



REPUBLIC OF KENYA



**In re Waiganjo (Deceased) (Probate & Administration E354 of 2022)
[2026] KEHC 4091 (KLR) (Family) (30 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4091 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

PROBATE & ADMINISTRATION E354 OF 2022

H NAMISI, J

MARCH 30, 2026

**IN THE MATTER OF THE ESTATE OF FREDRICK
CHRISTOPHER KABUBA WAIGANJO (DECEASED)**

BETWEEN

EASTSIDE DEVELOPMENT LTD OBJECTOR

AND

TED DAVE WAIGANJO RESPONDENT

RULING

1. Before the Court is Summons for Revocation of Grant dated 11 July 2025, brought under the provisions of section 76 (a), (b), and (c) of the *Law of Succession Act* read together with Rules 44 and 73 of the Probate and Administration Rules. The application is instituted by Eastside Development Limited, asserting the status of an Objector and Interested Party. Through this application, the Objector seeks the revocation, annulment, and absolute cancellation of the Grant of Letters of Administration ad Litem that was issued to the Respondent on the 22 March 2022.
2. The gravamen of the Objector's Application is predicated on grave allegations of material non-disclosure, fraudulent misrepresentation, and a gross abuse of the judicial process. It is asserted that the Respondent obtained the Limited Grant ad Litem by deliberately concealing the historical fact that the estate of the Deceased had already been subjected to prior probate proceedings, fully administered, and distributed by the Deceased's widow, the late Joyce Ronnie Waiganjo, in her capacity as the appointed administratrix. The Objector further contends that the Respondent has unlawfully attempted to delegate his fiduciary and statutory duties as an administrator to a third party, one Kelvin Balongo, via a Specific Power of Attorney. This delegation, the Objector argues, is in blatant contravention of the established legal maxim delegatus non potest delegare.



3. Conversely, the Respondent vehemently opposes the Application through a Replying Affidavit sworn on 21 July 2025, supported by written submissions dated 24 November 2025. The Respondent asserts that the Grant Ad Litem was lawfully and legitimately obtained for the specific, restricted purpose of instituting Environment and Land Court (ELC) Suit No. 123 of 2022. This suit was purportedly filed to recover estate properties—specifically L.R. No. 209/9779—that were allegedly transferred fraudulently. The Respondent maintains that while the estate of Joyce Ronnie Waiganjo was, indeed, administered, specific assets belonging to the late Fredrick Christopher Waiganjo, including L.R. No. 309/332 (Kileleshwa) and the suit property, were visibly omitted from her estate's Will and distribution schedule. The Respondent, therefore, posits that these assets remained unadministered, thereby justifying the issuance of a limited Grant to secure them, especially given that the executors of Joyce Ronnie Waiganjo's estate had concluded their mandate.
4. The evidentiary record before this Court indicates that in the Petition for the Grant ad Litem, the Respondent swore an Affidavit in Support averring categorically that the Deceased died intestate in October 1995 and that representation had not been raised to his estate. The Objector posits that this sworn deposition was a deliberate and calculated falsehood, as representation had undeniably been raised through the appointment of Joyce Ronnie Waiganjo in 1999, and subsequently through her Executors in 2009. The Objector relies on the Affidavit of Emmanuel Okello, which annexes official copies of the original 1999 Grant, the Assent transferring properties to Joyce Waiganjo, and the 2009 Grant of Probate issued to Kiran Manubhai Patel and Ann Kibutu.
5. The Respondent, in his defence, does not deny the existence of the prior Grants. Instead, he advances an argument rooted in the doctrine of unadministered assets. He argues that L.R. No. 309/332 (Kileleshwa) and the suit property L.R. No. 209/9779 were visibly excluded from Joyce Ronnie Waiganjo's Will. Therefore, he contends, these specific properties remained part of Fredrick's unadministered estate. The Respondent further submits that since the Executors of Joyce's estate had concluded their administrative mandate upon all beneficiaries attaining the age of 25, the beneficiaries were rendered legally incapacitated to protect the newly discovered assets without a fresh Grant. Consequently, by the mutual consent of all siblings, the Respondent acquired the Ad Litem grant to secure the assets.
6. Regarding the Power of Attorney, the Respondent justifies the delegation of his duties to Kelvin Balongo by citing a personal oral speech challenge, which he claims necessitates a representative to testify and prosecute the ELC matter on his behalf.

Analysis & Determination

7. The Court isolates the following primary, interlocking issues for determination:
 - i. Whether the proceedings to obtain the Limited Grant of Letters of Administration ad Litem were fundamentally defective and marred by fraudulent concealment of material facts within the meaning of Section 76 of the *Law of Succession Act*.
 - ii. Whether the proper legal procedure for dealing with assets allegedly omitted from a confirmed and distributed estate is the institution of a parallel succession cause or an application for review of the original grant's distribution orders.
 - iii. Whether the scope of a Grant ad Litem permits the substantive administration of an estate, or whether it is strictly confined to purposive, temporary representation.
 - iv. Whether the Limited Grant of Letters of Administration Ad Litem issued on 22 March 2022 ought to be revoked, and the ensuing legal and cost consequences thereof.



Fraudulent Misrepresentation and Concealment of Material Facts

8. The statutory bedrock governing the revocation or annulment of a Grant of representation is section 76 of the *Law of Succession Act*. The provision is couched in clear, unambiguous language, stipulating that a Grant of representation, whether confirmed or not, may be revoked or annulled at any time if the Court decides that:
 - (a) the proceedings to obtain the grant were defective in substance;
 - (b) 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) 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.
9. The jurisprudence surrounding section 76 is unequivocal: probate proceedings operate in rem, meaning they bind the whole world. Consequently, the law demands the highest standard of utmost good faith from any individual petitioning the Court for a Grant of representation. The concealment of a prior Grant, the existence of other beneficiaries, or the true historical nature of the estate constitutes a fatal breach of this foundational duty.
10. In the instant case, the Respondent swore an Affidavit in support of the Petition for the Grant ad Litem averring that the Deceased died intestate and that no prior representation had been raised to his estate. This statement is demonstrably, and factually, false. The documentary evidence presented by the Objector—which the Respondent has expressly conceded to in paragraph 5 of his Replying Affidavit—proves beyond peradventure that a Grant of Probate was, indeed, issued to the late Joyce Ronnie Waiganjo in 1999. Following this Grant, the estate was subsumed into her personal estate upon confirmation and the subsequent execution of an Assent.
11. The Respondent's failure to disclose to the Court the existence of the 1999 Grant to Joyce Waiganjo, and the subsequent 2009 Grant to Kiran Manubhai Patel and Ann Kibutu in Succession Cause No. 2730 of 2008, constitutes a textbook example of concealment of material facts under section 76(b) of the Act. The materiality of this concealment cannot be overstated. Had the probate court in 2022 been made aware that the estate of the Deceased had already been the subject of prior, finalized probate proceedings that culminated in an Assent and a subsequent testamentary disposition by the widow, the Court would have immediately recognized that it lacked the jurisdiction to issue a fresh, independent Grant.
12. The courts have consistently adopted a zero-tolerance approach toward litigants who obtain Grants through non-disclosure. In the case of *Charles Mukonu Kiruki v Celina Nyai Kiruki* [2017] eKLR, the Court revoked a grant where an administrator deliberately concealed the existence of a widow and proceeded to file for succession independently. Similarly, in *In re Estate of Nazir Khan Mohamed (Deceased)* eKLR, it was held that any grant obtained by withholding critical information regarding the true state of affairs of an estate is inherently defective and must be struck down. Furthermore, in *In re Estate of M'mwongo Kichiu* [2022] eKLR, the Court emphasized that the Court retains the inherent power to revoke even a confirmed grant if it is demonstrated that it was obtained through fraudulent misrepresentation or untrue allegations of fact regarding the status of the estate or its beneficiaries.
13. The Respondent's current contention that he disclosed all material facts is unsupported by the primary record herein. A Petition for a Grant must be evaluated on the face of the pleadings and supporting affidavits filed at the exact time of the application, not on retrospective, ex post facto justifications provided in subsequent revocation proceedings. The assertion that the estate was



completely unadministered was an untrue allegation of a fact essential in point of law to justify the Grant, falling squarely within the strict meaning of section 76(c) of the Act. Therefore, the foundational basis upon which the 22 March 2022 Grant was issued is irremediably tainted by non-disclosure and must fail.

Omitted Assets and Parallel Causes

14. The Respondent mounts a defence premised on the doctrine of newly discovered or unadministered assets. It is argued that because specific parcels of land, namely L.R. No. 309/332 (Kileleshwa) and L.R. No. 209/9779, were purportedly omitted from Joyce Ronnie Waiganjo's Will, they reverted to the status of unadministered assets of Fredrick's original estate. It is on this basis that the Respondent attempts to justify the necessity of a fresh Ad Litem Grant.
15. This argument necessitates a critical and exhaustive examination of the procedural mechanisms available under the Act for dealing with assets discovered after a Grant has been confirmed and an estate distributed. The courts have developed robust jurisprudence dictating that the discovery of new assets does not, under any circumstances, warrant the filing of a parallel succession cause.
16. In the highly persuasive and widely cited authority of *In re Estate of Charles Kibe Karanja (Deceased)* [2015] eKLR, Musyoka J. engaged in a meticulous analysis of this exact procedural dilemma. The Court held that where new assets are discovered post-distribution, the proper legal avenue is not to seek a fresh grant, nor is it to merely apply for the rectification of the certificate of confirmation under Section 74 of the Act. Instead, the applicant must file an application for the review of the original distribution orders under Rule 63 of the Probate and Administration Rules.
17. The rationale provided in *Charles Kibe Karanja* is highly instructive and bears reproduction:

“If a party wishes to have the assets of the estate redistributed or there is discovery of new assets that were not available or had not been discovered at the time of distribution... it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be effected without touching the orders made by the Court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate... The proper approach ought to be an application for review of the orders made at the confirmation of the grant.”.
18. This foundational principle was further crystallized in the recent decision of *In re Estate of Onesmus Kibira Wanjohi (Deceased)* [2025] KEHC 4079 (KLR), where the Court reiterated the absolute necessity of procedural adherence and the finality of judicial decisions regarding estate distribution. When an estate has been administered, the unity of that estate must be rigorously preserved within a single court file to prevent conflicting orders, double administration, and the fracturing of the estate's history.
19. This position was unequivocally reaffirmed in *In re Estate of Philip King'ori Muratha (Succession Cause E315 of 2022)* KEMC 74 (KLR). In that case, the Court ruled that adding a newly discovered property title post-confirmation constitutes a fundamental change requiring a formal review of distribution orders under Rule 63, and absolutely cannot be achieved through a mere rectification application or the initiation of new proceedings.
20. In this instance, the Respondent's course of action was fundamentally flawed and legally incompetent. Assuming that L.R. No. 209/9779 and L.R. No. 309/332 were indeed the rightful property of the late Fredrick Waiganjo and were inadvertently omitted from Joyce Waiganjo's subsequent administration



and Will, the Respondent was legally obligated to file an application for review within the original 1999 Succession Cause, or alternatively, within Succession Cause No. 2730 of 2008 (Estate of Joyce Ronnie Waiganjo), which had legally subsumed the primary assets of the Deceased.

21. By deliberately bypassing the existing, confirmed probate records and unilaterally opening Succession Cause No. E354 of 2022 under the guise of an unadministered intestacy, the Respondent engaged in a severe abuse of the court process. The law does not permit a party to bifurcate an estate simply because an asset was discovered post-confirmation.

The Nature and Scope of a Limited Grant Ad Litem

22. The Respondent attempts to shield his actions by arguing that the Grant obtained was merely a Limited Grant ad Litem, issued specifically for the purpose of filing ELC Case No. 123 of 2022. It is crucial to demystify the legal nature of an Ad Litem Grant to understand why its deployment in this context is inappropriate.
23. Under Section 54 of the Act and Rule 73 of the Probate and Administration Rules, the Court is empowered to issue Grants tailored to urgent or exceptional situations. A Grant ad Litem is a purposive, temporary, and highly restricted instrument. It is designed solely to enable a person to represent the estate of a deceased in legal proceedings, either as a plaintiff or defendant, where no full grant of representation has yet been issued or where the substantive administrator is unable to act.
24. However, the issuance of a Grant ad Litem presupposes that the estate is otherwise unrepresented in the specific capacity required. As elucidated by the Court in *In Re the estate of Helena Wangechi Njoroge (Deceased)* [2015] eKLR, a Grant ad litem does not confer the substantive powers set out in Section 82 of the Act, nor does it allow the discharge of duties under Section 83, which are reserved for the holder of a full, substantive grant. Furthermore, as held in *Virginia Wangari Ndindi V Ann Ngima Mari & Another* [2017] eKLR, the suit envisaged to be filed on the strength of an Ad Litem grant is a civil suit, not an interlocutory application within a succession case.
25. In *Lydia Ntembi Kairanya & Another v Attorney General* [2009] eKLR, the Court eloquently summarized the restrictive nature of limited grants, stating that if an applicant asks for limited letters of administration, they must be ready to operate strictly within that limited power—metaphorically noting that “if you ask for a quarter bread, expect just that and no more”.
26. In the present scenario, the Respondent utilized the Grant ad Litem not as a temporary bridge to preserve an unrepresented estate, but as a backdoor mechanism to bypass the substantive procedural requirements of reviewing a confirmed, historical Grant. Because representation had already been raised in 1999 and confirmed in 2010, the proper party to institute any recovery suit for omitted assets would be the legally recognized executors or administrators of the subsumed estate, following a proper application for review or the appointment of a substitute administrator if the executors’ mandate had lapsed. A Limited Grant Ad Litem cannot be superimposed over an already administered estate simply to facilitate fresh litigation.

Revocation, Locus Standi, and Legal Consequences

27. Having established that the Limited Grant of Letters of Administration Ad Litem was obtained through the active concealment of material facts and that the Respondent has subsequently engaged in the unlawful delegation of his fiduciary duties, the inevitable conclusion is that the Grant cannot be allowed to stand.
28. Before rendering final orders, the Court must address the Objector’s locus standi. Eastside Development Limited clearly possesses the requisite standing to institute these revocation proceedings.



As the registered proprietor of L.R. No. 209/9779—the very property the Respondent seeks to attach using the impugned grant—the Objector is an interested party within the expansive meaning of section 76 of the Act. A party facing litigation mounted by an administrator whose legal capacity is fundamentally defective has a direct, proximate, and constitutional interest in ensuring the probate register is rectified and that they are not subjected to suits by persons lacking legal capacity.

29. When a Grant is revoked, the legal authority of the personal representative to deal with the estate is instantly extinguished. The revocation operates to invalidate the mandate that empowered the Respondent to institute ELC Case No. 123 of 2022. The Court is acutely aware that the Respondent's primary argument against revocation is that the underlying ELC suit is necessary to recover allegedly stolen property. However, a noble end does not justify legally deficient and fraudulent means. The sanctity of the probate process cannot be sacrificed at the altar of expediency. As the equitable maxim states, no cause of action arises from a base or illegal act—a principle highly relevant when an applicant seeks equitable or legal relief based on a foundational misrepresentation. The Respondent cannot benefit from a Grant obtained through deceit.
30. If the family of the Deceased genuinely believes that L.R. No. 209/9779 and L.R. No. 309/332 form part of the unadministered estate, the correct procedure must be followed. The family must return to the original, validly established succession causes (either the 1999 proceedings or Succession Cause No. 2730 of 2008) and petition the Court for a review of the distribution orders under Rule 63 to encompass these assets. Such an application should be accompanied by prayers for the appointment of capable legal representatives if the original executors have indeed fulfilled their mandate.
31. Lastly, on the issue of costs, the Respondent's conduct in filing a parallel cause while concealing a previous grant, followed by an unlawful delegation of duties, constitutes a severe abuse of the court process. In succession matters, while courts are generally hesitant to penalize family members seeking to protect an estate, deliberate misrepresentation warrants a sharp departure from this leniency. The Respondent's actions have forced a third party to incur substantial legal expenses to rectify a fraudulently obtained court order.
32. Consequently, and in the exercise of the powers conferred by section 76 (a), (b), and (c) of the Act, this Court makes the following orders:
 - i. The Summons for Revocation of Grant dated 11 July 2025 is hereby allowed in its entirety.
 - ii. The Limited Grant of Letters of Administration Ad Litem issued to Ted Dave Waiganjo on the 22 March 2022 is hereby revoked, annulled, and cancelled absolutely.
 - iii. Any act, process, or delegation (including but not limited to the Specific Power of Attorney registered as IR/A 76983/1) initiated or undertaken on the basis of, or through, the revoked Limited Grant is hereby declared legally ineffective, invalid, and of no consequence.
 - iv. Succession Cause No. E354 of 2022 is hereby struck out and the file closed.
 - v. The costs of this application shall be borne personally by the Respondent, Ted Dave Waiganjo.

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 Applicants: Mr Njugi & Mr Koyokko



for the Respondent: N/A

Court Assistant: Lucy Mwangi

