



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. E3385 OF 2022**  
**IN THE MATTER THE ESTATE OF JANE NGIGE KARUNGU**  
**(DECEASED)**

**MARY WANJIRU KINYANJUI ..... APPLICANT  
/OBJECTOR**

**VERSUS**

**PENINAH INYANJE KARUNGU .....  
RESPONDENT/ADMINISTRATIX**

**RULING**

1. This ruling relates to the application dated **27<sup>th</sup> June, 2024** filed by the Applicant, Mary Wanjiru Kinyanjui; seeking for **ORDERS THAT:**
  - a) **Grant of letters of administration intestate issued to PENINAH INYANJE KARUNGU on 14<sup>th</sup> February, 2024 which are yet to be confirmed be revoked.**
  - b) **Upon grant of prayer a above the court be pleased to transfer this matter to the Nakuru High Court for hearing and determination.**

**c) Costs of this application be provided for.**

2. The application is based on the grounds thereof and supported by affidavit sworn by Mary Wanjiru Kinyanjui on **27<sup>th</sup> June, 2024.**
3. She avers *inter alia* that she is the administratrix of the estate of Tom Kamau Karungu, a beneficiary of the estate in issue. The deceased died partially testate and part of his estate was distributed through Nairobi High Court Succession Cause No. 2621 of 2013.
4. The Respondent is accused of fraudulently incorporating intestate assets of the deceased into the testate succession and allocating them to herself. It was pursuant to the Respondent's application that the court ordered the distribution of the intestate assets and directed her to render a full account, particularly where certain properties had been transferred to third parties. Some of the assets allegedly transferred fraudulently were subsequently reverted to the estate by the Nakuru Land Registrar.
5. That in early June 2024, she instructed her advocates to cite the Respondent before the High Court at Nakuru for failure to petition for a grant. However, the citation was rejected upon discovery that the Respondent had already filed these proceedings without disclosure. This came as a surprise to her, given that the Respondent's advocates had been appearing alongside her advocates in related proceedings without ever disclosing the existence of this cause. She

contends that the Respondent has consistently excluded her from matters relating to her late father-in-law's estate.

6. She further questions why the Respondent, a resident of Nakuru, instituted these proceedings in Nairobi, despite the deceased having been domiciled in Nakuru and all the estate assets being situated there. She also challenges the valuation of the estate at **Kshs.5, 000,000/=**, noting that the matter is nevertheless before the High Court.
7. As a person equally entitled to apply for letters of administration intestate, the Applicant maintains that the Respondent was under a mandatory duty to obtain her consent or to issue a citation, which was not done. She asserts that the High Court at Nakuru has territorial jurisdiction and prays that the grant be revoked to allow the proper procedure to be followed in applying for a fresh grant.
8. The application is opposed vide replying affidavit sworn by Peninah Iyanje Karungu on **19<sup>th</sup> September, 2024**. She avers *inter alia* that she is the duly appointed administratrix of the estate of the late John Ngigi Karungu. The primary purpose of her petition for letters of administration intestate was to complete transfers of several properties that the deceased had lawfully sold to third-party purchasers during his lifetime. These properties did not form part of the free estate available for distribution, as the sale transactions had been substantially completed prior to the deceased's death. This position was fully disclosed in her earlier supporting

affidavit sworn on **15<sup>th</sup> July, 2022**, particularly at paragraph **5** thereof.

9. The Respondent further avers that her petition was accompanied by multiple affidavits sworn by the third-party purchasers, together with sale agreements, acknowledgements of receipt of purchase price, applications for Land Control Board consent and transfer forms.
10. The deceased's son, Tom Karungu, whose estate the Applicant represents, was fully aware of these transactions. In some instances, the Applicant herself is alleged to have received portions of the purchase price on behalf of the deceased. The documentary evidence annexed to the petition clearly demonstrates receipt of the purchase price and the validity of the transactions.
11. She averred that the Applicant has failed to provide any evidence to controvert these facts or to show that the assets in question remained part of the deceased's estate at the time of death. The interests being protected are those of innocent third-party purchasers rather than her own personal interest or that of her late husband's estate.
12. No objections were filed following the gazettelement of the petition on **13<sup>th</sup> January, 2023**, despite the Applicant having been afforded the statutory thirty (**30**) days to do so.
13. Consequently, the court issued a grant of letters of administration intestate on **14<sup>th</sup> February, 2023**. Upon the filing of the summons for confirmation of grant, her advocates notified the Applicant's advocates in advance,

outlining the steps taken and acting in good faith. However, the Applicant failed to disclose that she had already filed summons for revocation of grant.

14. Finally, although some properties are situated in Nakuru, she did not object to the High Court in Nairobi hearing and determining the succession cause. She concludes that the Applicant's summons is scandalous, misconceived, an abuse of the court process and should be dismissed with costs.
15. The Applicant has filed written submissions dated **8<sup>th</sup> September, 2025** placing reliance on the following:
  - a. **Nairobi Succ 2621 of 2013** where it was stated as follows: ***"I reiterate that LR No. Shawa/Gicheha/Kangakinga/ Block 4/92, the subdivisions 206, 208, 205, 207, 163, 165, 201, 171, 172, 218, 213, 214, 202, 177, 164, 166, 199, 200, 9, 221, 178, 179, 183, 185, 186 and 226, and any other subdivisions from the main title (92), shall not form part of this testate succession. It will be in the intestate succession that the Respondent shall account to the Applicant in relation to this parcel and its subdivisions."***
  - b. **In re Estate of Yusuf Kipkorir Chepkeitany (Deceased) [2021] KEHC 6413 (KLR)** where it was held as follows: ***"The expression "any interested party" as used in that provision, in its plain and ordinary meaning, is in our view wide enough to accommodate any person with a right or***

***expectancy in the estate. We are not persuaded, as Mr. Oguttu urged, that that expression is limited by or should be construed against the provisions of sections 66b and 39 of the Law of Succession Act. Section 66 provides a general guide to the court of the order of preference of the person (s) to whom a grant of letters of administration should be made where the deceased has died intestate. Section 39 provides for the order of priority of persons to whom the net intestate estate shall devolve where the deceased left no surviving spouse or children. Those provisions do not in our view have a bearing on the question of who may be an ‘interested party’ for purposes of an application for revocation or annulment of grant of letters of administration under section 76 of the Law of Succession Act. There is therefore no merit in the complaint that the learned judge paid undue premium or undue regard to section 76 of the Law of Succession Act when he held that the 1<sup>st</sup> Respondent has the locus standi to present the application for revocation of the grant. We agree with the learned Judge that the 1<sup>st</sup> Respondent’s interest as a purchaser of the property of the deceased qualifies him as an ‘interested party’ with standing to challenge the grant.”***

- c. **In re Estate of Kamau Muigai (Deceased) [2018] KEHC 5673 (KLR)** where it was stated as follows: ***“A daughter in law is not a blood relative of a deceased father in law, and therefore she does not have a direct claim to his estate. That would be so where her husband, the child of the deceased is alive. Where her own husband is deceased, she no doubt would have an interest in the estate, for the sake of her children, although it would be preferable for the children, being direct descendants of the deceased, to pursue the claim themselves, unless they are minors. Even where her deceased husband had no children, the daughter in law would still have a stake in the estate of the father in law, but she would claim no daughter in law, for as such she is not entitled. She can only claim for the estate of her late husband, as she does have a stake in her husband’s estate. In such case she must obtain representation to her late husband’s estate first before she can move in her father in law’s estate for revocation of grant.”***
- d. **In re Estate of Elaine Diane Scarpelliini (Deceased) [2024] KEHC 14152 (KLR)** where it was held as follows: ***“In my view, the limitation as to territorial jurisdiction in Rule 7 of the Probate and Administration Rules only applies to the***

***Magistrate's Courts. Having said so, the High Court must strive, out of prudence, as much as possible, to handle those matters within the county in which it is situated to prevent forum shopping and abuse of its processes."***

16. The Respondent has filed written submissions dated **14<sup>th</sup> May, 2025** placing reliance on the following:
- a. In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR)** which was cited for the general grounds upon which a grant of letters of administration may be revoked under section 76 of the Law of Succession Act.
  - b. Lysaght v Edwards [1876] 2 Ch D 499** which was cited for the equitable principle that upon execution of a valid contract for sale, the vendor becomes a trustee for the purchaser and beneficial ownership passes to the purchaser.
  - c. Indar Sen v Satish Prakash Civil Action No. HBC 360 of 2015** which was cited for the proposition that once a valid sale contract is executed and consideration paid, the deceased's interest is extinguished save for formal transfer
  - d. In re Estate of Julius Ndubi Javan (Deceased) [2018] KEHC 8523 (KLR)** which was cited for the principle that liabilities, binding transactions and accrued rights entered into by a deceased prior to

death survive death and may be perfected by the administrator.

- e. **Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another [2016] eKLR** which was cited on the principle that costs follow the event, unless the court orders otherwise

### **ANALYSIS AND DETERMINATION**

17. I have read the application, the responses thereto and the rival submissions.
18. The issues for determination as crafted by the parties are as follows:
- a. Whether the grant should be revoked?
  - b. Whether the matter should be transferred to the Nakuru High Court for determination.
19. **In re Estate of Joshua Githiari Kibui (Deceased) [2021] eKLR** the court stated as follows:

**“18. For avoidance of doubt, Section 76 of the Law of Succession Act states as follows:**

**a. *“76. Revocation or annulment of Grant***

**b. *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—***

**20. Further, In the Matter of the Estate of L A K - (Deceased) [2014] eKLR the court held that;**

***(a) Revocation of grants is governed by Section 76 of the Law of Succession Act. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.***

**32. The court in the case of Jamleck Maina Njoroge v Mary Wanjiru Mwangi (2015) eKLR at paragraph 11 of its ruling in revoking a grant reiterated the**

grounds upon which a grant can be revoked. It stated as follows:-

a. **“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.”**

**33. In the case of Matheka and Another vs Matheka [2005] 2KLR 455 the Court of Appeal laid down the following guiding principles as to revocation of grants.**

***(a) “i. A grant may be revoked either by application by an interested party or by the court on its own motion.***

***(b) ii. Even when revocation is by the court upon its 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 the making of a false statement or by concealment of something material to the case or***

***that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.”***

20. The summons raises two core questions: whether the grant was defectively obtained so as to attract revocation under **Section 76** of the Law of Succession Act, for want of mandatory consents/citation and/or material non-disclosure; and (whether the matter should, as a matter of forum convenience/territorial nexus, be heard at Nakuru.
21. On the material presented, the Applicant’s strongest point is procedural: where a person of equal priority to apply (or a representative of such person’s estate) is not involved, the Petitioner is ordinarily expected to obtain written consents or, failing that, to proceed by citation, and failure may amount to a “defect in substance” or “concealment of something material” depending on the circumstances.
22. The Respondent’s replying affidavit introduces a substantial competing narrative, namely that the impugned assets were not “free property” at death because they had been sold in the deceased’s lifetime and that the petition was supported by purchasers’ affidavits and completion documentation. There is proof of this on record in the form of affidavits sworn by the purchasers. This, therefore, means that the dispute is less about distribution and more about completing lawful lifetime dispositions and protecting innocent

purchasers thus weakening the Applicant's allegation of fraud.

23. Revocation is a discretionary and drastic remedy. Courts generally lean towards it where the process was fundamentally compromised e.g., deliberate exclusion of persons with prior right, false statements or material concealment; but will also strive to avoid outcomes that unfairly prejudice bona fide purchasers or unravel transactions proved not to form part of the estate.
24. The Respondent's reliance on gazettelement and lack of objection is relevant but not conclusive. Absence of objection does not sanitize a grant obtained through material non-disclosure, nor does it answer the complaint of deliberate sidelining if proved. Conversely, the Applicant's allegation that the Respondent "secretly" filed the cause while appearing in related proceedings may support an inference of non-candor, but it still must be anchored in proof and weighed against the documentary trail on the alleged lifetime sales.
25. The "partial testate/partial intestate" background further suggests the risk of double administration or mischaracterization of assets across causes; that typically calls for a controlled inquiry into accounts, inventory, proof of completion of sales and identification of what was truly free property at death; rather than broad allegations alone.
26. Revocation in my view may not be efficacious given the stage this matter has reached. The best approach is to have

the application by the Applicant dated 5<sup>th</sup> July 2024 be determined and the interested Parties/Purchasers be at liberty to stake and or prove their claim.

27. As to the transfer of this matter to Nakuru high court I find the reasons advanced plausible. The Respondent did not object to it and for purposes of administration it is better that the file be handled at Nakuru high court.

28. **Consequently, I direct as follows:**

**(a) This file is hereby transferred to Nakuru High court for determination.**

**(b) The application for confirmation of grant dated 5<sup>th</sup> July 2024 be determined in the said court.**

**(c) The interested Parties/Purchasers be at liberty to apply and be enjoined in this suit.**

**(d) Costs in the cause.**

**Dated signed and delivered at Nairobi via video link  
this**

**22<sup>nd</sup> day of January 2026.**

**H K CHEMITEI  
JUDGE**