



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
FAMILY DIVISION
MILIMANI LAW COURTS
SUCCESSION CAUSE NO. 1420 OF 2011
IN THE MATTER OF THE WILLIAM NYARINDO MATARA
(DECEASED)

ANDREW OANDA NYARINDO.....
APPLICANT

-VERSUS-

TERESA MORAA NYARINDO.....
.....RESPONDENT

RULING

1. *Vide* Notice of Motion dated 19th November 2025, presented Under Article 159(d) of the Constitution of Kenya, Section 1A, 3A and 63 (e) of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law, the applicant seeks that the Court vacate its orders issued on 18th November 2025 revoking the grant issued on 11th November 2011 and issuing a fresh grant to the respondent as a sole administrator.

2. He avers that he was served late with the application and the mention notice, and that he seeks an opportunity for his response to the application to be heard. On the day the matter was slated for mention, he had difficulty logging in and was only able to join after the file had been called and orders made. It is his averment that he will suffer irreparable damage and loss if the orders are not vacated and he is given a chance to be heard. His application is pegged on his constitutional right to justice and a fair hearing. Conversely, the respondent and the other beneficiaries will suffer no prejudice.
3. The respondent has sworn an affidavit in opposition on 2nd February 2026. The respondent avers that no basis has been laid to grant the prayers sought, viz., stay of execution and vacating the impugned orders. It is her averment that the applicant has delayed the finalisation of the estate's transmission. Prior to presenting the application, she had sought to resolve the matter through mediation to no avail. No basis has been laid to review the Orders of 18th November 2025.

4. Ultimately, it is argued that the application is an abuse of the court process; it is 12 years since the grant was confirmed. It is in the interests of the estate that she be allowed to complete the transmission of the estate. In any event, the removal of the applicant as co-administrator is in accordance with Section 76. She has since lodged a summons for rectification of the grant to allow for transmission to each of the beneficiaries directly and reflect developments related to the estate.
5. In compliance with court directions, the respondent has filed her submissions dated 19th February 2026. She frames the issues for determination as-
- a. Whether the application for partial revocation of the grant issued on 25th September 2013 to remove the Applicant as Co- Administrator was justified, and whether the Orders of the Honourable Court of 18th November 2025 allowing the application are justified?
 - b. Whether the applicant's application dated 19th November 2025, allowing the application, is justified?
 - c. Who should bear the costs of this suit?
6. It is submitted that the applicant is responsible for the delay in finalizing transmission of the estate. Reference is made to

the decision in **Re Estate of John Kiptum Arap Bartilol (Deceased) [2023] KEHC 26743(KLR) [12]** for the submission that his removal was warranted.

7. Reference is made to the decision of **Re Estate of the Late Mwaura Makuro [2025] KEHC 5869 (KLR)** for the submission that the Court correctly exercised its discretion in terminating the applicant as co-administrator and the failure to demonstrate the prejudice he will suffer.
8. It is submitted that the application is merely a delaying tactic and reliance is had on the decision in **Salah v Awke [2023] KEHC 19681 (KLR)**.
9. It is submitted further that the application has no merit and the same should be dismissed with costs to the respondent.

ANALYSIS AND DETERMINATION

10. Having considered the pleadings, submissions filed herein, and the relevant law, I deduce the issues for determination to be-
 - a. Whether the Court should vacate its orders of 18th November 2025 and reinstate the applicant as Co Administrator?
 - b. Who should pay costs?

c. What, if any, are the consequential orders?

11. Whether the Court should vacate its orders of 18th November 2025 and reinstate the applicant as Co Administrator?

What happened on 18th November 2025? The respondent presented an application dated 3rd November 2025, in which she alleged that the applicant herein had obstructed the transmission of the grant herein, notwithstanding that the grant had been confirmed and a certificate of confirmation of the grant issued. The period between the issuance of the certificate of confirmation of grant and the application for revocation of the grant was 2 months shy of 12 years. The statutory period for finalisation of transmission is 6 months. The applicant is advanced in age and is desirous of finalising transmission prior to her death as she is of ill health and her days are therefore numbered.

11. On the basis of this, the Court proceeded to revoke the grant issued on 1st December 2011 and issued a fresh grant to the respondent herein as the sole administrator. In doing so, the Court exercised its statutory mandate under Section 76 of the Law of Succession Act. The applicant seeks to set aside these orders, stating that he was not afforded an opportunity to be heard. He invites the Court to exercise its discretion and inherent power in his favour.

12. On discretion, I am guided by the decision in **Ndambuki v Nairobi City Council [2024] KEHC 15177 (KLR)**, where the Court observed-

While the discretion of the Court to set aside an order generally or a dismissal order is unfettered, a successful applicant is obligated to adduce material upon which the Court should exercise its discretion, or in other words, the factual basis for the exercise of the Court's discretion in their favor. In the case of Shah v Mbogo & Anor [1967] E.A 116 the rationale for the discretion was spelt out as follows: -

The discretion to set aside an ex-part judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error, but it is not designed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the cause of justice.

13. On inherent power, I am guided by the decision of the Court of Appeal in **Rose Njoki King'au & Another v Shaba Trustees Limited & Another [2018] eKLR**, wherein it was observed that: -

Also cited was Section 3A of the Civil Procedure Act which enshrines the inherent power of the Court to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the Court. In Equity Bank Ltd v West Link Mbo Limited [2013], eKLR, Musinga, JA stated inter alia, that, by "inherent power" it means that:

Courts of law exist to administer justice and in so doing, they must of necessity balance between competing rights and interests of different parties but within the confines of law, to ensure that the ends of justice are met. Inherent power is the authority possessed by a Court implicitly without its being derived from the Constitution or statute. Such power enables the judiciary to deliver on their constitutional mandate.....inherent power is therefore the natural or essential power conferred upon the court irrespective of any conferment of discretion.

14. The applicant states that he wishes to respond to that application, but has not availed a draft of the intended response to enable me gauge his response to the serious charge that he has contributed to the delay in transmission of this estate. A reading of the Law of Succession Act reveals that time is of the essence in succession proceedings; Upon gazettelement, there is a 30-day grace period within which any objections may be raised. Upon issuance of the grant, the administrator is required to file a summons for confirmation within 6 months. Within 6 months of confirmation of the grant, the administrators ought to finalise transmission and furnish the court with a final report on the administration of the estate.

15. To facilitate adherence to these timelines, the Court is vested with inherent power under Section 47 of the Law of Succession Act and Rule 73 of the Probate of Administration of Rules to ensure that the ends of justice are met. Upon issuance of the grant and subsequent confirmation, the ends of justice demand that the estate be transmitted to the rightful heirs. At the same time, Section 76 confers on the court the mandate to revoke a grant if the administrators run afoul of any of the requirements thereunder. Section 66 of the Law of Succession Act vests in the court the final discretion on persons to administer the estate of a deceased person.
16. Having regard to the foregoing, I am not persuaded that a basis has been laid for me to set aside my orders of 18th November 2025; the advanced age of the respondent herein militates against engaging a reverse gear that takes the estate back to a state of inertia.
17. The administrator has proceeded to file a summons for rectification, by which it is proposed to amend the certificate of grant and allow transmission to the individual beneficiaries,

that in my view is the application that ought to be dispensed with. What then are the consequential orders? -

- a. The Application of 19th November 2025 is dismissed
 - b. The summons dated 10th December 2025 will proceed to hearing. **Andrew Oanda Nyarindo** and **Jane Veronica Mosiara** will file their affidavits in response within 14 days. The applicant granted leave to file a further affidavit in response, if necessary, within 7 days of service.
 - c. Mention before the Deputy Registrar on 17th April 2026 to confirm compliance and take further directions.
18. On account of the relationship of the parties, there shall be no order as to costs
19. Parties at Liberty to Appeal. The party exercising their right of appeal to do so within 30 days.

It is so ordered.

**SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT
THIS 6th DAY OF MARCH 2026.**

**P. M. NYAUNDI
JUDGE**

In the presence of:

Ng'alamoi Court Assistant
Wanjiku for Applicants
Ms. Muiruri for Respondent

ORIGINAL