

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
PROBATE & ADMINISTRATION CAUSE E1725 OF 2021

IN THE MATTER OF THE ESTATE OF BERNARD KEIROH KAMAU
(DECEASED)

CATHERINE WANGARI RUKUNGU APPLICANT

-VERSUS-

MARGARET WANJIKU KAMAU 1ST RESPONDENT

BENJAMIN TITO MUKEKE 2ND RESPONDENT

PATRICK MAINA MUKEKE 3RD RESPONDENT

RULING

1. The matter presently before this Court for determination is Notice of Motion dated 18 January 2023. The Application, erroneously filed as Notice of Motion instead of Summons, invokes the inherent and statutory jurisdiction of this Court brought fundamentally under the provisions of Section 76 of the Law of Succession Act, Section 44 of the Probate and Administration Rules, Order 51 of the Civil Procedure Rules and section 3A of the Civil Procedure Act.
2. The Applicant seeks the intervention of the Court to grant the following specific substantive orders:

- (i) That the Grant of Letters of Administration Intestate issued to Margaret Wanjiku Kamau, Benjamin Tito Mukere, and Patrick Maina Mukere (hereinafter referred to as the "Respondents") on 8 December 2021 be revoked and annulled in its entirety.
 - (ii) That the Certificate of Confirmation of Grant issued subsequently to the Respondents on 17 October 2022 be correspondingly revoked, set aside, and cancelled.
 - (iii) That upon the revocation of the aforementioned instruments of representation, Catherine Wangari Rukungu be appointed as the sole administrator of the Estate of the late Bernard Keiroh Kamau (hereinafter referred to as the "Deceased"), and that a fresh Grant of Letters of Administration Intestate be issued in her name.
 - (iv) That the costs of this Application be borne by the Respondents.
3. The foundation of the Applicant's contestation is grounded upon grave allegations of procedural impropriety, the fraudulent concealment of material facts, perjurious declarations, and the deliberate disenfranchisement of the Deceased's primary legal dependants—namely, his surviving widow and their 3 adult children.
4. The evidentiary record establishes that the Deceased passed away on 4 December 2020 at Dandora, Nairobi County, succumbing to complications arising from hypertension and diabetes. He died intestate.
5. The Applicant asserts, and provides documentary corroboration, that she was lawfully married to the Deceased for a continuous period of 41 years under Kikuyu customary law, a union that commenced on 20 November 1979. During his lifetime, the Deceased was gainfully employed at Telkom Kenya until his retirement in the year 2006. Upon his retirement, the Deceased relocated to their matrimonial rural home situated in Karia-ini village, Mathioya Constituency, Murang'a County, to engage in developmental

activities, while the Applicant remained at their residence in Kamulu, Nairobi, managing her business enterprises.

6. The chronology of events preceding and immediately following the Deceased's death reveals a disturbing and orchestrated pattern of familial exclusion by the Respondents. Between 30 September 2020 and 15 November 2020, the Deceased's health deteriorated rapidly due to diabetic complications. This necessitated his admission at the Kiria-ini Mission Hospital on two separate occasions, during which periods the Applicant acted as his primary caregiver.
7. As his condition worsened, the Deceased was referred to the Kenyatta National Hospital (KNH), where he was admitted on 20 November 2020. The hospital's admission records and interim invoices confirm the Applicant's active involvement and financial contributions to his medical upkeep during this critical period.
8. The sequence of events took a clandestine turn in early December 2020. On 4 December 2020, the Applicant visited KNH to attend to her husband, only to discover that his bed was empty. Inquiries directed at the hospital administration and nursing staff revealed that the Deceased had been discharged the previous day, 3 December 2020, and had been collected from the facility by his sister, Emily Njeri Kimani, who cleared his hospital bills. This discharge was executed entirely without the knowledge, consent, or consultation of the Applicant, despite her standing as the next of kin documented in the hospital's admission records.
9. Subsequent attempts by the Applicant to ascertain the whereabouts of her husband from Emily Njeri Kimani and the Respondents (the Deceased's other siblings) were met with deliberate obfuscation and refusal to disclose information, leaving the Applicant in a state of profound distress and

confusion. The tragic reality was communicated to the Applicant only on 5 December 2020, not by the Respondents, but via a telephone call from a third party, one Simon Mwangi. The Applicant was informed that her husband had died on the very night of his discharge at his mother-in-law's residence in Dandora Estate, where Emily Njeri Kimani resided, and that his remains had already been transferred to the Kenyatta University Hospital Funeral Home by the Respondents.

10. The unilateral, secretive, and highly suspicious actions of the Respondents prompted the Applicant to seek immediate legal and administrative redress. Disturbed by the circumstances surrounding the abrupt discharge and immediate demise, the Applicant, accompanied by her son Ryan Mukere Keiroh, proceeded to the funeral home, where they were initially denied access to view the body on the instructions of the Respondents, who had registered themselves as the custodians of the remains.
11. The Applicant demanded a post-mortem examination to establish the exact cause of death, but the funeral home management produced a letter from the Dandora Police Station asserting that a post-mortem was not required, as the Deceased had merely been discharged from the hospital and died naturally the same night. The Respondents hastily scheduled the burial for 11 December 2020, refusing the Applicant's pleas to postpone the interment to allow for a proper autopsy.
12. In a desperate bid to preserve the evidentiary integrity of the Deceased's remains, the Applicant instituted civil proceedings at the Milimani Commercial Magistrates Court via Complaint No. MCCC/E7385/2020 on 9 December 2020. She sued the three Respondents and Emily Njeri Kimani, seeking an urgent injunction to halt the burial pending a post-mortem. Unfortunately, on 10 December 2020, the presiding magistrate, Hon. D.W. Mburu (SPM), declined to certify the application as urgent. Consequently, the suit was overtaken by

events, and the Respondents proceeded to bury the Deceased on 11 December 2020.

13. Following the burial, the hostility and exclusion persisted. The Respondents stubbornly refused to surrender the Deceased's vital documents to the Applicant, including his national identity card, burial permit, hospital discharge summaries, mobile phone, and wallet containing bank cards. Efforts at local administrative arbitration proved utterly futile. The Assistant Chief of Kamacharia Sub-Location summoned the 3rd Respondent, Patrick Maina Mukere, to his office to hand over the burial permit to the widow, but the 3rd Respondent treated the summons with contempt and failed to attend.
14. While the Applicant engaged the proper statutory channels by approaching the Public Trustee to commence the lawful administration of the Estate—successfully securing a Letter of Indemnity on 3 May 2021 from the Deputy County Commissioner of Mathioya Sub-County to access the Deceased's pension and Safaricom PLC shares—the Respondents embarked on a parallel, covert, and fraudulent judicial process.
15. Armed with the Burial Permit they had withheld, the Respondents procured a Death Certificate on 8 March 2021 and an introductory letter from the Dandora Area Chief dated 23 June 2021. Utilizing these documents, they petitioned the Court for a Grant of Letters of Administration Intestate.
16. The fatal defect and the genesis of the fraud in their Petition was the total, deliberate, and calculated omission of the existence of the Applicant, the lawful widow, and the three adult children of the Deceased. The Respondents perjured themselves by failing to disclose the primary dependants of the Estate, thereby portraying themselves to the Court as the sole surviving next of kin entitled to administration. Operating on the presumption of the veracity of the Respondents' pleadings and the principle of utmost good faith

expected in *ex parte* probate applications, the Court issued the Grant of Letters of Administration Intestate to the Respondents on 8 December 2021.

17. Continuing their scheme of rapid disinheritance, the Respondents subsequently applied for and obtained a Certificate of Confirmation of Grant on 17 October 2022. The confirmed Grant authorized the distribution of the Estate exclusively among themselves, completely disinheriting the widow and children.
18. The Applicant remained blissfully unaware of these clandestine judicial proceedings until 29 September 2022. On that date, vigilant neighbours alerted her that the Respondents had visited the Deceased's real estate properties located at Kamarock Block 1/206 in the company of prospective purchasers. The Applicant immediately lodged a report at the KBC Police Station in the Kamulu area, OB No. 26/09/2022. Upon being summoned by officers of the Directorate of Criminal Investigations and facing the risk of arrest for intermeddling with the estate, the Respondents proudly produced the freshly minted Certificate of Confirmation of Grant issued on 17 October 2022. The production of the valid Court order bound the hands of the investigating officers, who correctly advised the Applicant that she must return to the Court to seek the revocation of the Grant. This advice birthed the present Notice of Motion.

The Applicant's Case

19. Before addressing the Application before the Court, it is of utmost importance to address the growing trend of laxity in drafting, wherein Advocates opt to copy-paste applications as opposed to actually reading the provisions of the respective Act upon which they rely. The fact that the Application herein is a Notice of Motion, as opposed to Summons, which form is clearly laid out in the provisions of the Act upon which the Application is premised, is a clear

indication of the levity with which the Advocate for the Applicant approaches this Court.

20. The Application is anchored on 5 fundamental grounds, which, if proven, strike at the very root of the Respondents' Grant:

- (i) That the Applicant is the lawful widow of the Deceased, with whom she had three children, making them the primary and superior dependants of the Estate.
- (ii) That the Respondents are merely siblings to the Deceased and do not rank as dependants entitled to priority in administration over the widow and children.
- (iii) That the Respondents moved the Court using illegally obtained documents and deliberately concealed material facts (the existence of the immediate family) to procure the Grant.
- (iv) That the sole legal dependants of the Deceased are the Applicant and her children.
- (v) That if the protective orders of revocation are not granted, the Applicant and her children will be entirely disinherited and subjected to irreparable loss.

21. The Application is supported by the deeply detailed Affidavit sworn on 18 January 2023. To substantiate her averments beyond a balance of probabilities, the Applicant annexed eleven distinct documentary exhibits (Marked CW1 to CW11), which collectively form an impenetrable evidentiary fortress:

22. Exhibit CW1 is a sworn Affidavit by the Deceased, Bernard Keiroh Kamau, dated 3 October 2001, in which the Deceased explicitly acknowledges his Kikuyu customary marriage to the Applicant on 20 November 1979, and unequivocally acknowledges his paternity of Lilian Njeri, Ryan Mukere, and

Maureen Wambui. This is accompanied by the official Birth Certificates of the three children, naming the Deceased as the father and the Applicant as the mother.

23. Exhibit CW2 is the official Certificate of Death of the Deceased. Exhibits CW3 & CW4 are detailed Discharge Summaries and Interim Invoices from Kiria-ini Mission Hospital and KNH, corroborating the Applicant's timeline of the Deceased's severe illness and proving her financial contributions to his medical upkeep.
24. Exhibit CW5 are Court Orders from the Milimani Commercial Magistrate Court (MCCC/E7385/2020) demonstrating the Applicant's immediate, albeit unsuccessful, legal action to stop the burial and demand an autopsy. Exhibit CW6 is a formal official letter from the Assistant Chief of Kamacharia Sub-Location dated 8 February 2020 (the date appears to be a typographical error by the chief, clearly post-dating the death in context), officially introducing the Applicant as the only widow of the Deceased.
25. Exhibit CW7 is a comprehensive formal complaint lodged by the Applicant at the DCI Headquarters on 21 January 2021, detailing the highly suspicious circumstances of the death, the withholding of documents, and her fears of property interference by Emily Njeri Kimani and the Respondents. Exhibit CW8 is a Letter of Indemnity issued by the Deputy County Commissioner, Mathioya Sub-County, functioning in his capacity as an *ex-officio* agent of the Public Trustee, formally authorizing the Applicant to pursue the Deceased's shares at Safaricom PLC. Exhibit CW9 & CW10 are certified copies of the impugned Certificate of Confirmation of Grant issued on 17 October 2022 and the Grant of Letters of Administration Intestate issued on 8 December 2021, which the Applicant seeks to quash.

26. The matter proceeded to an *inter-partes* hearing on 8 October 2025 before this Court. The Applicant took the witness stand as PW1, affirming her testimony in Kiswahili. She adopted her pleadings, witness statements, and supporting affidavits as her evidence-in-chief, requesting the Court to mark her annexures as Exhibits 1 to 11. She recounted the history of her 41-year marriage, the Deceased's retirement, his debilitating illness, and the cruel, clandestine discharge from the hospital orchestrated by his siblings. She testified unequivocally that she was entirely excluded from the succession proceedings, that no notice was ever served upon her, and that no consent was ever sought from her or her children. Her oral testimony remained unshaken, resolute, and consistent with her documentary submissions.

The Respondents' Posture and Non-Participation

27. The procedural history of this Application reveals a distinct, calculated, and ultimately fatal lack of engagement by the Respondents. Following the filing of the Application, the record reflects that the Respondents were duly and properly served with the Application and all supporting annexures.

28. Despite entering an appearance and acknowledging service, the Respondents elected to remain entirely mute on the substance of the allegations. They did not file any Replying Affidavit. They did not file any Grounds of Opposition. They did not file a Cross-Application to controvert the Applicant's evidence. Furthermore, despite being duly served with a Hearing Notice, the Respondents absented themselves entirely from the hearing. They had similarly failed to participate in the court-mandated mediation sessions prior to the hearing.

29. Consequently, the Applicant's evidence, both documentary and oral, stands completely uncontroverted, unchallenged, and unrebutted.

Analysis & Determination

30. Having reviewed the pleadings examined the annexed documentary exhibits, and evaluated the oral testimony adduced during the hearing, the Court crystallizes the following core legal issues for determination:

- a) Whether the Applicant and her children are the primary dependants of the Deceased;
- b) Whether the Grant of Letters of Administration Intestate and the subsequent Certificate of Confirmation were obtained fraudulently through the willful concealment of material facts;

The Statutory Architecture of Intestate Priority and *Locus Standi*

31. The Law of Succession Act constitutes a comprehensive, rigid, and protective legislative framework designed to regulate the devolution of estates. Its paramount philosophical and legal objective is the protection of the immediate family and dependants of a deceased person from destitution and interference by extended relatives. Section 2(1) of the Act establishes its universal application to all cases of intestate succession in Kenya.
32. The Act draws a sharp, unforgiving distinction between immediate family members (spouses and children) and extended family members (parents, siblings, and other relatives) in the hierarchy of inheritance. Section 29 of the Act defines a dependant to explicitly include the spouse or spouses, and the children of the deceased, whether or not they were being maintained by the deceased immediately prior to his death. The inclusion of extended family members, such as siblings, as dependants is highly conditional; it requires strict evidentiary proof that they were actually being maintained by the deceased immediately prior to his death. No such proof was tendered by the Respondents in the original cause.

33. Furthermore, Part V of the Act, which governs intestacy, dictates the substantive devolution of property. Section 38 provides that where an intestate has left a surviving child or children but no spouse, the net estate devolves entirely to the surviving children. Conversely, section 39 explicitly dictates that the extended family only inherits where the intestate has left no surviving spouse or children. The legislative intent is unequivocally clear: the mere existence of a spouse or a child instantly extinguishes the absolute right of siblings to inherit under intestacy rules.
34. This substantive right to inherit is procedurally mirrored in the right to administer the estate. Section 66 of the Act governs the preference to be given to certain persons to administer an intestate estate. It provides a mandatory hierarchical guide:

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.

35. This statutory hierarchy places the surviving spouse at the absolute apex of the priority list. In the absence of a spouse, the children follow. Siblings, who fall under other beneficiaries (and only if the conditions of section 39 are met), occupy a severely subordinate position.

36. The courts have consistently and vigorously reinforced this hierarchy. In the highly persuasive case of *In re Estate of Peter Alusiola Mulamula (Deceased) eKLR*, the Court emphasized that compliance with the Probate and Administration Rules, which require notification and consent from persons with a prior right to administration, is mandatory. A Grant issued to an individual with inferior priority without the explicit, documented consent or renunciation of those with superior priority is inherently defective. Similarly, in *Musa v Musa 1 EA 182*, the Court (Ringera J, as he then was) affirmed that a widow has priority under section 66 to apply for the grant and does not require the consent of subordinate survivors to do so.
37. Applying these principles to the instant case, the evidence—specifically the Affidavit of the Deceased (Exhibit CW1) and the Birth Certificates—irrefutably establishes that the Applicant is the lawful widow and the three named individuals are biological children. Pursuant to section 66, the Applicant held the absolute first priority to apply for the Grant. The Respondents, as siblings, were only entitled to administer if the Deceased left no spouse or children. The existence of the Applicant and her children entirely extinguished any automatic right the Respondents possessed to administer the Estate.
38. Rule 26(1) of the Probate and Administration Rules mandates that where an applicant seeks a grant, they must notify all persons entitled to a prior or equal right to the grant, and secure their consent or renunciation. The Respondents deliberately bypassed this mandatory procedural safeguard. They did not notify the Applicant. They did not seek her consent. They did not secure a renunciation of her rights. The Respondents, acting as interloping secondary heirs, unlawfully usurped the statutory priority vested in the Applicant.

Defective Proceedings and Fraudulent Concealment under Section 76

39. The Applicant invokes section 76(a) and 76(b) of the Act, averring that the proceedings were defective in substance and that the Grant was obtained fraudulently through the concealment of material facts.

40. The sanctity of a Grant of representation is not absolute. To protect the integrity of the judicial process and safeguard the rights of rightful heirs from usurpation, section 76 vests the court with the unfettered jurisdiction to revoke or annul a grant, whether confirmed or not.

41. Section 76 states, in relevant part:

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...

42. The threshold under section 76 is disjunctive; an applicant need only prove one of the enumerated grounds. "Defective in substance" encompasses profound procedural irregularities, such as the failure to utilize the correct forms, the failure to notify rightful beneficiaries, or the usurpation of the priority list without the requisite consents. In ***In re Estate of Naftali (Deceased) 2 KLR 684***, the Court revoked a Grant simply because the process of obtaining it was procedurally defective.

43. Fraudulent concealment under section 76(b) is a far more egregious violation. It involves a deliberate act of non-disclosure calculated to deceive the Court into issuing a Grant to persons who would otherwise not be entitled, or to the exclusion of those who are entitled. A probate Court operates largely on the principle of utmost good faith during *ex-parte* petition stages. When the Respondents petitioned this Court for the initial Grant, they bore a strict legal and moral duty of full and frank disclosure. They were obligated under the prescribed statutory forms to declare all survivors of the Deceased.
44. The jurisprudence of the Court on this specific form of fraud is robust and punitive. In the leading case of ***Monica Adhiambo v Maurice Odero Koko [2016] eKLR***, the Court established that the failure to disclose all beneficiaries constitutes a major concealment of material fact, amounting to fraud, and serves as an unequivocal ground for the revocation of a Grant. In that matter, the petitioner had failed to disclose the existence of two other beneficiaries. The Court ruled that such non-disclosure contravenes the mandatory provisions of Rule 7(7) of the Probate and Administration Rules and is inherently fraudulent.
45. Similarly, in ***In re Estate of Makosi Ngei (Deceased) [2021] eKLR***, a Grant was swiftly revoked when a brother fraudulently concealed the existence of the deceased's children to transfer estate properties to himself. In ***In re Estate of Opondo Olotsi (Deceased) [2024] KEHC 806 (KLR)***, a Grant obtained by a grandson was revoked for concealing the surviving spouse, rendering the process procedurally defective and tainted by misrepresentation.
46. The actions of the Respondents in the present matter map perfectly onto these precedents. By suppressing the existence of the primary beneficiaries, the Respondents manufactured a fictitious legal vacuum, portraying

themselves to the Court as the closest surviving relatives. This constitutes a profound untrue allegation of an essential fact, violating both section 76(b) and 76(c) of the Act. Consequently, the proceedings leading to the issuance of the Grant on 8 December 2021, and the Certificate of Confirmation on 17 October 2022, were fundamentally vitiated by fraud. The Court cannot, and will not, permit its processes to be utilized as instruments of disinheritance.

Protection of Third Parties and Section 93 of the Act

47. Having established that the Grant and its subsequent Confirmation were obtained through egregious fraud, the Court must finally address the status of the properties already distributed under the impugned Confirmation. The Certificate of Confirmation of Grant directed the distribution of Gratuity to the 1st Respondent, and two specific real estate parcels (Rita Property Ltd Phase 2-124 and 125) to the 2nd and 3rd Respondents respectively.
48. Ordinarily, section 93(1) of the Act provides a statutory shield for transactions undertaken before revocation. It states that the revocation of a Grant shall not invalidate any conveyances made in good faith by the personal representative prior to the revocation. The legislative intent of this section is to protect innocent, *bona fide* third-party purchasers for value without notice, and to maintain commercial certainty in property transactions.
49. However, the protective cloak of section 93 is completely dissolved when the underlying grant is procured through fraud by the very persons seeking its protection. The Court conclusively settled this issue in the aforementioned case of ***Monica Adhiambo v Maurice Odero Koko (supra)***. In that case, the Court firmly held that section 93 does not protect transfers based on an illegally or fraudulently obtained grant. The Court pronounced:

"Section 93 of the Law of Succession Act does not validate unlawful acts; its purpose is to protect purchasers when a

grant is properly and lawfully issued, which was not the case here."

50. The judgment emphasized that it would contravene all notions of fairness, justice, and equity to grant absolute immunity to property transfers birthed from a corrupted, fraudulent legal process.
51. In the present case, the transfers were not made to innocent, arm's-length third-party purchasers. Instead, the Respondents distributed the Estate properties directly to themselves. A party cannot rely on a statute to sanitize their own fraudulent acquisition; equity does not allow a person to benefit from their own wrong. Consequently, the distribution of the gratuity and the Rita Property parcels is rendered null and void *ab initio*. The properties must legally revert to the Estate of Bernard Keiroh Kamau to be administered lawfully by the rightful priority heir.
52. Based on the foregoing, the Court finds that the Notice of Motion dated 18 January 2023 is highly merited and succeeds in its entirety. Accordingly, it is hereby ordered as follows:
 - (a) The Grant of Letters of Administration Intestate issued to Margaret Wanjiku Kamau, Benjamin Tito Mukere, and Patrick Maina Mukere on 8 December 2021 is hereby revoked and annulled in its entirety pursuant to Section 76 of the Law of Succession Act.
 - (b) The Certificate of Confirmation of Grant issued to the Respondents on 17 October 2022 is hereby set aside and cancelled, and any distributions of the Estate, including the Gratuity from Kenya Post Office and the real property described as Rita Property Ltd Phase 2-124 and Rita Property Ltd Phase 2-125, are declared null, void, and of no legal effect.

- (c) The aforementioned properties and any other assets comprising the Estate of the Late Bernard Keiroh Kamau distributed under the annulled Grant shall immediately revert to the Estate.
- (d) Catherine Wangari Rukungu is hereby appointed as the sole Administrator of the Estate of the Late Bernard Keiroh Kamau. A fresh Grant of Letters of Administration Intestate shall be issued in the name of Catherine Wangari Rukungu forthwith.
- (e) Owing to the fraudulent and deceitful conduct of the Respondents which necessitated these protracted proceedings, the costs of this Application and the consequent legal processes shall be borne personally, jointly, and severally by the Respondents.

DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF MARCH 2026

**HELENE R. NAMISI
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For the Applicant:	N/A
For the Respondents:	N/A
Court Assistant:	Lucy Mwangi