



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYANDARUA**

**PROBATE & ADMINISTRATION NO. E033 OF 2025**

**IN THE MATTER OF THE ESTATE OF:**

**FRANCIS IGATHE MARARO..... DECEASED**

**BETWEEN**

**NGANDI ERUSTUS ..... 1<sup>ST</sup> PETITIONER/RESPONDENT**

**TIMOTHY IGATHE.....2<sup>ND</sup> PETITIONER/RESPONDENT**

**AND**

**MAGDALINE WANGARI IGATHE.....1<sup>ST</sup> OBJECTOR/APPLICANT**

**DANIEL MARARO IGATHE ..... 2<sup>ND</sup> OBJECTOR/APPLICANT**

**GAD GITHUA IGATHE .....3<sup>RD</sup> OBJECTOR/APPLICANT**

**LUCY WANJIRU IGATHE .....4<sup>TH</sup> OBJECTOR/APPLICANT**

**ANN NYAMBURA IGATHE .....5<sup>TH</sup> OBJECTOR/APPLICANT**

**AGNES MUTHONI IGATHE .....6<sup>TH</sup> OBJECTOR/APPLICANT**

**PETERSON MWANIKI IGATHE.....7<sup>TH</sup> OBJECTOR/APPLICANT**

**CHARITY NGONYO IGATHE ..... 8<sup>TH</sup> OBJECTOR/APPLICANT**

**RULING**

1. The applicants herein have moved the court by way of Summons for revocation of the grant dated the 9<sup>th</sup> day of May 2023. The application is brought under Sections 47 & 76 of the Law of Succession Act and Rules 44(1), 49 & 73 of the Probate and Administration Rules. They are seeking the following orders:

- a) This matter be certified as urgent, and its service thereof be dispensed with in the first instance. [Spent]
- b) The grant of letters of administration intestate issued to the respondent herein on the 21st September, 2022, be revoked and/or annulled.

- c) The honourable court be pleased to issue a conservatory order restraining the respondents herein from distributing, subdividing, alienating and/or disposing of any property and shares of the deceased in exclusion of the applicants and other beneficiaries.
- d) The 2<sup>nd</sup> objectors/applicants be enjoined to this cause as one of the administrators of the deceased's estate.
- e) The costs of this application be provided for from the estate of the deceased.

2. The application was premised on the following grounds:

- a) The applicants/objectors herein are beneficiaries of the deceased.
- b) The petition was filed fraudulently without informing and/or involving some of the beneficiaries of the estate's concealment from the court of material facts.
- c) The petitioners have distributed all the properties of the estate to themselves and have left out the objectors/applicants who are rightful beneficiaries of the estate of the deceased with a view to disinheriting.
- d) The estate is threatened with maladministration, waste and improper disposal of assets comprised therein now that the grant has been confirmed.
- e) The administration of the estate is still incomplete.
- f) The applicants' interest in the estate is fraudulently threatened with waste and/or unlawful alienation.

3. The 2<sup>nd</sup> respondent opposed the application on the following grounds:

- a) The deceased was in a polygamous union which involved being married to two wives, the first wife being the 2<sup>nd</sup> respondent's mother, and the 2<sup>nd</sup> wife being the mother of the 1<sup>st</sup> objector/applicant.
- b) The deceased was blessed with a total of 16 children, 8 children from each house.
- c) Consent from all the beneficiaries regarding the administrators was duly sought and granted by all the beneficiaries.
- d) The 3<sup>rd</sup> proposed administrator, Anastacia Mwiwaki, represented the 2<sup>nd</sup> house in which the objectors are beneficiaries.
- e) Due to the death of the 3<sup>rd</sup> proposed administrator, the respondents proceeded to obtain a grant and confirmation of the same with two proposed administrators.
- f) Contrary to the averments of the 2<sup>nd</sup> objector/Applicant vide his supporting affidavit, all the beneficiaries to the estate of the deceased were issued with a

summons for the confirmation of the grant, which they all duly responded to. They were all in court during the hearing for confirmation of the grant, as was noted by the honourable court on the day.

- g) That even before the summons for confirmation, they had retained the services of Njeri Njagua Advocates, who represented their interests in the objectors herein during the whole process from the lodging of the petition to the eventual confirmation of the grant.
- h) These, therefore, render the objectors’/Applicants’ application dated 9th May 2023 as fatally defective as it is frivolous, vexatious, a non-starter, incompetent and a gross abuse of the court process.
- i) The said application by the objectors/applicants is unmerited and therefore the same should be dismissed with costs.

4. Section 76 of the Law of Succession Act provides:

***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.***

5. My perusal of form P. & A. 5, I noted that all the beneficiaries who include the applicants herein were listed.
6. The consent confirming the grant, submitted to the court on April 30, 2014, was not signed by the commissioner for oaths or by a magistrate. Furthermore, none of the objectors signed it. This alone renders the process flawed.
7. Although the respondents claimed that Njeri Njagua Advocates represented the objectors, there is no evidence to support this on record. On September 21, 2022, when the grant was confirmed, the record does not indicate whether Njeri Njagua Advocates was present or absent for the objectors. The court record only shows that Munene was the sole advocate present, and he stated that all beneficiaries were participating online.
8. The upshot of the foregoing analysis of the evidence on record and the parties' submissions is that the application is merited. The confirmed grant is revoked, and any property that has been distributed is to revert to the deceased herein until a proper grant is issued and confirmed.
9. The application is allowed with costs to the objectors.

**Delivered and signed at Nyandarua, this 12<sup>th</sup> day of March 2026**

**KIARIE WAWERU KIARIE**

**JUDGE**