



REPUBLIC OF KENYA



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In re Estate of Hannah Muthoni Ng'ang'a (Deceased) (Succession Cause 197 of 2008) [2025] KEHC 18980 (KLR) (22 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18980 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 197 OF 2008
WM MUSYOKA, J
DECEMBER 22, 2025**

IN THE MATTER OF THE ESTATE OF HANNAH MUTHONI NG'ANG'A (DECEASED)

RULING

1. The deceased herein died on 22nd December 1992. The Assistant Chief, of Busia Township, in a letter dated 27th October 2008, indicates that she was survived by Jane Mweru Kariuki, although she also had other children, who had died, said to be the late Gerald Mwangi Kamau, the late Rose Wangari Ng'ang'a and the late Peter Ng'ang'a Njoroge.
2. Representation to the estate was sought by Jane Mweru Kariuki, vide her petition, which she filed herein on 23rd October 2008, in her capacity as daughter. She disclosed herself as the sole survivor of the deceased, who was said to have died possessed of Bukhayo/Mundika/2069, 4583, 4584, 4904, 4985, 5032, 5087, 8336 and 8337, and money in an account with the Kenya Commercial Bank. Letters of administration intestate were made to her, on 2nd February 2009, and a grant was issued, on even date. I shall refer to Jane Mweru Kariuki, hereafter, as the administratrix.
3. The grant, of 2nd February 2009, was confirmed on 30th November 2009, vide an application for confirmation of grant, dated 12th November 2009. The administratrix was listed as the sole heir, and the entire estate was devolved exclusively to her. A certificate of confirmation of grant, dated 30th November 2009, was issued, in those terms.
4. Peter Mwangi Ng'ang'a has filed an application herein, on 7th July 2025, of even date. I shall refer to him as the applicant. He seeks revocation of the grant held by the administratrix. She is accused of mispresenting facts to the court, and disinheriting the other beneficiaries. She did not involve the other beneficiaries in the process, he charges. He has brought the application as a grandson of the deceased. He asserts that there were other beneficiaries that the administratrix did not disclose. Among the documents, attached to his affidavit, is a list of beneficiaries, with the names of the late Gerald Mwangi Kamau, Esther Muthoni Ng'ang'a, Ann Wangare Ng'ang'a, Mary Wangui Mahinda, Mary Waihera Waweru and the administratrix.



5. The administratrix has responded to that application, vide an affidavit, sworn on 25th September 2025. She asserts that grandchildren of the deceased can only claim through their parents. She further argues that the administration was completed, after transmission was done. She further states that the deceased had made inter vivos distribution in favour of Gerald and Wangare, and mentions Bukhayo/Mundika/5032 as among the assets given to them. she also mentions that several assets meant for Esther were transferred to the name of the husband of Esther. She states that the mother of the applicant, and the wife of Gerald, were given 4 plots at Bulanda. She adds that the deceased had also bought a piece of land for the mother of the applicant, and that was where the applicant settled. She mentions that the deceased had also bought land for Wangare, the mother of Mary Waithera, at Burumba, which was later sold by Wangare. She states that Mary Waithera retained the land next to the Full Gospel Church, in Busia. She says the deceased gave all her vehicles to the father of the applicant, who subsequently sold them. She asserts that all the survivors and beneficiaries had benefited from inter vivos distributions, but that they misused what was given to them.
6. The applicant filed a supplementary affidavit. He claims to be a son of the late son of the deceased called Gerald Mwangi. He also claims to be an administrator of the estate of the deceased herein, having obtained a grant ad litem, in Busia CMC Misc. SC No. E116 of 2025. He discloses that Esther Muthoni was a surviving daughter of the deceased, who the administratrix did not disclose in her papers. He states that his father, Gerald, and his aunt, Ann Rose Wangare, were dead children of the deceased, who had children of their own, but they did not get a share of the estate. He asserts that transmission of the estate, following confirmation, does not bar revocation of the grant. He states that most of the assets were still registered in the name of the administratrix. He argues that no evidence was presented, pointing to the inter vivos distribution that the administratrix claims happened in favour of her siblings.
7. Directions were given, on 1st October 2025, for the disposal of the revocation application, by way of written submissions. Both sides have filed submissions, which I have read, and noted the arguments made.
8. The discretion to revoke grants is given to the court by section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya. The court may revoke a grant on an application by an interested party, or on its own motion. There are 3 general grounds, upon which a grant may be revoked. The first is around the process of obtaining the grant. The second is around the administration process. The third is with regard to the grant becoming useless and inoperative, following events subsequent to the making of the grant.
9. The application herein appears to be founded on the first general ground, about how the grant was obtained. The detailed grounds, under this head, are non-disclosure of critical facts, concealment of matter from the court, fraud, and defects in the process of obtaining the grant. The applicant argues that the administratrix approached the court as the sole survivor or child of the deceased, and it was on that basis that the grant was made to her, and the estate devolved exclusively to her.
10. The administratrix concedes that she was not the sole survivor of the deceased, nor the only child of the deceased. The deceased had other children, some are deceased, some are alive. She concedes that those dead had their own children. She explains that she excluded the others, because they had benefitted inter vivos from the estate, and, therefore, according to her, they got their share, and they were not, therefore, entitled to what the deceased died possessed of. Regarding the children of her deceased siblings, she argues that they are not entitled as grandchildren, to a share in the estate of their dead grandparent, for they could only access the estate through their own parents, the actual children of the deceased.



11. What emerges is that the administratrix is guilty of non-disclosure and concealment of matter from the court. She was not the only person, from the lineage of the deceased, who was alive. There were others, children of the deceased, and the children of the dead children of the deceased. She should have disclosed all those individuals, and involved them in the process. She obtained her grant through a defective process, to the extent that she did not disclose all those individuals, and did not involve them in the process. 1 of her sisters was alive. The law, section 66 of the *Law of Succession Act*, gives her sibling an equal entitlement to administer the estate. The administratrix could not validly petition for and obtain representation without her sister executing a consent, to let her petition, if she, the sister, did not intend herself to petition. See rule 7(7) and 26 of the Probate and Administration Rules.
12. The distribution of the estate which followed was done without disclosure of everyone entitled. Every child of the deceased should be involved in the process, and every grandchild, whose own parent is dead, should also be involved. The lone-ranger approach adopted by the administratrix is not countenanced in law. If there were inter vivos distributions, done by the deceased, section 42 of the *Law of Succession Act* states what should be done. Everyone, including those who had benefitted from the inter vivos distribution, should be disclosed or listed in the petition, and, at confirmation, evidence should be tabled, to show that some of the survivors had benefitted from inter vivos gifting, and that that ought to be taken into account at distribution. The administratrix adopted a completely wrong approach to the entire process, and bungled it in the end.
13. I am persuaded that the applicant has made out a case for revocation of the grant herein. The process of obtaining it was defective, for there was non-disclosure of a large section of the survivors. Material was concealed from the court. There was misrepresentation. The total effect of it all would be a fraudulent approach to the process of obtaining the grant, and confirming it
14. There are arguments that the administration has been completed for transmission was done, hence no purpose would be served by revoking the grant. Number one. The office of an administrator is for life. An administratrix can be called to account of her administration at any time, even long after the administration was completed and the estate distributed. To argue that transmission was done and administration completed, hence the matter ought not be revisited, is to allow the administratrix to benefit from fraud and misrepresentation. That is something that the law would not allow.
15. Of course, the confirmation was done in 2009. It is possible that transmission has been done. However, the administration is not complete. I have not seen, from the record, before me, an account of the completed administration, if indeed the administration was completed as alleged. After confirmation of the grant, the administratrix had 6 months to transmit the estate, and thereafter come back to court, with an account of the completed administration, so that the court can close its file. That is what section 83(g) of the *Law of Succession Act* requires. The fact that that was never done would mean that the administration is still ongoing.
16. The final orders are:
 - a. That the grant, made to the administratrix herein, on 2nd February 2009, is hereby revoked;
 - b. That fresh administrators shall be appointed, after the family has had some time to consult and agree on those to be appointed;
 - c. That the orders, on the distribution of the estate, made on 30th November 2009, are hereby vacated, and the certificate of confirmation of grant, generated from those orders, dated 30th November 2009, is hereby cancelled;



- d. That all transactions, carried out on the strength of the said certificate of confirmation of grant, are hereby nullified, and the Busia District/County Land Registrar is directed to cancel them and revert the assets to the name of the deceased herein;
- e. That the new administrators, to be appointed under (b) above, shall apply for a fresh distribution of the estate, taking into account all the survivors of the deceased and beneficiaries of the estate, and any inter vivos distribution that the deceased might have done;
- f. That the matter shall be mentioned on 17th February 2026, for appointment of new administrators, and further directions;
- g. That the Deputy Registrar shall call for the file, in Busia CMC Misc. SC No. E116 of 2025, for the purpose of that file being put together with the instant cause;
- h. That each party shall bear its own costs; and
- i. That any party aggrieved, by the orders made here above, has leave of 30 days, to file an appeal at the Court of Appeal.

17. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 22ND DAY OF DECEMBER 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Gathumbi, instructed by Martin Gathumbi & Company, Advocates for the applicant.

Mr. Otieno, instructed by Masiga Otieno & Associates, Advocates for the administratrix.

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