

**REPUBLIC OF KENYA**  
**MILIMANI HIGH COURT AT NAIROBI**  
**FAMILY DIVISION**  
**CAUSE NO. 2120 OF 2005**  
**IN THE MATTER OF THE ESTATE OF SAMUEL**  
**WAMBUGU**

**JACOB NGUNYI WAMBUGU..... 1<sup>ST</sup>**

**APPLICANT**

**STEPHEN NGUNYI WAMBUGU..... 2<sup>ND</sup>**

**APPLICANT**

**-VERSUS-**

**ILEEN MAITHA WAMBUGU..... 1<sup>ST</sup>**

**RESPONDENT**

**FAITH NJAMBI WAMBUGU ..... 2<sup>ND</sup>**

**RESPONDENT**

**AND**

**JOY MUTHONI WAMBUGU...INTERESTED PARTY/**

**BENEFICIARY**

**RULING**

**INTRODUCTION**

1. By Summons dated 6<sup>th</sup> July 2017, the applicants herein, Jacob Ngunyi Wambugu and Stephen Njeru, seek revocation of the Grant issued to Ileen Maitha Wambugu and Faith Njambi Wambugu on 27<sup>th</sup> February 2006 and confirmed on 26<sup>th</sup> March 2007 on the following grounds-

- a. The Applicants were not involved in the process of obtaining the same, given that they were away in South Africa pursuing their studies, and that the Applicants

never consented to the application for grant, the confirmation, nor the mode of distribution and that they were not involved in the proceedings.

b. There was unfair and unequal distribution of the estate, with a huge portion going to the 1st Respondent absolutely, with the remaining portion being held in trust by the Administrators, despite the Applicants and their younger sister being adults at the time the matter came up for confirmation.

c. The Respondents may continue to deal adversely with the estate.

2. The application is supported by the joint affidavit of Jacob Ngunyi Wambugu and Stephen Njeru Wambugu, sworn on 6<sup>th</sup> July 2017. They are sons to the deceased. The 1<sup>st</sup> Administrator is their mother, the 2<sup>nd</sup> Administrator is their sister. The deceased died intestate and is survived by the following beneficiaries-

- a. Ileen Maitha Wambugu- wife
- b. Faith Njambi Wambugu- daughter
- c. Jacob Ngunyi Wambugu- son
- d. Joy Muthoni Wambugu- daughter
- e. Stephen Njeru Wambugu- son

3. They aver that they were not involved in the succession proceedings, as at the material time they were both residents in South Africa. The 2<sup>nd</sup> Applicant was a minor at the time of the proceedings leading to the issuance of the

grant and its confirmation. The documents that were lodged in support of the Petition for grant and for confirmation are both forgeries. The 1<sup>st</sup> Applicant denies signing the documents; viz, consent to making of Grant of Administration intestate to a person of equal or lesser priority; consent to confirmation of Grant of Letters of Administration; consent to mode of distribution of the Estate. It is averred that the Administrators forged all these documents.

4. They also seek to have the grant revoked as the 1<sup>st</sup> respondent has allocated a disproportionate share to herself, and trusts were created when, in fact, the beneficiaries are adults. The 1<sup>st</sup> Respondent made false representations with regard to the bulk of the estate by alleging that the properties had been sold off, and yet she had transferred some to herself in 2008.
5. They challenge the authenticity and validity of the Power of Attorney as the same is not executed by him, and neither is it registered as required. On account of the conduct of the administrators, they have reasonable apprehension that

they will continue to dispose of the property unless they are injuncted.

6. It is submitted that the administrators are not fit to administer the estate on account of these failures. Ultimately, they seek that the grant be revoked; they aver that unless the grant is revoked, the beneficiaries (the applicants and their sister Joy Muthoni Wambugu will suffer irreparable harm and damage.
7. The Beneficiary, Joy Muthoni Wambugu, has sworn a replying affidavit in which she states that she is in alignment with the applicants and seeks that the grant be revoked.
8. The 2nd respondent, Faith Njambi Wambugu, has sworn a replying affidavit on 18th September 2017. She deposes that the application is misconceived, incompetent, and an abuse of court process. She states that the issues raised in the summons are similar to those raised in the application of 6<sup>th</sup> June 2016, presented by Joy Muthoni Wambugu. She counters and states that the applicants were well aware of the proceedings leading to the issuance of the grant and its confirmation. As evidence, she has attached

communications she states are between the 1st applicant and the advocates on record. That the consents required at both stages were forwarded to him, and he executed and returned the same.

9. She states that the majority of the properties were already sold by the deceased, and the administrators transferred them to the purchasers after the grant was confirmed. The land was transferred to the 1st administrator solely to facilitate its transmission to the purchasers, Railway Housing Cooperative Society. She has attached letters dated 21st June 1999 (from Railway Housing Co-Operative Society to Horizon Adventures Limited); letter dated 3rd June 2005 (from Horizon Adventurers Ltd to Rahoso-Kenya Railways); and a letter dated 3rd October 2005 (from M/S Muthoga Gaturu & Co to Chairman Railways Housing Cooperative Society Limited) as evidence of these transactions.

10. She asserts that the applicants and Joy have received their respective shares of the assets. She claims that the property in Donholm is owned by the first administrator and is therefore not part of the estate. Additionally, she states that only two properties remain unadministered (Deceased

share of KJD/KITENGELA/5422 and KJD/KITENGELA/9580), which are subject to the Summons for Rectification of Grant dated 10th December 2012, currently pending.

11. The respondents have sworn a further affidavit dated 4th July 2018. They reiterate that the grant should be revoked and state it was not possible for him to have been in Nairobi to execute a document when he was away in South Africa. They point out apparent contradictions regarding properties transferred to the Railways Sacco. They also note there is no evidence to support the claim that the properties had been sold at the time of the deceased's death. Their search certificates show that the administrator continued to sell the properties even after the deceased's death, up to 2017.

12. The included search certificates are-

- a. KAJIADO/ KAPUTEI-NORTH 6068 ; search on 6<sup>th</sup> December 2017, registered owner Patrick Kinyanjui Muriuki- registered on 23<sup>rd</sup> September 2016.
- b. KAJIADO/ KAPUTEI-NORTH 5993; search on 6<sup>th</sup> December 2017 registered in the name of Mirera Cornelius Gisaino on 18<sup>th</sup> January 2017
- c. KAJIADO/ KAPUTEI-NORTH 5942; search on 6<sup>th</sup> December 2017, registered in name of Alice Kwamboka Bosiro on 20<sup>th</sup> July 2016 and later to Zakary Byron Aoko Asiago on 21<sup>st</sup> July 2017.
- d. KAJIADO/ KAPUTEI-NORTH 6059 search on 6<sup>th</sup> December 2017; registered in the name of Samuel W Ngunyi on 6<sup>th</sup> April 2000

e. KAJIADO/ KAPUTEI-NORTH 11930 search on 6<sup>th</sup> December 2017 registered in the name of Samwel Wambugu Ngunyi on 24<sup>th</sup> October 2001

f. KAJIADO/ KAPUTEI-NORTH 6060 search on 6<sup>th</sup> December 2017

Registered in the name of Samuel Wambugu Ngunyi on 17<sup>th</sup> December 1998.

g. proposed subdivision of KAJIADO KAPUTEI NORTH 3005 as indicated in letter dated 11<sup>th</sup> February 2004 from Sambo Properties, addressed to Land registrar Kajiado District, 2004, in which the deceased was to get properties LR 15122;15127;15128;15129;15130; 15142; 15218; 15219;15220;15138 and 15187 and Memorandum of Understanding as evidence of purchase of LR No. Kajiado/ Kaputei North / 3005 by Sambo Properties Limited.

13. He avers that the administrators did not include the interest of the deceased in the following companies.

a. Sambo Properties- 300 shares as per CR12 103243 dated 24 May 2018

b. Horizon Adventures Limited- 500 shares as per CR12 CPR/2010/1895 dated 4<sup>th</sup> June 2018

c. H.A.L Turbo proprietor

14. The applicants have, in addition, sworn a further affidavit on 6<sup>th</sup> December 2019, and reiterated that the administrators failed to disclose all the assets of the estate.

Additional searches include-

a. KAJIADO/ KAPUTEI-NORTH 5995 search on 6<sup>th</sup> December 2017

Registered in the name of Grace Mudola Magunga on 17<sup>th</sup> September 2009.

- b. KAJIADO/ KAPUTEI-NORTH 6007 search on 6th December 2017  
Registered in the name of Washington Omondi Oganga on 30<sup>th</sup> November 2011.
- c. KAJIADO/ KAPUTEI-NORTH 6066 search on 6th December 2017  
Registered in the name of Lucy Kemunto Onyonka on 30<sup>th</sup> November 2011
- d. KAJIADO/ KAPUTEI-NORTH 6071 search on 6th December 2017  
Registered in the name of Aggrey Sitati Maraka on 27<sup>th</sup> October 2011
- e. KAJIADO/ KAPUTEI-NORTH 5952 search on 6th December 2017  
Registered in the name of Samuel Wambugu Ngunyi on 17th December 1998.
- f. Further, that the deceased did not disclose the policy taken out by the deceased as evidenced in the communication attached: AAR Membership No. C161031

15. It is further claimed that the administrators failed to disclose that the deceased had acquired an interest in Kahawa Sukari Limited as per the Land Sale Agreement dated 3rd May 2021.

16. The First Respondent/Administrator has sworn an affidavit dated 11th March 2019. She states that the applicants were properly informed about the proceedings concerning the issuance of the grant and its confirmation. She reconfirms the 2<sup>nd</sup> Administrator's claims that some of

the properties had already been sold by the deceased and that she had them transferred into her name to facilitate their transfer to the buyers.

17. She states that some of the estate funds were used to support the applicants while they were in school and dependent on her. She has provided the bank accounts from which she claims they accessed the money. She transferred Kajiado/Kaputei North 8905 to Jacob Ngunyi; he sold it. She transferred Kajiado/Kaputei North 14768 to Joy Muthoni Wambugu; she sold it. She transferred Kajiado/Kaputei North 8907 to Stephen Wambugu; he has sold it.
18. She has had to settle debts left by the deceased and has accrued legal fees due to cases filed against the estate and an inquest into the deceased's death.
19. She states there are only two assets that are awaiting administration.
20. The matter proceeded by viva voce evidence.
21. PW1- **Jacob Ngunyi Wambugu**- he is a son to the deceased. His affidavits on record were admitted as evidence in Chief.

22. As applicants, they seek to be appointed as administrators so that they can conduct a forensic audit of the estate. They claim that the Respondents have been unable to audit the accounts and that they wish to secure the properties in their father's name, as the Respondents are selling properties.

23. The 1<sup>st</sup> Applicant attested that the process of obtaining the grant was defective and that the summons for confirmation of the grant is dated 27.11.2006, while the consent to the confirmation is dated 2007.

24. Further, there is fraud, as the attached letter of 1999, the Railways Sacco wrote to the deceased confirming receipt of letters and payment.

25. That, three months after the death of the deceased, the first Respondent wrote to the Sacco stating she had the documents in safekeeping and was awaiting payment, the narrative being that the properties had already been purchased by the Sacco.

26. This is fraudulent because, seven years prior to the father's death, the Sacco had confirmed that the deal was closed, which contradicts the 1st Respondent's averments.

27. That the Applicants conducted a search in August 2017, which showed that the properties were still in the deceased's name.
28. Additionally, the Respondents did not disclose that the deceased held a 50% share in Horizon Adventures Ltd, was a 30% shareholder in Simba Properties, and owned Hall Turbo Systems. They also failed to disclose the bank accounts he maintained with the 1st Respondent and the accounts of companies where he served as a director. Furthermore, he stated that, to date, the Respondents have not provided the books of account.
29. The 1st Respondent resides in the US, and the estate is situated in Kenya. Therefore, the Applicants seek appointment as administrators, as they have disclosed accounts that have never been provided, necessitating contempt proceedings.
30. **On cross-examination**, the 1st Applicant stated that he is 46 years old and that at the time of his father's death, he was 27 years old, while his brother, the 2nd Applicant, was 16 years old. He added that at the time of the demise, he

was in South Africa, having relocated in 1999, whereas the 2nd Applicant was attending St. Mary's High School.

31. The documents filed with the summons are not the ones he signed. The administrators informed him of their intention to initiate the succession process (referencing the 2nd Respondent's affidavit of 18.09.2017 and email dated 08.07.2005). The 1st Applicant confirms he received this email as well as the email of 14.07.2005.

32. That at the time of signing the documents, he was not aware that the documents were meant to support the petition, and these documents suggest he was in Nairobi at that time, which he claims is not true.

33. He refers to the supporting affidavit of 06.07.2017, his subsequent affidavit of 04.07.2018, and his subsequent affidavit of 05.12.2019, and states that he has not attached the consents he signed, which are different from the consents presented in Court.

34. He also states that he attended his father's funeral and then returned to South Africa, but then moved back home permanently in February 2010. He denies being deported

from South Africa and claims that he returned home voluntarily.

35. Additionally, the email dated 26.10.2006 clarifies the purpose of the confirmation, but it did not reveal the nature of the succession proceedings to him.

36. He submitted his application in 2017, which is when he gained access to documents he had never seen before. The 2nd Respondent was unable to answer questions related to the estate, specifically, that he sought clarification on plots he learned his father owned in Kitengela.

37. On the power of attorney, which he confirmed he executed together with the 2<sup>nd</sup> Applicant on 04.03.2009 while they were both in South Africa.

38. He confirmed he was aware of communication with Eric Luarele and the email of 30.01.2007, in which he explained that he and his brother live in different states.

39. He confirmed he understood that the applicants wished to transfer their father's properties to those who had bought them before his death.

40. In their affidavit dated 05.12.2019 (paras 11-12), it was shown that properties were transferred to Railways Sacco,

including plots initially owned by the 1st and 2nd Applicants. The administrators initially provided a list of 48 properties, of which 3 were allocated to the 1st Respondent, and the Applicants sought clarification on these. In para 14, it is stated that the properties were sold after confirmation. The 1st Applicant has circumstantial evidence suggesting they were sold following the deceased's death. Regarding para 27, the 1st Applicant states that the person who provided that information has since passed away. In para 25, the 1st Applicant claims he does not have proof of the payment. Para 23 includes an interim financial statement of Simba Properties; the 1st Applicant testifies that the document is neither signed nor stamped for authentication and that they found it in their father's office. It also refers to para 16, which states that a parcel of land was subdivided and the plots sold.

41. That the 1st Applicant lives in the family home in Kitengela, which is situated on Kajiado/Kaputei North 8906 and is registered in the name of the 2nd Respondent, the 1st and 2nd Applicants, along with his brother. Before her departure to the US, the mother also resided there.

Referring to para 10, the 1st Applicant denies threatening the mother with death.

42. He further testifies that he is not aware of his mother filing an application for rectification of grant seeking to include properties that had been omitted. However, he states that the Applicants have not been provided with the details of the properties (they do not know the LR numbers) nor have they been instructed to carry out searches. In the affidavits, the Applicants did not include the details of the parcels for which they were unable to conduct searches.

43. On re-examination, the 1st Applicant confirmed that he has never been appointed as an administrator of the estate, but he understands the duties of an administrator, which include presenting all properties to the Court.

44. The consents attached to the summons are not the same as the ones he signed in South Africa, as the summons states he signed them in Nairobi. He claims this is false, and also states that none of the documents is notarised.

45. That Simba Properties (a real estate company) and Horizon Adventures (the main trading company) belonged to

the deceased and that both owned extensive parcels of land, yet they have not been included in the summons as assets.

46. Further, that the Applicants have not had access to or details of the accounts of the deceased and that his father's managers have informed him that there are properties not included in the petition.

47. That the Applicant is unaware of any application to have his brother's fees paid, and in any case, the estate exceeds the value of the fees. Furthermore, this would not affect their inheritance.

48. That the Applicants were each given single plots- 1<sup>st</sup> Applicant received a 1-acre plot; 2<sup>nd</sup> Applicant  $\frac{3}{4}$  acres.

49. That the Applicant is aware that the Respondents consent to rectifying the consent to include additional properties, and that the summons was disallowed.

50. **RWI ILEEN MAITHA WAMBUGU** She is the 1<sup>st</sup> Respondent, the wife of the deceased and mother to Jacob, Faith, Stephen and Joy. She currently resides in Washington State, U.S.

51. Her affidavit, sworn on 11th March 2019, was admitted as her evidence in chief. Both the applicants and the beneficiary, Joy, were aware of the succession proceedings, that Jacob was in South Africa, that Joy indicated she was busy at Kenyatta University, and that Stephen was a minor. They all agreed that Faith should take charge and jointly apply for letters of administration with her. She kept all of them informed of the succession proceedings contrary to their protestations.

52. The deceased used to buy and resell properties and dealt with Cooperative Societies, such as the Railway Cooperative Society, which purchased the properties. At the time of his death, some of his properties had not been transferred to the individual owners. After she obtained letters of administration, she signed transfers of the parcels to the buyers, and the Cooperative held the titles until the shareholders completed payment.

53. That regarding the letters dated 21.06.1999 and 03.06.2005, the 1st Respondent states that she was given these letters by the Cooperative Society and that it informed

her that the deceased had been paid in full. She did not conduct any transactions after the deceased's death.

54. Furthermore, during his lifetime, the deceased sold the land and fulfilled his part of the sale agreement, leaving the rest with the Cooperative Society to complete their part. She did not participate in her husband's businesses, which were usually run solely by Horizon Adventures. She was a shareholder in Horizon Adventures.

55. Referring to paragraph 6 of the affidavit, the 1<sup>st</sup> Respondent avers that the properties are the homestead and that the other 2 are undeveloped. That she distributed 1 parcel to the 1<sup>st</sup> and 2<sup>nd</sup> Applicants and retained the homestead until the 1st Applicant threatened her and demanded that she register it to the 1st and 2nd Applicants and the 2nd Respondent, which she did.

56. She used to communicate well with the 1st Applicant while he was in South Africa, but he accused her of killing his father and demanded his share of the inheritance.

57. Referring to paragraph 9 of the affidavit, the 1st Applicant was deported from South Africa for forging a passport, was imprisoned in Durban (Richard Bay), and she

bailed him out by transferring money to the 2nd Applicant's account. The 1st Applicant fled South Africa through Zimbabwe, and both he and the 2nd Applicant live in her houses in Donholm. The Donholm home was her property and not in the deceased's name.

58. The 1st Respondent asserts that she was a partner in H.A.L Turbo Systems with the deceased; that the deceased was a shareholder of Simba Properties alongside three other individuals. She states that the directors of Simba refused to include her in the deceased's estate and that she was hesitant to oppose this, as her husband had died under unclear circumstances. Furthermore, she claims that H.A.L did not possess any assets.

59. That she travelled to the US in July 2015 and that the beneficiary Joy filed a case against her when she was in Kenya, challenging the distribution of the estate and seeking that she and the 2<sup>nd</sup> Respondent be committed to civil jail.

60. She applied to rectify the grant but that application has not been heard

61. **On cross-examination**, she confirmed that she understands that the estate belongs to all beneficiaries and that it is within the right of the Applicants to require accountability on how the estate is administered.

62. She stated that she and her Co Administrator had filed the accounts as directed.

63. That she is aware that the Applicants have conducted searches on the company registry and that the companies that belong to the estate are Horizon Adventures (which at the time of the deceased held no properties) and Simba Properties (to which the deceased was a shareholder) both of which are land buying and selling companies.

64. She concedes that the Respondents did not include the two companies in the grant and that she is aware she ought to have. She explains she did not include Simba because she had been threatened not to by the managing director. Additionally, she states she only included properties she was able to manage. She also admits that she did not mention the threat in her affidavit.

65. That at the time of the deceased's death, the company Horizon Ltd held no properties in its name and that the properties were in the name of Samson Wambugu.
66. She avers that she never received any payments for land, and that all payments for land were made to the deceased but that she does not know the account the money was paid to.
67. She further conceded that she did not include the bank accounts as they had no funds.
68. Referring to the letter dated 14.09.2005 addressed to Horizon Limited requesting the 1<sup>st</sup> Respondent to give a bank account, the 1<sup>st</sup> Respondent states that she had no knowledge of bank accounts and that it was the deceased who totally managed the company.
69. Regarding the policy with AAR, she states that she did not include this in the succession properties.
70. The 1<sup>st</sup> Respondent contends that she was appointed Administrator by the other beneficiaries and that she objects to the Applicants being appointed as administrators.
71. That the properties, each measuring 1/8<sup>th</sup>, allocated to the 1<sup>st</sup> Respondent had been sold and that none of the

properties devolved to the Applicants, rather they devolved to her.

72. That at the time of death of the deceased, the properties had been sold and that there was no sale agreement- that all transfers happened after the death of the deceased, as all the properties had already been sold.

73. The 1<sup>st</sup> Respondent testifies that she transferred 4 properties to the 4 children/beneficiaries and that each received 1 and  $\frac{1}{4}$  acres.

74. She pleads that the 1<sup>st</sup> Applicant was not on scholarship, as she was paying his fees and that she did not provide statements, she has a bank account that will show this.

75. She further claims that at the time of the deceased's death, the Applicants were minors and that the 1<sup>st</sup> Applicant was in South Africa when he signed the consent. That the 1<sup>st</sup> Applicant was in Kenya at the time of confirmation of grant- that he was in South Africa at the time of distribution of the estate.

76. She states that her affidavit was notarised by an advocate in the US.

77. Regarding the documents about Simba Properties filed by the 1<sup>st</sup> Applicant, the 1<sup>st</sup> Respondent states that the documents are not authentic and that they do not come from the company as they have not been signed by the directors. These documents were filed after her reply. She concedes that she has not raised the issue of the documents' authenticity prior to this.

78. She avers that she is not aware of the payment of kshs.17million to the deceased and that she did not take any action to follow up.

79. The 1<sup>st</sup> Respondent states that it is the Railways Cooperative Society that bought the property and that there is a sale agreement being held by the Cooperative and that she was not provided with the same.

80. On further Cross-examination, she stated that the co-administrator filed accounts in court, but that she is not certain about which accounts were filed in Court.

81. She avers that she is a signatory of one of the accounts of Horizon Limited but that she was not involved in the running of the company.

82. That she is only aware of the purchasers of the property, who are not before the Court, and that they have the sale agreements.

83. The 1<sup>st</sup> Respondent avers that she gave the 2<sup>nd</sup> Respondent 1 acre; the 1<sup>st</sup> and 2<sup>nd</sup> Applicants 1 and ½ acres each and retained 1 acre. That this 4-acre plot of land was the only property available for distribution.

84. That Joy, is not noted as a beneficiary as the remaining share was the matrimonial home that belonged to the 1<sup>st</sup> Respondent and she therefore had a right to allocate it to anyone as they had gotten their respective shares. Further, that is not true that there was a property she was holding in trust for Joy neither is it true that she sold the alleged property without Joy's consent.

85. That at the time of the deceased's death, the 1<sup>st</sup> Respondent was educating Joy, who was in Kenyatta University undertaking a diploma and later a degree.

86. She further contends that she sold a family property for kshs. 17million and shared the proceeds with the family- with each child receiving kshs. 3million from the sale.

Further reiterating that all properties registered in the deceased's name, had been sold.

87. The 1<sup>st</sup> Respondent states that there is no estate of the deceased as this has all been transmitted and that she leaves it to the Courts to determine whether or not other administrators should be appointed.

88. Regarding property Kajiado/Kaputei/North/6059, the 1<sup>st</sup> Respondent avers that it was deposited at the land registry (and that Joy accompanied her to the registry and verified what was happening) and that she did not sell the property. That she later heard that the registrar had been found with the title in his car. That one, Mr Kariuki, sold the property to offset medical bills, and she signed the transfer. That she did not inform the beneficiaries of this, as the property was under the Railways Cooperative Society.

89. On re-examination, she reasserted that she had consulted the entire family before applying for letters of administration with her firstborn daughter Faith, and that the other beneficiaries had excused themselves, except for the second applicant, who was a minor at the time.

90. She refers to the affidavit sworn on 18.09.2017 by the 2<sup>nd</sup> Respondent and the attachment marked FNN 1 which shows that the 1<sup>st</sup> Applicant participated. That she was in communication with the 1<sup>st</sup> Applicant, as he was in South Africa, and that documents were sent to him via DHL, and that he consented to her being an administrator.
91. That the confirmation has a list of 62 properties (land parcels in Kajiado/Kaputei/ North) and that all of the properties were in the deceased's name except for one under the family.
92. The 1<sup>st</sup> Respondent testifies that the chairman of the Railway Cooperative Society indicated that they had already paid for the properties and that the deceased had acknowledged receipt of the money. It is the 48 properties in the letter dated 21.06.1999; not all the properties in the certificate had been sold.
93. That the properties had been sold 6 years earlier and that the letter is addressed to Horizon because Horizon and the deceased are one and the same person. As stated, she was not involved in the sale or the running of the company and

the deceased kept all documents, as she was a silent director.

94. The 1<sup>st</sup> Respondent reiterates that she distributed what was available for distribution i.e. item 51 to the 1<sup>st</sup> Applicant; item 53 to the 2<sup>nd</sup> Applicant, a parcel to herself and a parcel to Joy (itemised in para 11)

95. That as mentioned, she had been threatened by the managing director of Simba properties and feared to go against him as the deceased had been murdered- an inquest was done in Machakos, and she had participated in the proceedings.

96. The 1<sup>st</sup> Respondent avers that after filing the initial summons, she sought to rectify the grant to include properties that were excluded. That after filing this application (dated 12.12.2012) the Applicants challenged her in Court but did not give her any additional properties they felt should be included. And that had they done so, she would rectify the grant again to include them.

97. Regarding parcel Kajiado/Kaputei/North/6059, that this was in the deceased's name and that she, Joy and the 2<sup>nd</sup>

Respondent were aware of the investigations. Further, that the Applicants were not aware.

98. That application dated 05.12.2019 reveals that the property was in the name of Samuel Ngunyi thus they are part of the estate to be distributed.

99. **RW2 Faith Wambugu**, daughter to the deceased and the 2<sup>nd</sup> Administrator. Her affidavit, sworn on 18.09.2017, was admitted as her evidence in chief. The Grant was obtained on 27.03.2006, which was confirmed on 26.03.2007.

100. Prior to this application for revocation, the beneficiary, Joy, filed an application charging the Respondents with contempt and seeking confinement and the Court ruled on Joy's application.

101. Further, the Applicants made a complaint at CID regarding the documents placed before this Court.

102. She testified that the deceased was a property seller and buyer who purchased large tracts of land, subdivided and sold them, and that the subject parcels were sold to the Railways Cooperative Society but had not yet been transferred.

103. That at the time of making the application for grant of letters the Respondents had seen the titles and were aware of the parcels. Further, that they received documents from the office of the deceased and made the application with the assistance of the deceased's secretary Tabitha Otieno. That, alongside these documents, was a letter from the Society dated 19.06.1999 detailing the sales (annex NW4), showing that the deceased sold subdivided pieces of 50 x 100 to the Society.

104. Referring to para 8(4) that states that part of the matrimonial home (item 51) was transferred to the 1<sup>st</sup> Applicant; item 53 to the 2<sup>nd</sup> Applicant and registered formally between the 1<sup>st</sup> and 2<sup>nd</sup> Applicants, thus it is not true that the Applicants did not get any property.

105. That the beneficiary Joy was allocated a plot that was not part of the estate. Further, she and Joy have not inherited from the estate.

106. The 2<sup>nd</sup> Respondent states that item 67 is a property in Donholm that the 1<sup>st</sup> Respondent bought via a loan from the Teachers' Sacco, which repayment she completed after the death of the deceased.

107. That at the time of confirmation of the grant, the 1<sup>st</sup> Applicant was an adult while the 2<sup>nd</sup> was a minor.

108. The affidavits sworn on 04.07.2018 and 05.12.2023 have searches attached to them (annex JSC 2), which reveal three searches for Kajiado/Kaputtei/North/6059;11930;6060 showing that these parcels are in the name of the deceased. Furthermore, these parcels are included in the certificate of confirmation of grant and relate to items No. 2; 3; 5 and 29. These properties vest in the 1st Respondent, but she is not aware if they have been transferred.

109. That the properties were sold to the Railway Society, that no payments were due to the estate and that any payments were made to the client. That their role was only to sign Court orders.

110. That in the 1<sup>st</sup> Applicant's affidavit annexure J31 the document attached is a search. There is also a schedule showing the transfer numbers.

111. The 2<sup>nd</sup> Respondent further avers that after they transferred the land to the Society, they did not follow up with the Society. That there are 2 properties in the name of the deceased- the first is owned by Phillip Ndichu and the

other is in the deceased's name but belongs to a small investment club.

112. Referring to para 4 of the affidavit- after the Respondents learnt of property they sought to include them in the estate but that this has not been possible.

113. That she made an application dated 10.12.2024 to rectify the grant but that the same is yet to be heard and determined.

114. The 2<sup>nd</sup> Respondent submits that there were companies registered in the deceased's name- Horizon Adventures owned by the 1<sup>st</sup> Respondent and the deceased and Hall Turbo which was sold off to Simba Properties. That there are no assets belonging to these companies that are pending distribution.

115. Reference is made to annexure to judgment dated 05.12.2019; reference is made to title dated 30.06.2004 and to Simba properties to which the 2<sup>nd</sup> Respondent testifies that she was not aware of these when they presented the petition and that their counsel advised them not to include these as property in assets.

116. She asserts that the 1<sup>st</sup> Respondent received threats and that they did not hear from Simba Properties since the letter of 30.06.2004.

117. Referencing JS 6 the 2<sup>nd</sup> Respondent avers that she has not seen any dated accounts beyond 2005 of Simba Properties and that she saw them for the first time in Court but that these so not appear to be prepared by an auditor.

118. Finally, that there is no asset available for distribution.

119. **On cross examination** Referencing the affidavits of 05.12.2019 by the Applicants- annexure CR12 marked JS3 for Horizon Limited, shows the deceased as the last shareholder, holding 500 shares which have not been distributed as the company closed. Further, that CR12- Samba Properties, the deceased held 300 shares. The 2<sup>nd</sup> Respondent avers that she was aware that the deceased was a director of Simba properties and concedes that they did not include the company in the grant. That she approached one of the directors of Simba Properties, Mr. Mbote, but that he was uncooperative.

120. The 2<sup>nd</sup> Respondent states that she understands she owes the estate a duty of care and that she did the due diligence required as she held a subsequent meeting with Mr. Mbote.

121. The 2<sup>nd</sup> Respondent avers that she defers to the 1<sup>st</sup> Respondent on whether the Applicants should be made administrators.

122. That she is safeguarding the interests of the Railway Society as she has engaged with the leadership. That they signed transfers/consents to enable the Society to transfer the assets but did not file legal document to show transfer to the Society. That they were not privy to the sale agreement (sale concluded in 1999) as it was between the deceased and the Society. That she does not know the particulars of the sale and was not aware that she was required to obtain evidence of the transfer and she does not understand the process of transfer.

123. That they presented accounts in the affidavit of 08.06.2017 and that she is not aware whether the court was dissatisfied with the accounts. That she is aware that the deceased had bank accounts but that they were not included as they did not have money in the account. That she was not

aware that they needed to provide the bank details notwithstanding.

124. Regarding the AAR benefits, she states that they were distributed to all the beneficiaries as detailed in the affidavit dated - however she was not able to point out the affidavit.

125. That they retreated in the face of hostility from the directors of Horizon and Simba Properties but that it is not true that the Applicants have been more diligent in collecting the estate. That she has not committed fraud in relation to the estate or assets.

126. **On further cross examination** she confirmed that the 1<sup>st</sup> Respondent paid tuition for Joy who kept the receipts.

127. That she believes the distribution was fair- that she and Joy did not get a share of the estate but the 1<sup>st</sup> Respondent gifted them her assets.

128. That in the confirmation of grant there are properties held in trust for the 1<sup>st</sup> and 2<sup>nd</sup> Applicant and Joy.

129. That she cannot remember how much they each got from the AAR Insurance.

130. That the 1<sup>st</sup> Applicant transferred parcels of land to Joy ie Kaputei//North/14768.

131. That both her and Joy are entitled to inherit from the deceased.

132. **On re-examination** Regarding the searches dated 04.06.2018 and CR2 dated 24.05.2018 for Horizon and Simba Properties companies, the 2<sup>nd</sup> Respondent averred that she had not seen any titles for land belonging to the companies and that after the death of the deceased the 1<sup>st</sup> Respondent did not take up the companies. That she has not seen any audited accounts for Simba beyond 2004.

133. That the Applicants filed application ten years after grant was confirmed. That both Applicants signed the consents with knowledge of the succession matter.

134. That the Applicants have not responded to her application dated 10.12.2012

135. That in para 10-13 of the 1<sup>st</sup> Respondent's affidavit, she details the assets conveyed to the 2<sup>nd</sup> Respondent and the Applicants.

136. At the conclusion parties submitted their written submissions

### **SUMMARY OF THE APPLICANTS' SUBMISSIONS**

137. The Applicants' submissions are dated 9<sup>th</sup> September 2025. The issues framed for determination are-

a. Whether the grant confirmed on 26th March 2007 should be revoked and the 1<sup>st</sup> and 2<sup>nd</sup> Applicant hereby appointed as the administrators of the Estate of the late Samuel Wambugu Ngunyi.

138. It is submitted on the authority of the decision in **Re Estate of Peter Okeyo Odongo (2022) eKLR**, that the grant should be revoked as the consents were not duly executed by the applicants and further that on the authority of **Re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR** since the beneficiaries were not involved the grant should be revoked.

139. Further the grant was obtained by the making of a false statement that the affidavits and power of Attorney were commissioned in Nairobi, reference is made to the decision in **Re Estate of Julius Njau Kabuu [2019] eKLR**. The applicants further rely on the decision in **Re Estate of Juma Shiteswa Linani (Deceased) [2021] eKLR**

140. It is further submitted that the grant should be revoked as the applicants have failed to proceed diligently. Issue is raised on the manner in which the properties were transferred to the Railway Sacco absent proof of purchase and therefore it is submitted on the authority of **Re Estate of Wahome Njoki (Deceased) [2019] eKLR** and re

## **Estate of Prisca Ong'ayo Nande (Deceased) [2020]**

**eKLR** that the grant should be revoked, for not involving the other beneficiaries.

### **SUMMARY OF SUBMISSIONS OF JOY WAMBUGU-BENEFICIARY**

141. Her submissions are dated 17<sup>th</sup> September 2025. She frames the issues for determination as-

- a. Whether the grant was obtained through misrepresentation, concealment, or
- b. Whether the Administrators discharged their fiduciary duty to fairly administer the estate
- c. Whether the grant ought to be revoked under Section 76 of the Law of Succession Act.

142. She cites the following authorities; **In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] Eklr; Estate of Aggrey Otieno Ambala (Deceased) [2011] eKLR, In the Matter of the Estate of Nzuta Mutavi Maandu (Deceased) [2016] eKLR and Joseph Moswagi Mabeya & 4 Others [2016] eKLR, ilka Anyango Otieno & another v Kennedy Otieno Odeny [2014] KEHC 8774 (KLR) (Succession No. 32 of 2014);** For the submission that the grant ought to be revoked for making false representations, excluding some beneficiaries from the

process and not disclosing all the assets of the estate of the deceased.

143. On the 2<sup>nd</sup> issue, it is submitted that the administrators failed to fulfil their fiduciary duty, as their dealings were opaque and they did not act in the best interests of the applicants. Reference is made to the decisions in **In re Estate of John Bartilol (Deceased) [2025]**, **In re Estate of John Bartilol (Deceased) [2025]** on the consequences that follow when the administrators fail in their duty.

144. It is submitted, therefore, that the grant should be revoked in this matter and reference made to the decision in **re Estate of GCB (Deceased) [2020] eKLR**, and in **re Estate of Prisca Ong'ayo Nande (2020) eKLR**, and **In re Estate of Mbai Kathukya (Deceased) [2019] eKLR**.

#### **SUMMARY OF THE RESPONDENTS' SUBMISSIONS**

145. The submissions are dated 17<sup>th</sup> November 2025 and frame the following as the issues for determination-

- a. The Law and the Standard of Proof
- b. Whether the applicants were excluded from participation in the process of obtaining the grant issues on 27<sup>th</sup> February 2006 and its confirmation
- c. Whether the grounds and evidence in support of the application dated 6<sup>th</sup> July 2017 meet the threshold set out under Section 76 for the revocation/ annulment of grants

**d.** Whether the applicants should be appointed jointly with their sister, Joy Muthoni Wambugu, as joint administrators

146. On the 1<sup>st</sup> issue, it is submitted that the 1st Applicant ranks in priority as a person to administer the estate of the deceased, being a spouse. That the applicants have not discharged the burden of proof and that in any event the Court has the discretion whether or not to revoke a grant. Reference is made to the decisions in **Estate of Mbai Kathukya-Deceased - Machakos HC Succ Cause No. 251 of 2007; re Estate of the Late Suleman Kusudwa [1965] EA 247; Re Estate of Gitau (Deceased) [2002] 2KLR 430**

147. It is submitted that the issue of whether or not the applicant agreed to the sale of the properties was addressed by Hon. William Musyoka J in ruling delivered on 12th May 2017- **In re Estate of Samuel Wambugu Ngunyi (Deceased) [2017] eKLR - Succession Cause 2120 of 2005**

148. On the 3<sup>rd</sup> issue, reference is made to **Re Kibiego [1972] EA 179**, on the priority of the widow as administrator of the estate of the deceased husband. Having made allegations of

fraud, the applicants were obligated to substantiate the same; reference is made to the decision in **Kagina v Kagina & 2 others (Civil Appeal 21 of 2017) [2021] KECA 242 (KLR)**.

149. It is submitted that a basis has not been laid for revocation, and the Court has other options to ensure that the estate is properly administered.

#### **ANALYSIS AND DETERMINATION**

150. Having regard to the pleadings filed herein, the evidence adduced, submissions filed, and relevant law, I construe the following as the issues for determination-

- a. Whether the grant herein should be revoked?
- b. Whether the applicants herein should be appointed as administrators?
- c. What are the Consequential orders arising from (a) and (b) above?

151. I consider it useful to set out the background to this matter before filing the summons for revocation. The deceased herein died as most do, unexpectedly, his life having been brutally cut short on 13<sup>th</sup> March 2005. The

person(s) responsible are yet to be identified and prosecuted.

152. The respondents petitioned and were granted letters of administration on 27<sup>th</sup> February 2006. Subsequently, the administrators lodged a summons for confirmation dated 27<sup>th</sup> November 2006, following which the grant was confirmed on 26<sup>th</sup> March 2007.

153. The administrators then filed a summons for the rectification of the grant dated 10<sup>th</sup> December 2012. This prompted one of the beneficiaries, Joy Muthoni Wambugu, to submit applications dated 6<sup>th</sup> December 2013 and 27<sup>th</sup> February 2014, claiming that the grant was obtained fraudulently and that she had not signed the consents submitted in support of the Petition for Grant. She further argued that the administrators were unilaterally disposing of the deceased's assets. She opposed the administrators holding the properties in trust, asserting that she was an adult. Finally, she called on the administrators to account for their dealings with the estate.

154. The Court prioritised the application dated 27<sup>th</sup> February 2014 and, by orders of 30<sup>th</sup> October 2015, required that the administrators-

- a. Render an account in respect of KAJIADO/ KAPUTEI/ NORTH 5825, 11914 and 11917, which should include details as to where and on whose authority KAJIADO/ KAPUTEI/ NORTH 5825 was sub divided, when and with whose authority KAJIADO/ KAPUTEI/ NORTH 11914 and 11917 were sold, for what consideration and how the proceeds of sale were applied.
- b. An account be rendered in respect of plot No. 388/ Residential Noonkopir trading Centre, which should include detail on how much rent is and has been collected as rent from the premises on the said property from 26<sup>th</sup> March 2002 to date and details of how the money raised therefrom has been utilised.
- c. THAT an account in respect of plot No. 563/ Residential - Noonkopir Trading Centre, which should give a breakdown of the steps taken by the administrators to recover the said asset from alleged grabbers.

155. The Court then directed that the accounts be rendered within 30 days and deferred the hearing of applications dated 10<sup>th</sup> December 2012 and 10<sup>th</sup> February 2013 to await the production of the accounts. The orders of 30<sup>th</sup> October 2015 were apparently not complied with, and the beneficiary Joy Muthoni Wambugu, by her application dated 6th June 2016, made an application seeking that the administrators be sanctioned for contempt.

156. In the ruling of 12th May 2017, the Court accepted the explanation of the administrators regarding KAJIADO/KAPUTEI/NORTH 5825, finding that at the time of the deceased's death, it was no longer in existence, having been subdivided and other plots emerging from it, including KAJIADO/KAPUTEI/NORTH 11914 and 11917, which the Court noted were sold with the knowledge and consent of the applicants and the beneficiary. The Court criticised the administrators for failing to maintain proper records concerning the sale of these plots and the rental income collected from plot no. 388/residential.

157. The Court gave the administrators 30 days to file accounts showing how the sale proceeds and rental income were used. They failed to do so, and on 6th July 2017, the applicants submitted this application for revocation.

158. 1<sup>st</sup> Issue for determination: *Whether the grant should be revoked?* Section 76 sets out the grounds on which a grant may be revoked. These are-

**Section 76. Revocation or annulment of the grant**  
**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.**

159. The applicants seek the revocation of the grant on a number of grounds: the grant was issued based on forgeries, fraud, and other irregularities; the administrators have concealed and failed to include all the assets of the deceased; and finally, the administrators have failed to render an account of their dealings with the estate.

160. For avoidance of doubt, I must point out that Section 66 of the Law of Succession Act expressly provides that a

Spouse ranks in priority of all persons to whom the Court may issue a grant. She is therefore not at the same level and the applicants cannot challenge the grant issued to her on the basis that their consent was not obtained. There is no requirement that she seek their confirmation. I will only entertain this ground on the basis that she is a joint administrator with Faith Njambi Wambugu, who is a sibling of the applicants and interested party.

161. The 1<sup>st</sup> Applicant does not deny that he was out of the Country and that documents were forwarded to him via email. There is even an email that informs him that the document he was executing would be commissioned in Nairobi. He does not deny that he signed the document. It is not denied that, prior to the issuance of the Grant, the Cause was gazetted. Neither the applicant nor the beneficiary objected to its issuance. The publication of the Cause in the Kenyan Gazette is not just a procedural step but an essential requirement prior to issuance of the grant. Persons opposed to the issuance of the grant have a 30-day period to present their objections.

162. When, however, it is possible to demonstrate that the parties were aware of the succession proceedings, lodging of the Petition, their subsequent application for revocation of the grant would be, dead on arrival.

163. In exercising my discretion as to whether or not to revoke the grant on this ground, I consider the undisputed fact that the applicants and the beneficiary were well aware that the administrators had initiated the succession cause. Subsequent to the Petition, the Cause was gazetted, no objection was filed, not even when the applicants moved to confirm the grant. A party cannot allow the 30-day period that the law allows for Objection to lapse and then seek to move the Court to revoke a grant, that, in my view, is a waste of judicial time. The applicants are not alleging that they were not aware of the proceedings. They have not stated that they were not aware when the cause was gazetted.

164. It is clear that they contest the manner in which the estate has been administered, and for this reason, they seek to both vacate the orders confirming the Grant and alter the mode of distribution. It is argued that the grant should be

revoked because the affidavits supposedly signed by the 1st Administrator were fraudulently obtained. The 1st applicant contends that he did not have the proposed mode of distribution at the time of signing the consent, and it has now been found that the administrators excluded properties belonging to the estate.

165. On the first ground, the first applicant confirmed that a consent was sent to him via email, and he signed it. He actually signed two consents; the second one he signed after the advocate informed him that the first was not fit for purpose. He does not deny the signature on the consent. Instead, he asserts that he did not cite the summons for confirmation, and the other documents were not forwarded to him via email. I have looked at the consent, and it reads as follows-

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE No. 2120 of 2005**  
**IN THE MATTER OF THE ESTATE OF SAMWEL**  
**WAMBUGU NGUNYI (DECEASED)**

**CONSENT TO THE MODE OF DISTRIBUTION OF  
ESTATE**

**I, JACOB NGUNYI WAMBUGU**, the undersigned of P.O. BOX Number 43063-00100 GPO, a dependant in the meaning of Section 29 of the Law of Succession Act, of the above-named deceased Samuel Wambugu Ngunyi,

who died on the 13<sup>th</sup> March 2005, do hereby consent to the mode of distribution proposed in the affidavit of **ILENE MAITHA WAMBUGU** and **FAITH NJAMBI WAMBUGU**, sworn on 30<sup>th</sup> Day of October 2006.

**DATED** at **NAIROBI** this 12<sup>th</sup> March 2007

**Signed by Jacob Ngunyi Wambugu**

166. I find that the consent, as executed by the applicant, was very specific. It referred to the affidavit of 30<sup>th</sup> October 2006. I am not persuaded that he was unaware of what he was consenting to. I am strengthened in this regard by the fact that he did not ask any questions before signing the consent form. At paragraph 8 of that affidavit, properties listed as 2-54 were stated to have been sold by the deceased before his death, and the administrators would be finalising the transmission. Assets listed as 55-62 comprised the estate available for distribution, which the administrators would hold in trust for themselves and the beneficiaries.

167. I therefore decline to revoke the grant on this ground.

168. The applicants also seek revocation of the grant on the ground that the administrators have failed to provide an account as required by Section 83 of the Act. Of all the allegations against the administrators, this is the one that carries weight. As observed, earlier the Court had found the

accounts submitted by the applicants wanting and they were given 30 days to file more comprehensive accounts. They failed to do so, prompting this application.

169. The duties of an Administrator are clearly set out in Section 83 of The Law of Succession Act, Cap 160 Laws of Kenya. Sections 83(e) and (9) of the said Act provide as follows:-

83

(a).....

(b).....

(c)....

(d).....

(e) to produce to the Court, if required by the Court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the Deceased and a full and accurate account of all dealing therewith up to the date of the account.

(f) Subject to Section 55 to distribute or retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this Section and the income therefrom, according to the respective beneficial interests therein under the Will or on intestacy, as the case may be.

(g) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the Court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

170. In the case of **Re: Estate Of Julius Mimano (deceased)**

**[2019] eKLR**, Hon Justice William Ouko (as he then was) stated as follows:-

**Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the Trustee Act, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.**

171. Hon. Judge Musyoka in his ruling of 12th May 2017 observed that the administrators had fallen short in fulfilling their duty. Reading the responses of the two administrators, it is evident that they cannot improve. Even with the threat of contempt proceedings, they submitted accounts that were inadequate. It is clear to me that if I find there are issues

pending finalisation of the estate, the two administrators are ill-suited to conclude the administration of the estate.

172. *2<sup>nd</sup> Issue? Should the applicants be appointed as administrators?* The answer to this question depends on whether there are outstanding issues regarding the estate.

173. There is a pending summons for the rectification of the grant. The applicants also allege that some estate properties have not been included. I find, for instance, that the shares of the deceased in the two companies (Horizon Limited and Simba Properties although acknowledged, were not included. The respondents and the applicants agree that the deceased had bank accounts, which were not included in the grant.

174. The applicants appear to be in possession of information touching on the estate of the deceased and additional assets; they should be given an opportunity to present these assets for distribution, if they are able to prove ownership by the deceased. I would observe here that of the properties enumerated in Paragraphs 12 and 14, those properties are enumerated in the affidavit in support of confirmation of

Grant as properties that had been sold by the deceased, and the only pending issue was transmission to the purchasers.

175. I find plausible the administrators' assertion that the Railway Sacco is in possession of the transfer documents and is concluding the transactions once the purchasers comply with the prerequisites for transfer.

176. Having found that there are outstanding issues in relation to the estate and that the administrators are ill-suited to continue with the administration of the estate, and guided by Section 66 of the Law of Succession Act, I will make the following orders with regard to the Estate-

- a. The Grant issued on 27th February 2006 to Ileen Maitha Wambugu and Faith Njambi Wambugu is revoked pursuant to Section 76(d)(iii) of the Law of Succession Act.
- b. Fresh grant to issue to the following: Faith Njambi Wambugu, Jacob Ngunyi Wambugu, Joy Muthoni Wambugu
- c. The administrators so appointed will first proceed to conclude the hearing of Summons for Rectification dated 10<sup>th</sup> December 2012, the administrators granted leave to amend the summons to include the other assets of the deceased that were not previously included
- d. The matter will therefore be mentioned on the 20<sup>th</sup> May 2026 to confirm that the Summons for rectification as directed above has been filed and to take directions on its hearing.

177. For clarity and good order, accounts in accordance with Section 83 of the Law of Succession to Act will be addressed after finalisation of the Summons for rectification of the Grant.

178. Owing to the relationship between the parties, there shall be no order as to costs.

179. Parties are at liberty to appeal, the Party exercising their right to do so within 30 days.

It is so ordered

**SIGNED, DATED AND DELIVERED IN VIRTUAL COURT  
THIS 13<sup>th</sup> DAY OF MARCH 2026.**

**P. M NYAUNDI  
JUDGE**

**In the presence of:**

Ng'alamoi Court Assistant

Muruki holding brief for Kimeru for Applicant

Ms. Cynthia Ondielo holding brief for Mugambi for Administrators/Respondents

Ms. Talu for Beneficiary/Interested Party