



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 2868 OF 2012
IN THE MATTER OF THE ESTATE OF FRANCIS NGURE
KAMAU (DECEASED)

RULING

1. The Applicant herein *vide* application dated 3rd July 2025 seeks for Orders THAT-
 - a. Spent
 - b. The Honourable Court be pleased to revoke the Grant of Letters of Administration issued to Pininah Wanjiku and Washington Kamau Ngure on 22nd May 2013 and confirmed on 11th December 2015
 - c. The Honourable Court be pleased to declare that LR Ngong/ Ngong/2210 now known as LR Ngong/ Ngong/98634 does not form part of the Estate of the Late Francis Ngure Kamau (deceased)
 - d. All consequential orders issued pursuant to the Certificate of Grant dated 11th December 2015, including the order dated 27th November 2023 compelling the Applicant to transfer LR Ngong/ Ngong/2210 (now LR Ngong/ Ngong/98634) be set aside.
 - e. An order be issued restraining the Land Registrar, Kajiado from registering or effecting any further

transfer, transaction, or dealings in respect of LR Ngong/ Ngong/2210 (now LR Ngong/ Ngong/98634) based on the said Certificate of Confirmation of Grant

f. Any transfer, registration, subdivision, or disposition already effected in respect of LR Ngong/ Ngong/2210 (now LR Ngong/ Ngong/98634) pursuant to the impugned Certificate of Grant revoked.

2. There being no objection a grant of letters administration intestate issued to **WANJIKU KAMAU, WAKONYO MUKAI, STEVEN MUKAI KAMAU, MIRINGU KIMANI** on 18th January 2024.

3. In affidavit sworn in support of the application the applicant avers that the inclusion of the parcel of land LR Ngong/ Ngong/2210 (now LR Ngong/ Ngong/98634) at the time of the confirmation of grant was erroneous. He was not aware of its inclusion, he was not involved in the proceedings leading to the confirmation of the grant. In addition, he is basically 'not well literate and has limited understanding of the legal processes.

4. He asserts that the asset does not belong to the deceased, it is a property that belongs to him and the Co Administrator. He was not aware of the proceedings leading to orders

obtained on 27th November 2023. He therefore is calling on the Court to review the orders including the asset in the estate of the deceased.

5. The respondent opposes the application and has sworn affidavit on 28th August 2025. The applicant is one of the 18 dependants of the Estate of the deceased. She concedes that the parcel of land passed them to them vide Succession Cause No. 556 of 2012 as co administrators of the estate of the deceased herein. The Grant was rectified again 11th December 2020.
6. After the confirmation of the Grant the applicant has obstructed the transmission of the estate by withholding the Original Title for LR Ngong/ Ngong/2210 (now LR Ngong/ Ngong/98634). He was served with application compelling him to avail the title. He has obstructed efforts to transmit the estate to intended beneficiaries. The Court is *functus officio*
7. The Application has been canvassed via written submissions. The Applicant's submissions are dated 1st day of October 2025. The thrust of his application is that LR Ngong/ Ngong/2210 (now LR Ngong/ Ngong/98634) did not comprise

the estate of the deceased. It is his submission that the confirmation of the grant was obtained through concealment and misrepresentation of material facts relating to the ownership of LR Ngong/ Ngong/ 98634. He did not execute the affidavit in support of the Summons of confirmation of Grant. He relies on the decisions in **Re Estate of Joseph Kipkemoi Limo (Deceased) (Succession Cause E040 OF 2021) [2025]KEHC 1623(KLR)** and **Re Estate of Job Ndunda Muthike (Deceased) [2018] KEHC 3138 (KLR)**.

8. The respondent's submissions are dated 3rd November 2025.

The issues for determination are-

- a.** Whether the Applicant has established any grounds for revocation of the grant under Section 76 of the Law of Succession Act
- b.** Whether the present application is *res Judicata* and an abuse of Court process.

9. It is submitted that the application does not meet the threshold for revocation of grant as set out under Section 76 of the Law of Succession Act.

10. Further it is submitted that the application is *res judicata* as similar applications presented by the applicant have been determined. This application is therefore a clear abuse of

court process. Reference is made to the decision in **Muchanga Investment Ltd v Safaris Unlimited (Africa) Ltd & 2 Others [2009]eKLR**

ANALYSIS AND DETERMINATION.

11. I have considered the application, submissions by the applicant's counsel and the decisions cited. The issues for determination are;

- i. Whether the Court should revoke the Grant herein**
- ii. Whether the Court should vary the Orders confirming Grant**
- iii. What if any are the consequential orders**

12. The Applicant is aggrieved by the fact that at the time the Grant was confirmed, he was not involved and the co administrator included the disputed parcel of knowledge without his consent and knowledge. It is not disputed that the Grant was confirmed on 11th December 2015 and rectified subsequently on 11th November 2020. None of these actions spurred the applicant to act. He only acted when the Court muscled him to effect the transmission as per the impugned certificate of confirmation of Grant.

13. He does not respond to the very direct charge that he was served with application subsequent to the rectification of the grant seeking to effect the transmission. He asks this Court to

believe that when he utilised the grant to transmit the other assets of the deceased, he took no note of the inclusion of the disputed parcel of land. This is extremely disingenuous of him.

14. A party approaching the seat of justice is bound by the strict duty of candour. For this reason, the Court abhors a party who lies or is less than candid. In adjudicating matters the Court strives to do justice, the foundation for this outcome is truth.

15. He does not lay a basis for the revocation of the Grant, but attacks the certificate of confirmation of Grant. He missed his opportunity to challenge the inclusion of the asset when the Grant was confirmed and Certificate of Confirmation of Grant was issued.

16. The Law does not allow for revocation of Certificates of Confirmation of Grant as proposed by him. See the decision in **re Estate Of Lawrence Githinji Magondu (Deceased)** [2017] eKLR where Musyoka J. states-

It needs emphasis that section 76 targets revocation of grants, and not of any other process. A certificate of confirmation of a grant is not a grant, and therefore the process of obtaining it or obtaining its rectification cannot fall within what section 76 of the

Act envisages. A grant ought not to be revoked merely because the administrators possibly obtained rectification of a certificate of confirmation of grant in defective proceedings.

17. If he wishes to assert his right against the Estate he must now step out of the Probate Court and take his challenge to the Court equipped with the mandate to resolve issues of ownership of land and that would be the Environment and Land Court. In **Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR** the Court framed it as follows:

.....The Law of Succession Act, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets. Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the Civil Procedure Act and Rules, which have elaborate

rules on suits by and against executors and administrators (emphasize added).

The Probate and Administration Rules recognize that, and that should explain the provision in Rule 41(3). Clearly, disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation. In the meantime, the property in question is removed from the distribution table. The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most cases be functus officio so far as the property in question is concerned (emphasis added). The primary mandate of the probate court is distribution of the estate and once an order is made distributing the estate, the court's work would be complete. The proposition therefore is that not every dispute over property of a dead person ought to be pushed to the probate court

18. Owing to the foregoing the Application is dismissed in its entirety.

19. Leave to appeal is granted, the party exercising their right to appeal to do so within 30 days.

It is so ordered

DATED and DELIVERED, VIRTUALLY at NAIROBI this 20th Day of FEBRUARY 2026

**P M NYAUNDI
JUDGE**

In the presence of:

Fardosa Court Assistant
Dr. Mbutia Kinyanjui Respondent
Ouma for Applicant

ORIGINAL