



REPUBLIC OF KENYA



**Mbaria & another v Kariuki & another (Succession Cause 258 of 2013)
[2025] KEHC 18851 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18851 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 258 OF 2013
E OMINDE, J
DECEMBER 19, 2025
IN THE MATTER OF THE ESTATE OF MBARIA WAIRENGE(DECEASED)**

BETWEEN

MWANGI MBARIA 1ST PETITIONER

JAMES GETUA MBARIA 2ND PETITIONER

AND

MARY WANGUI KARIUKI 1ST APPLICANT

PENINNAH WANJA MBARIA 2ND APPLICANT

RULING

1. By Summons dated 22/07/2024, the Applicants seeks revocation of the confirmed Grant made on 29/07/2022 on grounds that:
 - a. The proceedings to obtain the grant were defective in substance.
 - b. The grant was obtained fraudulently by making of false statement or by concealment from Court of something material to the case.
 - c. The grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant notwithstanding the allegation was done in ignorance or inadvertently
 - d. The persons to whom the grant was made have failed after due notice and without reasonable cause either to and the grant has become useless and inoperative through subsequent circumstances
2. The application is stated to be brought under Section 76 of the *Law of Succession Act*. It premised on the grounds therein and is supported by the Affidavit sworn by Mary Wagui Kariuki.



3. She deposed that the deceased herein Mbaria Wairenge died intestate on 28/02/1996, that the Respondents herein instituted succession proceedings sometime in the year 2013. She added that the parties herein are beneficiaries and also the children to the late Mbaria Wairenge and that the Chief wrote an introduction letter on 3/08/2012 where he introduced the late Wairenges two wives Wanjiku Mbaria and Wangeci Mbaria and his 18 children.
4. She further deposed that the Petitioners herein filed the petition for letters of administration intestate on 9/09/2013 and a grant was issued to the Petitioners on 20/06/2014 and that they later filed summons for confirmation of grant dated 26/11/2021 dated on an even date.
5. She added that accompanying the summons for confirmation of grant was Form 37 being consent to the making of grant which consent is utterly misleading and false as most of the beneficiaries' signatures have been forged to make it appear as if they are in agreement with the mode of distribution. Further she deposed that even some of the names of the so called beneficiaries are completely misspelled and that a case in point is Alice Wanjiku who has been referred to as Alice Gishu. That some beneficiaries did not sign the consent form but the same was presented showing that they have signed cases in point being Mary Wangui Kariuki and Lydia Wageshi amongst others, who are ready to take oath and dissociate themselves from the alleged signatures.
6. She contended that the Petitioners/Respondents herein did not disclose to this Court that one of the deceased grandson Haron Mbaria Evans has been included as a beneficiary in mode of distribution yet his father is alive and also listed as a beneficiary that is James Maina.
7. She added that when the matter came up in Court for confirmation and ruling she and other members of the 2nd house were not aware of the Court date nor were they present to endorse/consent to the mode of distribution and the happenings of that day and that further, a plot belonging to their deceased father was omitted in the list of assets that was proposed in the mode of distribution being Timboroa Trading Centre Plot No.30.
8. She contended that the son of one of the Petitioners herein Haron Mbaria Evans is grandson and thus not a direct dependant to the late Mbaria Wairenge received a big chunk of the land with no rights whatsoever as his father is still alive yet some of the direct beneficiaries have only received small portions of their late father's estate.
9. She further contended that two sons of the late Mbaria Wairenge, Philip Maina and Daniel Mwangi have been completely left out of the succession proceedings despite the chiefs' letter showing them as the sons of the deceased Mbaria Wairenge.
10. According to the 1st Applicant, there is ill will and or wrong motive on the part of the Respondents in purposing to take the lion's share of the estate as well as committing some of the family members form the succession proceedings and it is prudent that the succession cause herein be reopened and that her interest as well as those of the members of the 2nd family be addressed in the Succession Cause herein.

Replying Affidavit

11. The application is opposed by the 2nd Petitioner, James Getua Mbaria vide his Replying Affidavit dated 14/01/2025.
12. He deposed that he is the administrator of the estate of Mbaria Wairenge who was his father.
13. He further deposed that he is opposed to the instant application on grounds that; the Applicants have not satisfied the conditions guiding the Court in so far as application seeking revocation or annulment of grant is concerned. That the Applicants were at all material times present in Court and



were thus aware of the existence of the proceedings herein as such the application was brought after an ordinate delay. That plot in Timboroa Trading Centre is not registered in their father's name but rather registered in their mother's name and as such the same ought to be dealt with under separate proceedings.

14. That Alice Wanjiku is commonly also referred to as Alice Gishu and the name therefore refers to one and the same person and as such no prejudice was occasioned in the mix up of names. That the grandson Haron Mbaria Evans who received part of the estate is and or was a dependant of the deceased to whom the deceased had taken as one of his own child and was providing and or maintaining him at the time of his death and thus a dependant within Section 29 of the *Law of Succession Act*.

Submissions

15. The Application was canvassed vide written submissions. The Applicants filed dated 31/10/2024 while the Petitioners on the other filed submissions dated 08/06/2025.

Applicants' Submissions

16. On the issue of revocation of grant, Counsel for the Applicants cited Section 76 of the *Law of Succession Act* and relied on the holding in the case of Jamleck Maina Njoroge-vs-Mary Wanjiru Mwangi (2015)e KLR the Court discussed circumstances when a grant can be revoked. The Court observed; -

“The circumstances that can lead to the revocation of grant as 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 Courts 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 a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegations of fact essential in point of law”

17. Counsel observed that power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. He relied on the case of L.A.K Deceased) (2014)e KLR.
18. Counsel further submitted that a grant may be revoked where the proceedings leading to its making were defective or were attended by fraud and concealment of important matters or was obtained by an untrue allegation of a fact essential to the point.
19. In the instant case, Counsel urged that from the evidence on record it is clear that a myriad of issues emerge which include issue of double benefit to some of the beneficiaries and the issue of a forged Form 37 consent to the making of grant which is utterly false and misleading as most of the signatures are forged to make it seem as if they are in agreement with the proposed mode of distribution yet they are not.
20. Counsel added that it is also key to point out that the affairs related to the estate of the late Mbaria Wairenge have been shrouded with secrecy from the Petitioners who have kept Court proceedings out of reach of the beneficiaries and that in fact when the matter came up in Court for confirmation the beneficiaries were completely not aware of the date and only found out when rumours started flying around that succession and confirmation had already taken place and subdivision process had started.
21. In the end, Counsel submitted that the circumstances under which a grant may be revoked are issues of fact which must be proved by the alleging party on a balance of probabilities and that in the instant case the beneficiaries Applicants have ably showed the honourable Court how the affairs of the estate of the late Mbaria Wairenge have been undertaken by the Petitioner who have concealed



from Court material facts related to the estate as well as fraudulent activities including but not limited to omission of beneficiaries, omission of properties of the deceased from the succession proceedings, forgery of beneficiaries signatures, double allocation or properties to some beneficiaries at the expense of others as well as secretly going to Court for confirmation proceedings without the knowledge of other beneficiaries.

22. Counsel urged that indeed the Petitioners through evidence in the pleadings and the instant application have been proven to have obtained the grant by making of false statement and concealment from the Court of material and crucial facts and information and as such the proceedings to obtain the grant were defective in substance and thus it is their prayer that Court invokes its inherent powers granted under Article 159 of *the Constitution* of Kenya and Section 76 of the Laws of Succession Act and make an order to revoke the grant issued on 22/05/2023 by the Court.

The Petitioners'/Respondent's Submissions

23. Counsel for the Respondents submitted that the main reason advanced by the Applicants on the face of the application and the supporting affidavit is that Forms 37 is misleading and false in that their signatures were false, some names of beneficiaries are misspelt, that one of deceased Grandson Haron Mbaria have been included as beneficiary in the mode of distribution, that deceased's plot No. Timboroa Trading Centre Plot No. 30 was omitted in the list of assets, that two sons of the deceased Philip Maina and Daniel Mwangi had been left out of the proceedings and that it is prudent that the succession cause herein be re-opened and their interest be addressed.
24. Counsel maintained that the 2nd Applicant Signed form 38 and consent to confirmation form as Judy Wanja and at all material times the said Peninnah Wanja had also been referred to as Judy Wanja which fact is corroborated by the other beneficiaries.
25. Counsel further submitted that Section 76 of the *Law of Succession Act* is discretionary in that it gives the Court discretion on whether to revoke or annul a grant and that it is not therefore the position that any breach or violation must always or automatically lead to revocation of a grant. Counsel urged the Court to find that due to the exceptional and/or unique circumstances arising in this matter, it will not serve the interest of justice to revoke or annul the grant. Counsel pointed out that exceptional circumstances arising include the fact that the deceased died in the year 1996 , 29 years ago and this cause was itself filed in the year 2013, 12 years ago and the grant was then given in 2022. Counsel added that the Applicants were aware of these succession proceedings and the orders given therein and that they are not being candid and have not explained the inordinate delay on their part of the in enforcing their rights. Counsel urged that "equity aids the vigilant, not the indolent".
26. He relied on the by Justice Wananda In re Estate of Bernard Mwangi Wanjohi (Deceased) (Succession Cause 96 of 2013) [2023]KEHC 23491 (KLR)(13 October 2023) (Ruling) where the judge observed;

Although the Petitioner misrepresented material facts, the Court chose not to revoke the grant due to the substantial time that had passed since its issuance and the confirmation in 2014. The exceptional circumstances being that it had been 20 years since the deceased passed on and 9 years since the grant was issued. The Court was not convinced that during all that time, the objector was never aware of the succession proceedings and the orders given therein. The objector resided in the homestead since their father died in the year 2013. The objector was not being candid. There had been unexplained and inordinate delay on the part of the objector in enforcing her rights. Equity aids the vigilant, not the indolent.

It will be in the interest of justice to revoke the Grant and send the protagonists back to the drawing board. However, the objector was entitled to inherit a portion of the estate. Since



no other family member, apart from the objector had come forward to claim a share in the estate, it was fair to share out the estate between the Petitioner and the objector.

Since the Petitioner took the lead in safeguarding and protecting the estate over the years and had in the process, incurred and spent her personal resources, it would only be fair that she retained the bigger portion rather than sharing equally with the objector.

The Court acknowledged that there had been a significant delay on the part of the Objector in asserting her rights but found that this did not preclude her from receiving a share of the estate.

Determination

27. Having appreciated the parties' pleadings on record, it is clear that the only issue for determination in the instant Cause is;

whether the Grant of Letters of Administration issued to Mwangi Mbaria and James Getua Mbaria on 23/06/2014 and confirmed on 22/05/2023, should be revoked.

28. Section 76 of the *Law of Succession Act* provides as follows:

“Revocation or annulment of grant

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.”



29. On the issue of revocation of Grants, Section 76 was expounded upon by Hon. Justice W. Musyoka in the case of *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where he stated as follows:

“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.”

30. There exist three primary reasons for the revocation of a grant of letters of administration. The first instance involves issues that arose during the grant application procedure. The first would be in cases where the process was flawed, either because a necessary step was missed, the candidates for representation were incompetent or unfit to serve, or the deceased passed away testate with a valid will and a grant of letters of administration intestate was made in lieu 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.
31. The second general ground is when the grant was obtained in accordance with procedure, but the administrator encountered difficulties in carrying out the administration. These difficulties could include the administrator's failure to apply for grant confirmation within the allotted time frame, to administer the grant carefully, or to provide accounts on time.
32. The third general ground is where the grant has become worthless and inoperative due to subsequent events, such as when the sole administrator passes away and leaves no successor to continue the exercise, or when the sole administrator becomes mentally or physically incapacitated to the point where he cannot perform his administrative duties, or when the sole administrator is declared bankrupt and thus ineligible to occupy any position of trust.
33. The Applicants contend that the Grant was obtained by concealment of material facts. Further, that the Petitioners forged signatures to obtain the grant. It is trite law that he who alleges must prove. The burden of proof of the forgery rests on the Applicants. They have not tendered any report by a forensic document examiner to buttress the claim that there was a forgery. I also note that the Applicants contend that some of the names of the beneficiaries have been misspelled. To my mind these are simple issues that can be rectified by parties filing of an appropriate application. The Applicants



further contend that they were not notified of confirmation proceedings. From a cursory perusal of this Court's record it clear that the Applicants have all along been participating in the proceedings herein. They therefore cannot claim to have not been made aware of the proceedings for confirmation of Grant.

34. In re Estate of Magangi Obuki (Deceased) [2020] eKLR the Court quoted the authority in the case of Albert Imbuga Kisigwa v Recho Kawai Kisigwa, Succession Cause No.158 of 2000, Mwita J. made remarks on the guiding principles for the revocation of a grant. He stated;

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

35. Being persuaded by the finding of Wananda J herein above cited with regard to the time that has passed since the deceased died in the year 1996 and the fact that the application for grant of letters of administration was made 12 years ago in the year 2013 and further by dint of the fact that the court record shows that the Applicants herein have all along been participating in these succession proceedings and have therefore have had every opportunity to raise whatever objections they may have had before the grant was confirmed in the year 2023 10 years after the application for grant was made, I do not find any merit in their application. The Court therefore is disinclined to allow the Applicants to improperly and impermissibly re-litigate endlessly on the same issues for reasons that litigation must come to an end. In this regard, the Application is dismissed with costs in the cause.

READ DATED AND SIGNED AT ELDORET ON 19TH DECEMBER 2025

E. OMINDE

JUDGE

