

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE NO. 151 OF 2004

IN THE MATTER OF THE ESTATE OF KLAUNDI KABUCHI
GICHOHI (DECEASED)

SINFORONZA KABUCHI WAMBUI.....
APPLICANT

VERSUS

HERMAN GICHOHI CLAUD KABUCHI.....
RESPONDENT

JUDGMENT

1. This a decision on Summons for Revocation of Grant. The Summons General dated 17.11.2020 and filed on 17.11.2020, for:
 - (a) The grant issued on 24.03.2006 be revoked.
 - (b) Costs of the application be provided for.

2. The matter proceeded by way of viva voce evidence, the court proceeds to determine whether the summons for confirmation is proper. The court notes that the case has been in the courts since 2004. However, in view of the circumstances of this case, it is important that the court proceed with

circumspection. The deceased herein died on 28.11.2003 at the age of 90 years. He is said to have left two parcels of land and some shares. These are:

- a. Aguthi/Gatitu/634 measuring 11.7 Acres
- b. Aguthi/Gatitu/634 measuring 0.1 Acres
- c. South Tetu Hotels and Bars Ltd
- d. Gikondi Housing Enterprises Company Limited
- e. Thegenge umoja company

3. A chief's letter dated 11.03.2004 reported the following beneficiaries:

First house Leonia Wakarindi Kabuchi (predeceased in 1953)

- a. Herman Gichohi Claudi Kabuchi
 - b. Paul Muchori Kabuchi
 - c. Sinfronza Kabuchi
- second house
- d. Maria Wangui Kabuchi
 - e. Micheal Gichohi Kabuchi
 - f. Teresa Wambui Kabuchi

4. All these beneficiaries were included in the consent for making the grant dated 29.03.2004. The grant was issued to the administrator, Herman Gichohi Claudi Kabuchi, on 10.06.2004.

5. An application for confirmation of grant was made on 19.1.2006, exactly 20 years and one month ago. All shares for the second house were given to the second widow, while the first house's shares were shared among Herman Gichohi Claudi Kabuchi, Catherine Muthoni and Paul Kabuchi.

- a. Herman Gichohi Claudi Kabuchi and Paul Kabuchi two got 2.67 acres each, while Catherine Muthoni got 0.89 acres out of Aguthi/Gatitu/634.
- b. The second widow got 5.34 acres. In short, both houses got a half share, but the deceased's grandchild got 0.89 acres. she is the applicant's daughter.
- c. The shares in South Tetu Hotels and Bars Ltd were to be registered in the names of Herman Gichohi Claudi Kabuchi.
- d. The shares of Gikondi Housing Enterprises Company Limited Catherine Muthoni.
- e. The shares of Thegenge Umoja Company to be registered in the names of Maria Wangui Kabuchi.
- f. Aguthi/Gatitu/1326 was to be registered in the names of Maria Wangui Kabuchi.

6. The consent to confirmation was signed by:

- a. Maria Wangui Kabuchi
- b. Herman Gichohi Claudi Kabuchi
- c. Catherine Muthoni
- d. Paul Muchori Kabuchi.

7. The application was said to be issued fraudulently. Unfortunately, no consent was obtained from the applicant. There was consent from her daughter. The daughter is not the applicant. The parties failed to obtain her renunciation.
8. The summons of revocation of grant were replied to. The administrator posited that the applicant was physically present in court. It was stated that the applicant wanted her daughter to receive her share, which is why the daughter signed.
9. It was also stated that Maria Wangui is already a registered owner of Aguthi/Gatitu/7243, measuring 0.046 acres. On the other hand, land parcel number Aguthi/Gatitu/634 was registered in the names of the given beneficiaries. Further, that land parcel number Aguthi/Gatitu/1326 is still registered in the name of Klaud Kabuchi Gichohi.
10. Herman Gichohi Claud Kabuchi filed a further affidavit, stating that the applicant denounced her share in a family meeting. A surveyor was agreed upon, and it is not true that the applicant was not aware of the subdivision. The applicant built a house on the daughter's portion and is staying there. The applicant also contributed money to the subdivision.
11. The parties appeared before Hon. Okwengu J., and the beneficiaries of the estate were present in court. The grant was confirmed at that time. The applicant acknowledged that she was present during the proceedings and was aware of the confirmation of grant. She further admitted that, despite this

knowledge, she did not move the court until 14 years. Later, the second widow died, leaving Teresa Wambui and Michael Gichihi Kabuchi as administrators.

Proceedings

12. PW1 was the Sinfronza Kabuchi Wambui. She was the Applicant. It was her stated case that she was not informed when the succession cause was filed. She did not sign any consent. Her name did not appear in the consent but the chief's letter mentioned her as beneficiary. Catherine Muthoni was her daughter. She did not appoint her daughter to be given a portion by the deceased. on cross examination, she testified that she saw the consent but did not sign it. She told the court that she signed the consent but did not remember when she signed it. She appeared before the judge but did not remember the year. She was with all the others named in the consent. She did not understand what was going on in court. She agreed that it took 14 years to file this application.
13. DW1 was Herman Gichohi Kabuchi. He was the administrator. According to him, PW1 was on court. it was on 24.3.2006. PW1 did not object. On cross examination, he maintained PW1 was present in court during the confirmation. The name of the Applicant was not in the list of those who signed. There was no agreement with the Applicant that her daughter would sign. Catherine signed for PW1. Family agreed

that Catherine would get her mother's portion. The house of Maria was given 5 acres.

14. DW2 was Teresa Wambui Kabuchi. The deceased was her father. According to her, PW1 agreed that her share be given to her daughter. She did not have documents to support this agreement.

Submissions

15. The Applicant filed submissions dated 1.3.2023. It was submitted that the Applicant was entitled to a share in the estate as she had not renounced her right.
16. The Applicant submitted that she was entitled as a daughter who was not involved in the succession process and was left out of the consent. She relied on Section 38 of the Law of Succession Act that she had an equal share in the estate like other beneficiaries.
17. The Applicant also submitted that it was controverted that the deceased had on his own volition gifted the Applicant's daughter a portion of land and which was not the Applicant's share. She relied on Section 109 of the Evidence Act to submit that she had proved her case.
18. For the Respondent, submissions dated 21.4.2025 were filed. It was submitted that all beneficiaries were present including the Applicant and the Court did not receive any objection or any protest from any of the listed beneficiaries and if such was raised the learned judge could not have

proceeded to record the said judgement by agreement of all the beneficiaries parties present.

19. Reliance was placed Rule 41 of the Probate and Administration Rules follows:

(1)At the hearing of the application for confirmation the court shall first read out in the language or respective languages in which they appear the application, the grant, the affidavits and any written protests which have been filed and shall then hear the applicant and each protester and any other person interested, whether such persons appear personally or by advocate or by a representative.

(2)The court may either confirm the grant or refer it back for further consideration by the applicant or adjourn the hearing for further evidence to be adduced or make any other order necessary for satisfying itself as to the expediency of confirming the applicant as the holder of the grant or concerning the identities, shares and interests of the persons beneficially entitled and any other issue which has arisen including the interpretation of any will.

(3)Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71(2) of the Act, proceed to

confirm the grant (4) In proceedings under subrule (3), unless the court otherwise directs, the personal representative of the deceased shall be the applicant seeking determination of the question, and the person claiming so to be beneficially interested together with the residuary legatee or other person to be appointed by the court to represent the residuary estate shall be the respondents; and the court in such proceedings shall give all necessary directions relative to the prosecution thereof including the safeguarding of the share or estate so appropriated and set aside and the provision of costs.

5) Where the court in exercise of its power under section 71(2)(a) of the Act directs that a grant be confirmed it shall cause a certificate of such confirmation in Form 54 to be affixed to the grant together with the seal of the court and shall appoint a date not more than six months ahead, by which time the accounts of the completed administration shall be produced to the court for its approval.

20. Based on the above, it was also submitted that the learned judge having exercised powers in terms of section 71(2) of the law of succession after satisfying on all matters relating to the estate of the deceased and issued an order of the confirmed grant and thereby entering into a consent judgement.

Analysis

21. 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 applicant.

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.

22. The Applicant alleged a fraud and nondisclosure of material facts on the part of the Respondent. However, the court notes that the applicant attended court in 2006. The daughter got the share. The daughter was also given a share. It may not be equal to the rest, but that is what they signed for. There was no protest made. This was years later that the application was made. The court finds that there was no concealment of material facts. Having admitted that she was present before the court, then she was under duty to appeal or inform the court. She did not protest that she was given her share through her daughter. She paid for the transfer to her daughter.

23. There is no evidence on record to demonstrate that there is a ground for revoking the grant. **In re Estate of Stephen Mmavi Chahasi (Deceased) [2022] KEHC 12450 (KLR)**, PJO Otieno, J, posited as follows:

Revocation of grant remain discretionary remedy which the court resorts to upon demonstration of a wrongdoing or wrongful failure by the administrator on his duties.

24. In the case of In the Matter of the **Estate of Elizabeth Wanjiku Munge (Deceased)** [2015] KEHC 2240 (KLR), W. Musyoka J, stated as follows:

4. I note, however, that the power granted under Section 76 of the Act for revocation of grants is discretionary. Where a case is made out for revocation of a grant under Section 76, the court has the option to either revoke the grant or make other orders as may meet the ends of justice.

35. The deceased in this cause died in 2002. The revocation of the grant may set the parties back several years, yet the applicant apparently is dissatisfied with her omission and that of other persons from the schedule of the survivors of the deceased. That can be cured by having her name, and that of the other two survivors omitted from that list, inserted in the schedule. That having been done, the distribution of the estate by the orders made on 6th June 2012 should be reversed to pave way for a redistribution of the estate that will take

into account the interests of the applicant and of Anne Munge Kimendah and Lucy Narumu.

25. The applicant has not met the threshold for revocation of the grant. The application is accordingly dismissed.

26. This leaves the issue of costs, which 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.

27. 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.

28. In the circumstances of this case and the delicate nature of the family issues dealt with, it is prudent that each party bears its own costs.

Determination

29. In the upshot, I make the following orders:
- a. The Summons General dated 17.11.2020 is dismissed.
 - b. Each party shall bear its own costs.

- c. Transmission to be completed by 19.08.2026.
- d. Mention on 19.10.2026 to confirm completion of transmission.

DELIVERED, DATED and SIGNED at NYERI on this 18th day of February, 2026. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

Mr. Muthee for the Applicant

No appearance for Wabandi for the Respondent

Court Assistant - Michael