



In re Estate of Washington Njenga Kariuki (Deceased) (Succession Cause 3255 of 2013) [2026] KEHC 1455 (KLR) (Family) (12 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 3255 OF 2013
EKO OGOLA, J
FEBRUARY 12, 2026
IN THE MATTER OF THE ESTATE OF WASHINGTON NJENGA KARIUKI (DECEASED)**

BETWEEN

**BENARD KARIUKI 1ST APPLICANT
EUNICE WAMBOI KARORI 2ND APPLICANT
SUSAN WANJIKU 3RD APPLICANT**

AND

JEAN NJOKI NJENGA RESPONDENT

RULING

1. On 26th June, 2024, this court rendered a Ruling in this matter. However, that Ruling contained some factual mistakes on account of aged proceedings and missing applications. By consent of all parties through the proceedings of 2nd October, 2025, parties agreed that the ruling be reviewed, pursuant to a Notice of Motion dated 6th November, 2024. That is what led to this particular ruling.
2. This decision enabled the court to go back to the file and to consider the two consolidated Applications, dated 6th October 2015 and 1st December 2015 seeking to revoke the grant of letters of administration issued on 31st October 2014 to Jean Njoki Njenga.
3. The Application dated 6th October 2015 is supported by the sworn affidavit of Benard Kariuki dated the same day.
4. The Application dated 1st December 2015 is supported by the sworn affidavit of Susan Wanjiku dated the same day.



5. Both Applications are opposed by the Replying affidavit of Jean Njoki Njenga dated 20th February 2015 and the Further affidavit of Jean Njoki dated 14th March 2017.
6. All parties filed their respective submissions.

Application dated 6th October 2015

7. The Applicants posit that the deceased died intestate on 16th July 2013 and that the deceased was a polygamous man.
8. The Applicants aver that the grant of letters of administration issued to the Respondent, Jean Njoki Njenga, on the 31st October 2014 were fraudulently obtained.
9. The Applicant avers that the Respondent obtained the grant by concealing material evidence, to wit; deliberately omitting to include Eunice Wamboi Karori, the 2nd Applicant as a widow of the deceased. Furthermore, the Respondent did not seek the 1st and the 2nd Applicants consent to making of a Grant of Administration Intestate.
10. The Respondent in her Replying affidavit swears that the 1st Applicant, Benard Kariuki, filed for a Limited Grant of Letters of Administration in Succession Cause Number 3255 of 2013 before the Respondent applied for a full grant in Succession Cause Number 1123 of 2014. That the same was gazette requiring objectors to file any objection but the Applicants herein belatedly filed objections to the Grant but did not raise the issue of not having being cited.
11. The Respondent avers that she is the only wife of the deceased, Washington Njenga Kariuki and had been married under Kikuyu Customary law prior to formalizing the marriage on 30th November 1990 at the Office of the Registrar. That the deceased had sired the 1st Applicant outside of wedlock but he was not a polygamous man.

Application dated 1st December 2015

12. The 3rd Objector/Applicant depones in her affidavit dated 1st December 2015 that she is a bonafide wife and a dependent to the deceased and that she has been excluded as a beneficiary of the deceased' estate.
13. The 3rd Objector avers that the deceased had three wives at the time of his death, the Respondent as the 1st wife, Eunice Wamboi Karori and Susan Wanjiku.
14. The 3rd Objector depones that she cohabited with the deceased between the year 2008 to 2013 as the deceased had separated from his 1st wife. That they lived together as husband and wife until the demise of the deceased herein.
15. She further avers that the grant of letters issued to the Respondent herein were obtained fraudulently as there was no full disclosure of the estate of the deceased. That the Respondent had left out part of the estate of the deceased, a plot in Mai Mahiu. That her consent was not sought prior to petitioning for the grant of letters of administration intestate.
16. The Respondent in her Replying affidavit dated 20th February 2015 avers that the 3rd Objector is not a widow of the deceased as alleged and that she is the only lawful widow of the deceased.

The Hearing

17. The Summons were canvassed through viva voice evidence and parties filed submissions.



18. PW1, Benard Kariuki, testified that he was the son of the deceased and that his father had two wives, Eunice Wamboi and Jean Njoki. That the deceased did co-habit with the 3rd objector from the year 2009 until 2012, though the 3rd objector was not a widow of the deceased.
19. PW1 testified that he was not involved in filing the petition for the Grant of letters of administration and he had raised an objection to the same.
20. PW2, Eunice Wamboi testified that she was married to the deceased between the year 1980 and 1981 and that the deceased paid dowry as per the Kikuyu Customary Marriage. That the union was blessed with one child but she had two other children from a previous relationship. That they lived in Uthuru as husband and wife until she relocated to live at her maternal home.
21. PW3, Mary Waithera, reiterated what PW2 testified in court.
22. The Respondent adopted her Replying affidavit sworn on 20th February 2015 and Further Affidavit as her testimony in court. She reiterated that she was the sole widow of the deceased.

Determination

23. I have carefully considered the pleadings herein, the Viva Voce evidence of parties together with their written submissions.
24. From the evidence it is clear that the deceased had relationships with the Respondent as his wife. He also cohabited with the 2nd Applicant and the 3rd Objector at various times, although there was no evidence that he was ever married to the 2nd Applicant or the 3rd Objector.

It is also clear that the deceased had a troubled relationship with his wife the Respondent. Indeed, the Respondent had stayed five years in the United States and only returned home at the death of her husband in order to bury him.

During his lifetime, however, the deceased cohabited for a long time with the 2nd Applicant and through that Co-habitation the 1st Applicant was born. There is however no evidence that the deceased and the 2nd applicant ever married. It is also clear that the deceased never accepted the 2nd applicant's 2 other children which the second Applicant came with into the relationship.

The relationship between the deceased and the 2nd Applicant was therefore that whereby they both provided companionship to each other, through which the 1st Applicant was born. The deceased clearly provided for and took care of the 2nd Applicant as his dependent.

In the course of time, the deceased also Co-habited with the 3rd Objector, Susan Wanjiku between 2008 – 2013. The 3rd Objector became his latest confidant in life, to whom he also showed an asset which was not included in his estate. During this time, the deceased took care of the 3rd Objector and confided in her and they lived together. This was not a marriage. No known elements of a marriage were provided. However, the 3rd Objector provided consortium and companionship in return of which the deceased took care of her during his life. It is the finding hereof that the 3rd objector was a dependent of the deceased.

From the foregoing, the court finds and holds as follows;

1. The 1st Applicant is a son of the deceased and his dependent.
2. The 2nd applicant is a dependent of the deceased.
3. The 3rd objector is a dependent of the deceased.



25. The central issue now for determination is whether the Applicant's application meets the threshold for revocation of grant within the meaning of Section 76 of the *Law of Succession Act*.

Section 76 states:

“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.”

26. The scope and application of section 76 was clearly expounded by the court in; *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR.
27. As to whether the grant should be revoked, this court should satisfy itself that the applicant has proved the alleged grounds for revocation and only evidence focused directly on proof of the above grounds can properly justify a revocation of grant.
28. The Applicants in this instance have focused on the issue that the deceased died a polygamous man. This goes to the mode of distribution of the deceased estate and not on the merits the grant of letters of administration.
29. However, the 3rd Objector, in her sworn affidavit avers that the Respondent when applying for the grant of letters of administration left out part of the deceased estate namely a plot in Mai Mahiu. Section 76 (c) of the *Law of Succession Act* – “where 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” warrants a revocation of the grant of letters of administration. In this instance, does the omission of the plot in Mai Mahiu, satisfy the limb as espoused under Section 76 (c) of the Law of Succession Act?

30. The power to revoke a grant is discretionary as was stated in the case of *Albert Imbuga Kisigwa v Recho Kavai Kisigwa*, where Mwita J. noted thus:

“(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.”

31. In the case of *In Re; Estate of Julius Ndubi Javan (Deceased)* [2018] eKLR the Court stated as follows; -

“The primary duty of the probate court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues on the ownership of the property of the estate are raised in a Succession Cause they must be resolved before such property is distributed And that is very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation”

32. That a section of the deceased estate has been left out of the grant of letters of administration fulfils Section 76 of the Law of Succession Act that provides for the revocation of grant and this court will therefore exercise the power conferred upon it to make the following orders:

1. That the Grant of letters of administration issued on 31st October 2014 be revoked.
2. That a fresh grant shall be issued in the joint names of the Respondent Jean Njoki Njenga and the 1st Applicant Benard Kariuki.
3. That the Respondent is directed to provide to court a true and accurate account of the administration of the estate within 45 days from today.
4. That, thereafter the two (2) Administrators to file Summons for confirmation of Grant.
5. That each party to bear its own cost.

It is so ordered.

DATED AND DELIVERED at NAIROBI this 12th Day of FEBRUARY, 2026.

.....
E.K. OGOLA

JUDGE

In the Presence of;

Mr. Maina for the Respondent

Mr. Musungu for the 3rd Objector

Mr. John for the 1st and 2nd Objector



Gisiele Court Assistant.

