



REPUBLIC OF KENYA



**In re Estate of John Mutongu Ngatia (Deceased) (Succession Cause E3050 of 2022)
[2026] KEHC 1494 (KLR) (Family) (13 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1494 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E3050 OF 2022
PM NYAUNDI, J
FEBRUARY 13, 2026
IN THE MATTER OF THE ESTATE OF JOHN MUTONGU NGATIA (DECEASED)**

JUDGMENT

Introduction

1. The respondent herein lodged Petition for Grant of Letters of Administration dated 15th September 2022 in her capacity as the sole surviving widow and relying on Section 66 of the Act averred that she had superior and higher priority than children of the deceased and other relatives and therefore she did not require consent. In the Petition she disclosed that the deceased was survived by the following-
 - a. Agnes Wamunyu Ngatia – Wife
 - b. Joseph Mutongu Ngatia- Son
 - c. David Irura Ngatia- Son
 - d. Jeffrey Nderitu Ngatia- Son
 - e. Karuga Ngatia- Son
 - f. Michael Muriithi Ngatia- Son (Deceased)
2. The cause was subsequently gazetted on 18th November 2022 vide Gazette Notice No.14242.
3. On 19th December 2022, grant was issued to the respondent. On expiry of the six-month period, she presented Summons dated 13th September 2023 for confirmation of Grant. In the said summon she enumerated the assets of the estate as comprising-
 - a. LR NO. 4984 (Original Number 4861/1 GLA File No. 6481)
 - b. Eusaonyiro/ Ilpejet A- Block 1/408
 - c. Nachu/Mikuyuini/630



She identified herself as the sole beneficiary and proposed that the assets be transferred to her absolutely.

4. With this application she stirred the hornets' nest. Her sons responded by presenting Summons for revocation of grant. The Summons are dated 16th July 2024 and 12th July 2024. The Summons dated 16th July 2024, was compromised by lodging of consent dated 4th April 2024 executed by Jeffrey Nderitu Ngatia, Agnes Wamuyu, Karuga Ngatia and Joseph Mutongu Ngatia. The Summons therefore that proceeded to hearing is that dated 12th July 2024 presented by David Irura Ngatia. He seeks revocation of the grant issued to the respondent on the following grounds-
 - a. The Objector/ Applicant was not aware of this Succession; neither did he consent to letters of administration of the estate of the deceased being granted to the Petitioner / Respondent.
 - b. The applicant's father devolved all his properties (moveable and fixed) to his sons by way of joint tenancy with the right of survivorship. The said properties should not form part of succession but yet have been listed for probate.
 - c. Not all properties that belonged to the applicant's deceased father have been listed in this Court, and the Petitioner listed only 3 titles omitting 5 titles, 4 logbooks, 4 bank accounts and shares in companies.
 - d. The titles of the 3 parcels of land submitted to this court by the Petitioner and or respondent are not authentic.
 - e. Parcel of Nairobi Land LR 4984 presented to this Court for succession does not exist.
 - f. The Petitioner / Respondent fraudulently and intentionally put the total value of the deceased's estate at 100 million whereas it is over 4 billion.
 - g. The Respondent/ Petitioner and Karuga procured the grant fraudulently by concealing material facts, intentionally hiding titles with joint tenancy, and not revealing logbooks, bank accounts, and shares.
 - h. The Petitioner and one beneficiary (Karuga) have jointly participated in the concealment of the estate properties. Karuga therefore is not suited to administer the estate as he will continue with fraudulent perpetuation.
 - i. The Objector/ Applicant and two other beneficiaries (apart from Karuga) did not relinquish their rights to own the submitted parcels of land.
 - j. The Petitioner misled the Honorable Court.
5. The applicant therefore prays that
 - a. The grant issued to the Petitioner be revoked
 - b. The Summons for confirmation be revoked for being defective as it proffers for distribution properties that do not exist.
 - c. ABSA, Housing Finance, Equity and Middle East Bank be directed to provide statements of the accounts held by the deceased.
 - d. Fresh grant of letters of administration to issue to the applicant jointly with the respondent.
6. The respondent opposes the summons and has sworn an affidavit on October 18, 2024, in response. She denies the averments by the applicant. Specifically, she avers that as a surviving spouse she ranks



- in priority to apply for grant. She denies that she deliberately excluded properties of the deceased and avers that she has invited the applicant to include the assets he considers excluded. She avers that her children were aware that she would Petition for grant as a family meeting was held when matters relating to administration of the estate of the deceased were discussed. She avers that owing to his recalcitrant stance he is not suitable to be appointed as co-administrator. She challenges the averment by the applicant to the effect that prior to his death the deceased had allotted property to his sons.
7. The summons for revocation proceeded by way of Viva Voce evidence. The applicant reiterated the averments in his supporting affidavit sworn on 12th July 2024; supplementary affidavit sworn on 14th November 2024; supplementary affidavit sworn on 2nd April 2025; supplementary affidavit sworn on 7th April 2025; supplementary affidavit sworn on 24th April 2025. And witness statement dated 25th April 2025. The applicant also relies on an undated list of documents.
 8. He asserts that the respondent filed for Grant and submitted summons for confirmation without consulting her sons. He claims both actions are fraudulent, as she intentionally failed to include all the deceased's assets. He alleges forged title certificates, accuses her of disposing of estate assets and leasing property LR 4984 (now LR 4984/1 & LR 4984/2), and maintains investigations into his father's death are incomplete. He objects to Karuga acting as administrator, citing collusion in fraudulent activities.
 9. The respondent stated that she depends on her replying affidavit and maintains her position as the administrator. She rejects claims suggesting her actions require the grant to be revoked. Additionally, she testified that the applicant is not suited to serve as administrator.
 10. At the conclusion of the hearing, parties filed submissions. The applicant's submissions are dated 2nd September 2025 and frames the issues for determination as
 - a. Whether the Grant was irregularly processed, and confirmation rushed in breach of statutory timelines without involving the objector.
 - b. Whether the administrator procured the grant fraudulently and without involving the objector, contrary to Section 76 LSA
 - c. Whether the Administrator misrepresented the estate and concealed material assets, contrary to Section 51(2)(g) and Rule 7 (1) of the Probate and Administration Rules
 - d. Whether the forged titles were introduced into these proceedings in a bid to disinherit the objector.
 11. The Judicial precedents cited include-
 - a. Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR on abuse of Court process
 - b. Estate of Ndung'u Kabui (Deceased) [2018] eKLR – omitting beneficiaries is a ground for revocation of grant
 - c. Estate of G.K.K. (Deceased) (2017) eKLR - omitting beneficiaries is a ground for revocation of grant
 - d. Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR – The court emphasized that administrators must give a full and accurate inventory; concealment amounts to fraud under Section 76 (b) Law of Succession.
 - e. Estate of David Kyuli Kaindi (Deceased) [2016] eKLR – Grant revoked for failure to disclose all estate assets, including bank accounts.



- f. Estate of Julius Ndubi Javan (2018) eKLR: The court held that concealment of estate assets is a valid ground for revocation of grant.
 - g. Munyu Maina v Hiram Gathiha Maina [2013] eKLR – The respondent had not established the validity of the titles she attached in support of the application.
 - h. Albert Imbuga Kisigwa v Recho Kawai Kisigwa, Succession Cause 158 of 2000 (2016): The Applicant having approached the Court with unclean hands was not deserving of any equitable remedy.
 - i. Estate of M’Ngarithi M’Miriti (Deceased) [2017] eKLR – the respondent had by her own admission conceded to the allegations of fraud against her.
 - j. Matheka v Matheka (2005) eKLR: Because of the misrepresentation and dishonesty on the part of the administrator, the grant should be revoked.
 - k. Kinyanjui Kamau v George Kamau [2015] eKLR – He had discharged his duty to establish proof the onus was on the respondent to confirm the validity of the documents of title she was relying on.
 - l. Estate of Wahome Njenga (Deceased) [2013] eKLR – the respondent cannot rely on the impugned documents.
 - m. Alex Mwenda Mwirigi v Rodah Karimi Jadel (Succession Cause No. 337 of 2011) [2016] - allegations of fraud if proved would lead to the voiding of a grant.
 - n. Re Estate of L.A.K (Deceased) [2014] eKLR – Consent that excluded some beneficiaries was of no effect.
 - o. John Gitata Mwangi & 3 Others v Jonathan Njuguna Mwangi & 4 Others [2006] eKLR – The Court of Appeal underscored that all beneficiaries must participate in administration; exclusion is fatal.
 - p. Re Estate of Ngari Gakunga (Deceased) [2021] eKLR – The respondent ought to be sanctioned for concealment of assets of the deceased.
 - q. Kuria & 3 others v Attorney General [2002] eKLR – The respondents were guilty of initiating criminal process to intimidate the applicant.
 - r. Republic v Chief Magistrate’s Court at Mombasa Ex Parte Ganijee & Another [2002] eKLR – the respondent using criminal process to circumvent justice.
 - s. Re Estate of Charles Njeru Njagi (Deceased) [2021] eKLR – Court noted threats and intimidation of beneficiaries in succession proceedings as aggravating conduct justifying revocation. Article 29 & 48 of [the Constitution](#) (right to security and access to justice).
 - t. Re Estate of Agan Ondiek – Grant revoked where counsel colluded in concealment, fraudulent letters, and misrepresentation.
 - u. Alex Mwenda Mwirigi v Rodah Karimi Jadel – Confirms the seriousness of pleading and proving fraud; Counsel must not abet.
12. The respondent’s submissions are dated 16th October 2026; she frames the following as the issues for determination-



- a. Whether or not the Grant of Letters of Administration Intestate dated 19th December 2022 was properly and lawfully obtained
 - b. Whether or not the Grant of Letters of Administration Intestate dated 19th December 2022 should be revoked and
 - c. Whether the Objector is fit to serve as a co- administrator to the estate
13. On the 1st issue it is submitted that she ranks prior in the list of preference as set out under Section 66 of the *Law of Succession Act*. Reference is made to the decision in Charles K. Kandie v Mary Kimoi Sang [2017] KECA 775 (KLR) and Re Estate of Mukhobi Namonya (Deceased) [2020] KEHC 9045 (KLR). Additionally, reliance placed on the decision in Jane Njeri Nderi v Rachel Wangari Nderi [2020] KECA 682 (KLR) for the assertion that she was not required to secure the consent of the children of the deceased to Petition for the grant.
14. Finally, it is submitted that the application has not met the legal threshold for revocation of grant and reference made to the decision in Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] eKLR.
15. The Submissions of the 2nd Respondet are dated 15th October 2025. He frames the issues for determination as
- a. Whether the grant issued to the 1st Respondent should be revoked/ annulled as sought in the prayers?
 - b. Who should be appointed to administer the Estate?
16. It is submitted that on account of her age, the administrator is not well suited to act as sole administrator. Reference is made to the decision in Re Estate of Prisca Ongayo Nande (Deceased) [2020] eKLR and Michael Odhiambo Ayimba v Peter Otieno Ogutu & ANOR [2020] eKLR.
17. On who should administer the estate, reference is made to Section 66 of the *Law of Succession Act* and the consent signed with the administrator. On the unsuitability of the applicant, reference is made to the decision in Re Estate of JMW (Deceased) [2017] KEHC 6100(KLR).
18. Joseph Mutongu Ngatia, a beneficiary, has filed submissions dated 22nd October 2025. It is submitted that the Applicant has not discharged the duty to prove fraud and reference made to the decision in Magutu Electrical Services Limited v Miriam Nyawira Ngure & Anor [2019] KEELC 1105 (KLR). It is further submitted that the application must fail as the applicant is approbating and reprobating. He cannot seek revocation and in the same concede to a joint administration with the administrator.
19. The Applicant filed supplementary submissions (he refers to them as rebuttal submissions) dated 20th October 2025. He contends that the submissions of the 1st and 2nd Respondent fail to address the issues at hand. He reiterates his earlier submissions and vehemently opposes the adoption of the consent.
- Analysis And Determination
- a. Should the Grant dated 19th December 2022 be revoked?
 - b. Should the Summons for Confirmation dated 13th September 2023 be struck out?
 - c. What if any are the appropriate orders that should be made?
20. On the 1st issue, the grant is challenged on three substantive grounds that it was fraudulently obtained; that the applicant did not notify the other beneficiaries of the estate or seek their consent and finally that she is too old to administer the estate on her own.



21. The relevant law is Sections 51, 66 of the *Law of Succession Act* and rules 7 and 26 of the Probate and Administration rules. Section 66 sets out the sequential hierarchy in order of preference of those who may administer the Estate of a deceased who died intestate.

66. Preference to be given to certain persons to administer where deceased died intestate

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

22. Further Rule 26 of the Probate and Administration Rules is clear as to the beneficiaries that should be given notice and whose consent is required.

26. Grants of letters of administration

(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or priority to the applicant.

(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.

(3)

23. It is evident that the applicant as widow ranks in priority to her sons. They are not ‘persons entitled in the same degree as or in priority’ to her. There was no requirement to issue them with notice prior to the issuance of the grant.

24. The applicant submits that the grant should be revoked on the basis that the Petition did not include all the properties of the deceased. It is on the basis of this exclusion that he alleges fraud alongside reliance on documents that do not accurately describe the assets of the deceased or that are incomplete. I refer to rule 7 of the Probate and Administration rules

7. Application for grant: general provisions

(1) Subject to the provisions of subrule (9), where an applicant seeks a grant of representation to the estate of a deceased person to whose estate no grant or no grant other than one under section 49 or a limited grant under section 67 of the Act has been made, the application shall be by petition in the appropriate Form supported by an affidavit in one of Forms 3 to 6 as appropriate containing, so far as they may be within the knowledge of the applicant, the following particulars—

- (a) the full names of the deceased;
- (b) the date and place of his death, his last known place of residence, and his domicile at date of death;



- (c) whether he died testate or intestate and, if testate, whether his last will was written or oral, and the place where and the date upon which it was made;
- (d) a full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or become known since that date) together with an estimate of the value of his assets movable and immovable and his liabilities;
- (e) in cases of total or partial intestacy— (i) the names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with section 39(1) of the Act;
 - (ii) whether any and if so which of those persons is under the age of eighteen years or is suffering from any mental disorder, and, if so, details of it;
 - (iii) for the purposes of determining the degree of consanguinity reference shall be made to the table set out in the Second Schedule;
- (f) the relationship (if any) which the applicant bore to the deceased or the capacity in which he claims;
- (g) if the deceased died testate leaving a written will, the names and present addresses of any executors named therein; and
- (h) the postal and residential addresses of the applicant (Emphasis Supplied)

25. From the above the law envisages that at the time of Petitioning for the grant, the applicant may not have all the information and therefore makes provision by providing that the Petitioner will submit the Petition with information that she/ he may have at that time. I am persuaded that the administrator's action was not actuated by fraud. The applicant submits that the administrator has undervalued the estate; he has not availed a valuation report that supports his contention on the value of the estate.

26. The 2nd respondent suggests that the administrator is too old to solely administer the estate. This assertion is not supported by any evidence on the part of the administrator. Excluding the administrator from administration of the Estate when she ranks in priority on account of her age would be a violation of Article 27 of *the Constitution* that prohibits discrimination.

27. Equality and freedom from discrimination

- (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
- (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres.
- (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).



27. In summary, therefore the prayer to revoke the grant is dismissed. The Petition as presented was within the parameters of the law.
28. After the issuance of the grant, the Respondent/ Administrator presented a summons for confirmation of grant dated 13th September 2023. The summons does not cite the provisions of the law under which it is presented; the relevant provisions of the law are Section 71 of the *Law of Succession Act* and rule 40 of the Probate and Administration Rules. The Summons presented is materially and incurably defective. It does not comply with Part V of the *Law of Succession Act* and in particular Section 35 of the *Law of Succession Act*. The consternation of the sons of the deceased is well founded. I have no hesitation in striking out the Summons for Confirmation of Grant.
29. What are the consequential orders?
30. Section 66 confers on the Court the final discretion as to who to appoint to administer the estate. I have already stated that the grant as procured is legally sound. The Court is required to exercise this discretion having regard to the best interests of all concerned. It is in the best interests of all that administration of the Estate proceeds without further delay.
31. It is evident that the consensus within the family is that the Administrator ought not to proceed as sole administrator. There is even a consent on record dated 4th April 2025 proposing that a grant be issued jointly to Jeffrey Nderitu Ngatia, Agnes Wanjiru, Karuga Ngatia and Joseph Mutongu Ngatia. The applicant is opposed and offers himself as a joint administrator with the respondent. He is diametrically opposed to the appointment of Karuga as administrator.
32. The Administrator's reservations regarding the applicant's appointment as co-administrator have been duly considered. I observed the applicant's conduct and interactions with the Administrator both during the trial and throughout cross-examination. The applicant's direct approach in cross-examination suggests a strained relationship between the parties, which indicates they may not be well suited to serve jointly as administrators.
33. The *Law of Succession Act* allows for the appointment of four administrators. I will therefore adopt the consent as executed by Jeffrey Nderitu Ngatia, Agnes Wanjiru, Karuga Ngatia and Joseph Mutongu Ngatia and direct that the order of 19th December 2022 appointing the respondent as sole administrator is varied and a fresh grant will issue to Jeffrey Nderitu Ngatia, Agnes Wanjiru, Karuga Ngatia and Joseph Mutongu Ngatia.
34. The administrators must file a compliant summons for confirmation of grant within 30 days, either together or individually if they cannot agree, and serve it on all beneficiaries of the estate. Any beneficiary who objects to the summons for confirmation should submit an affidavit of protest within 14 days of receiving it. The administrators can file a further affidavit in response within 7 days after being served.
35. The matter will be mentioned on 21st April 2026 to confirm compliance and take further directions
36. Parties at liberty to appeal. The party exercising right of appeal to do so within 30 days
37. Each party to bear their own costs

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF FEBRUARY 2026.

P. M NYAUNDI



HIGH COURT JUDGE

In the presence of:

Fardosa Court Assistant

Ms. Ndirangu for Jeffrey Ngatia beneficiary

Omao holding brief Ngatia Wambugu for Josephy Mutongu beneficiary

Ngatia – Applicant in person

