

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO. 1088 OF 2009

IN THE MATTER OF THE ESTATE OF MWANGI KIMOTE

(DECEASED)

PATRICK KINUTHIA MWANGI.....1ST

APPLICANT

MBURU MWANGI.....2ND

APPLICANT

VERSUS

ESTHER NJERI MWANGI.....1ST

RESPONDENT

BETH NYAMBURA MWANGI.....2ND

RESPONDENT

RULING

1. Before this Court is the Summons for Revocation or Annulment of Grant dated **14th May 2019** by which the Applicants **PATRICK KINUTHIA MWANGI** and **MBURU MWANGI** seek the following orders:-

“(a) SPENT.

(b) THAT the Grant of letters of Administration Intestate to the estate of the late MWANGI KIMOTE issued to ESTHER NJERI MWANGI and BETH NYAMBURA MWANGI on 25th JULY 2010 and 5th May 2015 be and is hereby revoked and/or annulled.”

2. The Summons were premised upon **Articles 48 & 50 of the Constitution of Kenya, Section 76 of the Law of Succession Act, Cap 160, Laws of Kenya, Rules 44 (1) & (2), 49 and 73 of the Probate and Administration Rules** and was supported by the affidavit of even date sworn by the 1st Applicant.
3. The Respondent opposed the Summons through the Replying Affidavit dated **23rd December 2019** sworn by the 1st Respondent **ESTHER NJERI MWANGI**. The summons was canvassed by way of written submissions. The Applicants filed the written submissions dated **5th June 2025** whilst the Respondents relied upon their written submissions dated **5th November 2025**.

BACKGROUND

4. This Succession cause relates to the estate of the late **MWANGI KIMOTE** (hereinafter '**the Deceased**') who died intestate on **14th June 1995**. A copy of the Death Certificate Serial No. **599118** is annexed to the Petition for letters of Administration Intestate dated **30th March 2009**.
5. The Deceased was survived by two (2) widows **Esther Njeri Mwangi** and **Beth Nyambura Mwangi** (the Respondents herein) and several children. The assets comprising the estate of the Deceased were listed as follows:-

“(a) Parcel of land known as Loc 3/Kariua/102

(b) Parcel of land known as

Mukuyu/Kimorori/Block

4/47

(c) Five (5) Ordinary shares in Kenya Breweries.

(d) Shares in Agricultural and Industrial

Holdings

Limited.

(e) Shares in Nation Printers and Publishers

Limited.

(f) Plot at Kariua - Mwirukia farmers Society Limited.

(g) Plot No. 1072 and Plot No. 133.”

6. Following the demise of the Deceased letters of Administration Intestate were on **25th July 2010** issued jointly to the two widows. On **3rd September 2015** the Respondents filed a Summons for Confirmation of Grant.
7. The Applicant who is a son of the Deceased filed this Summons seeking to have the Grant issued to the two respondents revoked. The Applicant alleges that the Grant was obtained unprocedurally as it was obtained fraudulently and without the consent of the Applicant **Patrick Kinuthia Mwangi**.
8. On their part the Respondents deny any irregularity and assert that the Grant was properly obtained.

ANALYSIS AND DETERMINATION

9. I have carefully considered the summons before this court, the reply filed thereto as well as the written submissions filed. The only issue for determination is whether the Grant issued on **25th July 2010** ought to be confirmed.

10. 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**

(iv) that the grant has become useless and inoperative through subsequent circumstances.”

11. 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, 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.”

12. The Applicant alleges that the proceedings leading up to the issuance of the Grant were defective as some of the beneficiaries did not sign the required consent. Firstly the Applicant did not give the names of the beneficiaries who did not sign a consent. To make such a blanket allegation is not sufficient, specifics must be supplied.
13. The Applicant alleged that neither he nor his brother signed the consent - which brother? The Applicant did not name this brother. In the absence of the actual names of the persons whom the Applicant alleges were excluded his allegation has no legs to stand on and cannot be upheld by the court.
14. The Applicant stated that he was not invited to sign the said consent. However the Respondent has explained that at the time the petition was being filed the applicant was aged **sixteen (16) years** and was therefore a minor. A minor cannot be required to sign legal documents.
15. I have perused the original copy of the Petition dated **30th March 2009** filed by the Respondents. The name of the Applicant "**Kinuthia Mwangi**" is listed as one of the

beneficiaries and it is indicated that he is aged **16 years old** and therefore a minor.

16. The Respondent has annexed to her Replying affidavit a copy of the **“Consent to the Making of a Grant of Administration Intestate to a person of equal or lesser Priority”** [Annexure **ENM 2’**] That consent is signed by ten (10) beneficiaries. The annexure corresponds to the original copy of the consent which was filed in Court on **10th December 2009**. None of the ten (10) beneficiaries whose names appear in the consent has repudiated their signatures on the said consent.

17. The Applicant further alleges that the Grant was fraudulently obtained by concealing a material fact. Once again the Applicant was long on allegations but short on specifics. What was the fact allegedly concealed. At **paragraph 8** of the Supporting Affidavit the Applicant states that the Petition filed by the Respondents was based on a fraud.

Fraud is an allegation which must be specifically proved, as it is akin to an offence which would attract criminal sanctions.

18. Proof of fraud requires clear and cogent evidence. The standard of proof on allegations of fraud was discussed in the case **Urmila W/O Mahendra Sha Vs. Barclays Bank International Ltd & Another (1979) eKLR** thus:-

“As was said by this Court’s predecessor in RATILAL GORDHANBHAI PATEL V LALJI MAKANJI [1957] EA 314, 317:

“There is one preliminary observation which we must take on the learned judge’s treatment of this evidence: he does not anywhere... expressly direct himself on the burden of proof or on the standard of proof required. Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required. There is no specific indication that the learned judge had this in mind: there are some indications which suggest he had not.” [emphasis my own]

19. Likewise in the case **Kuria Kiarie & 2 Others Vs. Sammy Magera (2018) eKLR** in quoting **Vijay Morjaria Vs Nansingh Madhusingh Darbar & Another [2000] eKLR** the **Court of Appeal** held as follows:-

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts. [Own emphasis]

20. The Applicant submitted that the 1st Respondent forged the signatures of some of the beneficiaries including that of the applicant in order to obtain the Grant. The Applicant has not named the other beneficiaries whose signatures were allegedly forged. No beneficiary has come forward to complain about forgery of their signature.

21. Forgery is a criminal offence. There is no evidence that the Applicant made a report to police regarding the alleged forgery. Finally no evidence of such forgery by way of a document examiners report was placed before the court. Once again this remains an unproven allegation.
22. Finally I find that this summons for revocation of Grant has no merit at all. The same consists largely of unproven allegations. I find no merit in the summons and the same is dismissed in its entirety. Costs will be met by the Applicants.

Dated in Nyeri this 13th day of March 2026.

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MAUREEN A. ODERO
JUDGE