

**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MOMBASA  
(FAMILY DIVISION)  
HC P&A NO 439 OF 2011**

**IN THE MATTER OF THE ESTATE OF NDUKU NDOLO WATHOME  
(DECEASED)**

**JUDGMENT**

1. Ms. Nduku Ndolo Wathome died on 17th October 2009 at Port Reitz, Mombasa. At the time of her death, she was 95 years old. The deceased died intestate.
2. Vide a petition for letters of administration intestate filed on **26<sup>th</sup> October 2011** by Bahati Nduku Salim, in her capacity as the daughter of the deceased, the grant was sought. The petitioner identified the following as the dependants of the deceased's estate: -
  - (1) Esther Mwelu Malua (deceased);
  - (2) Daniel Nzangi Malua (deceased);
  - (3) Constance Joyce Nduku Musyoka;
  - (4) Hellen Ndivo Ndeti (deceased);
  - (5) Bahati Nduku Salim (daughter); and
  - (6) Fatima Nduku (daughter).

A letter dated 2nd April 2012, written by the Chief of Changamwe location, Mr. Omar Swaleh, was attached. The information corroborates the foregoing.

3. The petitioner identified the properties of the deceased in the petition and gave their values as being Kes.**13,000,000/-**.
4. The petition was gazetted on **14<sup>th</sup> July 2015** vide Kenya Gazette Notice No 5078 of 2015. There being no objection within the requisite time, letters of administration intestate were issued to the petitioner on **19<sup>th</sup> February 2016**.
5. On **13<sup>th</sup> April 2017**, the petitioner filed the Summons for Confirmation of the grant dated **19<sup>th</sup> August 2016**. In the said summons, the Petitioner/Administrator listed herself, Constance Joyce Nduku Musyoka, and Fatuma Nduku as the survivors of the deceased. Constance and Fatuma signed a consent to the confirmation of the grant.
6. The grant was not confirmed. On **7<sup>th</sup> September 2018**, this Court revoked the grant in exercise of its power under section 76 (d) (1) of the Law of Succession Act. The said order was, however, set aside. Thereafter, the Petitioner/Administrator sought to have the Summons for Confirmation of Grant heard.
7. When the Summons for confirmation of Grant was listed for hearing, two affidavits of Protest were filed by Jonathan Mutua Nzangi, the son of Daniel Nzangi Malua, and the other by Fatuma Nduku, the daughter of the deceased. The affidavit of protest by Jonathan Nzangi is dated **6<sup>th</sup> February 2023**. Fatuma's is dated **24<sup>th</sup> February 2023**.

8. The 1<sup>st</sup> protestor contests the proposed mode of devolution of the estate of the deceased, on the grounds that the distribution of the estate was inequitable. This is on the basis that Constance Joyce Musyoka got properties worth **Kes.63,500,000/-**, Bahati Nduku Salim got properties worth **Kes.53,000,000/-**, Esther Mwelu Malua got properties worth **Kes.34,000,000/-**, the estate of Daniel Nzangi Malua got properties worth **Kes.5,850,000/-**, and Elizabeth Fatuma Nduku got properties worth **Kes.48,000,000/-**. The distribution was thus inequitable as the Estate of Daniel Nzangi Malua was prejudiced.
9. On her part, the 2<sup>nd</sup> protestor contended that the deceased distributed her estate during her lifetime. She stated in her deposition and during her testimony that she was given plot No. 790 Mkomani, as were other properties, which were subsequently taken away by Bahati Nduku and transferred to Ms Bahati Nduku, or to 3<sup>rd</sup> parties. The 2<sup>nd</sup> Protestor contended that the properties which were transferred to her during the lifetime of the deceased should not form part of the estate of the deceased.
10. The protests were canvassed through viva voce evidence. Thereafter, parties filed written submissions, which I have considered.
11. Although the protestors have referred to themselves as objectors, I note that their prayers are in essence for the revocation of the grant.
12. Under section 76 of the Law of Succession Act, the Court can revoke a grant of representation. Section 76 of the said Act provides 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.”**

**13.** In the case of **Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] KEHC 7143 (KLR)**, the Court said as follows: -

“11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

**14.** In the case of **Albert Imbuga Kisigwa v Recho Kavai Kisigwa [2016] KEHC 1528 (KLR)**, it was stated that: -

“13. Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing 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.”

15. What emerges from the foregoing is that the grant may be revoked upon the application by an interested party or on the Court's own motion.
16. In this case, it does not appear to me as though all the beneficiaries of the estate of the deceased were consulted, nor did they give their consent to the issuance of the grant. Although the deceased beneficiaries could not have consented, their children could have done so.
17. In the case of **In the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR)**, it was held that where dependants are deceased, their children could step in. The court expressed itself as follows: -
- “The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”**
18. This is important in this case as the distribution of the estate as proposed in the summons does not appear to me to be equitable.
19. In my view, the grant was issued pursuant to a defective process which this Court cannot condone. In the circumstances, the grant issued on **19<sup>th</sup> February 2016** is hereby revoked.

**20.** Based on the foregoing, the orders that commend themselves to me are the following: -

- 1.** I order the petitioner to file a fresh petition for letters of administration with Fatuma Nduku as a co-petitioner, upon obtaining the consent of the beneficiaries. The petition is to be filed within 60 days of the date hereof;
- 2.** I order the petitioner to provide a statement of account of her dealings with the estate of the deceased from the time of her appointment to date and provide an inventory of the assets and liabilities of the estate;
- 3.** As this is a family matter, each of the parties shall bear their own costs of the protest.

**21.** It is so ordered.

**Dated** and signed at Mombasa, this **9<sup>th</sup>** day of **December 2025**.

Delivered virtually through **Microsoft TEAMS**.

**Gregory Mutai**  
**JUDGE**

In the presence of: -

- 1.** Mr Frank Calvin Nyongesa, holding brief for Mr Oddiaga, for the Petitioner/Respondent;
- 2.** Mr Kiamba, holding brief for Mr Mbalu Mutava, for the 1<sup>st</sup> Objector;
- 3.** No appearance for the 2<sup>nd</sup> Objector; and
- 4.** Norah – Court Assistant.