



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**SUCCESSION CAUSE NO. 320 OF 2007**  
**IN THE MATTER OF THE ESTATE OF THE LATE MUGO**  
**WANDIA(Deceased)**

**JOSEPH CHEGE KARIUKI.....APPLICANT**

**VERSUS**

**ELIZABETH WAMBUI.....ADMINISTRATOR/RESPONDENT**

**RULING**

1. The Application before the Court is summons revocation of grant dated 19<sup>th</sup> March 2025 filed by **Joseph Chege Kariuki** seeking *inter alia* the following relief(s);

**a) SPENT**

**b) That the Honourable Court be pleased to revoke the letters of grant of administration issued to Elizabeth Wambui and subsequently confirmed on 24<sup>th</sup> February 2023.**

**c) That upon granting prayer (2) above, the Honourable Court be pleased to of rectify the grant herein in the following terms and manner:**

- i. That the Honourable Court be pleased to substitute the name Elizabeth Wambui with that of Joseph Chege Kariuki as the administrator of the estate of the late Mugo Wandia (deceased).**
- ii. That the Honourable Court be pleased to redistribute the deceased estate as per the supporting affidavits contents and the distribution schedule annexed therein.**

**d) That costs of the application be provided for.**

2. The Applicant's main contention is that the Respondent herein has not taken any steps to finalize the distribution of the estate, and further that the Applicant herein was not involved in the confirmation process. The applicant further disputes the manner in which the estate was distributed, as the same is not attainable.
3. The revocation of a grant is provided for under **Section 76** of the Law of Succession Act, which provides thus:-

***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,"***

4. The said section provides that, revocation can either be at the instance of an applicant or can be by the Court *suo moto*. However, it is a prerequisite that the conditions for revocation, as set out under Section 76 of the Act, must be proved.
5. That, in re **Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR**, the Court stated that:

***"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 infirmity 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."***

6. That, in the case of **Albert Imbuga Kisigwa v Recho Kaval Kisigwa, Succession Cause No.158 OF 2000** the Court observed:

***The 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 wrongdoing for the Court to Invoke section 76 and order for revocation or annulment of 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.***

7. That, it is not in dispute that a grant was issued to the Respondent. The Respondent in the replying affidavit confirms that she has not distributed the estate to the beneficiaries herein as is required.

8. The Applicant challenges the manner in which the Respondent has been performing her duties as the administrator. **Section 83** of the Law of Succession Act provides for the duties of an administrator as follows:

**(a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him:**

**(b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death:**

**(c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any):**

**(d) to ascertain and pay, out of the estate of the deceased, all his debts:**

**(e) within six months from the date of the grant, to produce to the Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account:**

**(f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debits as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be:**

**(g) within six months from the date of confirmation of the grant, or such longer period as the Court may allow, to complete the administration of the estate In respect of all matters other than continuing trusts, and to produce to the Court a full and accurate account of the completed administration,**

**(h) to produce to the Court, if required by the Court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account:**

**(1) to complete the administration of the estate in respect of all matters other than continuing trusts and if required**

**by the Court, either of its own motion or on the application of any interested party in the estate, to produce to the Court a full and accurate account of the completed administration.**

9. That, the grant was confirmed in February 2024, and from the said date, the Respondent has not produced before the Court an inventory and or the accounts on the administration of the estate, and neither has she finalized the administration of the estate.
10. That, it was not until the Applicant moved the Court that the Respondent tried to justify her delay, In the replying affidavit, the Respondent has claimed that she was in the process of filing an application seeking security during the subdivision process, as there was tension on the ground between the relatives.
11. That, despite the filing of the instant application, there was nothing barring the Respondent from filing the said application, and the allegation that the Applicant herein filed this application to delay the process is misplaced.
12. That, the replying affidavit by the Respondent was sworn on 30<sup>th</sup> June 2025, and it is clear that the Respondent had no intention of moving the Court earlier. Further, the annexure marked EW2 is clearly an afterthought.
13. That, for one, the letter is not dated. Secondly, there is no evidence of any invitation being made to the Respondent and or beneficiaries that

the surveyor would be visiting the disputed parcels of land on the alleged date in the letter.

14. That, the Respondent deponed that, there was tension on the ground, risk of violence, and breach of peace during the survey process. There is no evidence of any report being made to the police. In fact, had that been the case, the Respondent would have moved the Court at the very first instance and not waited.
15. That, the reasons given by the Respondent do not hold water. Despite claiming that she caused the illegal subdivisions to be revoked pursuant to the order of the Court, the said evidence has not been presented before this Court, and as such, there is nothing to prove that indeed the original title reverted back, and therefore, the assertions by the Applicant have not been challenged.
16. That, the Respondent has not disputed that the Applicant despite being a beneficiary was never served with the application for confirmation was not served to him.
17. That, given the foregoing, he submits that, the Respondent has failed to perform her duties as the administrator of the estate of the late Mugo Wandia diligently and as expected of her, and urge the Court to allow the application.

### **Respondents case**

18. The Respondent opposes the Application vide her sworn Affidavit dated 30<sup>th</sup> June 2025 terming the Application as an abuse of the Court process, premised on a misrepresentation of facts, ignorance of the Court record, and is ill-advised, frivolous, misconceived, brought in bad faith, incompetent, and devoid of merit. It should be dismissed with costs.
19. That, from the outset, the Applicant has failed to establish any legal or factual basis for seeking appointment as an Administrator of the Estate of the deceased. Crucially, he has not disclosed his relationship, if any, to the deceased and has not demonstrated any beneficial interest in the estate.
20. That, the Applicant has not attached any mandatory consents from other beneficiaries or dependants of the Estate as required under Rule 26 of the Probate and Administration Rules.
21. That, the confirmed mode of distribution, as reflected in the rectified Grant, is both practical and equitable. The parcel of land forming the estate, namely NYANDARUA/OLKALAU CENTRAL/17, is still in existence and registered in the name of the deceased.
22. That, indeed, the Grant of Letters of Administration was duly rectified and re-issued in my name on 24<sup>th</sup> February 2023 given the demise of the previous administrator.

23. That, since then, she has made sincere and deliberate efforts to implement the Grant but have encountered various obstacles, mainly arising from prior illegal dealings with the estate property.
24. That, the late Jesse Kariuki Mugo, who presented himself as the sole beneficiary of the estate of the late Mugo Wandia, had irregularly and illegally subdivided the said parcel of land and distributed the same among his own children.
25. That, these illegal subdivisions were quashed by an order of this Honourable Court issued on 27<sup>th</sup> April 2017 following an application by the previous Administrator, evidencing a copy of the said Court Order.
26. That, despite the Court's directive, the previous Administrator did not fully implement the said order. Upon the rectification and reissuance of the Grant in her favour, she took active steps to ensure full compliance.
27. That, she successfully liaised with the Ministry of Lands to revoke the illegal subdivisions and have the land reverted to its original form in accordance with the Court Order.
28. That, subsequently, she did engage professional surveyors to facilitate the implementation of the mode of distribution as per the Grant. However, during the exercise, tensions arose on the ground caused

by members of the estate of the late Jesse Kariuki Mugo, who expressed dissatisfaction with the confirmed distribution.

29. That, the risk of violence and breach of peace was real and imminent, prompting the Surveyors to recommend the presence of police security during the execution of their duties evidencing a copy of the letter from the surveyors requesting police escort.

30. That, as her Advocates were in the process of preparing a formal application for an order to authorize the local OCS to provide security during the subdivision process, the Applicant herein moved to file the instant Application, clearly aimed at derailing and frustrating the lawful implementation of the Grant.

31. That, in view of the considerable progress made, the request to revoke or further amend the Grant at this juncture is not only untenable but also amounts to unjustifiable interference with the lawful execution of this Court's directives.

32. That, the Applicant's conduct is evidently motivated by ulterior motives and not by any *bona fide* concern for the estate or its rightful beneficiaries.

33. That, in light of the foregoing, she respectfully urges the Court to dismiss the Application dated 19<sup>th</sup> March 2025 with costs, and further to issue appropriate orders directing the Officer Commanding Station

(OCS) of the relevant police station to provide security and maintain law and order during the subdivision exercise.

### **Analysis & Determination**

34. The sole issue for determination is, whether the Application meets the threshold for the revocation of a grant within the parameters provided under **Section 76** of the **Law of Succession Act** which provides;

**“Section 76: 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 has ordered or allowed; 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**
- iv. that the grant has become useless and inoperative through subsequent circumstances.”**

35. The applicant has a duty to prove that any grounds set out in **Section 76** of the Law of Succession Act before the grant issued is revoked. In the case of **Albert Imbuga Kisigwa v Recho Kawai Kisigwa, Succession Cause No.158 OF 2000**, Mwita J. observes:

***“[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.”***

36. The Applicant's case revolves around **Section 76(d) (ii)** that, the Administrator has after due notice and without reasonable cause, failed proceed diligently with the administration of the estate;
37. In the Applicants word that “Since Confirmation of grant on 24th February 2023 *Elizabeth Wambui has never taken any steps towards the final distribution and winding-up of the estate of the deceased*”
38. **Section 107** of the Evidence Act places the burden of proof on the person who alleges, and whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
39. The burden of proof as to any particular fact lies on that person who wishes the Court to believe its existence, unless it is provided by any law that the proof of that fact shall be on any particular person. The standard of proof determines the degree of certainty with which a fact must be proved to satisfy the Court of the fact.
40. It was the duty of the applicant to prove to the Court that the administrator was formally or informally and properly notified of the

requirement to perform the duty which in this instance is distribution of the estate of the deceased as per the confirmed grant.

41. This Court finds the summons to be a paradox to the extent that, were the Court to annul or revoke the grant as sought then the subsequent prayers are untenable in law to the extent that;

a) No grant shall exist for rectification.

b) The proposed rectification post-revocation of grant drastically alters the mode confirmed and the same is without basis.

c) The Applicant have equally failed to evidence proof of consent by the beneficiaries.

42. This Court has a post-confirmation of grant practice, to monitor administration distribution and settlement and this case had a mention date for this purpose just before the Application was filed and any disagreements can be monitored and addressed in conclusion.

43. The disagreement with a proposed mode of distribution by the Applicant post-confirmation of grant, is not one of the statutory parameters under **Section 76** of the Act.

44. **Section 76** read alongside **Section 47** of the Law of Succession Act, empowers the Court with jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decrees and make such orders therein as may be expedient and Rule 73 of the Probate and Administration Rules reaffirms the Court's inherent power

to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

45. The Summons for revocation of grant dated 19th March 2025 is dismissed with costs to the Respondent.

46. The Administrator shall forthwith and not later than sixty (60) days from the date of this ruling, undertake the survey while respectively acknowledging the settlement(s) by the beneficiaries as well as graves of family members (if) any.

47. An Order is hereby issued directing the Officer Commanding the Station (OCS) of a police station where the survey and subdivision is sought to provide the Administrator and her representatives including the surveyor of adequate security during survey and sub-division

48. The Applicant is directed to cooperate and support the Administrator in concluding the probate.

It is So Ordered.

**Signed, Delivered Virtually on Teams platform**

**On this 14<sup>th</sup> January 2026**

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**Mohochi S.M**

**JUDGE**