



REPUBLIC OF KENYA



**In re Estate of Elizaphan Murage (Deceased) (Probate & Administration
106 of 1997) [2026] KEHC 1109 (KLR) (6 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION 106 OF 1997
MA ODERO, J
FEBRUARY 6, 2026
IN THE MATTER OF THE ESTATE OF EM(DECEASED)**

BETWEEN

JOSEPH NGOTHO MURAGE APPLICANT

AND

ELIZABETH WANJIKU MURAGE RESPONDENT

JUDGMENT

1. Before this Court is the Summons for revocation of Grant dated 18th May 2023 by which the Applicant JNM seeks the following orders;-
 - “(a) That this Honourable Court be pleased to revoke and annul the Certificate of Confirmation of Grant (P & A 54) confirmed on 8th April 2011 made to EWM as the Administrator of the estate of EM (Deceased).
 - (b) That there be a fresh distribution of the deceased assets as indicated in the affidavit in support of this application and in particular redistribution of LR No. Nyeri/Waraza/XXX as the Applicant was left out during the distribution.
 - (c) That the costs of this application be provided for.”
2. The summons was premised upon Section 76 (e) of the *Law of Succession Act* Cap XXX Laws of Kenya and Rule 44 (1) of the Probate and Administration Rules and was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent (Administrator of the estate) EWM did not oppose the Summons.



4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 26th August 2025 whilst the Respondent relied upon her written submissions dated 15th September 2025.

Background

5. This succession Cause relates to the estate of EMM (hereinafter the Deceased) who died intestate on 11th January 1997. A copy of the Death certificate serial No. 411190 is annexed to the Petition for letters of Administration Intestate dated 9th April 1997.
6. The Deceased was survived by the following persons:-
 - (a) EWM - Widow
 - (b) GW - Daughter
 - (c) EG - Son
 - (d) CM - Son
 - (e) AM - Daughter
 - (f) NW - Daughter
 - (g) JN - Son
 - (h) GW - Daughter
7. The Deceased's estate comprised of the following two assets
 - (i) Property known as LR Thengenge/Ihithe/XXX
 - (ii) Property known as LR Nyeri/Waraza/XXX
8. Following the demise of the Deceased Grant of Letters of Administration Intestate were issued to the widow on 29th May 1998. The said Grant was thereafter confirmed on 8th April 2011. The two assets comprising the estate devolved entirely to the widow to hold in trust for the children of Deceased.
9. The widow (Administrator) then proceeded to subdivide Nyeri/ Waraza/XXX into 8 portions which she transferred into the names of the children of the Deceased. However the sub-division known as LR No. Nyeri/Waraza/2XXX was transferred into the names of EWN, PWN and EMN (Minor) who are the children of the Applicant JNM.
10. The Applicant contends that Plot 2XXX, ought to have been transferred into his name as he is a son of the Deceased and not to his children. He stated that the administrator failed to distribute the estate fairly by leaving him out.
11. The Applicant therefore prays that the grant issued to the Respondent be revoked, the subdivisions of Nyeri/Waraza/XXX be cancelled and a fresh fair distribution of the said property be ordered.

Analysis And Determination

12. I have carefully considered the Summons for revocation of grant as well as the written submissions filed by both parties.



13. 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]

14. This provision of the law was expounded upon by the court in the case of *Re Estate Of Prisca Ong'aya Nande (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 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 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.”

15. The question then is whether the Applicant has established any one of the grounds for revocation of the grant. The Applicant submitted that the grant has been rendered useless and inoperative due to the unfair manner of distribution of the estate which left him out.
16. The Respondent did not oppose the Summons. She explained that she had been misled into transferring a subdivision of Nyeri/Waraza/XXX to the children of the Applicant instead of to the Applicant himself. The Administrator concedes that Plot 2XXX ought to have been allocated to the Applicant.
17. The Respondent/petitioner herein, is the wife of the deceased and the Applicant one of the sons of the Deceased. Section 35 of the *Law of Succession Act* contemplates a situation where the Deceased has a left a surviving spouse and children, as is the case herein. It states:

35. Where intestate has left one surviving spouse and child or children

1. Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to –
 - a. the personal and household effects of the deceased absolutely; and
 - b. a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

2. A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.
- (3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share with or without variation of any appointment already made.
- (4) Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so what order, shall have regard to -
 - (a) the nature and amount of the deceased’s property;
 - (b) any past, present or future capital or income from any source of the applicant and of the surviving spouse;
 - (c) the existing and future means and needs of the applicant and the surviving spouse;
 - (d) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;



- (e) the conduct of the applicant in relation to the deceased and to the surviving spouse;
- (f) the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any); and
- (g) the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section.

(5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net estate shall on the death or in the case of a widow, re-marriage, or the surviving spouse devolve upon the surviving child if there be only one or be equally divided among the surviving children.

18. There is no dispute that the Applicant herein is a son of the Deceased and therefore is a direct beneficiary to the estate in terms of Section 35 of the Law of Succession Act. Being a son of the Deceased the Applicant has priority over his own children (the grandchildren of the Deceased) in inheritance.

19. This is not say that a grand-child cannot inherit from the estate of his/her grandfather. In cases where the child of a Deceased person passes away then the grandchild of that Deceased may step into the shoes of his/her late parent and inherit the share of the estate that would have been due to their Deceased parent.

20. In the case of *Cleopa Amutla Namayi v Judith Were Succession Cause 457 of 2005 [2015] Eklr Hon. Mrima, J.* observed that:-

“Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents.....

The argument behind this position is that such grandchildren should inherit from, their own parents. This means that the grandchildren can only inherit from their grandparents indirectly through their own parents..... The only time where the grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead.” [Own emphasis]

21. However in this case the Applicant who is a son of the Deceased is still alive. The Respondent/Administrator has not given any reason why she left out the Applicant and opted instead to transfer Plot 2XXX to the children of the Applicant i.e the grand-children of the Deceased. The parties both state that the family had reached an agreement that the Applicant was to be allocated Plot 2XXX. Indeed the Respondent vide a letter dated 19th March 2025 conceded that the Applicant ranked in priority over his children and states that her exclusion of the Applicant was an error/mistake. She asks to be allowed to rectify that mistake.

22. Section 47 of the Law of Succession Act provides as follows:-

“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.”



23. Likewise Rule 73 of the Probate and Administration Rules provides that

“73 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.”

24. Since there is agreement between the parties regarding the allocation of Plot 2XXX and by dint of Sections 35(3) and (4) of the Act, I find that this dispute is best resolved by rectifying the ‘mistaken’ allocation of Plot 2XXX to the Applicants children.

25. In conclusion I hereby direct that the apportionment of Nyeri/Waraza/2XXX to EWN, PWN and EMN (minor) be revoked. The said Nyeri/Waraza/2XXX to be registered afresh in the name of JNM (the Applicant herein). All other allocations to remain undistributed. This being a family matter each party to bear their own costs.

DATED IN NYERI THIS 6TH DAY OF FEBRUARY 2026.

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MAUREEN A. ODERO

JUDGE

