



REPUBLIC OF KENYA



In re Estate of Michael Boniface Mukanga (Deceased) (Succession Cause 49 of 2019) [2025] KEHC 18232 (KLR) (3 December 2025) (Judgment)

Neutral citation: [2025] KEHC 18232 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 49 OF 2019
G MUTAI, J
DECEMBER 3, 2025
IN THE MATTER OF THE ESTATE OF MBM (DECEASED)**

BETWEEN

JOM & CMM ADMINISTRATOR

AND

DOM (SUING FOR AND ON BEHALF OF THE ESTATE OF MCM - DECEASED) OBJECTOR

JUDGMENT

1. The deceased person whose estate is the subject of these proceedings is MBM. The late M passed away on 4th June 2014 at Budalangi. He was 89 years old at the time of his demise. According to the certificate of death, serial number XXXXXX, he died from urinary obstruction. The deceased died intestate.
2. The petition for letters of administration intestate was filed by Ms JOM and CMM, both of Mombasa, on 17th October 2019. The petitioners listed the 1st Petitioner as the widow and BSM, FOM, FMH, CMM, and VNM as the sons and daughters. The value of the estate was given as Kes.25,000,000/-, made up of real estate and equities. The details given in the petition accord with those in the letter written by the chief of Bunyala East Location, Mr Ojanji Mudonga.
3. The Petition was gazetted on 10th January 2020. There being no objection, the grant was issued on 24th July 2020.
4. The grant was confirmed on 7th March 2022. The certificate of confirmation of grant states that the seven beneficiaries of the estate, whose names I have already stated, would share the deceased's estate equally. I note that there was a consent attached to the Summons for Confirmation of Grant dated 10th January 2022 which all the beneficiaries appended their signatures.



5. Before the estate could be fully distributed, DOM filed a summons for revocation of grant dated 25th June 2024. D is the son of MCM, who, he deposed, is the daughter of the deceased. In his supporting affidavit, he accused JOM and CMM of obtaining the grant fraudulently by misrepresenting material facts. In his view, the deceased had nine children, three of whom are deceased. The deceased issues are FOM, MCM, and JOM. It was contended that the children of the deceased heirs were in danger of being disinherited as no provision had been made for them in the confirmed grant.
6. The summons was opposed. Mrs. JOM deposed to an affidavit dated 17th July 2024. In the said affidavit, she conceded that she had children with the deceased and that three of them were deceased. The deceased children were MCM (who had one child, DOM), FOM (who had two children, CNL and DM M). JOM died without a wife or any issue. Mrs. J averred that she had provided for her grandchildren by giving D half an acre of land in Bulago, Budalangi, and an additional Kes.550,000/- for him to enter into a Business. C and D also got ½ an acre of land at Bulago, where they had constructed a house.
7. Mrs. J M deposed that she was in control of the entire estate, which was estate was still intact and had not been distributed. She stated that she could not list her deceased children in good conscience, as she was taking care of their children.
8. Two affidavits purportedly signed by DM M and CNL were filed together with the replying affidavit of Mrs J M. Both affidavits disclaim the summons for revocation of the grant and aver that each deponent is satisfied with what the grandmother gave them.
9. CNL later disowned the affidavit that had been filed herein purporting to be her deposition.
10. The matter proceeded by way of viva voce evidence on 5th December 2024 when D M testified. Mr D testified that the deceased had nine children, 3 of whom were dead. It was his evidence that his deceased uncle JO had two children. He testified that he got land from his grandfather, identified as Plot No. 2022. It was also his evidence that he got Kes.5,000/- twice from Nicodemus M, but was unable to establish what the payments were for, as the said person declined to pick up his calls. He prayed that the grant be revoked.
11. Mrs. JOM testified in her capacity as the co-administrator. It was her evidence that she got married to the deceased in 1955. She stated that she and her husband had nine children. She told the Court that he didn't know who the children of JO were.
12. Mrs M testified that the Majengo house was sold, and part of the proceeds were given to the objector to finance his business. Further, he got 1 acre of land in Budalangi, which he was to share with C and D. She further testified that she called a meeting, which D refused to attend.
13. When cross-examined by Mr. Odunga, Mrs. M admitted that the objector was not listed as a beneficiary. While conceding that a property had been sold, she testified that the estate was still largely intact. Josephina M stated that they would give D land after she had discussed it with the family.
14. At the end of the trial, the Court gave directions. The directions were given on 16th January 2025. The counsel for the Petitioner/administrator respondent did not file submissions. The submissions of the objector/applicant are dated 23rd May 2025.
15. In the submissions, the Objector/Applicant's counsel identified issues or determination as being whether the proceedings to obtain the grant were defective in substance, whether the grant was obtained fraudulently by the making of a false statement or concealment of material information, and whether the grant issued herein ought to be revoked.



16. It was submitted that under Rule 26(1) of the Probate & Administration Rules, the petitioners ought to have notified every other person entitled to the same degree or in priority to the applicant of the intention to apply for a grant. It was urged that this wasn't done. Reliance was placed on the cases of Elizabeth Wanjau v Lucy Wanjiku [2015]eKLR, and Rachael Wanjiru Karanja v Nancy Wambui Kamau [2015]eKLR.
17. I have very carefully considered the summons for revocation of the grant, the responses thereto, the evidence tendered, and the submissions of the parties. It has been conceded that the petition did not list all the deceased's children. Is that a cause for disturbing the grant by revoking it?
18. The power of the Court to revoke a grant is given in section 76 of the Law of Succession Act, which states that: -

“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.”

19. The said provision has been considered in a long line of decisions of the High Court. In my view, the most succinct interpretation of the foregoing provision was given by Musyoka, J, in re Estate of Prisca Ong'ayo Nande (deceased) [2020]KEHC 6553 (KLR). The learned judge stated as follows: -

“8. . 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.”

20. From the foregoing decision, it is clear that the defect that could justify revocation of the grant includes failure to disclose all the survivors of the deceased.

21. I must state that the Court is called upon to exercise a discretion as to whether to revoke the grant. I take counsel in the decision of Mwita, J, in *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2010] KEHC 1520 (KLR), where the learned judge stated as follows: -

“Power to revoke a grant is a documentary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously ...”

22. The petitioners/respondents knew about the three deceased persons and were aware that they, or some of them, had children. As the children of the deceased beneficiaries, they ought to have been listed, or at least the estates of their deceased parents should have been listed as beneficiaries. This wasn't done. The certificate of confirmation of grant limits the devolution of the property of the deceased to the living issues of the deceased.

23. It is also clear that not all the beneficiaries were notified before the application for a grant, contrary to Rule 26 of the Probate & Administration Rules. Although the widow ranked higher than the children, the co-administrator, Ms CMM, was of equal rank with her siblings. She couldn't, therefore, have been appointed without notice to the siblings.

24. As was held by Gikonyo, J in the *In re Estate of Silas M'Itumwari Mukanagu (Deceased)* [2020] KEHC 8501 (KLR).

“17. 17. A grant obtained through concealment of material facts or without consent from relevant persons or through false claims is a perfect candidate for revocation. See apt statement in the case of *Samuel Wafula Wasike Vs. Hudson Simiyu Wafula* CA NO.161 OF 1993) (Kwach, Omolo and Tunoi JJA) that: -

“A grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable to revocation.”



25. The court notes that there were attempts to mislead it through the filing of a false affidavit purportedly signed by C Lando. This Court deprecates such misconduct in the strongest terms possible.
26. In my view, the grant issued in this matter was a product of defective proceedings and concealment of material information. The only fair and just thing to do in the circumstances of this case is to revoke the grant. In the circumstances, the grant issued on 24th July 2020 and confirmed on 7th March 2022 is hereby revoked. I appoint DOM to be a co-administrator of the estate of the deceased jointly with CMM.
27. The two administrations should convene a family meeting to discuss the distribution of the estate of the deceased. I order that a fresh Summons for Confirmation of grant be filed within 60 days of the date hereof, failing which the Court will distribute the estate suo moto. Any proposed distribution must take into account what each beneficiary has already received from the estate.
28. This being a family matter, each party shall bear their/her own costs.
29. It is so ordered

DATED AND SIGNED THIS 3RD DAY OF DECEMBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Ms Kanazi, holding brief for Mr Odunga, for the Objector;

No appearance for the Administrators/Respondents; and

Norah – Court Assistant.

