



REPUBLIC OF KENYA



**In re Estate of Joseph Wachira Kihiu (Deceased) (Probate & Administration  
289 of 2015) [2026] KEHC 1843 (KLR) (20 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1843 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
PROBATE & ADMINISTRATION 289 OF 2015**

**MA ODERO, J**

**FEBRUARY 20, 2026**

**IN THE MATTER OF THE ESTATE OF JOSEPH WACHIRA KIHU (DECEASED)**

**JUDGMENT**

1. Before this Court is the Summons for Revocation of Grant dated 20<sup>th</sup> February 2025 by which the Protestors Margaret Nyawira Ndirangu, John Mwangi Wachira (Deceased) and James Ngari Wachira seek the following orders:-
  - “ 1. That the written grant of representation to the estate of the late Joseph Wachira Kihiu Alias Wachira Kihiu Issued To Catherine Wangui Mwangi And Margaret Wanjiru Thuku on 18<sup>th</sup> October 2024 be revoked.
  2. That after granting of Prayer (1) above the Honourable Court be pleased to issue a fresh grant of representation in the names of James Ngari Wachira, Margaret Nyawira Ndirangu, Catherine Wangui Mwangi And Margaret Wanjiru Thuku.
  3. That the Honourable Court be pleased to further rectify the certificate of Confirmation of Grant issued on 18<sup>th</sup> October 2024 in terms of paragraph 8 of the affidavit in Support.
  4. That cost of this application be provided for.”
2. The application which was premised upon Section 47 and 76 of the *Law of Succession Act* and Rule 74 of the Probate and Administration Rules and all other enabling provisions of the law was supported by the Affidavit of even date sworn by the 3<sup>rd</sup> Applicant.
3. The Respondents Catherine Wangui Mwangi And Margaret Wanjiru Thuku opposed the Summons through the Replying Affidavit dated 11<sup>th</sup> March 2025 and the Further Affidavit dated 16<sup>th</sup> June 2025 both sworn by the two Respondents.



4. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated 15<sup>th</sup> October 2025 whilst the Respondents relied upon their written submission dated 23<sup>rd</sup> September 2024.

### **Background**

5. This succession cause relates to the estate of the late Joseph Wachira Kihiu (hereinafter ‘the Deceased’) who died intestate on 2<sup>nd</sup> November 2006. A copy of the Death Certificate Serial No. 356268 is annexed to the Petition for Grant of Letters of Administration Intestate dated 7<sup>th</sup> April 2015.
6. The Deceased was survived by a widow Mary Njoki Wachira and several children. The estate comprised of the parcel of land known as Nyeri/Euwasonyiro/117 measuring 18 Hectares.
7. There has been much litigation over this estate. On 18<sup>th</sup> October 2024 Grant of Letters of Administration Intestate was issued to the Respondents jointly.
8. The matter was then referred for Court Annexed Mediation. A Mediation Settlement Agreement dated 8<sup>th</sup> June 2021 was filed in Court. That Agreement was duly adopted by the Court on 8<sup>th</sup> October 2021. Thereafter a rectified Certificate of Confirmation of Grant dated 18<sup>th</sup> October 2024 was issued by which the estate was to be distributed in terms of the Mediation Settlement Agreement.
9. The Applicant then filed this Summons for revocation of Grant.

### **Analysis And Determination**

10. I have carefully considered the application before this Court, the replies filed thereto as well as the written submissions filed by both parties.
11. The Applicants seek to have the grant which was issued to the Respondents on 18<sup>th</sup> October 2024 revoked on grounds that they were not notified of the existence of this cause and that the Respondents were appointed as Administrators of the estate without the knowledge and/or involvement of the Applicants.
12. The Applicants state that they were not allowed an opportunity to argue the application dated 24<sup>th</sup> December 2020 seeking to substitute their late mother (widow of Deceased) who was the initial administrator of the estate. Finally the Applicants oppose the proposed mode of distribution of the estate.
13. As stated earlier the application was vehemently opposed. The Respondents assert that the parties underwent mediation which involved all the beneficiaries. That the parties reached a settlement and the settlement agreement was duly signed by all parties. They urged that this application for revocation of grant be dismissed.
14. The grounds upon which a Grant may be revoked are set out in Section 76 of the [Law of Succession Act](#) 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;
- 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 .” [Own Emphasis]

15. This provision of the law was expounded upon by the court in the case of *Re Estate Of Prisca Ong’aya Mande (Deceased)* 2020 eKLR where it was held as follows:-

“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 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 reasons or even becomes physically infirm 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.”

16. A look at the record reveals that this cause was duly gazetted on 22<sup>nd</sup> May 2015 vide Gazette Notice No. 289 of 2015. As such notice was given to all person who may have had an interest in the succession cause including the Applicants.

17. Again from the record the Widow of the Deceased one Mary Njoki Wachira initially applied for a Grant in respect of the estate of the Deceased on 19<sup>th</sup> February 2016. On 21<sup>st</sup> June 2016 four of the daughters of the Deceased filed a protest challenging the proposed mode of distribution. Vide a



judgment delivered on 9<sup>th</sup> April 2020 Hon. Justice Ngaah directed that the entire estate was to devolve to the widow subject to a life interest.

18. The widow of the Deceased unfortunately passed away on 12<sup>th</sup> December 2019 as evidenced by the Death Certificate Serial No. 0795225 annexed to the Summons for confirmation of Grant dated 24<sup>th</sup> April 2020. This is where all the problems plaguing this estate began.
19. On 24<sup>th</sup> December 2020 the Applicants filed an application seeking to be substituted as Administrators in respect of the estate. That application was never heard.
20. The Respondents also filed an application dated 17<sup>th</sup> September 2024 also seeking to replace their late mother as Administrators of the estate and seeking to have grant confirmed. That application was allowed culminating in the issuance of the Grant in the name of the Applicants.
21. My perusal of the handwritten record reveals that although court gave directions in respect to the application dated 24<sup>th</sup> December 2020, that application was never heard. Instead the parties moved to mediation.
22. At that point Judge who was handling the matter left on transfer.
23. I then took over the matter and was immediately faced with the application dated 17<sup>th</sup> September 2024 filed by the Respondents. In this manner due to an interruption of institutional memory the application filed by the Applicants dated 24<sup>th</sup> December 2020 fell by the wayside and was not addressed. Therefore the complaint by the Applicants that they were not accorded an opportunity to prosecute this application therefore has merit.
24. Coming to the application dated 17<sup>th</sup> September 2024 the same came up for hearing on 18<sup>th</sup> October 2024. Vide an Affidavit of Service dated 25<sup>th</sup> September 2024 it was alleged that the Applicants had been served with Notice of the hearing of that application and since they did not appear on that date the court proceeded to grant the orders prayed for and appointed the two Respondents as Administrators of the estate.
25. The Applicant opposes the mode of distribution as set out in the Rectified Certificate of Confirmation of Grant dated 18<sup>th</sup> October 2024. The Applicants contend that they were not involved in the decision on how the estate was to be distributed.
26. The Respondents however counter that the mode of distribution of the estate was agreed upon at a Mediation in which all parties were involved. They insist that the Mediation Settlement Agreement was adopted by the Court thus the question of distribution has now been overtaken by events.
27. At this point I note there has been a major defect in these proceedings. One of the children of the Deceased named John Mwangi Wachira (the 2<sup>nd</sup> Applicant in this cause) passed away on 17<sup>th</sup> September 2021 as evidenced by the Burial Permit Serial No. 0083116 issued on 21<sup>st</sup> September 2021. (see Annexure JNW 4'b' to the Affidavit dated 12<sup>th</sup> February 2025)
28. There is no indication that this deceased beneficiary was ever substituted nor was there any representation in the proceedings by the legal representative of this deceased beneficiary.
29. The Affidavit of Service dated 25<sup>th</sup> September 2024 is misleading in that it indicates that service was effected on the 3<sup>rd</sup> Applicant James Ngari Wachira and John Mwangi Wachira who as the court has already pointed out was already Deceased. The process server in his affidavit avers that the 3<sup>rd</sup> Applicant received the documents on behalf of the deceased beneficiary. The 3<sup>rd</sup> Applicant was not the



legal representative of the estate of John Mwangi Wachira. Service cannot be effected on a Deceased beneficiary and a suit cannot be sustained against such a Deceased beneficiary.

30. Similarly the Mediation Settlement Agreement was defective in that the parties misled the Court that all the beneficiaries to the estate participated in the mediation process. Clearly this was not the case as one of the beneficiaries was deceased and obviously could not have participated in the said mediation. There is no indication that any representative of the estate of this deceased beneficiary was included/involved. As such the mediation process cannot be said to have been all inclusive.
31. Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules give the probate court wide discretionary powers. Section 47 of the *Law of Succession Act* provides:-

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

Rule 73 of the Probate and Administration Rules provides that:-

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
32. Finally I find that in so far as the proceedings in this cause imply the participation of a deceased beneficiary those proceedings are null and void. The proceedings leading to the issuance of the Grant to the two Respondents were clearly defective in substance. The said John Mwangi Wachira ought to have been properly substituted before the matter could proceed.
33. This is a very old succession cause which was filed way back in the year 2015. To date ten (10) years down the line the estate still remains undistributed. It is quite obvious that there is a tug of war between the sons of the Deceased on the one hand and the daughters of the Deceased regarding the distribution of the estate. The duty of this probate court is to facilitate and expedite the distribution of the estate to the genuine beneficiaries.
34. The Deceased herein died intestate. The widow of the Deceased who held a life interest in the estate has also passed away therefore her life interest has expired.
35. Section 38 of the *Law of Succession Act* provides that

“ 38 where an intestate has left a surviving child or children but no spouse the net intestate estate shall subject to sections 41 and 42 devolve upon the surviving child if there be only one, or be equally divided among the surviving children.” [Own emphasis]
36. Given the length of time this matter has spent in the courts and taking into account the obvious bad blood between the two factions in the family the duty falls on this courts to bring this matter to a close.
37. The family/dependants of the late John Mwangi Wachira are advised to seek Grant of Representation to his estate to enable them participate fully in this cause and to benefit from any allocation made to the late John Mwangi Wachira.
38. There is no dispute regarding the names and identities to the estate. The dispute revolves around distribution of the sole asset being LR Nyeri/Euwasonyiro/117 with each faction seeking to secure a greater share of the land.



39. Finally in exercise of the powers conferred upon this court by Section 47 and Rule 73 I hereby make the following orders:-

- (1) The Grant of representation in respect of the estate of the late Joseph Wachira Kihui Alias Wachira Kihui issued to Catherine Wangui Mwangi and Margaret Wanjiru Thuku on 18<sup>th</sup> October 2024 be and is hereby revoked.
- (2) Similarly the Rectified Certificate of Confirmation of Grant dated 18<sup>th</sup> October 2024 be and is hereby revoked.
- (3) Grant of letters of Administration to be issued jointly to James Ngari Wachira, Margaret Nyawira Ndirangu , Catherine Wangui Mwangi And Margaret Wanjiru Thuku .
- (4) A further rectified certificate of Confirmed Grant to issue to James Ngari Wachira, Margaret Nyawira Ndirangu, Catherine Wangui Mwangi And Margaret Wanjiru Thuku .
- (5) The Parcel of land known as LR NO. Nyeri/Euwasonyiro/117 to be divided Equally between all the beneficiaries of the estate in line with Section 38 of the [Law of Succession Act](#).
- (6) This being a family matter each side will bear their own costs.

**DATED IN NYERI THIS 20<sup>TH</sup> DAY OF FEBRUARY 2026**

.....

**MAUREEN A. ODERO**

**JUDGE**

