

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NYERI**  
**SUCCESSION CAUSE NO. 207 OF 2007**

**IN THE MATTER OF THE ESTATE OF NATHANIEL**  
**NJOROGE KARANO alias NJOROGE KARANO (DECEASED)**

**DANIEL MAINA NJOROGE.....**  
**PETITIONER**

**VERSUS**

**ISAAC NJOROGE NDUNGU..... 1<sup>ST</sup>**  
**APPLICANT/OBJECTOR**

**JAMES KARANJA NJOROGE..... 2<sup>ND</sup>**  
**APPLICANT/OBJECTOR**

**PETER KINUTHIA NJOROGE..... 3<sup>RD</sup>**  
**APPLICANT/OBJECTOR**

**MARY WAIRIMU MUIRURI..... 4<sup>TH</sup>**  
**APPLICANT/OBJECTOR**

**DAVID MWANGI NJOROGE ..... 5<sup>TH</sup>**  
**APPLICANT/OBJECTOR**

**AND**

**JAMES NDEGWA GITITU.....INTERESTED**  
**PARTY**

**RULING**

1. By the summons for revocation of grant dated 21.6.2021, the Objectors sought for the following reliefs:
  - a) Spent
  - b) Spent
  - c) The Honourable Court be pleased to revoke the grant herein and set aside the Certificate of Confirmation of Grant dated 19.12.2008 and subsequently redistribute the estate of the deceased comprising Nyeri/Watuka/617 to all beneficiaries of the deceased as opposed to one beneficiary, the Petitioner.
  - d) The costs be provided for.
2. The summons was supported by the Affidavit of Peter Kinuthia Njoroge and was based on the following grounds:
  - (i) The Deceased was survived by the following children:
    - (a) Isaac Njoroge Ndungu - (deceased), survived by 1<sup>st</sup> Applicant
    - (b) James Karanja Njoroge - son
    - (c) Mary Wairimu Njroge - daughter
    - (d) Wambui Njoroge - daughter
    - (e) Daniel Maina Njoroge - son
    - (f) Peter Kinuthia Njoroge - son
    - (g) Daniel Muiruri Njoroge - deceased, survived by Mary Wairimu, widow
    - (h) Daniel Mwangi Njoroge - son
    - (i) Mary Njeri Njoroge - daughter
  - (ii) The Grant was issued through fraud and concealment of material facts, being that Joseph Ndungu Njoroge

(deceased), survived by the 1st Applicant, resides on the parcel of land, the subject of the estate.

(iii) The Petitioner falsified the Applicant's signature.

3. The Petitioner filed a Replying Affidavit 9.12.2021 by which it was deposed as follows:

a) That the estate was transmitted to him to hold in trust for himself and other beneficiaries.

b) The said trust was reduced to a trust deed and signed by all parties.

c) The estate was duly surveyed, and the Applicant was completing partitioning and subdivisions.

d) The court had no jurisdiction as the matters were civil.

4. The Interested Party also filed a replying affidavit dated 5.7.2021 by which it was deposed that the Petitioner paid him the cost of the suit in Nyeri CMCC No. 48 of 2008 of Ksh. 41,575/= and Ksh. 99,471/= in Nyeri ELCA No. 1 of 2021.

5. There was also a pending bill of costs pending in the Court of Appeal Civil Application No. 27 of 2016.

6. He supported that all beneficiaries be given their individual share to enable him obtain the costs personally from the Petitioner.

### Evidence

7. The 1<sup>st</sup> Objector testified in court, relying on his witness statement filed. He testified that the deceased Joseph Ndungu Njoroge occupied Nyeri/Watuka/617 and was his father. His father was left out in succession. On cross-examination, it was

his stated case that they came to court when they learnt that the land was being sold. He learnt that the title had been issued. They were not involved in the succession. The signatures were forged.

8. The 2<sup>nd</sup> Objector testified that his father was Joseph Ndungu Njoroge, who died in 2005. His father was not involved in the succession.
9. The 4<sup>th</sup> Objector testified that the Nyeri/Watuka/617 belonged to the deceased, her husband was Daniel Muiruri Njoroge. They learnt that the land was being sold and so filed these proceedings. On cross-examination, she maintained that she had not been evicted from the premises in question. Her signatures were forged.
10. Daniel Maina Njoroge also testified that the deceased's land was to be sold by James. He sued James in his capacity as administrator. James was to be refunded Ksh. 300,000/= as ordered by the court. They agreed that the land be held in trust for other beneficiaries.
11. On cross-examination, it was his case that he knew Joseph Ndungu Njoroge had a son. His mother left the matrimonial home. He forgot to include his brother's son in the succession. The son returned in 2013. There was no concealment. He gave his brother's son the shamba that he was using.

### Submissions

12. The Objectors filed submissions dated 10.10.2025. It was submitted that the Applicant was the grandson of the deceased, Joseph Ndungu Njoroge. It was submitted that the father of the 1<sup>st</sup> Objector was left out of the inheritance. Reliance was placed on Section 74 of the Law of Succession Act to submit that the 1<sup>st</sup> Objector should be provided for.
13. The Objectors also submitted that the Petitioner listed himself as the sole beneficiary when there were other beneficiaries, and the grant should be set aside. They cited Sections 71 and 76 of the Law of Succession Act to submit that the grounds for revocation had been established.
14. On his part, the Petitioner filed submissions dated 29.6.2023. It was submitted that the Objectors participated in the Grant process.
15. It was submitted that the court had no jurisdiction to interfere with the registration of the suit land as a trust had been established with the Petitioner holding the property on behalf of other beneficiaries.
16. The Petitioner cited **Matheka v Matheka (2005) EA 251**, based on which it was contested that there was no ground for revocation of the grant.

### Analysis

17. The Objectors questioned the grant as confirmed. The issue for determination is whether the summons for revocation should be allowed, and the mode of distribution done by the

Petitioner should be set aside. Section 51 of the Law of Succession Act requires a person seeking to administer the estate of a person who died in 1980 to comply with section 51(2)(g) of the Law of Succession Act and Rule 7(1)(e) of the Probate and Administration Rules, which require disclosure of all the children of the deceased.

18. A cursory perusal of the summons for confirmation of grant dated 25.6.2008 reveals that one of the deceased's sons, Joseph Ndungu Njroge, also deceased, was not listed as a beneficiary. The Petitioner has not disputed this fact. The Petitioner's response is that he forgot to list Joseph Ndungu Njoroge's son, Isaac Njoroge Ndungu, in the place of his deceased father, since Isaac's mother had left the matrimonial home. However, the Petitioner also stated that Isaac Njoroge stayed on the disputed parcel of land.

19. Therefore, this court has to establish a basis to revoke the grant and interfere with the mode of distribution proposed in the certificate of confirmation of grant, as urged by the Objectors. The grounds for revocation or annulment of grant of Letters of Administration are set out in Section 76 of the Law of Succession 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.

20. The summons for confirmation of the grant made an attempt to list some beneficiaries, but did not state the shares to the beneficiaries. Further, the summons described the only

property being Title No. Nyeri/Watuka/617, which was also stated to be transferred to the Petitioner absolutely.

21. The Petitioner alleged that this court had no jurisdiction as the matter would be suited to be determined by a civil court. That is wishful thinking. The court retains the power to deal with the estate's beneficiaries. The Summons for Confirmation of Grant did not make any reference to a trust and purported to transfer the sole property of the deceased to the Petitioner. Nothing can be read from the said summons to infer that the property would be held in trust. It was also not disputed that some children of the deceased were deceased and their beneficiaries were not included in the summons as dependants.

22. For all intents and purposes, the succession herein was tainted with material nondisclosure. Even if the Petitioner was not guilty of fraud, nondisclosure was sufficient to taint the grant, and I so find. Anything done without full disclosure is a nullity. Nothing can be put and nothing and can survive. In **Macfoy vs. United Africa Co. Ltd [1961] 3 All E.R. 1169**, Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said:

*“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado,*

*though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”*

23. The bounds and mounts of the estate of the deceased were not well defined, and I find a basis in revoking the grant. The law governing applications for confirmation of grant is section 71 of the Law of Succession Act and Rules 40 and 41 of the Probate and Administration Rules. The proviso to section 71, as read together with Rule 40(4), is that the administrator applying for distribution must satisfy the court that they have properly ascertained the persons beneficially entitled to a share in the estate and have properly ascertained the shares due to such beneficiaries. The effect of it is that the court then incurs a duty to be satisfied, before it confirms the grant, that the administrator asking for confirmation has properly ascertained the persons beneficially entitled to a share in the estate and the shares due to such beneficiaries.

24. In the case of **Jamleck Maina Njoroge v Mary Wanjiru Mwangi (2015) eKLR** the court discussed circumstances when a grant can be revoked. The court observed:

“11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or

on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law."

25. This court notes, and curiously so, that the Summons for Confirmation of the Grant dated 25.6.2008 recognized the Petitioner as the sole Administrator alongside selecting him as the person to whom the entire estate would devolve on an absolute basis.

26. The court is at a loss as to whether the Petitioner is a diligent Administrator in light of the circumstances of this case. It would take a diligent administrator to ensure that the property of the deceased was distributed timeously as by law expected. Failure of such responsibility or need to clarify issues leaves no doubt that the failure to include the other beneficiaries as stipulated in the Objection was intentional. The discretion of this court tends towards revoking the certificate of confirmation of grant. In the case of **Albert Imbuga Kisigwa v Recho Kawai Kisigwa, Succession Cause No.158 of 2000**, the Court stated as follows:

"[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."

27. Similarly, the Petitioner did not notify or involve the 1<sup>st</sup> Objector in the succession process. There was thus no evidence of compliance with Rule 26 of the ***Probate and Administration Rules***, which states that;

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

28. This court finds that all the persons entitled as beneficiaries to the estate of the deceased herein were not involved in the succession process, and particulars of the dependants were concealed contrary to the law. In the case of **Charles Mutua M'anyoro vs. Maria Gatiria [2009] eKLR** it was held that:

“...in mandatory language, the proviso to section 71 of the Law of Succession Act enjoins the court, in case of intestacy, to confirm the grant only if it is satisfied as to the respective identities and shares of all persons beneficially entitled to the estate. Another safeguard in ensuring that only the deceased person’s dependants benefit from the estate is in Rule 40(3) of the Probate and Administration Rules, which requires that before a grant can be confirmed, the particulars of the dependants must be disclosed...*It is imperative under the rules that all the dependants be in attendance during the hearing of the application for confirmation save where the dependants have signed a consent in writing. See Rule 40(8).*”

29. The consent of the 1<sup>st</sup> Objector and other named beneficiaries was necessary in the circumstances of this case.

**In re Estate of Abdulkarim Chatur Popat (Deceased)**

**[2019] eKLR** the Court pronounced itself as follows:

*“Having found that the applicants therein were beneficiaries of the estate of the deceased, their consent was necessary as was their participation in the confirmation proceedings.”*

30. Where there is a likelihood of prejudicing the Objector, the justice of the case tilts in favour of the interference with the confirmation proceedings. The Objectors have proved that they risk being disinherited if the deceased's property is sold at public auction. I do not think that the Petitioner was genuine in his assertion that as long as the Objectors or any one of them stayed on the parcel, it meant they were not left

out of the inheritance. Their heritage was clearly at risk from any buyer who would evict them now that the Petitioner, who posed as the sole absolute owner, had not safeguarded their interests. As held by **Mwita, J, Albert Imbuga Kisigwa vs. Recho Kawai Kisigwa, Succession Cause No.158 of 2000:**

“Power to revoke a grant is 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 the beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interests of justice.”

31. The net effect of the foregoing is that I find a basis to set aside the Grant dated 19.12.2008. The process of obtaining the temporary grant and the process leading to the confirmation of the said grant were defective and marred with misrepresentation and concealment of material facts from the court.
32. The Petitioner therefore failed to satisfy this court that he had properly ascertained the persons entitled to benefit from the estate of the deceased as well as their distinct shares. As was illustrated by Musyoka J, **In re Estate of Paul Maloba Mutanda** (Deceased) (Succession Cause 945 of 2007) [2022] KEHC 10153 (KLR) (13 May 2022) (Ruling):

Was there compliance with the proviso to section 71(2) and Rules 40 and 41? The summons for confirmation of grant dated 18<sup>th</sup> April 2012, did not comply with Rule 40(3), which is in mandatory terms, which requires that the particulars of the children of the deceased ought to be given in the affidavit sworn in support of the confirmation application. Although the applicant did not identify the children of the deceased in the affidavit sworn in support of the confirmation, application, there is a long list of individuals listed in the affidavit under the rubric "dependants," but it is not disclosed whether they were widows or children of the deceased. The consequence of the failure to comply with Rule 40(3) is that the applicant failed to comply with the proviso to section 71(2) and Rule 40(4), which required her to satisfy the court that she had properly ascertained the persons beneficially entitled to the estate and their shares. The particulars of the children were not provided in the affidavit, contrary to the requirements of Rule 40(3).

27. Rule 40(8) was complied with, for the application was accompanied by a consent in Form 37. Form 37 is executed in support of the proposed distribution, by the persons who are beneficially entitled to a share in the estate, and who have not protested. The Form 37 on record was executed by the applicant only. That would mean that she was the only person supporting her proposal. The other sixteen individuals listed in her affidavit, as dependants or persons beneficially entitled to a share in the estate, did not support her proposal. In such a case where the Form 37 on record is executed only by the applicant, and there are sixteen other individuals beneficially entitled, would require that the

confirmation application be served on the sixteen who are not consenting, so that they can file affidavits of protest under Rule 40(6) of the Probate and Administration Rules, should they be opposed to the distribution proposed, or attend court at the hearing of the confirmation application, so that the court can hear them, by dint of Rule 41(1) of the Probate and Administration Rules, where they would have the opportunity to state whether they agree or not with the proposals made by the applicant. There is no evidence that the other survivors of the deceased, except for the protestor, who is in any case a co-administratrix, were ever served with the application. The absence of protest affidavits by them should create a presumption that they were not opposed to the proposed distribution, which, then, should have triggered compliance with Rule 40(8), the filing of consents in Form 37, duly executed by them. Rule 40(8) is in mandatory terms. When the confirmation application was heard orally 28th April 2021 and 12th July 2021, the survivors of the deceased, except the protestor, were not in attendance, as persons beneficially entitled or interested in the estate, and they were not heard. That would mean that Rule 41(1) was not complied with.

33. To sum up, this court appreciates the reality of the law that the office of the administrators and executors of the will of the deceased persons has the responsibility to bring on board all the beneficiaries of the estate of the deceased and narrow down the bounds of the estate to reduce the possibility of disputes.

34. A lot of disputes are unnecessarily filed in court because a beneficiary or part of the estate has been, by design, omitted. That is why the law requires all beneficiaries to be notified so they can participate in the succession process. The Administrator, executor or beneficiary has no right to take upon themselves the duty of selecting based on their own whims who should benefit and who should not. As so long as a beneficiary does not renounce his or her right to a share in the estate of the deceased, they are by law entitled thereto and the duty of the administrator or executor of the will is to live up to this expectation of the law.
35. The court is satisfied that title No. Nyeri/Watuka/617 was part of the estate of the deceased, as this is not a disputed fact. Whereas the justice of the case demands ultimate distribution of the estate to each beneficiary, the parties did not provide a copy of the title to this property so that the court could discern the extent of the shares from the title deed. Be that as it may, the Petitioner deposed that he had surveyed the land and was in the process of distributing it to the beneficiaries.
36. It is irrelevant in whose name the title of the said parcel is. The proceedings were fraudulent. The court therefore sets aside the confirmation of grant, revokes all transactions fraudulently undertaken by the petitioner, and reverts the title deed to the name of the deceased.

37. In the circumstances, given the fraud perpetuated by the petitioner, I hereby terminate his services, and in lieu thereof, I appoint Mary Wairimu Njoroge and James Karanja Njoroge as administrators. I also confirm the grant in the names of the two persons with beneficiaries, sharing the estate property *Nyeri/Watuka/617* in the following manner:

- a. Estate of Isaac Njoroge Ndungu (deceased)
- b. James Karanja Njoroge
- c. Mary Wairimu Njoroge
- d. Wambui Njoroge
- e. Daniel Maina Njoroge
- f. Peter Kinuthia Njoroge
- g. Estate of Daniel Muiruri Njoroge (deceased).
- h. Daniel Mwangi Njoroge
- i. Mary Njeri Njoroge

38. I decline to handle issues related to the interested party as he remains an interested party. Whatever his claim may be, it does not lie in the succession court. In the case of **Methodist Church in Kenya v Fugicha & 3 others [2019] KESC 59 (KLR)**, the Supreme Court [DK Maraga, CJ & P, MK Ibrahim, JB Ojwang, N Ndungu & I Lenaola, SCJJ] held as follows:

This court, in Trusted Society of Human Rights Alliance v Matemo & 5 others [2014] KESC 32 (KLR), thus observed of interveners, or interested parties:

[14] Black's Law Dictionary, 9th Edition, defines 'intervener' (at page 897) thus:

'One who voluntarily enters a pending lawsuit because of a personal stake in it';[and defines 'interested party' (at p 1232) thus:]'A party who has a recognizable stake (and therefore standing) in a matter....

[18] Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause..."

39. In the circumstances, the protest is allowed.

40. Costs are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of **Farah Awad Gullet v CMC Motors Group Limited** [2018] KECA 158 (KLR) had this to say:

**"It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.**

41. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of **Rai & 3 others v Rai & 4 others** [2014] KESC 31 (KLR), as follows:

18. It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation

22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.

42. There will be no utility in ordering costs in this matter. Each party should bear its own costs.

### Determination

43. In the upshot, I make the following orders:
- (i) The Summons dated 21.7.2021 is merited and is allowed.
  - (ii) The Certificate of Confirmation of Grant dated 19.12.2008 is hereby set aside.
  - (iii) The Petitioner shall file the title deed and/or green card for LR No. Nyeri/Watuka/617, together with the summons for confirmation of the Grant.
  - (iv) The petitioner is removed as an administrator.
  - (v) I appoint Isaac Njoroge Ndungu and James Karanja Njoroge as administrators.
  - (vi) I confirm the grant in the names of the two persons with beneficiaries, sharing the estate property Nyeri/Watuka/617 in the following manner:
    - a. Estate of Isaac Njoroge Ndungu (deceased)
    - b. James Karanja Njoroge
    - c. Mary Wairimu Njroge
    - d. Wambui Njoroge
    - e. Daniel Maina Njoroge
    - f. Peter Kinuthia Njoroge
    - g. Estate of Daniel Muiruri Njoroge(deceased)
    - h. Daniel Mwangi Njoroge
    - i. Mary Njeri Njoroge
  - (vii) Transmissions by 9<sup>th</sup> August, 2026.
  - (viii) Mention to confirm transmission on 12<sup>th</sup> October, 2026.
  - (ix) Each party to bear their own costs.

**DELIVERED, DATED and SIGNED** at **NYERI** on this **9<sup>th</sup>** day of **February, 2026**. Ruling delivered through Microsoft Teams Online Platform.

**KIZITO MAGARE**  
**JUDGE**

**In the presence of: -**

Mr. Muhoho for the Applicant

C.M. Kingo'ri for the Respondent

Court Assistant - Matiko/Michael