g. The grant was confirmed on 16th April 2013, distributing the estate, land parcel N/WANGA/KHOLERA/183 as 0.5 Ha to the applicant and 0.30 Ha to the respondent.
 - h. The land was subsequently subdivided into N/WANGA/KHOLERA/4143 and 4145.
4. The applicant avers she never consented to the respondent's petition, never attended court for the confirmation, never signed any consent for distribution, and has never received the title deed for the portion in her name.
 5. The issues for determination are:
 - a. Whether the application for revocation of the certificate of confirmation of grant is properly before this Court.

b. Whether the applicant has established sufficient grounds for the revocation of the grant of letters of administration issued to the respondent.

Analysis

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. The applicant's prayers seek the revocation of the grant of letters administration intestate herein together with all consequential orders. Section 76 of the Law of Succession Act empowers the court to revoke or annul a grant of representation. On whether grounds for revocation have been established, **section 76 of the Law of Succession Act** provides:

“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:

(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;”

8. I therefore treat this application as one seeking the revocation of the grant of letters of administration issued on 18th January 2012 and the annulment of the confirmation orders made on 16th April 2013, which would inherently invalidate the certificate of confirmation and the subsequent subdivisions and titles. The court has inherent jurisdiction under Rule 73 of the Probate and Administration Rules to make such orders as are necessary for the ends of justice.

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

9. The law prioritizes certain dependents in applications for a grant of letters of administration intestate. A child of the deceased has a

superior and prior right to administer the estate compared to a more distant relative like a cousin. Where intestate has left a surviving child or children but no spouse, section 38 of the Law of Succession demands that:

“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.”

10. The petitioner’s petition was fundamentally defective. By presenting himself as a son and beneficiary in the chief's letter and the petition, he concealed the material fact that the applicant, the true child, had not consented to his administration. His actions usurped the applicant's prior right to apply for the grant. This material concealment rendered the entire proceeding defective. **In Kagau & another v Kagau & another (Civil Appeal 477 of 2018) [2025] KECA 696 (KLR) (11 April 2025)**, it was held that:

“Failure to disclose all legal heirs constitutes a valid ground for revocation of a grant. The High Court, on a preponderance of all the facts and evidence placed before it, found that the appellants had knowledge of the 1st respondent’s relationship with the deceased and the children’s dependency but omitted them from the list of beneficiaries, making the grant defective.”

11. The applicant's unchallenged testimony is that the respondent deceitfully obtained the chief's letter by misrepresenting himself as her biological brother. This foundational document, procured by fraud, was then used to secure the grant.

12. Furthermore, the respondent's inclusion of himself as a beneficiary to the estate of his uncle is legally unsupportable under the distribution scheme for intestate succession. Where a deceased person is survived by a child, the estate devolves entirely to that child. A cousin is not a dependant or a beneficiary under **Section 29 of the Law of Succession Act** in the presence of a child. His claim a portion of share was therefore an untrue allegation of a fact essential in law to justify the distribution.

“For the purposes of this Part, "dependant" mean:

(a)the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

(b)such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and”

13. The distribution effected was not only fraudulent but also substantively unfair and contrary to law. The respondent, having no

legal entitlement, allocated himself 0.30 Ha out of 0.80 Ha to the detriment of the sole rightful beneficiary, the applicant. An administrator's duty is to safeguard the estate for the rightful beneficiaries, not to misappropriate it.

14. The respondent's failure to respond to these grave allegations is deemed an admission of their truth. Consequently, I find that the applicant has overwhelmingly proved grounds under **Section 76(a)(b) of the Law of Succession Act** for the revocation of the grant.

“(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;”

15. Having found the grant was obtained fraudulently, it must be revoked.

Orders

16. The grant of letters of administration intestate issued to Hassan Mutabachi on the 18th January 2012, and the subsequent certificate of confirmation of grant issued on the 16th April 2013, are hereby revoked and annulled entirely.

17. Consequently, all transactions founded upon the said void grant and confirmation, including but not limited to the subdivision of the original parcel N/WANGA/KHOLERA/183 into parcels N/WANGA/KHOLERA/4143 and 4145, and the subsequent registration of titles thereto, are hereby declared null and void ab initio.
18. An inhibition order is hereby registered against the register of the original land parcel N/WANGA/KHOLERA/183 at the Kakamega County Lands Registry, prohibiting any dealings therein pending the conclusion of fresh succession proceedings.
19. A fresh grant of letters of administration intestate in respect of the estate of Khamisi Chibete shall be and is hereby issued to Beatrice Nomano Were.
20. The said administrator, Beatrice Nomano Were is directed to proceed diligently and apply for confirmation of the new grant in accordance with the law, proposing a mode of distribution that reflects her status as the sole surviving child of the deceased.
21. The respondent, Hassan Mutabachi, is ordered to surrender to the Deputy Registrar of this court, within thirty (30) days, all original title documents, maps, and instruments in his possession or control relating to the estate of the deceased.
22. Mention on 6.7.2026 to confirm.
23. Right of Appeal 30 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS
3RD DAY OF DECEMBER, 2025.**

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Ms. Mideva holding brief for Maina for the Objector/Applicant present online.