



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
SUCCESSION CAUSE NO 185 OF 2014

IN THE MATTER OF THE ESTATE OF NJERU GATHIMBA (DECEASED)

MARGARET MUTHONI JOGOO.....1ST APPLICANT
JOHN MUTHIKE NDEGE.....2ND APPLICANT
PETER CHOMBA NDEGE3RD APPLICANT
POULINA WANGARI MURIMI.....4TH APPLICANT
ISABEL MURINGO KARIUKI.....5TH APPLICANT

VERSUS

MARY MUTHONI NJERU.....1ST PETITIONER/ RESPONDENT
SIMON MURIITHI NJERU.....2ND PETITIONER/ RESPONDENT
ALICE NYAGUTHII NJERU.....3RD RESPONDENT
WARUI NJERU.....4TH RESPONDENT
MUNENE NJERU.....5TH RESPONDENT
JACKSON KIBUCHI NJERU.....6TH RESPONDENT
NANCY WANJIRU NJERU.....7TH RESPONDENT
GLADYS WAMBUI NJERU.....8TH RESPONDENT

RULING

[1] The applicant filed Summons dated 5th May, 2025 seeking the following orders:

1. Spent.
2. That a temporary injunction be issued restraining the respondents their servants, agents, employees or any other associates from transferring, disposing or in any way dealing with land parcel No. Mutithi/Chumbiri/307 or any other resultant subdivision of the land mentioned herein.
3. That an inhibitory order be placed on land parcel No. Mutithi/Chumbiri/307 until this application and suit is heard and determined.

4. *That this honourable court be pleased to review/annul the grant issued to the respondent on 20/3/2018 and the estates revert back to its original owner Njeru Gathimba.*
5. *That any title deed that might have been a resultant subdivision of land parcel No. Mutithi/Chumbiri/307 be cancelled.*
6. *That costs of this application be provided for.*

- [2] The application is based on the grounds on the face of the application and the supporting affidavit of the applicant setting out the applicant's case that they are children of the late Rebecca Muringo Njeru who was a daughter to the above deceased. The petitioners never disclosed to court during summons for confirmation of grant. The respondent concealed material fact to chief Mwerua location when getting introductory letter. The chief omitted his mother one REBECCA MURINGO NJERU as dependant of the deceased. The respondent concealed material facts to this honourable court by failing to disclose to court that Rebecca Muringo Njeru(deceased) was a daughter to the deceased and who was survived by the applicants.
- [3] The applicants aver that upon visiting the land office and upon requesting an official search of land parcel No. Mutithi/Chumbiri/307 that is when they discovered succession was done and grant registered. The respondent filed succession secretly and obtained grant of letters of administration intestate dated 20/3/2018 and it was confirmed on 20/3/2018 without their knowledge.
- [4] Further, the applicants aver that the grant of the above deceased was obtained fraudulently with concealment of material facts by failing to disclose all beneficially.
- [5] Lastly, it is imperative that the grant of letters of administration and certificate of confirmation of grant herein be cancelled and revoked for being obtained unlawfully through concealment of material facts and information. Upon revocation of grant the same should be issued to them jointly to administer the deceased property.
- [6] The petitioners/Respondents filed a Replying Affidavit that the 1st, 4th and 5th Applicants are married granddaughters of the deceased while the 2nd and 3rd Applicants herein are grandsons of the deceased their mother being Rebecca Muringo Njeru Alias Rebecca Wambui Ndege. The 1st, 4th and 5th Applicants all stay in their husband's land parcel peacefully. The respondents aver that the 2nd and 3rd Applicants stay in their father's Ndege's home and in land parcel No. Mutithi/Chumbiri/903 registered on 4.9.2001 in their mother's name Rebecca Wambui Ndege. They aver that sometimes on 2.10.2006, they sub-divided Land Parcel No. Mutithi/Chumbiri/903 into L.R Mutithi/Chumbiri/1076 and 1077 and sold L.R Mutithi/Chumbiri/1077 to third parties for a valuable consideration while they retained L.R Mutithi/Chumbiri/1076 where they stay to date.

- [7] Further, the respondents avers that they later sub-divided L.R Mutithi/Chumbiri/1076 into L.R Mutithi/Chumbiri/1348, 1349 and 1350 in which the 2nd and 3rd Applicants retained L.R Mutithi/Chumbiri/1349 and 1350 and sold L.R Mutithi/Chumbiri/1348 to 3rd parties for a valuable consideration.
- [8] Moreover, being grandsons and granddaughters of the deceased, they don't have legal capacity to claim land parcel No. Mutithi/Chumbiri/307 while the deceased's sons and daughters are still surviving. Lastly, the respondents aver that the Applicants herein have no legal capacity to make the said Application as there was no limited grant applied as per the law in respect of their mother.

Applicant's submissions

- [9] The Applicants' interest emanates from the fact that their mother (REBECCA MURINGO NJERU) was a beneficiary to the suit property, thus being dependent to their mother's estate within the provisions of section 29 of the Law of succession Act, they acquire an interest in the grandfather's estate; by virtue of their mother's share.
- [10] The 1st Respondent in paragraphs 3 of her Replying Affidavit has confirmed that the Applicants are children of the deceased beneficiary and they are entitled to a share of the property and they are willing to distribute the estate to the Applicants.
- [11] They cite **In re Estate of Japheth Kisaka Ayuya (Deceased) (Succession Cause 3 of 2022) [2023] KEHC 21211 (KLR) (25 July 2023)** (Ruling) where Justice J KAMAU while revoking the grant held as follows in paragraph 23:
- “23. It is trite law that a grandchild is a direct heir to the estate of the grandparent where the parent predeceased the grandparent. The grandchildren get into the shoes of their deceased parents and take the parent's share in the estate of the grandparents as was enunciated in the case of Re Estate of Wahome Njoki Wakagoto [2013] eKLR where it was held that the only time grandchildren inherited directly from their grandparents was when their own parents had died and they stepped into the shoes of their parents and took the share that ought to have gone to their parents.”*
- [12] The applicants submit that failure by the Respondents to obtain consent from the Applicants before the issuance of the grant was not procedural as per the provisions of Rule 26 and the same should be revoked.
- [13] Perusal of the Petition for Grant of Letters of Administration Intestate that was filed by the Respondents showed that the Petitioners did not make any reference to the Applicants herein being children of Rebecca Muringo Njeru who was a daughter of the deceased.
- [14] They submit that the Respondents did not disclose to the Court all the beneficiaries and the deceased beneficiary was survived by two children who were entitled to his share of

the estate. In **re Estate of John Kihara Njau alias Kihara John deceased [2021] eKLR** where L.A. Achode J. (as she then was) while allowing the revocation of grant held:

“41. Having determined that the deceased’s daughter Naomi (deceased) was entitled to the “deceased’s estate, it is only just and fair that her estate too is included in the distribution. Omitting her name from the list of the beneficiaries who survived the deceased whose estate is in issue amounts to concealment of a material fact, which is a ground upon which a grant of representation can be revoked. Based on the rules of intestacy, the estate of the deceased ought to have been shared equally amongst his beneficiaries, the three daughters who survived him.”

Respondents submissions

[15] The Applicants alleges that their deceased mother was to benefit from the estate but the Respondents never included her in the succession cause. They are therefore demanding a share of what their mother would have received. The fact that they demand a share of what their mother would have got, calls for legal capacity. The Applicants herein have failed to prove that they applied for a limited grant of the estate of Rebecca Muthoni in order to bring any proceedings on her behalf, they therefore have no Locus Standi to institute any proceedings.

[16] Section 82 of the Act vests the power to file suit on behalf of the estate of a deceased person in the personal representative duly appointed through the process of succession as provided in the Act and not in any other person.

[17] The Court in **Peter Kaukau Asituha —vs-Olekia Mahindu Makunga [2021]** relied in the Court of Appeal in the case of ***Barnes Muema vs Francis Masuni Kyangangu (2019) eKLR*** considered the question whether a litigant could file and sustain objection proceedings on behalf of the estate of his deceased grandfather claiming that the suit property was family land. The court was in agreement with the High Court’s finding that such a litigant without Letters of Administration lacks locus standi and dismissed the Appeal.

[18] There is no doubt that the Applicants herein never obtained a limited grant in order to have capacity to sue on behalf of their mother, Failure to obtain a limited grant then means the Applicants have no locus standi.

Issues

[19] Whether the Applicants have *locus standi* to bring the application.

[20] Whether the grant issued on 20th March 2018 should be revoked under Section 76 of the Law of Succession Act.

Analysis

Whether the Applicants have locus standi

[21] The Respondents submitted that the Applicants lack locus standi because they have not obtained letters of administration for the estate of their late mother, Rebecca Muringo Njeru, through whom they claim entitlement.

[22] It is settled law that the estate of a deceased person can only be represented by a duly appointed personal representative. Section 82 of the Law of Succession Act vests the power to sue on behalf of the estate of a deceased person in the personal representative.

[23] The Court of Appeal in **Trouistik Union International & Another v Jane Mbeyu & Another [1993] eKLR** held that a party who has not taken out letters of administration lacks the legal capacity to institute proceedings on behalf of a deceased person's estate.

[24] The law recognizes the principle of representation in intestate succession. In **Re Estate of Wahome Njoki Wakagoto [2013] eKLR**, the court held that grandchildren may inherit directly from their grandparents where their parent, who was a child of the deceased, is deceased. The grandchildren step into the shoes of their deceased parent and take the share that would have devolved to that parent.

[25] In **Barnes Muema vs Francis Masuni Kyangangu (2019) eKLR**, the Court of Appeal made a crucial distinction as follows:

*“40. From the reading of the foregoing provisions, there is no doubt that any person has the right to lodge objection proceedings. The objector must however have a direct interest in the estate of the deceased. The issue here is not that the appellant could not file the objection on his own behalf, but whether he could sue on behalf of his late grandfather or other members of his family without obtaining a grant of letters of administration in respect of his grandfather’s estate first. See this Court’s decision in **Otieno v Ougo [1986-1989] EALR 468**, where the Court rendered itself thus: “... An administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.”*

41. In the instant appeal, it is evident that the appellant did not institute proceedings on his own behalf but on behalf of the interest purportedly held by his grandfather who was long deceased. His claim was that the suit property was “family land”. His claim was therefore based on Trust.

Could he sue on behalf of the family of his late grandfather? He does not dispute the fact that he had no grant of letters of administration to enable him sue on behalf of his late grandfather. The law is very clear on this point. The

learned Judge was correct in his enunciation of the law on the issue of locus standi in succession matters. He cannot be faulted for the said finding. That ground therefore fails.”

[26] The applicants are seeking relief **in their own behalf as grandchildren of the deceased not on behalf of their mother.** Therefore, although the Applicants have not obtained a limited grant for their mother’s estate, they are nonetheless persons beneficially interested in the estate of the deceased and are entitled to bring to the court’s attention any alleged concealment of beneficiaries during the succession proceedings.

[27] Consequently, this Court finds that the Applicants have sufficient interest to challenge the grant.

Whether the grant should be revoked

[28] Revocation of grants is governed by Section 76 of the Law of Succession Act, which provides that a grant may be revoked where:

- a. The proceedings to obtain the grant were defective in substance;
- b. The grant was obtained fraudulently by making false statements or by concealment of material facts; or
- c. The grant was obtained by means of untrue allegations of essential facts.

[29] The Applicants contend that the Respondents failed to disclose that Rebecca Muringo Njeru, a daughter of the deceased, was a beneficiary of the estate.

[30] A perusal of the record indicates that the Petition for Grant of Letters of Administration filed by the Respondents did not include the said Rebecca Muringo Njeru among the beneficiaries of the deceased. The Court in **In Re Estate of John Kihara Njau alias Kihara John (Deceased) [2021] eKLR** held **that omission of a rightful beneficiary amounts to concealment of material facts and constitutes sufficient ground for revocation of a grant.**

[31] If indeed Rebecca Muringo Njeru was a daughter of the deceased and predeceased him, her interest in the estate ought to have been disclosed during the petition for grant. The failure to disclose her existence and that of her children deprived the court of the opportunity to consider all beneficiaries during confirmation of the grant. This omission constitutes concealment of material facts, which falls squarely within the ambit of Section 76 of the Law of Succession Act. The court must ensure that succession proceedings are conducted with full disclosure of all beneficiaries.

ORDERS

[32] Accordingly, for the reasons set out above, the application for revocation of confirmed grant dated 20/3/2018 is allowed as prayed.

[33] The administrators will file a fresh application for confirmation of grant for hearing by the Court.

[34] Directions as to hearing of the new application for confirmation of Grant shall be taken on 7/7/2026.

Order accordingly.

DATED AND DELIVERED THIS 12TH DAY OF MARCH 2026.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Nyaga Gitari for the Applicant.

Mr. G. Kahiga for the Respondent.