

PUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 11 OF 1991

IN THE MATTER OF THE ESTATE OF NZIOKA MUATHAI
(DECEASED)

RAPHAEL NGEI NZIOKA
APPLICANT

AND

AGEOGINAH NTHENYA NZIOKA.....
RESPONDENT

RULING

1. Before this court for determination is a Summons for Revocation or Annulment of Grant dated 23rd October 2024 seeking the following orders;
 - a) That the Grant of Letters of Administration Intestate issued in the High Court at Machakos on 9th June 2021 in Succession Cause Number 11 of 1991 be revoked and or annulled.
 - b) The costs be paid by the Respondent.

2. The Applicant's application is premised on the grounds set out in the application and the supporting affidavit sworn by the Applicant. The crux of the application is that the Applicant, being one of the administrators to the estate of Nzioka Muathai is dissatisfied with the distribution provided in the

partial confirmation of grant confirmed on 9th June 2021. He contends that Rose Peter Nthenge and Elizabeth Nzilani Peter are strangers to the estate and ought not to have been included. . He further avers that the partial grant disinherited him of his rightful shares of his late father's estate. According to him, the Respondent, in collusion with the said strangers, fraudulently obtained the grant with the intention of depriving him off his inheritance. . He asserts that the Respondent concealed material facts, including his name as a beneficiary, and failed to obtain his consent regarding the distribution of Land Parcel No. Muvuti/Kiima Kimwe/14. He states that the Respondent obtained the grant by means of untrue allegation of facts essential in the point of law to justify the grant in that they alleged to be the sole beneficiaries of the deceased.

3. Pursuant to the court's directions on 8th May 2025, the co-administrator, Peter Matheka Nzioka was duly served with the present application through the area chief who filed his report dated 24/9/2025 to confirm service. The Respondent herein did not file a response but appeared in court on 15/10/2025 when the matter came up for hearing.
4. At the hearing, the Applicant urged the court to allow the application. The Respondent, on the other hand, maintained that succession had already been conducted and that each beneficiary had received their share. She argued that the applicant is now attempting to claim her little portion of land

and referred the court to the grant issued on 29th July 2021 urging the court to grant her share of land.

Analysis and Determination

5. I have carefully considered the summons application, the supporting affidavit and the submissions made and the following issues arise for determination;

- a) Whether the Applicant has established sufficient grounds for revocation of the Grant of Letters of Administration Intestate issued on 9th June 2021 within the meaning of section 76 of the Law of Succession Act and the Probate and Administration Rules.**
- b) If the answer to (a) is in the affirmative, whether the Grant and Certificate of Confirmation should be revoked/annulled**

Whether the Applicant has established sufficient grounds for revocation of the Grant of Letters of Administration Intestate issued on 9th June 2021 within the meaning of section 76 of the Law of Succession Act and the Probate and Administration Rules.

6. Section 76 of the Law of Succession Act which provides for revocation or annulment of grant as follows;

76. Revocation or annulment of 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.**

7. The High Court in the case of **In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR)** simply summarized the Section 76 of the Law of Succession Act as follows;

“8. 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 he fails to proceed diligently with administration, or fails

to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

8. It is clear that Section 76 of the Law of Succession Act empowers the Court to revoke or annul a grant at any time where, inter alia, the process of obtaining the grant was defective in substance; or the grant was obtained fraudulently by making a false statement or by concealing some material fact; or by an untrue allegation of a fact essential in point of law. The duty of full and candid disclosure is central to succession proceedings.
9. To begin with, it is necessary to clarify the nature of the order sought to be impugned. The Applicant seeks revocation of what he describes as a “Grant of Letters of Administration issued on 9th June 2021.” However, the record, reveals that no grant was issued on that date. What was issued on 9th June 2021 was a Certificate of Confirmation of Grant. The actual

grant of letters of administration had earlier been issued on 13th March 2018 and dated 21st September 2021.

10. A certificate of confirmation of grant is not, strictly speaking, a grant of representation. It is documentary evidence of the orders made by the court upon confirmation under Section 71 of the Law of Succession Act. The grant itself remains the instrument of representation issued while confirmation merely authorizes distribution of the estate in accordance with the terms approved by the court. That said, Section 76 of the Act provides that “a grant of representation, whether or not confirmed, may at any time be revoked or annulled.” Thus, once a grant has been confirmed, it remains capable of revocation if the confirmation process was tainted by fraud, concealment of material facts, or untrue allegations essential in law.
11. Therefore, although the Applicant has in form referred to revocation of a grant issued on 9th June 2021 which technically relates to the certificate of confirmation, this court will consider the application substantively as one seeking revocation of the grant as confirmed and shall determine whether the statutory grounds under Section 76 have been established.
12. I now turn to examine whether the Applicant has discharged the burden placed upon him by Section 76 of the Law of

Succession Act. In the present case, the uncontroverted record shows:

(a) The Partial Certificate of Confirmation of grant dated 9th June 2021 and issued on 29th July 2021; Grant of letters of administration dated 21st September 2021 were issued by court to Peter Matheka Nzioka and Raphael Ngei Nzioka on 29th July 2021 and 13th March 2018 respectively;

(b) In the Partial Certificate of confirmation of Grant dated 9th June 2021 and issued on 29th July 2021, Plot No. 14 Muputi/Kiima Kimwe; is to be shared as below;

- i. 2/3 to be registered in the name of Ageogina Nthenya Nzioka
- ii. 1/3 to be registered in the name of Rose Peter Nthenge and the same to be valued and be reimbursed to the Applicants.
- iii. 2/3 to be valued and land (without developments) of similar value to be carved from share due to Peter Matheka Nzioki and be registered in the name of Elizabeth Nzilani Peter.

(c) Following the directions issued in court on 19th July 2022, the court ordered that the Deputy Registrar to sign the Land Control Board Application forms, sub-division forms and transfers/transmissions forms to facilitate transfers of two thirds (2/3) share plot No. 14 Muputi/Kiima Kimwe to be registered in the name of

Ageogina Nthenya Nzioka and a third (1/3) to be registered in the name of Rose Peter Nthenge.

13. The Applicant's complaint falls squarely within the first three limbs of Section 76. He alleges that:
 - a) Certain beneficiaries were strangers to the estate;
 - b) His consent was not obtained in respect of the distribution;
 - c) There was concealment and misrepresentation in presenting some persons as beneficiaries;
 - d) The distribution had the effect of disinheriting him.
14. This court must therefore interrogate whether these allegations meet the evidentiary and legal threshold required under Section 76. Revocation of grant is a serious remedy and not be automatic upon mere allegation and assertions. In **Re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR)**, the court emphasized that concealment of material facts or misrepresentation must be demonstrated by evidence and not by mere assertions.
15. In the present case, the supporting affidavit filed by the Applicant does not annex any documentary evidence. No documentary proof has been placed before this court to demonstrate that the alleged "strangers" are indeed not beneficiaries. No birth certificates, identity documents, prior pleadings or earlier affidavits in the cause have been annexed to show that the Respondent misrepresented the list of beneficiaries at the stage of confirmation. The absence of

annexures is not merely a procedural lapse; it goes to the substance of the application. Allegations of fraud or concealment must be specifically pleaded and strictly proved. Fraud is a serious imputation. Although succession proceedings are civil in nature and proof is on a balance of probabilities, allegations of fraud will require a higher standard of proof than ordinary civil claims.

16. From the record before this court, the Applicant was himself one of the administrators. The grant was issued jointly. The certificate of confirmation reflects a distribution that was sanctioned by the court. There is no evidence placed before this court to show that the confirmation proceedings were conducted without his knowledge or participation. There is equally no evidence demonstrating that he filed an objection to the confirmation at the time or that he was excluded from the process.
17. The Applicant's grievance appears to be directed more at the mode of distribution rather than at the legality of the grant itself. Section 76 is not designed to re-open distribution merely because a beneficiary is dissatisfied. Where a party is aggrieved by the terms of confirmation, the appropriate recourse may lie in review or appeal, not necessarily revocation, unless the distribution was procured through fraud or concealment.

18. The court also notes that the Respondent did not file a replying affidavit. However, the absence of a response does not relieve the Applicant of the burden of proof. The legal burden remains with the Applicant to demonstrate, through evidence that the grant was obtained through concealment of material facts or false statements. Mere opposition by way of oral statements during hearing does not cure evidentiary gaps.
19. On the issue of consent, Rule 40(8) of the Probate and Administration Rules requires written consents of beneficiaries where a grant is being confirmed. However, the Applicant has not annexed the confirmation application to demonstrate absence of consent nor has he placed evidence showing that his signature was forged or omitted. Being a co-administrator, his participation in the process is presumed unless rebutted by evidence.
20. The record further shows that subsequent court directions were issued to facilitate subdivision and transfer, including orders for execution by the Deputy Registrar. This indicates that the confirmation stage had been completed and implemented through court sanctioned processes. The Applicant has not demonstrated that those proceedings were conducted in secrecy or in violation of procedural safeguards.
21. In essence, the Applicant has alleged fraud, concealment and untrue allegations but has not substantiated the same

with material evidence. The court cannot revoke a grant on the basis of suspicion, dissatisfaction, or intra-family disagreement. Revocation is a drastic remedy that unsettles vested rights and completed transactions, and must therefore be exercised cautiously and upon solid proof.

22. I therefore find that the Applicant has not established that the proceedings to obtain the grant were defective in substance, that the grant was obtained fraudulently by making a false statement; that there was concealment of material facts; or there was any untrue allegation of a fact essential in law to justify the grant. Accordingly, the threshold under Section 76 of the Law of Succession Act has not been met.
23. Having found that no sufficient grounds have been established under Section 76, it follows that there is no legal basis upon which this court can revoke or annul the grant and the certificate of confirmation issued on 29th July 2021.
24. The Applicant's grievance appears to be rooted in dissatisfaction with the distribution rather than in demonstrable procedural illegality or fraud. Succession proceedings must eventually attain finality. The court cannot lightly disturb confirmed grants in the absence of cogent evidence.

25. In that regard, the Summons for Revocation or Annulment of Grant dated 23rd October 2024 lacks merit and is hereby dismissed.

26. Given the nature of the dispute and the relationship between the parties, each party shall bear their own costs.

Orders accordingly.

Dated, signed and delivered at Machakos this 12th day of March, 2026.

RHODA RUTTO
JUDGE

In the presence of;

.....Applicant

.....Respondent

Selina Court Assistant