



REPUBLIC OF KENYA



KENYA LAW
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**Gachurio v Maina & 5 others (Civil Appeal E025 of 2025)
[2026] KEHC 5551 (KLR) (30 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 5551 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E025 OF 2025
EM MURIITHI, J
APRIL 30, 2026**

BETWEEN

LEAH NYAGUTHI GACHURIO APPELLANT

AND

GLADYS WANGITHI MAINA 1ST RESPONDENT

BERNARD KIRONJO MUTUTI 2ND RESPONDENT

JEREMIAH MAINA 3RD RESPONDENT

EUNICE WAITHIRA 4TH RESPONDENT

SAMUEL GATHUMBI 5TH RESPONDENT

PERIS MUTHONI 6TH RESPONDENT

*(Being an appeal from the Ruling of Hon. S. M. Nyaga (P.M) in
Baricho Succession Cause No. 93 of 2017 delivered on 27/2/2025)*

JUDGMENT

1. Upon the withdrawal of the Summons for Revocation of Grant dated 15/9/2022 filed by Githu Kibunja on 3/11/2022, the 1st Respondent herein filed another application dated 20/1/2023 seeking the revocation of the Grant issued to Githu Kibunja on 22/10/2002 and amended on 7/7/2022 on the grounds that it was obtained fraudulently by making a false statement and/or concealment from the court of something material to the case.
2. Githu Kibunja swore a replying affidavit on 7/2/2023 in opposition to the application. He urged that the application for revocation of the grant had been overtaken by events as the transmission had been effected and the land subdivided.



3. The Appellant swore a Replying Affidavit on 22/2/2023 urging that the grant was issued by the court properly and openly to all the beneficiaries.
4. Peris Muthoni, Eunice Waithira, Samuel Gathumbi, Bernard Kironjo Mututi and Jeremiah Maina filed statements dated 10/8/2023 in support of the application.
5. The Appellant and Anthony Kabiru Kabuku filed witness statements dated 12/6/2024 in opposition to the application.
6. Upon inter partes hearing of the application, the trial court revoked the Grant of Letters of Administration and proceeded to distribute the estate afresh.

The Appeal

7. On appeal, the Appellant filed his memorandum of appeal on 10/3/2025 raising 5 grounds as follows:
 1. The learned trial Magistrate erred in law and fact by revoking the grant of letters of Administration which was issued by the High Court and where he lacked jurisdiction to do so. A miscarriage of justice was thereby occasioned.
 2. The learned trial Magistrate erred in law and fact by distributing the property of the deceased before first issuing grant of letters of Administration the Administrator to administer the estate. A miscarriage of Justice was thereby occasioned.
 3. The learned trial Magistrate erred in law and fact by sharing the estate of the deceased without the consent of the beneficiaries or without any evidence from the beneficiaries of the estate. A miscarriage of Justice was thereby occasioned.
 4. The learned trial Magistrate erred in law and fact by distributing the estate to the grand children who were not dependants of the deceased and without obtaining letters of Administration ad litem. A miscarriage of justice was occasioned.
5. The decision and Ruling of the learned trial Magistrate is not only flawed by error on the record but total misunderstanding of the legal principal involved in *Law of Succession Act* which deals with the distribution of the estate of the deceased.

Duty of the Court

8. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle v Associated Motor Boat Co. & others* [1968] E.A. 123).

Oral Evidence

9. AW1 Gladys Wangithi Maina, the 1st Respondent herein and the Applicant in the trial court testified that, "I am a daughter to the deceased. 1st respondent is my brother. 2nd respondent - nephew. 3rd respondent – purchasers. 4th respondent – purchasers, 5th respondent - Wife to my brother's wife, 2nd respondent - is my nephew, 3rd, 4th, 5th, 6th are my nephew/nieces. 7th applicant was married by my nephew. Meaning 2nd to 7th applicants are children of my sister Francisca Wanjiku. I was not involved in the Succession. I have authority to act for the other applicants. I wish to rely on affidavit and annexures to my summons of 20/01/2023. I also seek to rely on further affidavit filed on 22/2/2023. I deny having been involved in the Succession process. I pray to get my share and children of Francisca's."



10. On cross examination by counsel for the Appellant, she stated that, “I am a beneficiary. I was married in 1979 a short distance away. Dad died in 1981. I only attended burial. I never visit again until 1988 when I attended mum’s burial. I used to visit mum between 1981-1988. Jane Wambui my sister in 2019. I would visit her at Thika. She never told me about the Succession. They concealed the process. I never attended D.O’s meeting. My sister Franscisca did not tell whether she was called to any meeting. The 1st respondent told me to pay for the succession in 2021. I visited him in September, 2023. He told me the land had been subdivided. I then filed this application. I had no money. Franscisca was married and lived in suit land. The applicants are children of my sister Franscisca. They live and have land with their father. I want them to get a share of their mother Francisca. I do not know if they have letters from court to follow up their mothers right. I have no such letters. I am not aware of gazettment process and its purpose I was not invited at the chief meeting. I had a portion in 463. I stopped in 1983 when they demolished my parents house and destroyed my bed. 5th respondent has no house in the suit land. She has 7 children. She had another land and sold. I have no evidence; my dad not shared his land before death. He had no WILL. He had no WISHES before death. This is not an afterthought.”
11. In re-examination, she stated that, “I never attended any meeting anywhere. I believed my dad’s two parcels are intact. 3rd respondent is a bonafide purchaser of 2 acres. 1st and 5th respondent demolished my late parents’ house. I then stopped cultivating my piece given by my parents. I am pursuing Franscisca’s and my share on the two parcels. We are both disinherited. Jane Wambui - died and her son 2nd respondent was given land.”
12. RW1 Githu Wa Jeremiah of Rukanga, a son to deceased and the 1st Respondent in the trial court adopted his replying affidavit sworn on 07/2/2023 as his evidence in chief. He went on to state that, “I did not involve the applicants in the Succession.”
13. On cross examination by counsel for the 1st Respondent, he stated that, “I would not have gone to look for the applicants (rudely responds). My dad had shared the land before death. I was the Petitioner in the Succession case. I only expressed the wishes of the deceased. Dad had subdivided the land. There was no WILL. The land was subdivided on the ground. My advocate has all the documents. That is why I did not inform Gladys and Franscisca. I could not have gone to look for them (rude). I did not apply to amend the grant. (The witnesses have vehemently denied amendment of grant). I gave 4th respondent one acre. He was helping in the Succession. We would fuel his car. I have not given him any land (contract). The amended grant is a mistake. It is court that allowed the amended grant. Where was the mistake? (rude) I could not go looking for Gladys and Fransisca (rude). I would not go to look for them at their home (??) rude.”
14. On cross examination by counsel for the Appellant, he stated that, “I filed a replying affidavit. I rely on content. I share the land as per our dad’s wishes. 1st applicant was married before dads’ demise. Franscisca Wanjiku was living on suit land. She was given 3 acres. She (Franscisca) was not given any land by dad. She had been married. I strictly relied on deceased wishes. We to date live in that formula. 1st applicant did not follow up. Matter until now. We never met with Gladys during Succession. I took only due beneficiaries to the chief.”
15. In re-examination, he stated that, “I strictly pursued my father’s wishes. 4th respondent was our driver during Succession. We gave him one acre in appreciation. He was helping us.”
16. RW1 Leah Nyaguthii, the Appellant herein and the 5th Respondent in the trial court adopted her replying affidavit of 22/2/2023 and witness statements dated 02/6/2024 as her evidence in chief. She went on to state that, “I am wife to Gilbert Gacheru late son to deceased. We live in suit land. We built therein. We involved all the siblings to the family. That was at chief’s office. Gladys is married nearby.



- She never wanted the land. That is same case to Franscisca. They used to visit home-suit land. The 2nd to 7th respondent live with their father Dickson. She died about two years ago. I seek dismissal of application. We expressed deceased's wish.”
17. On cross examination by counsel for the 1st Respondent, she stated that, “We involved Gladys and Franscisca. Githu was the petitioner. I should be believed. Githu was the petitioner. There was no written WILL. Josphat is now deceased. He was present in a meeting. No minutes Githu was present. I do not know why he failed to mention it in court. Jane was given 3 acres to hold in case in trust for the other two sisters in case they come back home. Kinyeki son of Jane was given some land-3 acres. That land was for the daughters. That land should be shared equally among the three daughters. Titles can be revoked. I do not know why the other two girls were not involved. I believed they were involved. The three girls were in discussions. The other two ladies did not participate in the court process. They attended prior meetings. I amended grant. I was given seven (7) acres. It was deceased Wishes. 4th respondent was given one acre by entire family since he conducted the Succession process. We did not imagine the applicants would turn around.”
18. RW2 Anthony Kabuku, adopted his witness statement of 12/6/2024 as his evidence on chief.
19. On cross examination by counsel for the 1st Respondent, he stated that, “Deceased was my uncle. The deceased told me his wishes. He noted in a book. Jane took over the title and that book/record. She did not return them. I do not know if matter was reported. Gladys was informed by Githu but he ignored. He failed to attend. I was then working in Nairobi (how did he know Githu called Gladys): This case began in 1993. The daughters visited each other and Jane and Gladys would attend court together. I did not record it in my statement. Deceased had 3 daughters Gladys, Jane and Francisca. Deceased gave Jane land. Mother to 2nd respondent Jane had separated with her husband. He was given bigger land since the husband gave the deceased Kshs. 6,000/=. That land was not for the three daughters but the family committee said it should be held for the 3 daughters. Now it belongs to her son only 2nd respondent was given the land by consent of all his siblings. The other daughters have land from where they are married. Jane was holding in trust for the two other sisters. The father was against giving land to Married daughters.”

Submissions

20. The Appellant urges that the trial court lacked jurisdiction to revoke the Grant of Letters of Administration issued by the High Court in H.C Succession Cause No. 425/2007. She faults the trial court for issuing a fresh Certificate of Confirmation of Grant without appointing an administrator. She urges that the Respondents lacked locus standi to institute these proceedings because they did not have a grant of Letters of Administration Ad Litem, and cites *Cleopa Amutala Namayi v Judith Were* (2015) EKL.R.
21. The Respondents urge that the grant was obtained by concealing material facts and omission of 2 beneficiaries, and cite *Wangigi Kamiti (DCS) (2022) KEHC 3078 (KLR)* and *Khisa & Another v Nalika & Another (Family Appeal E008 OF 2023 (2015) KEHC 5797*.

Analysis and Determination

22. From the grounds of appeal, the singular issue for determination is whether the revocation of the Grant of Letters of Administration and the subsequent distribution of the estate were grounded in law.



23. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant as follows:-

“76. 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.”

24. In re Estate of Prisca Ong’ayo Nande (Deceased) [2020] KEHC 6553 (KLR), the court (W. Musyoka J.) considered the scope of the authority of the Court in section 76 of the *Law of Succession Act* as follows:

“8. Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. 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.”

25. The trial court is faulted for distributing the estate to grandchildren of the deceased, who were not dependants thereto. However, it is trite that grandchildren may take the shares going to their deceased parents who are children and heirs of the Deceased. It is also trite that children of a deceased person as persons to whom a grant may be made under section 66 of the *Law of Succession Act* have a right to sue for their inheritance and they need not have Letters of Administration ad Litem, and as such would also qualify as “any interested party” within the meaning of a revocation application under section 76 of the *Law of Succession Act*. In any event, the Court could revoke a Grant on its own motion.
26. The evidence on record of the Court is clear the 1st Respondent, Francisca, Lucy and the Appellant, are daughters and a daughter-in-law respectively of the deceased. It is discernable from the testimonies of the witnesses that the daughters of the deceased were discriminated upon on the basis of their gender and marital status. Anthony Kabuku stated on cross examination that, “Deceased had 3 daughters Gladys, Jane and Francisca. Deceased gave Jane land. The father was against giving land to Married daughters.”
27. The 1st Respondent herein testified that, “I am a daughter to the deceased. 1st respondent is my brother. 2nd respondent - nephew. 3rd respondent – purchasers. 4th respondent – purchasers, 5th respondent - Wife to my brother’s wife, 2nd respondent - is my nephew, 3rd, 4th, 5th, 6th are my nephew/nieces. 7th applicant was married by my nephew. Meaning 2nd to 7th applicants are children of my sister Francisca Wanjiku. I was not involved in the Succession. I pray to get my share and children of Francisca. Francisca was married and lived in suit land. The applicants are children of my sister Francisca. My dad not shared his land before death. He had no WILL. He had no WISHES before death.”
28. Githu Kibunja, the Petitioner and 1st Respondent in the trial court stated on cross-examination that, “I would not have gone to look for the applicants. My dad had shared the land before death. I only expressed the wishes of the deceased. Dad had subdivided the land. There was no WILL. The land was subdivided on the ground. That is why I did not inform Gladys and Francisca. I share the land as per our dad’s wishes. 1st applicant was married before dad’s demise. Francisca Wanjiku was living on suit land. She was given 3 acres. She (Francisca) was not given any land by dad. She had been married. I strictly relied on deceased wishes.” In re-examination, he acknowledged that, “4th respondent was our driver during Succession. We gave him one acre in appreciation. He was helping us.”
29. The Appellant herein testified that, “I am wife to Gilbert Gacheru late son to deceased. We live in suit land. We built therein. We involved all the siblings to the family. Gladys is married nearby. She never wanted the land. That is same case to Francisca. The 2nd to 7th respondent live with their father Dickson. We expressed deceased’s wish.” On thorough cross examination, she admitted that, “That land should be shared equally among the three daughters. Titles can be revoked. I do not know why the other two girls were not involved. I believed they were involved. The other two ladies did not



participate in the court process. 4th respondent was given one acre by entire family since he conducted the Succession process.”

30. The evidence on record, taken cumulatively reveals that the Appellant, the 1st Respondent and Fransisca (now deceased) were children of the deceased and, therefore, beneficially entitled to inherit from his estate. The Petitioner conceded that he had shared out part of the estate with purchasers, who were in the strict sense of it, strangers to the estate, at the expense of the rightful beneficiaries.
31. This court is, therefore, satisfied that the Grant could not stand and was properly revoked pursuant to the provisions of section 76 of the *Law of Succession Act*.
32. As regards the objection to revocation by the subordinate court, these proceedings were originally commenced in the High Court before being subsequently transferred to the lower court. Upon such transfer, the trial court was vested with the jurisdiction to deal with the matter and, therefore, the contention that the latter lacked the jurisdiction to revoke the grant issued by the former is misconceived.

Orders

33. Accordingly, for the reasons set out above, the Court finds that the appeal is without merit and it is dismissed.
34. There shall be no orders as to costs in this succession dispute.

Orders accordingly.

DATED AND DELIVERED THIS 30TH DAY OF APRIL 2026.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Ndana for the Appellant.

Mr. Igati Mwai for Respondent.

