

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**SUCCESSION CAUSE NO.7 OF 2019**

IN THE MATTER OF THE ESTATE OF KABUGUA MUNGARIKA  
(DECEASED)

BETWEEN

IN THE CHIEF MAGISTRATE'S COURT AT MURANG'A  
SUCCESSION CAUSE 736 OF 2017

IN THE MATTER OF THE ESTATE OF KABUGUA  
MUNGARIKA(DECEASED)

**JUDGEMENT**

1. The Applicant James Njenga Thandau moved this Court vide a Summons for Revocation or Annulment of Grant dated 6<sup>th</sup> May 2019 and filed on 7<sup>th</sup> May 2019 seeking for the annulment of Certificate of Confirmation of Grant issued by the Chief Magistrate Muranga (Hon. M. Wachira) on 14<sup>th</sup> December 2018 in respect of the Estate of the late Kabugua Mungarika on the following grounds:
  - i. That the proceedings to obtain the grant were defective in substance.*
  - ii. That the grant was obtained fraudulently by the making of false statement and concealment from the Court of something material to the case.*
  - iii. That the grant was obtained by means of untrue allegations of a fact, essential in a point of law to justify the grant notwithstanding that the allegations were made in ignorance or inadvertently.*
  - iv. That the proceedings to obtain the grant were filed in a wrong court which was the Resident Magistrate's Court and not the right Court which is the High Court available in Murang'a station, in accordance with provisions of succession Act., CAP 160 Laws of Kenya.*

2. The Applicant a grandson to the deceased Kabugua Mungarika and the son of Thandau Kabugua aged around 90 years as at May 2019. In his Affidavit in Support of the subject Summons for Annulment of Grant sworn on 6<sup>th</sup> May 2019, the Applicant deposed at paragraph 3 therein that he filed suit in his capacity as the personal representative and guardian of his father Thandau Kabugua whom, he deposed, is a deaf and disabled person. He further averred that following the demise of his father, he was appointed the personal representative of the Estate of Thandau Kabugua through a Grant of Letters of Administration dated 25<sup>th</sup> August 2022.
3. Elidah Wanjiru Mwangi resisted the subject suit through her Replying Affidavit sworn on 1<sup>st</sup> July 2019 in her capacity as one of the beneficiaries of the Estate of her late father Kabugua Mungarika. She refuted claims that the Applicant's father Thandau Kabugua is a person living with a disability. It was her further testimony that the three beneficiaries of the Estate of Kabugua Mungarika namely: Elidah Wanjiru Mwangi; Thandau Kabugua; And, John Kamau Kabugua represent their respective families, therefore, annulment of Grant as prayed by the Applicant will occasion unmanageable litigation as the distribution of the deceased's estate was completed. Furthermore, the deceased's estate was distributed as per the wishes of the deceased and the Applicant, has mounted the subject cause in an effort to swindle the other beneficiaries of the share belonging to the Applicant's father Thandau Kabugua.
4. John Kamau Kabugua, a beneficiary of the deceased's estate as per the Certificate of Confirmation of Grant in question filed his Replying Affidavit dated 1<sup>st</sup> May 2019 wherein he denied the Applicant's claim that Thandau Kabugua is a disabled person and asserted that of the three beneficiaries named in the Certificate of Confirmation of Grant, only Elidah Wanjiru Mwangi suffers from disability on

account of visual impairment/blindness. Further, the Applicant failed to indicate the distribution which he is challenging or to demonstrate any distribution which falls to be altered by the Court. He further averred that the Court issuing the impugned Certificate of Confirmation of Grant possessed the requisite jurisdiction to do so. It was his testimony that the deceased's estate was divided equally among the three beneficiaries hence the Applicant is seeking the revocation of a Grant which cannot be faulted.

5. The suit proceeded by way of written submissions. The Applicant filed written submissions dated 9<sup>th</sup> June 2025 wherein he deposed that sometimes in 1966, his grandfather convened a family gathering whereby, he slaughtered a goat and served traditional beer in a ceremony wherein he distributed his property as follows: Land Reference number LOC.13/GITUGI/1494 measuring approximately 3 Acres to be shared equally between Elidah Wanjiru Mwangi and John Kamau Kabugua; while Land Reference number LOC.13/GITUGI/231 measuring approximately 2 Acres was given to the Thandau Kabugua (the Applicant's father) to the exclusion of any other person or party. It was further submitted that the Applicant and his father both constructed their family homes on Land Reference number LOC.13/GITUGI/231 while Elidah Wanjiru Mwangi and John Kamau Kabugua reside on Land Reference number LOC.13/GITUGI/1494.
6. The Applicant faulted the mode of distribution of the deceased's Estate contained in the Certificate of Confirmation of Grant dated 14<sup>th</sup> December 2018 for disregarding his late grandfather's wishes as expressed in the aforesaid family meeting of 1966.
7. The Respondent through written submissions dated 3<sup>rd</sup> November 2025 argued that the Applicant was engaging in mischief by craving the annulment of a Grant on grounds in incapacity of one of the parties without presenting any

health records attesting to the disability. Furthermore, the Applicant failed to demonstrate that the Grant in contention was obtained fraudulently by the making of false statements and concealment of some material facts regarding the deceased's Estate. The jurisdiction of the Court was affirmed with reliance being placed upon the provisions of **Section 73** of the **Probate and Administration Rules**.

8. Having so encapsulated parties' pleadings and rival submissions, the Court identified the following question for determination: whether the Summons for Annulment of Certificate of Confirmation of Grant dated 14<sup>th</sup> December is 2018 is merited.
9. **Section 76** of the **Law of Succession Act**, provides as follows:

***“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) that the grant has become useless and inoperative through subsequent circumstances.”***

10. In the case of **re Estate of Juma Shitseswa Linani (Deceased) [2021] KEHC 9676 (KLR)**, the Court proclaimed that the provisions of **Section 76** of the **Law of Succession Act** do not apply to Certificates for Confirmation of Grant:

***“Section 76 makes no mention of revocation of certificates of confirmation of grants. The only reference to confirmation of a grant is in section 76(d)(i), and it is about the failure to apply for confirmation of the grant within the time allowed in law. That means that a grant-holder who fails to apply for confirmation of his grant in accordance with sections 71 and 73 of the Law of Succession Act exposes their grant to revocation. There is nothing in section 76 about a certificate of confirmation of grant being revoked because there were problems with the process of the confirmation of grant. Neither does section 76 permit the making of orders on a summons for revocation of grant founded on grounds to do***

***with a party being unhappy with the confirmation provision, and the process gives the court no discretion to cancel certificates of confirmation of grant.***

***The ideal situation, where a person is unhappy with the process of confirmation of grant, for it would appear that that is what the applicant herein is aggrieved about, is not to move the court under section 76 for revocation of grant, for the reasons that I have discussed in the foregoing paragraphs. What such a person should do instead, is to file an appeal against the orders made by the court on distribution.”***

11. Similarly, in the case of ***In re Estate of Kiberenge Mukwa (Deceased) [2021] KEHC 1392 (KLR)***, the Court reasoned as hereunder:

***“...The question then that arises is whether a certificate of confirmation of a grant is in fact a grant of representation intestate or the equivalent of a grant, to be revoked or annulled through section 76 of the Law of Succession Act. The answer to that question, appears to me, to be that a certificate of confirmation of grant is not a grant of representation... The certificate is a mere extract, its revocation would not affect its source, the orders of confirmation of grant. A grant of representation is not equivalent to a certificate, it is not an extract from some order, and it is the order itself, appointing administrators, and it is the court granting representation. The orders on confirmation of a grant remain unaffected by a revocation or annulment of the certificate of confirmation of grant. The proper thing to do should be to have the confirmation orders vacated and thereafter the certificate of confirmation of grant annulled,***

***following the setting aside of the orders from which it draws its life. Otherwise, failure to vacate the orders would mean that a fresh certificate could still be extracted from the same orders. The grant of representation and the certificate of confirmation of grant are two separate or different things.”***

12. Furthermore, **re Estate of Kiberenge Mukwa (Deceased) (supra)**, the Court stated that, whereas certificates of confirmation of grant are provided for under **Rule 41(5)** of the **Probate and Administration Rules**, the aforementioned **Probate and Administration Rules** do not provide for what should happen after the certificate of confirmation of grant has been generated from the confirmation order.
13. In addition, the subject cause pertains to the distribution of land belonging to the deceased's Estate. The Court in **re Estate of Juma Shitseswa Linani (Deceased) (supra)** ruled that in such cases as the one before the Court, the process of the carrying into effect the confirmation orders is regulated by land legislation through a process known as transmission, which is not provided for under the Law of Succession Act hence, it falls outside the jurisdiction of this Court, it being a matter reserved for the Environment and Land Court pursuant to the provisions of **Sections 60-63** of the **Land Registration Act, No. 3 of 2012** as read together with **Sections 49-51** of the **Land Act, No. 6 of 2012**.
14. Having regard to the foregoing, the Court finds no merit in the instant suit.
15. **Final Orders:**

**Application is hereby dismissed. Each party shall bear their costs.**

**Dated Signed and Delivered Virtually On 30<sup>th</sup> day of April, 2026.**

**HON. T. W. OUYA  
JUDGE**

**In the presence of:**

**Wangeche holding brief for Semekia - Applicant**

**Kimwere - Respondent**

**Kelvin/Hamza - Court Assistant**

ORIGINAL