

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1979 OF 2016

IN THE MATTER OF THE ESTATE OF GEOFFREY MWAI

KABIRU (DECEASED)

EMILY MAYIAMEI MUYAA

APPLICANT

VERSUS

JANE NYAGUTHI MWAI

ADMINISTRATOR

JACQUELINE WANGAI

ADMINISTRATOR

RULING

1. A Grant of Letters of Administration was issued to the administrators and which was later confirmed.

2. Among the assets listed is a property known as Kajiado/Kaputiei-North/65207.
3. The Applicant has moved the court concerning this property via an application dated 24th April, 2025. The application seeks the following orders;

i. Spent

ii. THAT the operation of the Grant of Letters of Administration Intestate made on 19th September, 2017 and the Certificate of Confirmation of Grant made on 10th December, 2018 be suspended and/or stayed pending the hearing and determination of this application.

iii. THAT the Grant of Letters of Administration Intestate made on 19th September, 2017 to JANE NYAGUTHII MWAI and JACQUELINE WANGAI, and the subsequent Certificate of Confirmation of Grant made on 10th December, 2018 be revoked and/ or annulled forthwith.

iv. THAT in the alternative to prayer 3 above, the Certificate of Confirmation of Grant made

to JANE NYAGUTHII MWAI and JACQUELINE WANGAI on 10TH DECEMBER,2018 be reviewed and/or varied by revoking and/ or quashing the distribution of the parcel no. Kajiado/Kaputiei-North/65207 to Quentin Holdings and to forthwith remove the property from the schedule of properties therein mentioned.

v. THAT Costs be in the cause.

4. The applicant contends that she is the registered proprietor of parcel number Kajiado/Kaputiei-North/65207 (“property”). She asserted that the title of the property was given to the deceased pursuant to an agreement of sale dated 30th July, 2013 but which aborted after the deceased opted to purchase another parcel of land known as Kajiado/Kaputiei-North/65206 vide an agreement for sale dated 26th September, 2014.
5. The Applicant contends that the respondents obtained the grant by fraudulently including the property in the list of

assets belonging to the deceased, whereas the property is registered in the name of the Applicant.

6. She argues that the Respondents concealed the fact that they had no beneficial interest in the property, as they had already rescinded the agreement for sale of the property and had been refunded the full deposit of the consideration paid to the Applicant.
7. The Respondents in the replying affidavit dated 10th July, 2025 contended that the issues raised by the Applicant do not warrant a revocation of the whole grant.
8. According to the Respondents, the property was sold to the deceased, who paid the purchase price in full. They maintained that the title and transfer documentation were duly executed and possession delivered.
9. I have reviewed the application and affidavits along with the submissions.
10. The Applicant has provided proof that the title is registered in her name. That is sufficient to give her locus to present the application before the succession Court.

11. The Respondents argue that the property is part of the estate.
12. There is evidence of related litigation between the parties.
13. The mandate of the succession Court is limited to the administration and distribution of the estate - disputes over land fall under the mandate of the Environment and Land Court.
14. Under **Section 3** of the **Law of Succession Act**, **“free property”** means the assets a deceased person owned and could freely dispose of during their life, and whose interest hasn't ended at death, forming part of their estate available for distribution to heirs according to the deceased's Will or in intestacy. It excludes property subject to other legal limitations.
15. The property in question, being currently registered in the name of another individual asserting that the deceased holds no beneficial interest, fails the classification as free property of the estate.
16. The administrators erred in listing the property that does not form part of the free estate.

17. In instances where the property is not already vested in the deceased's name, and a dispute ensues, the administrator/s of the estate possess the authority to approach the Environment and Land Court regarding the claimed beneficial interest on behalf of the estate for it to be appropriately examined and addressed. Following successful determination, the administrator(s) then move to the Succession Court to have the property distributed.
18. Given the findings, the key issue for determination is whether the Court should issue an order to revoke the grant entirely or review the Certificate of Confirmation of Grant to exclude the specific property in question from the Certificate of Confirmation of the Grant.
19. The estate encompasses other assets that extend beyond the property currently under dispute. Revoking the Grant would have far-reaching implications, affecting all the assets outlined, yet the majority have no disputes relating to them. Given the considerable size of the estate, I find it necessary to maintain the Grant and, therefore, decline to revoke it.

20. Upon careful consideration and determination that the property does not meet the criteria for classification as free property of the estate, the Court exercises its inherent powers and reviews the Certificate of Confirmation of Grant.
21. Consequently, the inclusion and distribution of the property Kajiado/Kaputiei-North/65207 is hereby set aside.
22. An Amended Certificate of Confirmation of Grant will be issued, excluding this property from the list of assets.
23. The administrators are at liberty to move the Succession Court once the interest is determined by the Environment and Land Court, which is the Court vested with the jurisdiction to determine the dispute regarding the land title and the use/occupation of the land.
24. The application is partly successful as outlined above. I make no order as to costs.
25. It is so ordered.

DATED, DELIVERED and SIGNED at NAIROBI through the Microsoft Teams Online Platform on THIS 17th day of DECEMBER, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms Mwangi, Advocate holding brief for Kimondo Mubea,
Advocate for the Applicant

Ms. Lanoi, Advocate, holding brief for Njoroge, Advocate, for
the Administrators