



REPUBLIC OF KENYA



**Ng'ang'a & another v Nduati (Family Appeal E004 of 2024)
[2026] KEHC 50 (KLR) (16 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 50 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY APPEAL E004 OF 2024
H NAMISI, J
JANUARY 16, 2026**

BETWEEN

FRANCIS KAMAU NG'ANG'A 1ST APPELLANT

MARY WANJIRU NG'ANG'A 2ND APPELLANT

AND

JOYCE WANJIKU NDUATI RESPONDENT

*(Being an Appeal from the Ruling of Hon. F. I. Koome, Principal Magistrate
delivered on 9 August 2023 in Thika Succession Cause No. 422 of 2016)*

JUDGMENT

1. This appeal invites this Court to navigate the often-turbulent confluence of succession law, land registration regimes and the equitable doctrines of trust within the Kenyan legal framework. It places under the judicial microscope the integrity of the grant-making process, specifically probing the legal consequences of non-disclosure of material facts – namely the majority age of the beneficiaries- and the jurisdictional limits of a probate Court in determining questions of beneficial ownership summarily during revocation proceedings.
2. The Appellants are the biological children of the Deceased. They have moved this Court to set aside the Ruling delivered on 9 August 2023, in which the trial court dismissed the Appellants' Summons for Revocation of Grant, effectively sustaining a distribution of the estate's primary asset to the Respondent, who is a sister of the Deceased.
3. The core of the dispute revolves around a parcel of land known as Ruiru West Block 1/1873 (hereinafter "the suit property"). While the Appellants contend that this property constitutes the estate of their late father and was distributed to their aunt, the Respondent, through a fraudulent process that concealed their adult status, the Respondent maintains that the Deceased held the property in a resulting trust for her, having purchased it using her funds while she resided in the United Kingdom.



4. The Court is seized of jurisdiction pursuant to section 47 of the *Law of Succession Act*, which grants the High Court jurisdiction to entertain appeals from the subordinate courts in matters of probate and administration. Furthermore, Article 165(3)(b) of *The Constitution* confers upon this Court jurisdiction to hear and determine appeals from subordinate courts.
5. In arriving at this determination, this Court has conducted an exhaustive re-evaluation of the entire record of appeal, the oral and written submissions by counsel, and the plethora of judicial authorities cited by the parties and those identified by this Court as germane to the issues at hand. This being a first appeal, this Court is enjoined to revisit the evidence and arrive at its own independent conclusion, albeit with the caveat that it did not have the privilege of observing the demeanour of the witnesses (*Selle & Another vs. Associated Motor Boat Company Ltd & Others EA 123*).

Brief Background

6. The Deceased died intestate on 24 June 2010 at Nazareth Hospital. He was domiciled in Kenya at the time of his passing. He was survived by his widow, Alice Nungari Kamau, and several children. The Appellants herein are among those children.
7. At the time of his demise, the Deceased was the registered proprietor of Plot No. RUIRU WEST BLOCK 1/1873. This property is the sole asset listed in the inventory of the estate and is the focal point of the acrimony between the parties.
8. On 29 August 2016, 6 years after the death of the Deceased, a Petition for Letters of Administration Intestate was filed at the Thika Chief Magistrate's Court in Succession Cause No 422 of 2016. The Petitioners were Alice Nungari Kamau and John Kangethe Nganga, a son to the Deceased and brother of the Appellants. The list of survivors provided in the Affidavit in support and in the letter from the Chief, Ruiru Location, dated 19 August 2016, categorised the beneficiaries as follows:

Name	Status	Age
i.	Alice Nungari Kamau - Widow	- adult
ii.	John Kangethe Nganga -Son	- Adult
iii.	Francis Kamau Nganga - Son	- Minor (20 years)
iv.	Mary Wanjiru Nganga - Daughter	- Minor (18 years)
v.	Joh Muiruri Nganga - Son	- Minor
vi.	Joyce Wanjiku Nduati - Sister	- Adult
9. It is an uncontested fact in this appeal that at the time of filing the Petition, the 1st Appellant was 20 years old, and the 2nd Appellant was 18 years old. They were, legally, adults. However, they were presented to the court as minors.
10. Based on the Petition, a Grant of Letters of Administration Intestate was issued to Alice Nungari Kamau and John Kangethe Nganga on 17 March 2017. On 11 April 2017, barely a month later, the Administrators filed Summons for Confirmation of Grant. In the Application, the mode of distribution proposed was singular and absolute: the entire estate, comprising the suit property was to be distributed to Joyce Wanjiku Nduati, the Respondent. The court allowed the application, and an Amended Certificate of Confirmation of Grant was issued on 19 April 2017.
11. On 22 September 2021, approximately 4 years after the confirmation, the Appellants filed a Summons for Annulment and Revocation of Grant. They sought orders to revoke the Grant and



- the confirmation certificate and to rectify the register to cancel the Respondent's ownership. The Appellants argued that the Grant was obtained by concealing their true age. By labelling them as minors, the Petitioners obviated the need for their consent to the distribution.
12. The Appellants alleged that another sister, Felister Wambui Nganga, was entirely omitted from the list of survivors. They contended that distributing the family home to their aunt, the Respondent, was an act of disinheritance and that the property should have devolved to the children under section 38 of the *Law of Succession Act*. They averred that they were never served with the Summons for Confirmation.
 13. The Respondent opposed the revocation. Her defence was predicated on the doctrine of resulting trust. She deposed that she resides in the United Kingdom. In 2003, she sent funds to her brother, the Deceased, to purchase land for her. The Deceased purchased the suit property but registered it in his name as her trustee/nominee because she was absent. The Respondent relied on a Transfer Agreement dated 28 August 2015, executed by the widow, Alice Nungari, prior to the succession cause, acknowledging that the land belonged to the Respondent. She argued that the property was never free property of the Deceased and thus, the distribution merely formalised her beneficial ownership.
 14. The trial court dismissed the application for revocation. The court reasoned that the error regarding the Appellants' ages was a matter for the Administrators to explain, not the Respondent. The Respondent was an innocent purchaser/beneficial owner for whom the Deceased held the land in trust. The trial court found that the Appellants had failed to prove fraud on the part of the Respondent.
 15. Aggrieved by the said Ruling, the Appellants lodged this appeal, raising 17 grounds, which can be summarised into 4 primary issues for determination.
 16. First, whether the proceedings to obtain the Grant were defective in substance and obtained by concealment of material facts, specifically the age of the Beneficiaries and omission of heirs, thus warranting revocation under section 76 of the *Law of Succession Act*. Second, whether the trial court erred in law by failing to appreciate the mandatory nature of consent and notice to adult beneficiaries under Rule 26 of the Probate and Administration Rules. Third, whether the trial court had jurisdiction to determine the complex issue of beneficial ownership (Trust vs. Estate Property) summarily within the succession cause, or whether it ought to have deferred to the Environment and Land Court. Fourth, whether the Administrator's execution of the 2015 Transfer Agreement constituted intermeddling, and whether the distribution to the Respondent was legally sound.
 17. The appeal was canvassed by way of written submissions.

Analysis & Determination

18. The power and discretion to revoke a Grant are provided in section 76 of the Act, which provides as follows:

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...



Defective Proceedings and Concealment of Material Facts

19. The record is incontrovertible that at the time the Petition was filed in August 2016, the 1st Appellant was 20 years old and the 2nd Appellant was 18 years old. However, the Petition, the Affidavit in Support, and the Chief's letter presented them as minors.
20. The distinction is material. In the the architecture of the *Law of Succession Act*, the distinction between a minor and an adult beneficiary is fundamental. Section 41 mandates that where a legacy is given to a minor, it must be held in trust. Section 58(1) restricts the issuance of a Grant to a single individual where a continuing trust arises, i.e where there are minor beneficiaries. Rule 26(1) of the Probate and Administration Rules requires that the Letters of Administration shall not be granted without notice to every other person entitled in the same degree as the applicant. Most critically, adult children have a right to consent to the making of the grant and the mode of distribution. Minors do not; they are represented by guardians.
21. By misclassifying the Appellants as minors, the Petitioners successfully evaded the statutory requirement to serve the Appellants with notice or obtain their consent. This deprived the Appellants of their locus standi to object to the proceedings at the incipient stage.
22. In *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR, Justice Musyoka provided a luminous exposition on this subject. He held that concealment of something material to the case includes the failure to disclose the correct survivors or misrepresenting their capacity. A Grant obtained on such a premise is fundamentally flawed.
23. The Respondent argues that this was an honest mistake or an error by the Chief. This Court rejects that submission. The Petitioners were the mother and brother of the Appellants. A mother is presumed to know the age of her children. To depose in an Affidavit that a 20-year-old is a minor is a falsehood. Under Section 76(c), even if an untrue allegation is made in ignorance or inadvertently, it remains a ground for revocation if the fact is essential in point of law. The capacity of a beneficiary to consent is undoubtedly a fact essential in point of law.
24. The Appellants further contend that their sister, Felister, was omitted entirely. The Respondent's submissions attempt to brush this aside by stating no evidence was tendered to prove she was a child. However, the onus in probate is on the Petitioner to make a full and frank disclosure (Section 51(2) (g)). The failure to list a beneficiary constitutes concealment. As held in *In re Estate of Raphael Charles Makokha (Deceased)* [2024] KEHC 12277 (KLR), the omission of a widow or child is a defect in substance that warrants revocation.
25. Therefore, on the first issue, I find that the proceedings were defective in substance and the Grant was obtained by concealment of material facts. The trial court erred in finding otherwise.

Mandatory Nature of Notice and Consent

26. The Appellants submit that they were not notified of the confirmation proceedings. Since they were listed as minors, the court proceeded on the assumption that their interests were protected by the Administrators.
27. Rule 40(8) of the Probate and Administration Rules is instructive regarding confirmation. It implies that where all beneficiaries have not consented, the court must be satisfied that they have been served. Since the Appellants were adults, they were entitled to be served.



28. In *Beatrice Mbeere Njiru v Alexander Nyaga Njiru* [2022] KEHC 2351 (KLR), the Court emphasized that where persons of equal priority do not give consent, the proceedings are defective. The Respondent attempts to distinguish this case by arguing that the petitioner there was of equal rank, whereas here the Petitioner was a widow, thus higher rank. This distinction is unavailing regarding the confirmation stage. At confirmation, Section 71 requires the court to be satisfied that the distribution represents the will of the beneficiaries or the law. One cannot distribute the estate of an intestate deceased without the input of the adult children, regardless of the administrator's rank.
29. The failure to notify the Appellants denied them their constitutional right to a fair hearing under Article 50 of *The Constitution*. They were condemned unheard, and their potential inheritance was alienated without their input.

Jurisdiction of the Probate Court versus the Environment and Land Court

30. This appeal presents a classic conflict between the jurisdiction of the Probate Court and the Environment and Land Court (ELC). The Respondent's defence is that the suit property was held in a resulting trust for her. She argues that because she paid for it, the beneficial interest vested in her, and the Deceased was merely a trustee.
31. The doctrine of resulting trust is well entrenched in Kenyan jurisprudence. In *Mbui v Mbui* (Civil Appeal No. 263 of 1997), the Court of Appeal held that where property is registered in the name of one person but the purchase price was provided by another, a resulting trust arises in favour of the provider of the funds. This is an equitable doctrine designed to prevent unjust enrichment.
32. The Respondent's affidavit evidence, which is supported by James Ndichu, and the 2015 Transfer Agreement strongly suggest the existence of such a trust. However, the procedural question is: Which court has the jurisdiction to determine that the property was held in trust?
33. Article 162 (2)(b) of *The Constitution* vests exclusive jurisdiction in the Environment and Land Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. Section 47 of the *Law of Succession Act* gives the High Court, and Magistrates within limits, jurisdiction over the estate of the deceased. The settled jurisprudence is that the Probate Court deals with free property of the deceased. If a third party claims that an asset registered in the deceased's name is not free property, that is a dispute regarding ownership/title.
34. In *In re Estate of Stone Kathuli Muinde (Deceased)* [2016] KEHC 3725 (KLR), Justice Musyoka articulated this principle with clarity:

“With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.

28. Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the Civil Procedure Rules. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court,



or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.”

35. In the instant case, the learned Magistrate proceeded to determine the issue of ownership (trust) within the revocation application. While this might seem pragmatic, it was procedurally risky. By accepting the Respondent’s trust argument without a full trial on that specific issue, where the Appellants could cross-examine and challenge the authenticity of the 2015 agreement, the learned Magistrate effectively exercised ELC jurisdiction within a Probate and Administration cause.
36. The Appellants dispute the trust. They argue that the land was their father’s. This creates a contested dispute over land ownership. The proper forum for determining whether the suit property was estate property or trust property is the Environment and Land Court, or at the very least, a distinct application within the High Court where pleadings are strictly drawn to address the trust.
37. However, I am cognizant of Article 159(2)(d) of *the Constitution* which abhors technicalities. Sending the parties to the ELC now, after years of litigation, might be unduly punitive. Yet, the Probate Court cannot distribute property that is contested without first resolving the ownership question procedurally.
38. The error of the trial court was in allowing the confirmation to stand based on a trust claim that was never subjected to a fair hearing involving the adult children. The Petitioners/Administrators unilaterally agreed that the land belonged to the Respondent. While the widow admitted this in the 2015 agreement, the Appellants did not. As beneficiaries, they had a right to be heard on whether that assets should be excluded from the estate.

Intermeddling

39. The Appellants argue that the Transfer Agreement of 28 August 2015 was an act of intermeddling contrary to Section 45 of the Act. The section provides:

Except so far as expressly authorized by this Act... no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
40. Intermeddling is a criminal offense and renders the acts void. However, the Respondent argues that she was not dealing with free property but with her own trust property.
41. If the trust is valid, then the land was not free property of the Deceased, and Section 45 might not strictly apply to the beneficial interest. However, the legal title was in the deceased. Dealing with the legal title required a Grant. The 2015 agreement was an acknowledgment of trust by the widow. It could not transfer land. The actual transfer happened after the Grant was confirmed in 2017. The illegality lies not necessarily in the 2015 agreement itself, which is the evidence of intention, but in the use of that agreement to bypass the succession process’s safeguards, which are the participation of all heirs.
42. Thus, the Court is faced with two competing interests; The Appellants are the heirs who were fraudulently concealed from the court and denied a voice in the distribution of their father’s estate. The Respondent, based on the affidavit evidence and the widow’s admission, appears to have purchased the land and is the beneficial owner. To revoke her title might effectively dispossess her of property that she bought.



43. Justice must not only be done but be manifestly seen to be done. A Grant obtained by lying to the court about the age of beneficiaries is a poisoned chalice. It cannot be allowed to stand solely because the result (transfer to Respondent) might be substantively correct. Procedural integrity is the bedrock of the rule of law. If we condone the misdescription of adults as minors, we open the door for administrators to disenfranchise beneficiaries at will.
44. The solution, therefore, is that the Grant and confirmation must be revoked to cure the defect in substance. However, the Respondent's proprietary interest must be protected pending a proper determination. The correct path is to restore the suit to the stage of the Grant, include the correct beneficiaries, and then set down the issue of the Trust for determination.
45. The Respondent should file a formal application or cross petition, asserting her beneficial interest. The Appellants, now properly on record as adults, can file their replied. The court can then take viva voce evidence specifically on the issue of the purchase of land. If the court finds a resulting trust, then the land is transferred to the Respondent. If not, it is distributed to the heirs.
46. Section 80 of the [Land Registration Act](#) empowers the court to rectify the register where registration was obtained by fraud or mistake. The registration of the Respondent was based on a flawed Certificate of Confirmation. It is liable to cancellation. However, to avoid the land being sold to a third party by the Appellants, if title reverts to the Deceased, a restriction/inhibition order is necessary.
47. In the premise, and guided by the overriding objective of the Act to ensure proper administration of estates, I find the appeal to be meritorious. Accordingly, I make the following orders:
- i. The Ruling of the Principal Magistrate in Thika Succession Cause No. 422 of 2016 delivered on 9 August 2023 is set aside;
 - ii. The Grant of Letters of Administration Intestate issued on 17 March 2017 and the Certificate of Confirmation of Grant issued on 19 April 2017 are hereby revoked and annulled.
 - iii. The Land Registrar, Kiambu/Ruiru, is directed to:
 - a) Cancel the registration of Joyce Wanjiku Nduati as the proprietor of RUIRU WEST BLOCK 1/1873.
 - b) Restore the registration of the property in the name of Michael Ng'ang'a Kang'ethe (Deceased).
 - c) Place a Restriction on the said title preventing any dealing, transfer, or charge until further orders of the Court;
 - iv. A fresh Grant of Letters of Administration shall be issued jointly to Alice Nungari Kamau and Francis Kamau Ng'ang'a;
 - v. The Respondent is granted leave to file a formal application in the appropriate forum within 60 days to establish her claim of beneficial ownership/trust over the suit property;
 - vi. The Succession Cause is remitted to the Chief Magistrate's Court for the determination of the beneficial ownership issue and subsequent distribution in accordance with the law;
 - vii. Given the familial relationship and the fact that the initial error regarding age was propagated by the Administrators, each party shall bear their own costs of this appeal.

DATED AND DELIVERED AT THIKA THIS 16 DAY OF JANUARY 2026.

HELENE R. NAMISI



JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For the Appellants: Ms Githinji

For the Respondent: Ms Wanja h/b Mr. Mugo

Court Assistant: Lucy Mwangi

