

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA SUCCESSION CAUSE
NO 49 OF 2008
IN THE MATTER OF THE ESTATE OF THE LATE WINFRED MUKAMI
TIRAS (DECEASED)

RULING

1. There are 2 applications before the court. The first of these is that dated 9th May 2025, vide which **Enid Njeri**, the sister of the deceased administrator, **Elizabeth Kagendo Thuguri**, seeks to be appointed as an administrator of the estate of **Winfred Mukami Tiras**, in place of the said **Elizabeth Kagendo Thuguri**. I will refer to Enid Njeri as “**Enid**” or “**the objector.**”
2. In the affidavit in support of the application, she contended that as the only sister of Winfred Mukami Tiras and the only surviving sibling of Winfred Mukami Tiras, she was the direct beneficiary thereof and thus the best person to take over and administer the estate. She averred that substitution was necessary to enable a just, fast, and expeditious conclusion of the succession proceedings.
3. The application was opposed by **Cynthia Muthoni Mutune** (hereafter referred to as “**Cynthia**”) and **Sharon Kinya Mutune** (hereafter referred to as “**Sharon**”). Through their counsel **AB Patel & Patel Advocates LLP**, they filed a preliminary objection contending that the

said application offends the provisions of Section 76 of the Law of Succession Act.

4. Cynthia and Sharon, on their part, filed a chamber summons application dated **22nd August 2025** in which they seek to have the grant issued to their mother **Elizabeth Kagendo Thuguri** on **11th August 2008** and the certificate of confirmation of grant issued on **27th September 2010** be revoked, on ground that the same had become useless and inoperative through the demise of their mother, the administrator. They applied to have the grant issued to them, and for it, upon issuance, to be confirmed.
5. The application was supported by the joint affidavit of Cynthia and Sharon, sworn on **22nd August 2025**. The deponents contended that administrators could not be substituted, but that the court could revoke the grant issued to their mother and issue a new one to them. They deposed that they had no problem with their aunt, **Enid**, being made a co-administrator with them. Such inclusion, they averred, would go a long way in promoting a harmonious and inclusive administration of the estate of Winfred Mukami Tiras and “give a reflection of a balanced representation of the interested parties, given the origin of this matter before this honorable court.”
6. This latter application was opposed by the objector. The objector filed a notice of preliminary objection dated **10th September 2025** in which it was contended that the application dated **22nd August 2025**

offended the provisions of Section 76 of the Law of Succession Act, and for that reason, it should be dismissed.

7. The two applications were canvassed by way of written submissions. I will briefly consider each of the parties' respective submissions below.
8. Enid's submissions are dated 22nd October 2025. Her counsel, **MCM Advocates LLP**, identified the sole issue for determination as being who among the surviving family members holds legal priority to be appointed as the administrator of the estate of the deceased.
9. Her counsel made 2 concessions in his submissions. Firstly, as the administrator had died, the grant, under Section 76 (e) of the Law of Succession Act, had become useless and inoperative. Secondly, relying on the case of **IN THE MATTER OF THE ESTATE OF MWANGI MUGWE ALIAS ELIEZA NGWARE (DECEASED) [2003] KEHC 872 (KLR)**, he agreed that substitution of deceased administrators is not possible at law. Counsel submitted that it was, however, possible for the court, on its own motion, to revoke a grant and to issue a new grant to the qualifying party.
10. Mr. Mwalimu, learned counsel for the objector, contended that Enid Njeri, as the sole surviving sibling of the deceased, had a higher rank than Cynthia and Sharon, who are nieces of the deceased. He prayed that under 7 (1) (e) of the Probate and Administration Rules, the court should not issue a grant to any party unless the applicant

has prior or equal light to do so. Counsel contended that siblings rank higher than nieces and nephews. Being a sister, Enid ranked higher than Cynthia and Sharon.

11. Counsel submitted that Cynthia and Sharon had no *locus standi* to file the application and could only come in as interested parties. Even then, they would have to prove dependency. Reliance was placed in the decision of the court in the case of **in re Estate of Njama Weru (deceased [2025] KEHC 2239 (KLR)**, in particular, the holding by Maureen Odera, J, that:

“The Applicant, being a grandson of the Deceased, may only step in to represent the interests of his late father, and even then, the Applicant must demonstrate that he has legal authority to represent the late father’s estate, i.e., by holding a Grant of Administration to his late father’s estate. The Applicant has not shown the court any such Grant.”

12. Mr. Mwalimu submitted that Cynthia and Sharon did not list all the beneficiaries of the estate, nor did they seek the consent of all those who were entitled to benefit from the estate. He urged that the application dated 22nd August 2025 and the preliminary objection dated 21st August 2025 were incompetent as Cynthia and Sharon lacked locus standi to bring the application. For the said reason, he prayed that the application filed by them be dismissed. The court was asked to issue a new grant to Enid Njeri.

- 13.** On their part, counsel for Cynthia and Sharon filed submissions dated 22nd October 2025 through their counsel on record. In the said submissions, it was urged that substitution of administrators was a remedy unknown to our law of succession. In support of the said contention, reliance was placed on the case of *In re Estate of George Stephen Angadi Owuor (Deceased)* [2024] KEHC 14809 (KLR) and also on the case of **FLORENCE OKUTU NANDWA AND ANOTHER v JOHN ATEMBA KOJWA, Court of Appeal Civil Appeal No. 306 of 1998.**
- 14.** Based on the said authorities, it was urged that the application dated **9th May 2025** be dismissed with costs and that the preliminary objection be sustained.
- 15.** Counsel for Cynthia and Sharon, Ms. Essajee, contended that the application brought by her clients was competent and properly before the court and should be considered on the merits.
- 16.** Ms. Essajee urged that Cynthia and Sharon had no objection to a grant being issued to them together with their aunt, which action they reckoned would bring harmony into their family and promote reconciliation. Counsel noted that in response to their application, Enid's counsel filed a preliminary objection but not a replying affidavit. That being the case, and relying on the authority of *Mutai & 9 others v Attorney General* [2019] KECA 125 (KLR), she submitted that the averment on facts made in the application ought to be deemed as conceded.

17. It was thus urged that the application dated 22nd August 2025 be allowed as prayed.

18. Section 76 of the Law of Succession Act states that:

“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.”

19. From the text of the said section, it is clear that a summons for revocation of a grant may be brought by inter alia “any interested party.” Further, the court may revoke a grant on its own motion.
20. It is a common ground that **Elizabeth Kagendo Thuguri** is deceased. She was the administrator of the estate until her untimely demise. Elizabeth was also the sister of Enid Njeri, the objector in the two succession causes before me. The parties in their submissions agreed that a grant is issued *in personam*, and not *in rem*. That being the case, it is not possible, as sought in the application dated 9th May 2025, for the deceased administrator to be substituted. Counsel for the objector, conceding this point, urged that the court should, however, revoke the grant, on its own motion, and issue a grant to Enid, as she, rather than Cynthia and Sharon, is the closest living kin of Winfred Mukami Tiras.
21. Since the administrator is deceased, the grant has become useless and inoperative. In the case of *In re Estate of Prisca Ong’ayo Nande (Deceased) [2020] KEHC 6553 (KLR)*, it was stated that:

“8. Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. 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 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.”

22. Since all the parties agree on the need to appoint new administrator(s), the sole point of difference is who the administrator should be. The objector stated that Sharon and Cynthia had no locus standi, being nephews of the deceased, and that even as children of Elizabeth, they would first have to obtain a grant of her estate before seeking to be appointed as the administrators of the estate of their aunt. My view is that, as the nieces of Winfred Mukami Tiras, Cynthia and Sharon are “interested parties” within the meaning of Section 76 of the Law of Succession Act, and that in that capacity they can seek to revoke the grant. That being the case, I am unable to agree with the submissions made by Mr. Mwalimu that Cynthia and Sharon lack standing.

23. Section 66 of the Law of Succession Act gives the order of preference whenever a court is considering persons to administer the estate of a person who died intestate. It states that:

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference

—

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

24. To decipher the import of section 66(b) of the Law of Succession Act, one must pay heed to what Section 39 (c) of the said Act states. It provides that:

(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—

(a) father; or if dead

(b) mother; or if dead

(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none

(e) The relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.”

25. In my view, since Cynthia and Sharon are the children of Elizabeth Kagendo Thuguri, they can take her place. My view is that there is no need for them to take out a grant of representation in respect of their mother’s estate to do this.

26. In support of the foregoing, I am guided by the decision of Musyoka, J, in the case of In the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR), where, in a situation analogous to this one, he stated as follows:

“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents indirectly through their own parents, the children of the deceased. The children inherit first, and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents...”

27. In my view, the court is faced with a delicate matter. It should try as much as possible to restore family ties. That can only be attained if a decision is made that does not create winners and losers, but rather, encourages cooperation, reconciliation, and mutual respect. Such a situation would only be possible if all the parties feel that they have a stake.

28. Based on the foregoing, I revoke the grant issued to **Elizabeth Kagendo Thuguri**, as it has become useless and inoperative. In the interests of justice, I issue a new grant jointly to **Enid Njeri** and **Cynthia Muthoni Mutune** forthwith. I direct them to collect whatever estate of the deceased remains uncollected, and to file the summons for confirmation of the grant within 60 days of the date hereof, after consulting and getting consent of all the lawful beneficiaries.

29. As this is a succession matter involving close family members, I order that all the parties shall bear their own costs.

30. It is so ordered.

Dated and signed in Mombasa, this 2nd day of **March 2026**. Delivered virtually through **Microsoft TEAMS**.

Gregory Mutai
JUDGE

In the presence of:

Mr. Ondego, for Cynthia and Sharon Mutune;

Mr. Mwalimu, for Enid Njeri; and
Mr. Hamisi – Court Assistant.

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