

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 122 OF 2010
IN THE MATTER OF THE ESTATE OF GIDEON MANTHI
NZYUKO (DECEASED)

MARY MAINA NANDEKA

APPLICANT

AND

JOHN MUKULYA MANTHI.....1ST

RESPONDENT

AARON MUTHIANI MANTHI..... 2ND

RESPONDENT

RULING

1. Before this court for determination is a Summons for Revocation of confirmed Grant dated 22nd August 2023. It seeks the following orders;
 - a) That the rectified confirmed grant issued to Monicah Mwenga Manthi, John Mukulywa Manthi and Aaron Manthi Nzyuko on 7th October 2020 be revoked.
 - b) That a fresh confirmed grant be issued to Mary Maina Nandeka jointly with Henry Muli Nziuko.
 - c) That the Respondents be ordered/directed to account for and surrender the sale proceeds received by each of them

from the unlawful sale of the following properties which belong to the deceased's estate: -

- i. Plot No. 141, Kangundo town.
- ii. Plot No. 43, Kawethei Market.
- iii. Plot in Ukia area of Kilungu Sub- county

d) That such further or other order be granted as this court will deem just and expedient.

e) That costs of this application be borne by the Respondents.

2. The Applicant's application is premised on the grounds set out on the face of the summons and in the supporting affidavit sworn by her. The crux of the application is that the deceased died on 2nd December 1974 and that a rectified confirmed grant of letters of administration in respect of his estate was issued to Monicah Mwenga Manthi, John Mukulya Manthi and Aaron Manthi Nzyuko on 7th October 2020. She avers that prior to the rectification, a confirmed grant had been issued jointly to Monicah Mwenga Manthi, George Nziuko (now deceased), John Mukulya Manthi and Aaron Manthi Nzyuko. According to the Applicant, George Nziuko was subsequently removed as an administrator upon an application by the other administrators alleging non-cooperation in the administration of the estate. She further avers that Monicah Mwenga Manthi has since passed away, leaving John Mukulya Manthi and Aaron Muthiani Manthi as the surviving administrators.

3. The Applicant contends that the surviving administrators have failed to administer the estate in accordance with the law and have instead unlawfully disposed of certain assets forming part of the net estate without disclosure or accountability. She alleges that on 16th October 2018, John Mukulya Manthi, while purporting to act as the sole beneficiary of the estate, sold a parcel of land situate in Ukia area of Kilungu Sub-County to Teresia Nzioki for Kshs.400,000/= and to Thomas Mutua for Kshs.400,000/=, receiving a total sum of Kshs.800,000/= which he allegedly failed to declare or account for to the benefit of other beneficiaries.
4. She further alleges that the Respondents sold Plot No. 141 Kangundo Town and Plot No. 43 Kawethei Market but have not accounted for the proceeds of sale, particularly the share due to the late George Nziuko. Additionally, she contends that pursuant to a judgment and decree issued in ELC Case No. E145 of 2021, the Environment and Land Court directed the Respondents to sell and transfer House No. A17, Kimathi Estate, Nairobi to her or to the estate of the late George Nziuko. She alleges that the Respondents have failed to execute the necessary sale agreement or to procure the requisite lease or certificate of lease to facilitate compliance with the said decree. The Applicant also asserts that the Respondents have failed to take steps to recover a prime property belonging to the estate situated in Syokimau Estate, being Plot No. 4 on L.R. No. 7/49/11, which this Court, in a

ruling dated 25th November 2015, determined to form part of the estate.

5. The Applicant avers that the estate of the deceased remains substantially unadministered and that the net estate has not been fully distributed in accordance with the confirmed grant, despite the lapse of several years since confirmation. She therefore contends that the Respondents are unfit to continue administering the estate and ought to be removed.
6. She states that, as the legal representative of the estate of her late husband, George Nziuko, she has a direct and legitimate interest in safeguarding his entitlement in the estate. She consequently seeks orders compelling the Respondents to render a full account of all monies received from the alleged sale or disposal of estate properties and, in default of proper accounting, that their respective shares in the remaining estate be reduced by the equivalent sums found to have been misapplied.
7. In opposing the application, the Respondent filed a replying affidavit sworn on 13th October 2023 by Aaron Muthiani Manthi and grounds of opposition dated 25th October 2023. In his response which he swore in his capacity as a co-administrator of the estate of the deceased and with the authority of his co-administrator, he summarily deponed that the application is founded on half-truths and misrepresentations intended to mislead the court.

8. He avers that the application does not satisfy the legal threshold for revocation of grant; that the Applicant is not a beneficiary of the estate and therefore lacks locus; and that the application is frivolous, vexatious, and an abuse of the court process. He further states that the Applicant does not fall within the category of persons entitled to appointment as administrator under section 66 of the Law of Succession Act, rendering her prayer to be appointed as administrator legally untenable.
9. The Deponent maintains that the estate has been diligently administered. A certificate of confirmation of grant exists on record detailing the distribution to the eleven beneficiaries, each of whom is aware of their respective entitlement. He states that proceeds from the sale of certain estate properties were distributed equally to the beneficiaries, including the Applicant's late husband, who was an administrator at the time. He denies that there was any failure in distribution.
10. With respect to specific properties, he avers that there is no property known as Plot Ukia Kilungu forming part of the estate and that no evidence has been produced to demonstrate otherwise. He further states that Plots 141 Kangundo and 43 Kawethei Market were sold in 2018 and the proceeds distributed to all beneficiaries through their respective advocates, without complaint for several years. He asserts that any grievance relating to the Applicant's late

husband's share lies with his estate and not with the estate of the deceased herein.

11. Regarding House A17 Kimathi Estate, the deponent states that pursuant to a judgment in ELC Case No. E145 of 2021, the property was to be sold or transferred to the Applicant for Kshs. 8,600,000/=, which sum the Applicant has allegedly failed to pay. He contends that the present application is an attempt to evade compliance with that judgment. In relation to the alleged Syokimau property, he states that although it was in the name of the deceased, it was fraudulently transferred to a third party and that the administrators have taken steps to recover it, including reporting the matter to the relevant authorities. He maintains that investigations are ongoing.
12. The Deponent further states that the Applicant, as the legal representative of her late husband's estate, is not entitled to participate in the administration of the deceased's estate beyond dealing with her late husband's share. He maintains that the estate has been substantially administered and that the only remaining asset is House A17 Kimathi Estate, whose transfer is contingent upon payment of the court-ordered consideration. He denies any impropriety or risk to the estate and asserts that the Applicant has not demonstrated grounds warranting revocation of grant.

13. He concludes that the application lacks merit, is brought in bad faith, and should be dismissed with costs in the interests of justice.
14. The Applicant further filed a supplementary affidavit sworn on 15th November 2024 wherein she averred that the Respondents have failed to administer the estate of the deceased diligently and that is why the distribution and transfer of the shares of the beneficiaries who are entitled to benefit in the estate have not been concluded for the last 14 years. She avers further that the allegation by Aaron Muthiani Manthi that the administrators have constantly sought to recover the deceased's 5 acre piece of land in Syokimau is not true and that is why the Respondents have not placed any evidence before court to show any efforts to recover, preserve, protect and administer the property more than 14 years after they were appointed the administrators. She depones that the failure by the Respondents to conclude the administration of the deceased's estate by collecting and distributing the net estate of the deceased for the last more than 14 years is a clear pointer to their unsuitability to continue administering the estate. She further states that she has produced evidence showing that the Respondents have secretly sold some properties belonging to the deceased's estate without accounting for the sale proceeds and this is also a pointer to the unsuitability of the Respondents to continue administering the estate. That the Respondent's

deliberate refusal to follow up and procure the Certificate of Lease and Title for House No. A17, Kimathi estate Nairobi is also worth taking into account when considering the application at hand. She concludes by stating that she is ready and willing to administer the deceased's estate if she is given the opportunity and appointed as administrator in place of the Respondents.

15. In a further replying affidavit sworn by Aaron Muthiani Manthi on 5th December 2024, he states that the Supplementary Affidavit raises no new issues and merely reiterates the matters contained in the initial application dated 22nd August 2023. He therefore restates and relies on all the contents of his Replying Affidavit sworn on 13th October 2023. He denies the allegations that the administrators have failed to properly administer the estate, asserting that the claims are vague, lack specificity, and do not identify any particular acts of misadministration. He maintains that the concerns raised in paragraphs 4 and 5 of the Supplementary Affidavit are repetitive and were comprehensively addressed in the earlier Replying Affidavit. He further denies allegations that the administrators have sold estate property without accounting for the proceeds. On the contrary, he avers that the administrators have consistently rendered accounts to all lawful beneficiaries of the estate. He questions the basis upon which the Applicant, whom he maintains is not a direct beneficiary of the deceased's estate, raises such complaints.

16. With respect to House No. A17, Kimathi Estate, he states that the administrators are in the process of procuring the lease and title documents for the property. He reiterates his position that the Applicant is not a beneficiary of the deceased's estate and does not fall within the hierarchy of persons entitled to administer the estate. He adds that the deceased has eight surviving adult children of sound mind who are capable and willing to assume administration of any remaining part of the estate, should replacement of the current administrators become necessary.
17. He concludes that the affidavit is sworn in strong opposition to both the Applicant's application dated 22nd August 2023 and her Supplementary Affidavit dated 15th November 2024.
18. The present application was canvassed by written submissions. The Applicant's submissions are dated 24th July 2024. At the time of writing this judgment, the court was not in receipt of the Respondent submissions.

Applicant's Submissions

19. The Applicant began her submissions by introducing the summons filed. She argued that the Court has jurisdiction under section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules to invoke its inherent powers to ensure justice is achieved. The Applicant contends that the confirmed grant, which has been in existence for approximately fourteen years, has not been fully

implemented. She asserts that the Respondents have failed to complete the administration of the estate.

20. She further noted that two administrators, George Nziuko and Monicah Mwenga, have since passed away. While the grant was rectified to remove George Nziuko's name, no action has allegedly been taken to remove Monicah Mwenga's name following her death. The Applicant maintains that the surviving administrators have neglected their duty to finalize the distribution of the estate and instead have engaged in unilateral dealings with estate property.

21. In particular, the Applicant alleges that one of the Respondents secretly sold an undisclosed parcel of land belonging to the deceased for Kshs. 800,000/= without accounting for the proceeds. She also contends that although the Respondents admit having sold Plot Nos. 141 Kangundo and 43 Kawethei Market, they have not demonstrated how and when the late George Nziuko received his share, if at all. Further, she blames the Respondents for failing to take meaningful steps to recover an alleged five-acre parcel in Syokimau said to have been fraudulently transferred, and for failing to obtain the lease and title documents for House No. A17, Kimathi Estate, thereby frustrating compliance with a decree issued in ELC Case No. E145 of 2021 directing sale and transfer of the property.

22. The Applicant submits that the Respondents' conduct demonstrates a failure to diligently administer the estate and

to account to beneficiaries, thereby justifying revocation of the grant. She relies on decisions in **In re Estate of the Late Kubuta Kamara Nguuro alias Pharis Njegegu (Deceased) [2021] eKLR** and **In re Estate of Annah Nenchungei Koikai (Deceased) [2021] eKLR** for the proposition that the office of administrator is fiduciary in nature and that the court has power to revoke a grant where administrators fail to discharge their duties or where trust and accountability are lacking.

23. On locus, the Applicant maintains that as the legal representative of the estate of the late George Nziuko, she is entitled to protect her late husband's interest as a beneficiary. Though not a direct beneficiary, she asserts that she steps into the shoes of her late husband and has standing to seek the orders prayed for. She further emphasizes that she seeks appointment jointly with another son of the deceased, and not solely in her own name.

24. In conclusion, the Applicant submits that she has established sufficient grounds for revocation of the confirmed grant on account of failure to complete administration, lack of accountability, and alleged unlawful dealings with estate property and she urges the court to allow the summons as prayed.

Analysis and Determination

25. I have carefully considered the summons application herein, the affidavits filed by parties and submissions placed before the court and it is my view that the following issues arise for determination;

a. Whether the Applicant has *locus standi* to bring the present application.

b. Whether the Applicant has established grounds for revocation of the confirmed grant under Section 76 of the Law of Succession Act.

Whether the Applicant has *locus standi* to bring the present application.

26. The Respondents challenge the Applicant's standing on the basis that she is not a direct beneficiary of the estate of the deceased. The Applicant, however, approaches the court as the widow and legal representative of the estate of the late George Nziuko, who was a son of the deceased and therefore a beneficiary. The record confirms that George Nziuko was initially appointed as one of the administrators before his removal and that he was entitled to a share of the estate under the confirmed grant.

27. Under succession law, once a beneficiary dies, his entitlement devolves to his estate. The legal representative of that estate steps into his shoes for purposes of protecting and enforcing that entitlement. The Applicant therefore has a recognizable legal interest in ensuring that her late husband's

share in the estate is preserved, properly accounted for, and distributed. Her standing is not as a direct heir of the deceased, but as a representative of a deceased beneficiary whose entitlement remains in issue. In that capacity, she cannot be termed a stranger to the estate.

28. I therefore find that the Applicant has locus standi to move this court.

Whether the Applicant has established grounds for revocation of the confirmed grant under Section 76 of the Law of Succession Act.

29. Section 76 of the Law of Succession Act provides for revocation or annulment of grant as follows;

76. Revocation or annulment of grant

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**

30. The High Court in the case of **In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR)** simply summarized the above Section 76 of the Law of Succession Act as;

“8. 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 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.”

31. Section 76 of the Law of Succession Act empowers the Court to revoke or annul a grant at any time where, inter alia, It was obtained fraudulently or by concealment of material facts; the administrator has failed, after due notice, to apply for confirmation or to proceed diligently with administration; the administrator has failed to render accounts as required and the grant has become useless or inoperative through subsequent circumstances. The duty of full and candid disclosure is central to succession proceedings.
32. The confirmed grant herein was issued in 2010 and rectified in 2020. The Applicant’s complaint is not about how the grant was obtained but about subsequent conduct in administration. The principal allegations relate to prolonged failure to complete administration; alleged secret sale of estate property and failure to account; failure to recover or preserve certain assets and failure to comply with a decree relating to House No. A17 Kimathi Estate.
33. On the delay in completing administration, it is noted that the grant was confirmed over fourteen years ago yet the estate has not been fully administered. The administrators concede that at least one asset, House No. A17 Kimathi Estate remains pending. While delay alone does not automatically justify revocation, administration of an estate is not intended to be indefinite. The office of administrator is fiduciary in

nature, founded on trust, diligence and accountability. The Respondents have not provided the court with a structured account demonstrating compliance with Section 83 of the Act which imposes a duty to complete administration and render accounts. A lapse of fourteen years without full completion of administration is prima facie inordinate. The administrators therefore bear the burden of satisfactorily explaining such delay.

34. Regarding the alleged sale of the estate properties and accounting, the Applicant annexed sale agreements relating to the property situate in Ukia area and raised questions concerning Plots 141 Kangundo and 43 Kawethei Market. The Respondents admit that the Kangundo and Kawethei plots were sold in 2018 and assert that all beneficiaries, including George Nziuko received their shares through advocates. However, beyond this assertion, no documentary proof of distribution such as payment schedules, acknowledgments, bank transfers or estate accounts has been placed before court demonstrating when and how the late George Nziuko received his share and in what amount.

35. Where administrators dispose of estate property, the law imposes a strict duty to account. Mere averments that beneficiaries were paid are insufficient where specific allegations of non-accounting are made.

36. As regards the Ukia property, the existence of a sale agreement naming one of the administrators raises legitimate

questions. If indeed the property formed part of the estate, sale without transparency and proper accounting would amount to breach of fiduciary duty. If it did not form part of the estate, that position must be supported by documentary evidence of the estate inventory.

37. The burden of transparency lies with administrators.
38. The Applicant contends that a prime five-acre property in Syokimau was not recovered despite a prior ruling declaring it part of the estate. The Respondents state that it was fraudulently transferred and that investigations are ongoing. If indeed the property was judicially determined to belong to the estate, administrators were under a duty to take concrete recovery steps. Fourteen years without demonstrable civil recovery proceedings or substantive action would raise concerns as to diligence.
39. The Environment and Land Court (ELC) decree directed sale and transfer of the property to the Applicant upon payment of Kshs. 8,600,000/=. The Respondents allege non-payment; the Applicant alleges failure to procure title documents necessary for completion. This dispute appears to revolve around execution of a specific decree rather than general administration of the estate. It may be more appropriately addressed through enforcement mechanisms in the ELC or through directions rather than revocation of the entire grant.

40. Revocation is a drastic remedy that may not be taken lightly. Even when acting on its own motion, the Court may revoke the grant only in the clearest of cases and for very good reasons. In **Albert Imbuga Kisigwa v Recho Kawai Kisigwa [2016] eKLR** EC Mwita, J held that: -

“13. Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a 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.”

41. It would appear to me that revocation of grant is a drastic remedy that should only be issued where the court is satisfied that a clear case for it has been made. Is that the case in this matter? From the material before this court, the grant was properly issued and confirmed, there is no evidence that it was obtained fraudulently, administration has substantially progressed though not fully completed and the principal complaint is delay and lack of transparent accounting. The Applicant has not demonstrated clear fraud but have shown laxity or poor record-keeping. The threshold for immediate

revocation has not been demonstrated to the high standard required under Section 76.

42. Accordingly, I direct that;

- a. Summons for Revocation of Grant dated 22nd August 2023 is hereby dismissed.
- b. the surviving administrators, John Mukulya Manthi and Aaron Muthiani Manthi shall within thirty (30) days from the date hereof file in court and serve upon all beneficiaries a full and comprehensive account of their administration of the estate pursuant to Section 83 of the Law of Succession Act.
- c. The matter shall then be mentioned for further directions in thirty days

43. That said, I do not think that the issuance of an order of costs would serve the interests of justice nor promote family amity.

Orders accordingly.

Dated, signed and delivered at Machakos this 12th day of February, 2026

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant
.....Respondent
Selina Court Assistant

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