



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
SUCCESSION CAUSE NO. 172 OF 2017
IN THE MATTER OF THE ESTATE OF ROBINSON MWANGI NJOROGE
(DECEASED)

**LOUIS ALVIN KARIUKI AND VALEEN ALICE WANYARA
NDIRANGU (Legal representatives of the Estate of
THERESA NJERI MWANGI (Deceased).....
APPLICANTS**

VERSUS

LUCAS MWANGI.....RESPONDENT

RULING

1. Before Court for determination is the Applicants' Notice of Motion Application dated 25th August, 2025 wherein, they are seeking the following relief(s); -
 - i) **THAT the Honourable Court be pleased to grant the Applicants leave to file additional documentary evidence relating to the Deceased's properties.**
 - ii) **THAT the Applicants documents annexed to this Application be deemed as duly filed upon the payment of the requisite Court fees.**
 - iii) **THAT the costs of this application be in the cause.**

Applicants' Case

2. The Application is predicated on grounds on its face and the Supporting Affidavit sworn by the **Louis Alvin Kariuki** on the same date. He deposes that, at the filing of the Summons for Revocation of Grant dated 7th June 2022, they had not ascertained the extent of the Respondent's intermeddling and non-disclosure of the status of the Deceased's properties and have since made efforts to trace all the Deceased's assets and their actual locations.
3. That in May 2025, the Applicants instructed a surveyor who carried out a survey and prepared a report dated 7th July 2025. That from the said report, it has been established that, whereas some properties were included in the Certificate of Confirmation of Grant issued on 13th November 2019, the same were left out in the Summons for Confirmation dated 16th May 2023.
4. Further, that from the report Parcels 27, 28 and 33 are missing on the map (Bahati/Engarusha Block 4) as well as in the Summons for Confirmation of Grant filed by the Respondent. That some parcels have been sub-divided and their mutation forms are missing from the records and a proper account is required on all the Deceased's Estate.
5. It is averred that the report is necessary to enable the Applicants prosecute the Summons dated 7th June 2022 and for the Honourable Court to establish the extent of nondisclosure on the Respondent's part.

6. It is contended that, if the documents are not allowed on record, they stand to suffer prejudice and the Estate will continue to fall into waste, with some properties being left out in the administration.
7. That, they are willing to attend Court for further cross-examination on the said documents by the Respondent if the Court considers it necessary. Further that Report is neither voluminous nor prejudicial to the Respondent and was filed without delay.
8. That, if the orders sought are denied, the Applicants will be prejudiced and will not be able to justify the grounds for revocation of the Grant issued to the Respondent.

Respondent's Case

9. The Application is opposed by the Replying Affidavit sworn on 27th October, 2025 wherein it is stated that the said survey allegedly carried out in respect of the Deceased's properties does not reflect the correct position and the claim of intermeddling or non-disclosure is untrue, malicious and ill-motived.
10. She avers that, although the Confirmation of grant dated 13th November, 2019 had indeed indicated parcels No. 27, 28, 33 and 475, the same were left out in the Summons for Confirmation of grant filed on 22nd February, 2024 following the discovery of a survey report dated 28th January, 2017 for the reason that:
 - i) The said report had been conducted on instructions of the Late **Theresa Kariuki**, who was one of the administrators of the estate and the Applicants mother herein alongside **Veronica**

Wanjiru Mwangi and **Fr. Peter Ignatius Gichure**, who were the administrators but are now all deceased.

- ii) The said survey report comprehensively identified all the properties of the deceased before his demise as well as the exact number of acres left in his possession as at the time of his demise.
- iii) The report categorized the deceased's plots to include those that had been sold to third-parties and those in respect of which third-parties had encroached on.
- iv) With respect to parcels 27, 28 and 29, and as correctly indicated by the applicants, the same underwent subdivisions and some of the subdivisions were disposed to third parties and the remaining ones are included in the summons of confirmation of grant filed on 22nd February, 2024.
 - a) Parcels no. 194 and 195, which are resultant subdivisions of Parcel 27 are registered in the names of **Mary Wangari Warui** and **Justus Mwangi Ngai** respectively.
 - b) Parcels 165, 166 and 167 which are sub-divisions of parcel 28, are registered in the name of the deceased and are in the Summons for confirmation of grant dated 22nd February, 2024.
 - c) Parcels 75 and 164, being some of the sub-divisions of the parcel 29 and 28 are registered in the names of Susan Warindi and Mohammed Abdi Muse respectively.
 - d) Parcel no. 475, is registered in the name of one **Harrison Kamau Njoroge** and thus does not fall under the estate of the deceased.

e) The report does not list any parcel indicated as no. 33 as being a property of the deceased.

11. That, the report discloses all the rightful properties of the estate of the deceased, which she has endeavored to administer faithfully and the Application and the report intended to be adduced does not reflect the true position of the estate of the deceased and is of no probative value.
12. The hearing of the Application proceeded orally, with counsel for the parties arguing for and against the application.
13. **Mr. Sila** for the Applicants submitted that there will be no prejudice suffered if the evidence is allowed and that the Applicants can be availed for further cross-examination. He added that at paragraph 7 of the Replying Affidavit the Respondent agrees with the Applicants and the report discloses the rightful properties of the deceased therefore there is no reason not to allow the Application.
14. **Mrs. Mukira** for the Respondent submitted that, the properties intended to be included are no longer properties of the deceased. That the current administrator was appointed by the Court, the matter was concluded and certificate of confirmed grant issued.
15. She added that, the Respondent only came in to carry forth that which was rendered void by operation of law and the Applicants appear not to appreciate succession. That the Applicants are not direct beneficiaries of the estate but grandchildren and their mother

consented. The other beneficiaries too have consented except the Applicants.

16. It was contended that the Applicants have frustrated conclusion with them raising issues belatedly. That there was nothing new to warrant admissions the Application should be dismissed to proceed with hearing.
17. In Rejoinder **Ms. Sila** and **Mr. Kokonga** submitted there is a pending summons for revocation of grant and the survey report intended to be produced supports the applicant to determine the acreage of the land of the deceased and it is not voluminous.
18. Reliance was placed in **Section 146** of the **Evidence Act** as read with **Order 18 Rule 10** of the **Civil Procedure Rules** to submit that the Court may exercise discretion and allow further evidence and by virtue of **Article 50** and **159 (2)** of the **Constitution** each Party ought to be given an opportunity to be heard fairly. Reliance was also placed in the case of **Raila Odinga Vs Independent Electoral & Boundaries Commission**.
19. It was argued that, under the Rules of evidence, every party especially defence or Respondent has an opportunity to cross examine

Analysis and Determination

20. Having considered the application, affidavits, submissions of counsel, the sole issue for determination is whether the Application has merit.

21. The record shows that on 14th May, 2024 the Court directed parties to file and exchange their documents prior to commencement of the hearing of the Summons for Confirmation of Grant dated 29th January, 2024, the Protest dated 9th May, 2024 and Summons for revocation of Grant dated 7th June, 2022.
22. This direction was intended to ensure that all parties had a fair opportunity to prepare, to avoid surprises and to facilitate an orderly hearing of the substantive applications.
23. The Court is mindful that, while directions were issued for parties to exchange documents, the law permits the Court to exercise discretion to admit further evidence where it is necessary for the just determination of the matter.
24. The Applicants contend that, certain parcels were omitted in the succession proceedings while the Respondent maintains that the 2017 survey comprehensively captured the estate.
25. I have carefully scrutinized both the survey reports of 7th July 2025 and that of 28th January 2017. On a plain reading, the questions raised by the Applicants appear to have been substantially addressed in the earlier report. That report which was sanctioned by the Applicants' mother documented sub-divisions and transfers which, on the face of the record, appear to have taken place during the lifetime of the deceased.
26. The Applicants have not demonstrated that, the new report as sought to be introduced, discloses fresh evidence of probative value that was

previously unavailable or that, it introduces material that would likely alter the outcome of these proceedings.

27. Based on the foregoing, no sufficient or plausible reason exist to warrant the admission of the additional evidence. Accordingly, the Application dated 25th August 2025 is hereby dismissed.

28. There shall be no orders as to costs this being family matter.

It is so ordered.

Dated, Signed and Delivered at Nakuru

On this 18th day of March, 2026

Mohochi S.M.

JUDGE