

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NYERI**  
**SUCCESSION CAUSE NO. 573 OF 2013**

**IN THE MATTER OF THE ESTATE OF CHARLES NJUGUNA**  
**KAMATA (DECEASED)**

**CHARLES NJUGUNA KAMATA.....**

**APPLICANT**

**VERSUS**

**JOACHIM MBUTHIA NJUGUNA.....**

**RESPONDENT**

**RULING**

1. By an application dated 21.8.2024, the Applicant sought for the following reliefs:
  - a) That the Grant of Letters of Administration Intestate issued on 21.1.2024 and confirmed on 20.6.2024 be revoked and/or annulled.
  - b) Spent.
  - c) The certificates of title arising out of the subdivision of Land Parcel No. Nyeri/Watuka/1304 be revoked and/or cancelled and the title do revert to the name of the deceased awaiting distribution of the estate.
  - d) The costs be provided for.

2. The application was supported by the affidavit of the Applicant and was based on the following grounds:

- (i) The Applicant is a co-administrator with the respondent.
- (ii) The proceedings leading to the grant were defective in substance.
- (iii) The grant was issued through connivance, deceit, material nondisclosure, and misrepresentation.
- (iv) The Applicant's consent was never sought or obtained.
- (v) The Applicant's signature on the consent was forged.
- (vi) The Applicant's co-administrator passed away in July 2020 and could not have equally consented or signed documents.

3. The Respondent filed a Replying Affidavit sworn by himself on 4.3.2025 by which it was deposed as follows:

- a) The Respondent is son of the deceased.
- b) The Applicant was the Respondent's nephew, the son of his sister, Lydia Njeri Njuguna, now deceased.
- c) The Applicant served the Respondent with a citation, and the Respondent expressed willingness to take out letters of administration. However, the Respondent later noticed that the Applicant and one Charles Njuguna Murage had already filed a petition for letters of administration intestate on 18.11.2013.

- d) The Respondent did not object as he believed they would administer the property well and so the grant was issued with the duo as administrators.
- e) The Grant Intestate was issued to the Applicant, and the said Charles Njuguna Murage, now deceased, on 21.1.2014.
- f) The Applicant resides in the United Kingdom and his absence from the country makes it difficult to administer the estate.
- g) On 18.11.2018, the court revoked the Grant as the Applicant was not discharging his duties in administering the property.
- h) The Applicant however applied for review of the revocation by an application dated 30.7.2021 and the order revoking grant was reviewed on 2.11.2021 and the Grant reissued to the Applicant.
- i) In consultation with other family members, they sought and the grant was confirmed on 20.6.2022.
- j) The Applicant has however failed to administer the estate and failed in distributing it among the beneficiaries, 3 years after confirmation.
- k) The following persons should be appointed as joint administrators in place of the Applicant to facilitate distribution of the estate:
  - (i) Joachim Mbuthia Njuguna
  - (ii) Jecinta Njambi Wachira

(iii) Mary Githaiga Njuguna

- 1) The title No. Nyeri/Watuka/1304 remains in the name of the deceased and the prayer for cancelling the title is unmerited.

### Submissions

4. The Applicant filed submissions dated 1.10.2025. It was submitted that the Applicant's signature was forged and that he was never consulted. Reliance was placed on Section 76 of the Law of Succession Act and that the grant was defective and obtained fraudulently.
5. It was further submitted for the Applicant that the Respondent admitted at paragraph 9 of his Replying Affidavit that the Applicant and the late Charles Njuguna Murage were issued with the Grant as joint administrators. However, at paragraph 14, he asserted that the family, "in consultation with other family members," sought and obtained confirmation of the grant, conspicuously excluding the Applicant, who was still alive and legally the administrator. This admission alone, according to the Applicant, demonstrated that the confirmation was conducted behind his back, in breach of the law and natural justice. Reliance was placed on **In re Estate of Julius Ndubi Javan** (Deceased) [2018] eKLR where it was held as follows;

"Needless to state that, in any judicial proceeding, parties must make full disclosures to

the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (uberimaefidei) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law. I will give ample justification for taking this position.”

6. Based on the above, it was also submitted that **In Re Estate of Moses Wachira Kimotho** (Deceased), Succession Cause 122 of 2002 [2009] eKLR on fraudulent concealment the court held thus:

**As it is therefore the grant was obtained fraudulently by making of a false statement and or concealment from court of something material to the cause...She also ignored them completely when she applied for the confirmation of the grant.**

7. The Respondent on the other hand filed submissions dated 27.10.2025. It was submitted that the Applicant was not consulted for the sole purpose of expediting the succession process.

8. The Applicant was not available to execute the transfers. The burden was on the Applicant to prove otherwise. Reliance was placed on Section 109 of the Evidence Act.

### Analysis

9. Section 51 of the Law of Succession Act, requires a person seeking to administer the estate of a person who died in 1980 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.

10. It is not in dispute that the Respondent is not an administrator of the estate of the deceased. Equally, Anne Wairimu Njuguna is not an administrator. They are a son and daughter of the deceased.

11. 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. The summons for confirmation of grant dated 17.1.2022 was initiated by persons who are not administrators. The allegation by the Applicant that the process of obtaining the grant was defective and tainted with material nondisclosure is supported. The High Court case of **In re Estate of Julius Mimano (Deceased) [2019] eKLR** analyzed the unique position in law held by the personal representative of a deceased person by stating as follows:

**“...personal representatives administer estates on the strength of legal instruments made to them by the probate court. The**

**vesting of the estate of the deceased on the personal representatives by virtue of section 79 of the Act, flows from the instrumentality of the grant of representation. Upon representation being made, the grant holder then becomes entitled to exercise the statutory powers conferred upon personal representatives by section 82 of the Act and incurs the duties imposed on them by section 83 of the Act. Additional powers flow from and duties are imposed by other statutes, such as the Trustee Act. Under section 82 of the Act, there are powers to enforce and defend causes of action on behalf of the estate, to sell or convert estate assets, to assent to vesting of bequests and legacies on the beneficiaries, among others. Acts done or actions taken on behalf of the estate or for the benefit of the estate would have to be accounted for. In other words, the personal representatives are bound to account for every action they take on behalf of the estate, for they exercise the powers on delegation.”**

13. Even if it is apparent that the Applicant is bent on advancing negative duties by delaying the distribution of the estate as opposed to fostering such distribution, the Respondent had no capacity to commence proceedings as he did. There were indications that the Applicant, as Administrator, had failed or refused to act in accordance with the law. Where the Administrator fails in their role, the court has powers to call the administrator to action or even fire the

administrator from office. This position was adopted and exemplified in the matter of the **Estate of Mbaabu M'Abutu (Deceased) [2020] eKLR**, where Gikonyo J stated as following:

...Needless, to state that such conduct runs counter to the overall statutory duty of the administrators; to administer the estate of the deceased diligently and without undue delay. Therefore, where an administrator willfully fails or refuses to diligently carry out his statutory duties, the grant made to him should be revoked rather than authorize the court administrators to sign transmission papers, yet, leaving the indolent administrator *in situ*. I propose courts to take this path in order to relieve estates of deceased persons of belligerent administrators, thereby, enhancing efficiency in administration of those estates by appointing compliant administrators. Nonetheless, notice of such precipitate action should be given to the administrator whose grant is subject of revocation. See section 76 of the Law of Succession Act. For emphasis, it makes real legal sense to revoke the grant made to recalcitrant administrators, rather than turn court administrators into administrators of sort of the estate of the deceased, yet, leaving such administrator in the office of personal representative of the deceased.

14. Therefore, due to the laxity on the part of the Applicant as administrator, the Respondent's duty as beneficiary was to

seek to revoke the grant but not to assume the role of an administrator, as this would amount to intermeddling in the estate of the deceased. That is the only way the interest of the beneficiaries will yield and justice will be manifestly seen to be done. In the case of **Veronica Njoki Wakagoto (Deceased)** [2013] eKLR: Hon. Justice William Musyoka held:

**“The effect of [section 45]... is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”**

15. The conduct of the Applicant as administrator more than 11 years after the grant intestate was issued is wanting. I say so because a party cannot act on whims to keep the entire estate with at least the named 10 beneficiaries out of their fruits from the estate of the deceased, more than 11 years after the Grant Intestate was issued on 21.12.2014; who has not filed for the confirmation of the grant more than 11 years later. The court thus finds conduct on the part of the Applicant that runs contrary to the overall duty of the Administrator’s office under the law. The explanation rendered by the Respondent on the laxity of the Applicant is plausible. In **Re Estate of Prisca Ong’ayo Nande (Deceased) [2020] eKLR** the Court observed as doth:

“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.”

16. The grant shall thus be revoked only for the reason that the process leading to its issuance was defective, as the person applying was not an administrator. There cannot be a valid grant. The certificate of confirmation of the grant must be set aside. In **Macfoy vs. United Africa Co. Ltd [1961] 3 All E.R. 1169**, Lord Denning, delivering the opinion of the Privy Council at page 1172 (1) said;

**“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”**

17. To spirit the conclusion of the administration of the estate of the deceased, I am inclined to appoint a new administrator in the place of the Applicant. As the Respondent has demonstrated that he is available in Kenya, while the Applicant is based in the United Kingdom, the Respondent is the most suitable person for appointment as administrator, in my view. The Respondent is sufficient, and I hope that he will

undertake the duties that the Applicant has failed, to diligently administer the estate and distribute the sole property among the beneficiaries.

18. Before I pen off, I find it paramount to note that the Respondent is the son of the deceased, while the Applicant is a grandson. The Respondent ranks in priority as the more suitable administrator under Section 66 of the Law of Succession Act. Also, it is common ground of the parties that Charles Njuguna Murage who was co-administrator and a grandson to the deceased is since deceased.

#### Determination

19. In the upshot, I make the following orders:

- (i) The Grant of Letters of Administration issued to Charles Njuguna Kamata and Charles Njuguna Murage on 21.1.2014 is revoked.
- (ii) A fresh Grant of Letters of Administration Intestate is forthwith issued to Joachim Mbutia Njuguna.
- (iii) The Certificate of Confirmation of Grant issued on 20.6.2022 is set aside.
- (iv) The said Joachim Mbutia Njuguna as Administrator shall, within 45 days of this date, file in court a Summons for Confirmation of Grant, taking into account the entire estate of the deceased and the shares of each of the beneficiaries.
- (v) Each party to bear own costs.

**DELIVERED, DATED** and **SIGNED** at **NYERI** on this **16<sup>th</sup>** day of **December, 2025**. Ruling delivered through Microsoft Teams Online Platform.

**KIZITO MAGARE**  
**JUDGE**

**In the presence of: -**

Ms. K'Ojienda for the Applicant

Mr. Mwaniki for the Respondent

Court Assistant - Michael