

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**FAMILY DIVISION**  
**PROBATE & ADMINISTRATION CAUSE NO. 1063 OF 2015**

***IN THE MATTER OF THE ESTATE OF JOHN WAMBUGU KARIUKI***  
***(DECEASED)***

**MARY WANGUI NDERITU**  
**ALIAS MARY WANGUI KARIUKI** ..... **APPLICANT**

**VERSUS**

**MERCY MUMBI KARIUKI**  
**ALIAS MERCY MUMBI NDUMBI** ..... **RESPONDENT**

**RULING**

1. Before the Court is Summons for Revocation and/or Annulment of Grant dated 22 May 2025, brought under the provisions of sections 47 and 76 of the Law of Succession Act, alongside Rules 44, 63, and 73 of the Probate and Administration Rules, seeking the immediate revocation of the confirmed Grant of Probate with Written Will Annexed that was issued to the Respondent on 20 September 2016, and subsequently rectified on 22 May 2017.

2. The Deceased passed away testate on 28 December 2014. Under the Deceased's Last Will and Testament dated 24 October 2013, the Respondent was appointed as an executor and trustee. The specific controversy triggering this Application concerns the Respondent's administrative actions regarding Land Parcel No. NAIROBI/BLOCK 47/1134 (formerly known as Plot No. 7583/226 before conversion). Under Clause 10 of the Deceased's Will, this property was devised to the Trustees upon an express trust to sell.
3. The Applicant alleges that the Respondent unilaterally, unlawfully, and clandestinely sold this property to third parties without the Applicant's knowledge, failed to render statutory accounts, and misappropriated the sale proceeds. Consequently, the Applicant seeks the revocation of the Grant, the appointment of herself and a co-Administrator, and a suite of preservatory orders including a temporary injunction, an inhibition order on the land, and a freezing order targeting a specific bank account.
4. The Respondent vehemently opposes the Application through her Replying Affidavit sworn on 22 June 2025 and submissions dated 14 November 2025. She contends that the sale of the property was a lawful execution of her fiduciary duty under the Will, that the sale proceeds are preserved in a stakeholder account pending the issuance of rates clearance certificates by the Nairobi City County Government, and that the Application is a premature abuse of the court process.

### **The Applicant's Case**

5. The Applicant's grievances and legal postulations are detailed in her Affidavit in Support sworn on 22 May 2025 and her submissions dated 3 October 2025. The Applicant, who is the surviving widow of the Deceased and a primary beneficiary under the Will, advances her case on several grounds.

6. The Applicant asserts that since the confirmation of the Grant of Probate in 2016, the Respondent has failed to proceed diligently with the administration of the estate. The Applicant avers that the Respondent has completely ignored the mandatory statutory dictates of section 83(e) and (g) of the Law of Succession Act, having failed to file an inventory or render a full and accurate account of her administration to the Court.
7. The Applicant contends that while Clause 10 of the Will authorized the sale of Land Parcel No. NAIROBI/BLOCK 47/1134, it directed that the net proceeds be distributed equally among the Deceased's wife and children. The Applicant alleges that the Respondent unilaterally and clandestinely disposed of the property to two third parties, Fiona Wambui Ngumi and Isabel Wahu Waiganjo, deliberately keeping the Applicant in the dark regarding the transaction's timing, process, and consideration.
8. The Applicant expresses grave apprehension that the sale proceeds have been deposited into Absa Bank Account No. 2038845902, held in the name of KARMUSEED LIMITED, an entity the Applicant claims is closely associated with the Respondent. Due to this alleged commingling and risk of dissipation, the Applicant seeks a freezing order over the said account, alongside an inhibition order under the Land Registration Act to prevent the registration of the property transfer to the purchasers.
9. The Applicant also deposes to incidents of intimidation, specifically citing an event in 2023 reported at Karen Police Station (OB No. 22/25/04/2025), which she subjectively links to her exclusion from the estate's administration.
10. The Applicant heavily relies on the holding in ***In re Estate of the Late Mwaura Makuro (Deceased) eKLR***, where the Court underscored that the duty to account is a strict statutory obligation without discretion, and failure to

file accounts within six months of confirmation justifies revocation under section 76(d) of the Act.

### **The Respondent's Case**

11. The Respondent's defence is articulated in her Replying Affidavit and corresponding submissions. The Respondent characterizes the application as fundamentally flawed, factually inaccurate, and legally unmerited.
12. The Respondent relies on the express wording of Clause 10 of the Will, which devised the property to the trustees "upon trust to sell the same". She posits that as an Executor, her primary fiduciary duty is to give effect to the testator's intentions. To this end, a formal Letter of Offer was issued on 10 October 2024, and an Agreement for Sale was executed on 22 November 2024 for a purchase price of Kshs. 65 million.
13. The Respondent categorically denies the allegation that the sale proceeds were misappropriated or deposited into the KARMUSEED LIMITED account. She adduces documentary evidence—specifically, a letter dated 10 June 2025 from the purchasers' Advocates, Valentine Kariuki & Co. Advocates—which confirms that the entire purchase price is securely held on a stakeholder basis by the Respondent's Advocates, Wanjama & Associates LLP, pending completion of the transaction.
14. The Respondent contends that the transaction is 90% complete. The sole reason the proceeds have not been distributed is an external administrative bottleneck at the Nairobi City County Government. The billing for the converted parcel of land has been delayed due to system technicalities, impeding the generation of rates payment receipts necessary to finalize registration. She argues that this constitutes a reasonable cause for the delay under section 76(d).

15. The Respondent asserts that issuing an inhibition order or revoking the Grant at this late stage of conveyancing would paralyse a lawful transaction, unfairly prejudice innocent third-party purchasers, and expose the estate to liability for breach of contract.

### **Analysis & Determination**

16. Upon review of the pleadings, the Supporting and Replying Affidavits, and the rival legal submissions, this Court distils the following determinative issues:

- (i) Whether the Respondent breached her fiduciary duties by executing the sale of Land Parcel No. NAIROBI/BLOCK 47/1134 without the explicit prior consent of the Applicant, in the context of a testamentary trust for sale.
- (ii) Whether the Applicant has established sufficient statutory grounds under section 76(d) of the Law of Succession Act to warrant the revocation and annulment of the Grant of Probate.
- (iii) Whether the Applicant has met the strict legal threshold for the issuance of preservative orders, specifically a freezing order over the alleged bank account and an inhibition order under the Land Registration Act.
- (iv) What consequential orders and alternative remedies the Court should grant to ensure the just and expeditious administration of the estate.

### **Fiduciary Duties and the Testamentary Trust for Sale**

17. The foundation of the Applicant's grievance is her assertion that the Respondent acted unilaterally and clandestinely in selling the Karen property, keeping her, a primary beneficiary and widow, entirely in the dark.

18. Clause 10 of the Deceased's Will states:

*"I devise my plot number 7583/226 to my trustees upon trust to sell the same and after paying any property taxes or other outgoings related to the said plot any legal and appraisal fees distribute the proceeds of sale equally between my wife Mary Wangui and my children..."*

19. In trust and succession jurisprudence, an explicit testamentary directive to hold real property upon trust to sell creates an immediate and binding trust for sale. When such a trust is created, the doctrine of equitable conversion applies. The property is, in the eyes of equity, treated as converted into money from the moment the instrument becomes effective—in this case, upon the testator's death. The beneficiaries' core legal interest is, therefore, not in the physical land itself, but in the proceeds of the sale.

20. Under section 82(b) of the Law of Succession Act, a personal representative possesses the statutory power to sell any of the free property of the deceased to facilitate distribution. Furthermore, section 13 of the Trustee Act empowers personal representatives vested with a trust for sale to sell the property by public auction or private treaty, subject to such conditions as they deem fit, without requiring ongoing judicial or beneficiary micromanagement.

21. The Applicant argues that the failure to consult her or obtain her consent prior to the sale renders the transaction unlawful and amounts to a breach of fiduciary duty. It is necessary to differentiate between the duty to act in the best interests of the beneficiaries and a non-existent legal obligation to seek unanimous consensus on administrative execution. An executor's primary

fidelity is to the Will. As the Court articulated in *Mumo v Mbau 2 KLR 123*, Courts are highly reluctant to interfere with the exercise of discretion by trustees unless it is affirmatively shown that they have acted in bad faith, fraudulently, or outside the scope of the powers conferred upon them.

22. The Respondent, acting as the executor and trustee, identified purchasers and secured a purchase price of Kshs. 65 million through a formal Letter of Offer and an Agreement for Sale. The Applicant has not adduced any independent valuation report to suggest the property was sold at a gross undervalue, nor is there evidence that the Respondent sold the property to herself or a proxy to defraud the estate—actions which would clearly trigger the prohibitions against self-dealing highlighted in equitable trust principles.
23. It is instructive to contrast the present scenario with cases where executors attempt to sell property prematurely or contrary to statutory protections. For instance, in the widely cited case in [\*In re Estate of Mark Kiptarbei Too \(Deceased\) \[2024\] KEHC 1024 \(KLR\)\*](#) the Court dismissed an application to sell estate land prior to the confirmation of the Grant, ruling it premature as the wealth and beneficiaries had not been fully ascertained. Here, however, the Grant of Probate was confirmed in 2016, and the sale was a direct execution of a confirmed testamentary instruction.
24. While the highest standards of fiduciary duty demand transparency and the provision of information to beneficiaries upon request, a lack of prior consultation before executing a mandated trust for sale does not invalidate the sale. The Deceased did not insert a condition precedent in his Will requiring the Applicant's consent prior to the sale. The Respondent, therefore, acted within her legal and testamentary mandate.

### Failure to Render Accounts and Statutory Grounds for Revocation

25. The Applicant heavily relies on section 76(d) of the Act, arguing that the Respondent's failure to proceed diligently with the administration and to render accounts justifies the revocation of the Grant of Probate.
26. Section 76 of the Act provides the exclusive legal framework for the revocation or annulment of a Grant. Specifically, section 76(d) stipulates that a Grant may be revoked if:
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either— (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.*
27. Section 83 of the Act imposes mandatory duties on personal representatives to provide a full and accurate inventory within six months of the Grant, and a full account of the completed administration within six months of confirmation.
28. The Applicant robustly relies on the holding in ***In re Estate of the Late Mwaura Makuro (Deceased) [2021] eKLR***, where the Court replaced an administrator for failing to distribute the estate or file accounts, emphasizing that the duty to account is a strict statutory obligation. In that matter, the Court found an inexcusable failure to proceed diligently, which constituted a clear statutory ground for revocation under section 76(d).
29. However, the power to revoke a Grant is not automatic; it is a highly discretionary remedy that must be exercised judiciously, proportionately, and solely upon sound grounds. Revocation is the capital punishment of probate

law. In the persuasive authority of ***Albert Imbuga Kisigwa v Recho Kawai Kisigwa [2016] eKLR***, the Court emphatically cautioned:

*"Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant."*

30. This standard requires the Court to evaluate whether the Respondent's omissions occurred without reasonable cause, as explicitly phrased in section 76(d).
31. In ***In re Estate of Peter Alusiola Mulamula (Deceased) [2020] eKLR***, the Court revoked a Grant because the administratrix actively concealed the existence of a key beneficiary and failed to disclose all assets, rendering the proceedings fundamentally defective under section 76(b) and (c). Similarly, in ***In re Estate of Beatrice Wanjiku Ng'ok (Deceased) [2020] eKLR***, the Court annulled a Grant where the administrator fraudulently concealed four parcels of land and transferred them to himself prior to confirmation. In these instances, actual fraud, concealment, and self-dealing formed the bedrock of the revocation.
32. Conversely, in ***In re Estate of Joseph John Karanja (Deceased) [2020] eKLR***, an application to revoke a Grant based on allegations of neglect and failure to account was dismissed. The Court held that the applicant failed to discharge the burden of proof on a balance of probabilities to show that the administrators acted without reasonable cause or that the delays were a result of indolence rather than administrative complexities. Likewise, in ***In re Estate of Gachii Wambugu (Deceased) KEHC 6910***, an application for

revocation based on alleged concealment was dismissed for failing to meet the high evidentiary threshold of section 76.

33. In this instance, it is an undisputed fact that the Respondent has not filed final accounts as mandated by section 83. However, the Respondent has furnished a substantial reasonable cause for the current delay in distributing the Kshs. 65 million. The conveyancing process is stalled due to bureaucratic delays at the Nairobi City County Government in generating rates clearance certificates for the newly converted parcel.
34. Furthermore, the status of the funds provides critical exculpatory context. In conveyancing practice, when a deposit or the balance of a purchase price is paid prior to the completion of registration, it is standard practice governed by the Law Society Conditions of Sale for the vendor's Advocate to hold the funds on a stakeholder basis. A stakeholder is an independent escrow agent holding the money in trust for both the vendor and the purchaser until the transaction is successfully completed or lawfully rescinded.
35. The correspondence dated 10 June 2025 from Valentine Kariuki & Co. Advocates confirms unequivocally that the full purchase price is currently held on a stakeholder basis by Wanjama & Associates LLP because the provisional rating account has not been opened to finalize registration. Because the transaction is legally incomplete, the funds have not yet vested absolutely in the estate. The Respondent cannot distribute funds she does not yet legally control. Therefore, her failure to disburse the Applicant's share at this exact moment is not a product of malice, misappropriation, or indolence, but a direct consequence of standard conveyancing safeguards and external county government delays.
36. While the Respondent's overall failure to file intermediate accounts since 2016 constitutes a technical breach of section 83, the Court must weigh the

proportionality of the remedy. In ***Peter v Mutua [2022] KEHC 13308 (KLR)***, the Court held that where revoking a Grant would cause more injustice or disrupt an ongoing process, the Court should opt for an alternative that ensures the estate is properly administered rather than outright revocation. Revoking the Grant at this juncture would abruptly paralyse a 90% complete transaction, inevitably invite breach of contract litigation from the innocent purchasers, and severely prejudice the estate and all beneficiaries, including the Applicant.

37. Consequently, the Court finds that the Applicant has failed to meet the strict evidentiary threshold required under section 76(d) to prove that the Respondent has failed to proceed diligently without reasonable cause. The prayer for the revocation and annulment of the Grant of Probate is, therefore, declined.

#### Preservatory Orders

38. The Applicant seeks drastic interlocutory reliefs designed to preserve the estate's substratum, specifically an inhibition order on the land title and a freezing order on a bank account.
39. The jurisdiction to issue preservatory orders in succession causes flows from section 47 of the Act and Rule 73 of the Probate and Administration Rules, which preserve the Court's inherent power to prevent the dissipation of estate assets. As the Applicant correctly notes, referencing ***In re Estate of Prisca Ong'ayo Nande (Deceased) eKLR***, a preservatory freezing order requires the applicant to demonstrate a good arguable case and a real, imminent risk of dissipation of assets. The Court granted the order because the administrator had already depleted bank accounts without explanation.
40. The evidentiary foundation for the Applicant's prayer in the instant case, however, is fatally flawed. The Applicant alleges, based merely on

apprehension, that the sale proceeds were deposited into Absa Bank Account No. 2038845902 held in the name of KARMUSEED LIMITED. Absolutely no bank statements, tracing reports, or independent documentary evidence were annexed to substantiate this highly specific and damaging claim.

41. Conversely, the Respondent has provided concrete, verifiable documentary proof—a letter from an independent third-party law firm—confirming that the full purchase price is held in the client trust account of Wanjama & Associates LLP on a stakeholder basis. The Court cannot issue a draconian freezing order against a third-party corporate entity's bank account based on uncorroborated suspicion, especially when documentary evidence securely locates the funds in a regulated Advocate's trust account. Allegations of financial mismanagement by administrators must be proved on a balance of probabilities. The Applicant has failed to discharge this burden. The prayer to freeze the Absa Bank account is denied.
42. The Applicant further seeks a prohibitory/inhibition order against any dealings on Land Parcel No. NAIROBI/BLOCK 47/1134, ostensibly relying on section 68 of the Land Registration Act, which empowers courts to issue inhibition orders to prevent the registration of dealings with land pending case resolution.
43. The legal threshold for an inhibition order requires the applicant to demonstrate that: (i) the suit property is at risk of being disposed of or alienated to their detriment; (ii) refusal to grant the order would render the proceedings nugatory; and (iii) they have an arguable case.
44. In the present case, the property is, indeed, being alienated. However, it is being alienated lawfully pursuant to an express testamentary trust for sale created by the Deceased himself. The purchasers have executed a binding

Agreement for Sale and fulfilled their primary obligation by depositing the full purchase price of Kshs. 65 million. They are *bona fide* purchasers for value. Issuing an inhibition order at this advanced stage would frustrate a valid contract, deny the purchasers their equitable right to the property, and expose the estate to substantial damages for breach.

45. Furthermore, as established earlier regarding the doctrine of equitable conversion, the Applicant's core beneficial interest lies in the proceeds of the sale, not in the retention of the physical land. Because the sale is lawful and the proceeds are secure in a stakeholder account, an inhibition order is neither necessary nor justifiable in law. The prayer for an inhibition order is denied.

#### Supervisory Jurisdiction and Alternative Remedies

46. Although the Court has declined to revoke the Grant or issue the requested injunctions, it cannot turn a blind eye to the Applicant's legitimate grievances regarding transparency and the inordinate delay in the formal rendering of accounts. The Respondent holds a fiduciary office of high trust. Her failure to communicate effectively with the Deceased's widow regarding the sale of a prime asset, even if not legally fatal to the conveyancing transaction itself, breeds unnecessary suspicion, erodes trust, and spawns the very type of costly litigation witnessed here.
47. The Court's supervisory jurisdiction under section 47 of the Act empowers it to make necessary orders to ensure the expeditious, transparent, and equitable administration of the estate. In jurisprudence where administrators have delayed in rendering accounts but revocation is deemed a disproportionate response, courts frequently invoke this jurisdiction to order the mandatory filing of accounts and impose strict timelines for distribution.

48. To protect the Applicant's beneficial interest in the Kshs. 65 million and to cure the transparency deficit that triggered this application, the Court will issue firm directives governing the completion of the sale and the immediate distribution of the proceeds. Once the Nairobi City County rates clearances are obtained and the transfer to the purchasers is registered, the stakeholder status of the funds will dissolve, and the funds will crystallize as estate assets. At that precise moment, the Applicant is legally entitled to her equal share as unequivocally stipulated in Clause 10 of the Deceased's Will.
49. Accordingly, this Court makes the following orders:
- (i) The Applicant's Summons for Revocation/Annulment of Grant dated 22 May 2025 is hereby dismissed.
  - (ii) Upon the successful registration of the transfer and the release of the funds from stakeholder status, the Respondent shall, within 14 days, distribute the net proceeds strictly in accordance with Clause 10 of the Deceased's Will.
  - (iii) The Respondent shall file in Court a comprehensive, full, and accurate inventory of the assets and liabilities of the estate, together with a full accounting of her administration within 60 days of this Ruling, pursuant to section 83(e) and (g) of the Law of Succession Act.
  - (iv) Each party shall bear their own costs of this Application.

**DATED AND DELIVERED AT NAIROBI THIS 30 DAY OF MARCH 2026**

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

Delivered on virtual platform in the presence of:

For the Applicant: Mr George Oduor

for the Respondent: N/A

Court Assistant: Lucy Mwangi

Ruling