



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS - FAMILY DIVISION
SUCCESSION CAUSE NO 447 OF 2001
IN THE MATTER OF THE ESTATE OF WILFRED GATHIOMI
NJONGE (DECEASED)

PATRICK KARIUKI	NJONGE.....	1ST
APPLICANT		
EISLE NYAWIRA	NJONGE.....	2ND
APPLICANT		
SIMON NDERITU	NJONGE.....	3RD
APPLICANT		
GRACE WAIRIMU	NJONGE.....	4TH
APPLICANT		

-VERSUS-

WILFRED GATHIOMI	GIKARU.....	1ST
RESPONDENT		
JAMES MWAURA	GIKARU.....	2ND
RESPONDENT		
RAHAB WANJIRU	GIKARU	3RD
RESPONDENT		

RULING

1. Vide Summons for revocation or annulment of grant application dated **4TH March 2025** brought pursuant to section 74 of the law of succession act and rules 44, 59 and 73 of the probate and administration rules, the applicants herein seek the following orders:

1. Spent

2. **THAT** pending hearing and determination of this application the respondents by themselves or through their servants, agents and employees be restrained from selling, leasing out, sub-dividing of doing fresh construction on the deceased estate.
3. **THAT** the grant of letters of Administration issued on the 2nd day of May 2001 be revoked/ annulled.
4. **THAT** the rectified certificate of confirmation of grant issued on the 2nd day of March 2015 be revoked/ annulled.
5. **THAT** upon grant of prayers 3 and 4 above, the original death certificate in respect of the deceased be released to the applicants to enable them file a fresh succession cause in respect of the deceased estate.

2. The Applicant has similarly laid the grounds for this application and states that the only surviving administrator of the deceased estate Newton Gikaru Gathiomi died on 10th August 2024 and hence by operation of the law there is need to revoke /annul the grant letters of administration and the re-rectified certificate of confirmation of grant
3. That the applicants are children of Leonard Njonge Gathiomi (deceased) who was by virtue of being a son of the deceased herein entitled to get a share of the estate but passed away on the 27th day of October 2000 before the cause could be filed.

4. That despite the administrators being aware that the applicants were his children they did not give them his share but proceeded to share the property amongst themselves.
5. The applicants aver that after the death of the other two beneficiaries the said Newton Gikaru Gathiomi proceeded to apply to the court to have the grant letters of administration intestate and the certificate of confirmation of grant re-rectified to the effect he is the sole administrator and sole beneficiary of the deceased estate without including the applicants.
6. The applicants state that since the administrator is now deceased it is only fair and just to revoke/annul the grant letters of administration and the re-rectified certificate of confirmation of grant and that they will also need the original death certificate hence the need to have it released to them in order to file a fresh cause.
7. Their application is supported by the affidavit of Patrick Kariuki Njonge dated the same date. He annexes the applicants' registration documents and a chief's letter to show their relationship to their father. He avers that a fresh succession will also serve the other grandchildren of the deceased. He also states that the respondents have started leasing out the deceased estate and constructing houses without consulting all the grandchildren of the deceased

hence the need to issue orders stopping such orders to protect the estate.

8. The Respondents filed a Replying Affidavit dated 4th April 2025 in opposition. They aver that the Applicants have not adduced sufficient evidence to revoke the said grant and state that they have requested authentication of the applicants' birth certificates from the registry and are awaiting confirmation.

DETERMINATION

9. The core issue for determination in this matter is:

i. Whether the authenticity of the birth certificates must be verified before revoking the grant of letters of administration.

10. It is in dispute that the Applicants are grandchildren of the deceased.

11. Under **Section 29 of the Law of Succession Act**, dependants include: (a) *the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;*

(b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being

*maintained by the deceased immediately prior to his death;
and*

*(c)where the deceased was a woman, her husband if he was
being maintained by her immediately prior to the date of her
death.*

12. The applicants herein have produced birth certificates to ascertain their relationship to the deceased's son. Birth certificates are prima facie evidence of parentage, issued by the statutory authority mandated to register births. However, where their authenticity, accuracy, or lawful issuance is in dispute, the Court cannot proceed on the assumption that such documents are conclusive without further inquiry. To do so would risk revoking a grant based on unproven or contested facts, thereby occasioning an injustice.
13. Accordingly, the question of authenticity of the applicants' birth certificates must be resolved as a preliminary issue before the revocation of grant of letters of Administration issued on the 2nd day of May 2001 and the rectified certificate of confirmation of grant issued on the 2nd day of March 2015.
14. The Applicants argue that there was Concealment of Material Facts and Defective Proceedings and; Under Section 76 (b) and (c) of the Law of Succession Act, *a grant may be revoked if it was obtained fraudulently by making false statements or by concealment of material facts, or if the proceedings to obtain the grant were defective in substance.*

15. The record shows that the deceased had several children, one of whom predeceased the succession proceedings. The Applicants' father was therefore a beneficiary whose interest ought to have been disclosed in the petition.
16. The above notwithstanding, it is incumbent upon the Court, before taking the step of revoking a grant of letters of administration, to first ascertain whether the impugned birth certificates are genuine and duly issued by the Registrar of Births, and whether they lawfully establish the claimed relationship to the deceased. Only upon confirming the legitimacy or otherwise of the birth certificates can the Court properly determine whether the grant was obtained through concealment of material facts, misrepresentation, or error, within the meaning of the law governing revocation of grants. Absent of such confirmation, any decision to revoke the grant would be premature.
17. In the upshot I make the following order;
1. **THAT** all dealings with the estate, including leasing, construction, sale, or transfer are hereby restrained pending authentication of the Applicants' birth certificates from the office of the Registrar of Births.
 2. In the meantime, since all the administrators of the estate are deceased, the court having consulted the parties, hereby appoint the following as interim joint administrators of the estate;

1. Patrick Kariuki Njoroge
2. Lucy Njeri Waweru
3. David Mirange Njoroge

3. Mention on **30th April, 2026.**

It is so ordered.

**DATED AND DELIVERED at NAIROBI this 15th Day of JANUARY
2026**

.....
E. K. OGOLA
JUDGE

Machemi for
the Applicant

Wanjiru holding brief Ngugi for the
Respondent

Giselle.....
Court Assistant