



Muinamu v Gitau & another (Sued as Administrators of the Estate of Stephen Kamau Gitau - Deceased) (Succession Cause 868 of 1991) [2026] KEHC 4110 (KLR) (Family) (5 March 2026) (Judgment)

Neutral citation: [2026] KEHC 4110 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 868 OF 1991
CJ KENDAGOR, J
MARCH 5, 2026**

IN THE MATTER OF THE ESTATE OF PHYLIS NJERI ALIAS NJERI MWAURA (DECEASED)

BETWEEN

TERESIAH WATIRI MUINAMU APPLICANT

AND

SAMUEL KARIUKI GITAU 1ST RESPONDENT

DOMINIC KAMAU GITAU 2ND RESPONDENT

**SUED AS ADMINISTRATORS OF THE ESTATE OF STEPHEN KAMAU GITAU
- DECEASED**

JUDGMENT

1. The Summons for determination dated 23rd April, 2025 seeks orders of revocation of the Grant issued to Stephen Kamau Gitau in the estate of Phylis Njeri alias Njeri Mwaura (deceased).
2. The Respondents are sued in their capacity as administrators of the Estate of Stephen Kamau Gitau, who was appointed administrator but is deceased. Service was by substituted service pursuant to orders issued on 23rd September, 2025. They did not enter an appearance nor respond to the application.
3. The matter proceeded by way of viva voce evidence.

The Applicants' case

4. PW1, Teresiah Watiri Muinamu testified that Phylis Njeri, also known as Njeri Mwaura (deceased), is her sister who lived with her before she passed away. She explained that there was a loan over the



- property where they resided, which she continued to pay, expecting it to be transferred to her name. However, she later discovered that the property was registered under the name Stephen Kamau.
5. She stated that at the time of death, the deceased was unmarried with no children. She detailed their familial background, clarifying that she is one of nine siblings, among whom only four are living, as the others have since passed on.
 6. Furthermore, she indicated that her sister left behind certain properties, specifically mentioning property E32/6 L.R. 209/8552/504 as belonging to her. She added that her sister had outstanding loans for which she was paying a monthly instalment of Ksh.154,/= as evidenced by payment card TW2, which was produced. She stated that she continued to honour the loan payments after her sister's death, having lived with her sister prior to her passing, and successfully completed the payment obligations thereafter.
 7. PW1 further testified that she filed for a Grant in the High Court at Nairobi, Family Division P&A No. 967 of 1994, which was confirmed, and she distributed the property as per the Court orders. She told the Court that plot E32/6 was not distributed because she could not process the transmission as she found out the property was in another name, Stephen Kamau, which prompted her to file the application now before the Court for revocation of the Grant.
 8. She stated that Stephen Kamau (now deceased) lied that Njeri was his wife. She testified that she had gone to great lengths to obtain the obituary for the said Stephen, indicating that the deceased Phylis was not among the names of Stephen's wives listed in his obituary.
 9. The Applicant asserts that following a search, she initiated legal proceedings in the High Court at Nairobi, Family Division, HCC No. 6 of 2004. This suit was against the administrators of the Estate of Stephen Kamau Gitau. However, the Court ultimately dismissed the suit, determining that the matter at hand was not appropriate for resolution within the framework of a civil case. Instead, it held that the proper procedural course was to file an application for revocation. The Applicant has since commenced this process after the decision.
 10. The Respondents are sued in their capacity as the legal representatives of the estate of Stephen Kamau Gitau (deceased), appointed in High Court of Kenya at Nairobi, Family Division Milimani, P&A 2361 of 1995; they did not participate in the hearing despite service.
 11. In her submissions, the Applicant argues that following the decision in HCC 6 of 2004, she has invoked the jurisdiction of this Court under Section 76 of the *Law of Succession Act* seeking revocation of the fraudulently obtained Grant and all consequential illegal transfers.
 12. She further submits that the introduction of the name alias name - Phylis Njeri alias Njeri Mwaura, was neither supported by official documentation nor disclosed in good faith, and that this was strategically employed to avoid detection, confuse beneficiaries and facilitate illegal acquisition of estate property. Furthermore, the Applicant argues that the deceased Stephen Kamau Gitau deliberately concealed the existence of the rightful beneficiaries, including the Applicant.
 13. She relies on the case... in the Estate of Moses Wachira Kimotho (Deceased) [2009] KEHC 3958(KLR), where the Court pointed out the importance of disclosing all material facts before a Court of law while seeking Letters of Administration and confirmation thereof. Similarly, she cites the case in the Estate of Julius Ndubi Javan (Deceased) [2018] KEHC 8523 (KLR). She submits that the Respondents' predecessor secured the Grant through clear act of lies, deceit and material non-disclosure, conduct that strikes at the very integrity of the Court and should not be entertained.



14. On whether the proceedings leading to the issuance and confirmation of the grant were defective in substance, the Applicant submitted that the late Stephen Kamau Gitau had no locus standi to petition for the estate of Phylis Njeri alias Njeri Mwaura (deceased). She relies on Section 66 of the Law of Succession Act, which sets out the hierarchy of persons entitled to apply for a Grant, giving priority to spouses and blood relatives. She submits that Stephen Kamau Gitau (deceased) was neither a spouse nor a relative to the late Njeri Mwaura, and that his petition was fundamentally incompetent and void ab initio. She cites the case of Re Estate of Hellen Wangari Wathiai (deceased) [2021] eKLR where the court stated “it is trite law that pleadings filed in court by persons with no locus standi are void ab initio and the court does not have jurisdiction over such.”
15. She further submits that there is no dispute that the subject property was transferred solely on the basis of the fraudulent Grant. She cites the estate of M’mwongo Kichiu (deceased) Succession Cause 335 of 2014 [2025] KEHC 2958(KLR) and submits that equity and justice demand that the subject property should revert back to the estate of Phylis Njeri alias Njeri Mwaura (deceased) and that the Court should not allow the Respondents to continue benefitting from the fraud and illegality masterminded by the deceased.
16. The Applicant further submits that in determination of the application, the Court should not visit the mistake of the previous counsel, who invoked the wrong procedure and consequently the applicant’s civil case was dismissed, upon the Applicant and that this mistake should not prejudice the Applicant who has consistently sought for her rights and justice for her fellow beneficiaries to the estate of the deceased Njeri Mwaura.

Analysis and determination

17. The Court has considered the application, the supporting documents and the testimony of the Applicant. The issue for determination is whether the applicant has presented sufficient evidence to warrant revocation or annulment of the grant.
18. Section 76 of the Law of Succession Act gives the Court the powers to revoke a grant provided the conditions stipulated therein have been met. It states that: “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 has ordered or allowed; 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. The grant has become useless and inoperative through subsequent circumstances.
19. In order to determine the issue at hand, there must be proof that any of the circumstances described under Section 76 of the *Law of Succession Act* has occurred.
20. In this case, the Applicant has alleged that the Grant was obtained fraudulently through concealment of material facts to the Court. In the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] KEHC 1528 (KLR), Mwita J. made pertinent remarks on principles for the revocation of a Grant as follows:
- “Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not 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. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
21. The Applicant has availed a letter from the area Chief, dated 5th May, 2023, indicating an existing dispute between the Applicant over the plot in Kiamaiko, where it is indicated she was residing. It states that the Respondents, Dominic Kamau Gitau and Samwel Kariuki, filed a complaint in Court that resulted in the eviction of the occupant, and states that this subsequently hindered the payment of land rates until the legal matter is resolved.
22. The record shows that the petition for Letters of Administration in this case was filed on 1st August 1991 by Stephen Kamau Gitau. A grant of Letters of Administration intestate was issued on 7th October, 1991 and the Grant was confirmed on 30th April, 1992 distributing the parcels of the deceased. According to the Applicant, the deceased passed away without leaving behind a surviving spouse or any children. Interestingly, the late Stephen Kamau did not furnish any letter from the Chief, which, as a matter of practice, is crucial in introducing the known dependants/beneficiaries of an estate.
23. There is another Grant of Letters of Administration dated 25th August, 1994 and confirmed on the 26th May, 1995 in Succession Cause Number 967 of 1994 that was issued to the applicant in respect of the same estate.
24. The Applicant has submitted the following documents in support of her case:
- a. A repayment card from the City Council of Nairobi showing that indeed she was making payments with regard to the parcel, and thus it is plausible that she resided therein with the deceased;
 - b. A letter from the Chief’s office in Kiamaiko indicating the existing dispute over the said parcel;
 - c. A letter from the Nairobi City Council dated 25th October, 1993 addressed to Njeri Mwaura (deceased) c/o Teresia W. Muinamu (applicant), confirming that all rates and rent payments have been made in full;
 - d. Grant of Letters of Administration and a Certificate of Confirmation for Case Number 967 of 1994;
 - e. A letter from the Nairobi City Council dated 14th June, 1995 approving transfer of the parcel from the deceased’s name into the Applicant as transferee and instructing the applicant to



obtain a clearance certificate from the Chief Revenue Officer on the charges as may exist over the parcel;

- f. The eulogy for the deceased, Stephen Kamau Gitau showing that the deceased was neither the Petitioner's wife nor relative;
 - g. A letter from Nairobi City County dated 11th March, 2014 indicating preliminary investigations that neither the County nor its predecessor, the City Council of Nairobi, had sanctioned the transfer of the parcel of land to one Grace Kamau. The letter indicated that the matter was escalated for investigations;
 - h. The judgment in Civil Case number 6 of 2004, showing that indeed she pursued the claim which was disallowed on the ground that the Applicant had not applied for revocation of the grant. Similarly, in that case, the Respondents herein were served but did not enter an appearance.
25. After examination of the evidence presented, it is evident that the Applicant has successfully established a legitimate claim. I am convinced that the evidence submitted substantiates the assertion that the property in question is part of the estate of Njeri Mwaura.
26. The Court has reviewed the obituary of Stephen Kamau Gitau, and Phylis Njeri Mwaura, alias Njeri Mwaura, is not indicated nor included among the individuals recognized as Stephen's wives. As such, it is reasonable to conclude that Stephen does not hold the status of being Njeri's husband in any legal or informal capacity. It is also highly credible that the late Stephen used the alias Phylis to deliberately sow confusion and mislead.
27. The mention of Grace as a wife in the document suggests a familial relationship that may be pertinent to the estate proceedings involving Stephen Kamau Gitau. It is reasonable to presume that she is the same Grace to whom the transfer was made from the Letter by the County.
28. From the foregoing, I am persuaded that the Grant was fraudulently obtained. In this case, the Petitioner Stephen Kamau Gitau (deceased), indicated that he was the husband of Phylis Njeri Mwaura alias Njeri Mwaura, the deceased, who was not his wife. By that fraudulent action, Stephen Kamau Gitau (deceased) disinherited the rightful beneficiaries of the deceased's estate. Accordingly, there is sufficient justification to invoke Section 76 of the *Law of Succession Act*.
29. The Summons for Revocation of grant dated 23rd April, 2025 is hereby allowed in the following terms;
- a. The grant of letters of administration issued in the High Court of Kenya at Nairobi, Family Division Milimani, P&A No. 868 of 1991 is hereby revoked, and the Certificate of Confirmation of Grant is set aside;
 - b. Any action taken and any registrations or subsequent transfers made using the said grant are declared null and void;
 - c. The property Mathare Valley Plot No. E32/6 (L.R. 209/8552/504) and the Shares in the Certificate of Confirmation shall revert to the names of the deceased Njeri Mwaura;
 - d. The estate of Njeri Mwaura alias Njeri W. Mwaura shall be administered in accordance with the grant of letters of administration issued by the High Court of Kenya at Nairobi, Family Division, Milimani, P&A No. 967 of 1994, and any other proceedings or orders in that file;
 - e. As it is stated that there may be bona fide purchasers, the parties therein are at liberty to ventilate any claim to the suit land in the Environment and Land Court;



- f. The costs of the revocation proceedings are awarded to the applicant and shall be borne by the Estate of Stephen Kamau Gitau.

30. Orders accordingly.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORMS ON THIS 5TH DAY OF MARCH, 2026.

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HON. C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

