



**In re Estate of Mwigua (Deceased) (Probate & Administration
391 of 2004) [2026] KEHC 2446 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2446 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION 391 OF 2004
MA ODERO, J
FEBRUARY 27, 2026
IN THE MATTER OF THE ESTATE OF MUIGA MWIGUA (DECEASED)**

IN THE MATTER OF

JAMES MATHENGE 1ST OBJECTOR

STEPHEN MAINA 2ND OBJECTOR

JUDGMENT

1. Before this Court for determination is the Summons for Revocation of Grant dated 16th January 2008 by which the Objectors James Mathenge and Stephen Maina seek the following orders

- “ 1) SPENT.
- 2) That the Grant of Letters of Administration made on 12th August 2005 be revoked on the grounds that
 - a) The Grant was obtained fraudulently by making false statements and concealing from the court material facts particularly the fact that the Petitioner failed to disclose that the applicant objectors were dependants and survivors of the deceased.
 - b) That the Grant was as such obtained by means of an untrue allegation of fact essential in point of law to justify the grant.
 - c) That the proceedings to obtain the grant were defective in substance.
 - d) That the Applicants herein who are beneficiaries have been excluded from the Estate and their shares within the Estate have not been ascertained and determined.



- 3) That the court do order that Status Quo with regard to the occupancy of the applicants within Ruguru/gachika/113 be maintained.
 - 4) That costs be provided for.
2. The Summons which was premised upon Section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya and Rule 44(1) of the Probate and Administration Rules was supported by the Affidavit of even date sworn by the 1st Applicant.
 3. The Respondents Annah Waithera Mwihiiga And Gladys Nyambura Ndirangu have opposed the summons through the Replying Affidavit dated 5th February 2008 sworn by the 1st Respondent. The matter was canvassed by way of written submissions. The objectors filed the written submissions dated 10th November 2025 whilst the Respondents despite having been given an opportunity to do so did not file any submissions.

Background

4. This succession cause relates to the estate of the late MUIGA s/o MUIGUA who died intestate in the year 1958. Following the demise of the Deceased Grant of letters of Administration Intestate was on 12th August 2005 made to Anna Waithera Mwhihige (1st Respondent) who was a daughter of the Deceased.
5. The Grant was duly confirmed on 16th February 2006. According to the certificate of confirmed Grant the property known as LR No. RUGURU/GACHIKA/113 was to be distributed as follows:-
 - (i) Anna Waithira Mwihiiga - 5.2 acres
 - (ii) Gladys Nyambura Ndirangu - 2.0 acres
6. The Applicants have now filed this application seeking revocation of the Grant issued to the 1st Respondent. The 1st Objector averred that he is the son of the late KABECHU MWEIGA who was a son to the Deceased herein. Accordingly the 1st Objector states that he is a 'grandson' to the Deceased.
7. The Objectors contend that the Grant was obtained fraudulently as the Petitioner did not include the names of all the beneficiaries to the estate. That the 1st Objector misled the court by claiming to be the only daughter to the Deceased.
8. The Objectors further complain that one Gladys Nyambura Ndirangu who signed the consent for confirmation of the grant is a stranger to the estate. The objectors contend that they have been omitted and were not allocated any share of the estate despite their being genuine beneficiaries.
9. In her reply the 1st Respondent denies having obtained the Grant fraudulently. She states that during her lifetime the Deceased gifted to her the parcel of land known as ruguru/gachika/113 which parcel of land she has exclusively used since the 1970's.
10. The 1st Respondents further avers that the Deceased during his lifetime gifted to the applicant's father the parcel of land known as Ruguru/gachika/121. That the Applicant's parents took possession of the same and the applicants were raised on this Plot 121. The 1st Respondent denies the objectors claim that they have been in occupation of Plot 113.
11. The Respondent avers that the clan met and deliberated on 7th July 2004 and that the 2nd Objector and his mother attended said meeting. That the Objectors' mother who resides on Ruguru/gachika/221 never raised any objection to issuance of the Grant.



12. Finally the Respondent states that the 2nd Respondent Gladys Nyambura Ndirangu is a purchaser who bought the land after confirmation of the Grant with full knowledge of the Objectors. The Respondents pray that this application be dismissed.

Analysis And Determination

13. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties. The only issue for determination is whether the Grant issued on 12th August 2005 and confirmed on 16th February 2006 ought to be revoked.
14. The grounds upon which a Grant may be revoked are set out in Section 76, Law of Succession Act Cap 160, Laws of Kenya 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]

15. This provision of the law was expounded upon in the case of *Re Estate Of Prisca Ong'aya Mande (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 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.”

16. The fact of the demise of the Deceased is not in any doubt. What appears to be in dispute is the identities of the beneficiaries to the estate of the Deceased.
17. Under Section 35 of the Law of Succession Act the direct beneficiaries to an estate would be the spouse/spouses of the deceased, the biological children of the Deceased and any other person who was dependant on the deceased immediately prior to his death. (Section 29, Law of Succession Act)
18. The 1st Respondent is a daughter of the Deceased and would therefore rank in priority over the Objectors who are the ‘grandchildren’ of the Deceased. The chiefs letter dated 19th July 2004 names the following as the persons who survived the Deceased;-
 - (1) Kariuki Muiga - Deceased
 - (2) Peter Kabechu - Deceased
 - (3) Warigia Kariuki - Deceased
 - (4) Wahu Kamangu - Daughter
 - (5) Waithira Mwihiga
19. However in the petition for Grant the 1st Respondent listed only herself and one Peter Muiga Waithira a grandson of the Deceased as beneficiaries. The Respondent failed to list the names of her Deceased siblings and more pertinently she failed to include the name of her sister Wahu Kamangu who was by that time still alive. However I do note that the said Wahu Kamangu did sign [thumb-print] the consent to the summons for confirmation of Grant dated 13th November 2006. This is a clear indication this ‘Wahu’ had no objection to the issuance of the Grant or to the mode of distribution of the estate.
20. The Objectors herein though not direct beneficiaries to the estate under Section 35 are the children of Kabechu Mweiga a son of the Deceased who apparently pre-deceased his father.
21. The courts are replete with decisions to the effect that grandchildren can inherit from their grandparents where their parents who are beneficiaries are also deceased. In the case of *Re Estate of Florence Mukami Kinyua (Deceased)* (2018) eKLR Matheka J stated:

“A grandchild is a direct heir to the estate of the grandparent where the parent predeceased the grandparent. The grandchildren get into the shoes of their deceased parents and take the parents’ share in the estate of the grandparents. This was stated in *Re Estate of Wahome Njoki Wakagoto* (2013) eKLR where it was held:- Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren can only inherit 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." [Own emphasis]

22. Finally I note that the Deceased herein died in the year 1958. The Grant was issued in the year 2005 and was confirmed in the year 2006. Although the Objectors claim that they were left out of the distribution of the estate the record indicates that one Muiga s/o Kabechu was present at the family meeting which authorised the 1st Respondent to proceed with the succession cause. A copy of the minutes of this meeting appears as annexure AW1 to the Replying Affidavit dated 5th February 2008. It is noteworthy that the mother of the Objectors did not raise any objection to the issuance of the grant or to its confirmation.

23. In conclusion I find no merit in this application for revocation of Grant. The Summons is dismissed in its entirety.

Each party to meet their costs.

DATED IN NYERI THIS 27TH DAY OF FEBRUARY, 2026.

MAUREEN A. ODERO

JUDGE

