

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO. 444 OF 2010

IN THE MATTER OF THE ESTATE OF MIANO KARIUNGI

(DECEASED)

ALICE GATHONI KANENEAPPLICANT

VERSUS

EDWARD KARIUKI MIANO.....1ST RESPONDENT

GITONGA MIANO.....2ND RESPONDENT

AND

VICTORIA NASHIRIMA MWANGI.....INTERESTED PARTY

JUDGEMENT

1. The Applicant **ALICE GATHONI KANENE** has filed in the High Court this Summons for revocation of Grant dated **29th October 2024** seeking the following orders:-

“1. SPENT

2. SPENT

3. SPENT

4. THAT the Grant of letters of Administration made to Edward Kariuki Miano and Gitonga Maina on 12th December 2020 and confirmed on 24th September 2024 be revoked.”

2. The application was premised upon **Section 76, Section 47 of the Law of Succession Act and Rule 44 of the Probate and Administration rules, Order 40 Rule 1 of the Civil Procedure Rules** and was supported by the affidavit of even date as well as the Supplementary affidavit dated **9th December 2021**, both sworn by the Applicant.
3. The Respondent/Administrator **GITONGA MIANO** opposed the application through the Replying Affidavit dated **12th November 2024** sworn by the Respondent. The Interested party **VICTORIA NASHIRIMA MWANGI** who is a daughter-in-law of the Deceased filed a witness statement supporting the summons for revocation of grant. The matter was referred for Court Annexed Mediation but no settlement was reached.
4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated **18th**

November 2025, the Respondent filed the written submissions dated **16th January 2026** whilst the Interested party filed submissions dated **20th January 2026**.

BACKGROUND

5. This succession cause relates to the estate of the late **MIANO KARIUNGI** who died intestate on **8th August 1968**. A copy of the Death Certificate Serial No. **369332** is annexed to the Petition for Grant of letters of Administration Intestate dated **3rd June 2010**.

6. The Deceased is said to have been a polygamous man who had three (3) wives namely

- | | | |
|---|---|----------------------------|
| (1) Wangu Miano | - | 1st wife |
| (2) Kagina Miano | - | 2nd wife |
| (3) Nyambua Miano alias
Nyambura Miano | - | 3rd wife |

The three wives of the Deceased are all now deceased. A petition for Grant of letters of Administration Intestate was made by **Edward Kariuki Miano** a son to the Deceased. In that Petition dated **3rd June 2010** the following were named as the only beneficiaries to the estate;-

- (a) **Edward Kariuki Miano - Son**
- (b) **Gitonga Miano - Son**
- (c) **David Mwangi Miano - Son**
- (d) **John Miano Karuaru - Grandson**
- (e) **Kariungi Kamaru - Grandson**

7. The estate of the Deceased was said to consist of two assets being

(i) **Parcel of land known as RUGURU/KIAMARIGA/1139**

(ii) **Parcel of land known as RUGURU/KIAMARIGA/561**

8. Following the demise of the Deceased Grant of letters of Administration Intestate was on **21st December 2010** made to **Edward Kariuki Miano** and **Gitonga Miano** (the Respondents herein). That Grant was duly confirmed on **24th September 2024**. The certificate of Confirmation of Grant indicated that the estate of the Deceased was to be distributed in the following manner;-

NAME	DESCRIPTION OF PROPERTY	SHARE OF HEIRS
EDWARD KARIUKI MIANO		3.527

GITONGA MIANO	RUGURU/KIAMARIGA/	ACRES
DAVID MWANGI MIANO	1139	3.527
KARIUNGI KANIARU		ACRES
		3.527
		ACRES
		1.727
		ACRES
JOHN MIANO KANIARU	RUGURU/KIAMARIGA/	ABSOLUTE
	564	LY

9. The Applicant states that she is a grandchild of the Deceased from the 2nd House being the daughter of **Rachael Gitare Kanene** who was the child of the Deceased's second wife **Kagina Miano**. That sometime in the year **2000** upon request by her aunts the Applicant moved to the home of her grandmother **Kagina Miano** and took care of the old woman until she died on **17th July 2007**. That during that period the Applicant resided with her grandmother on the portion of land allocated to her by the Deceased on LR No **Ruguru/Kiamariga/1139**. That following the demise of her

grandmother (the 2nd wife of Deceased) the Applicant continued to reside on and cultivate the said parcel of land.

10. The Applicant further averred that sometime after the death of Deceased but during the lifetime of her grandmother, the clan subdivided **Ruguru/Kiamariga/1139** into three (3) portions to represent the three (3) houses of the Deceased. That the 1st House rejected their portion thus the land was divided into two portions allocated to the 2nd and 3rd Houses. The Applicant states that she has been in peaceful occupation of the portion which had been allocated to the 2nd House, where she resides with her children.
11. However to the Applicants surprise she learnt that the children from the third House moved to court without her involvement/inclusion and filed a succession cause by which they obtained a Grant which was later confirmed. That it was only when a surveyor came to subdivide the land in accordance with the confirmed grant that the Applicant realised what had happened and consulted a lawyer to represent her. She complains that she (representing the 2nd House) and her Aunt **Wanjugu Gathigo** from the 1st House

were not involved and were not invited to appear in Court during the hearing to confirm the Grant.

12. The Applicant states that the Grant was obtained fraudulently by concealment of material facts in furtherance of a scheme by the 3rd House to inherit the entire estate to the detriment of the beneficiaries from the 1st and 2nd Houses. That the mode of distribution adopted by the court is skewed in favour of the 3rd House. The Applicant prays that the Grant issued to the Respondents be revoked.
13. In opposing the Summons for revocation of Grant the Respondents concede that the Applicant is a granddaughter of the Deceased from the 2nd House. They state that the Applicant only came to live with her grandmother on the suit land with her children after her land was auctioned due to non-payment of a loan.
14. The Respondents aver that the clan elders held a meeting where it was decided that the Applicant was not entitled to inherit anything from the Deceased. That the clan elders gave the Applicant notice to vacate the land. Finally the Applicants assert that the Applicant has no locus standi in

this matter. They urge the court to dismiss the summons for revocation in its entirety.

ANALYSIS AND DETERMINATION

15. I have carefully considered the Summons before this Court, the reply filed by the Respondents as well as the written submission filed by both parties. It is common ground that the Deceased in this matter passed away way back in **August 1968**. It is also not in dispute that the Deceased as a polygamous man who had three (3) wives. The Applicant told the court that she was a grand-child of the Deceased from the 2nd House. This fact is not disputed by the Respondents who readily concede to the relationship of the Applicant to the Deceased.
16. The three (3) wives of the Deceased have all now passed away. According to the Applicants the children of the Deceased from the 1st House are all deceased save for one daughter '**Wanjugu Gathigo**'. That the children of the 2nd House are all deceased and that from the 3rd House the three (3) sons who include the two (2) respondents are still alive.

17. The Respondents contend that being a '**grand-child**' the Applicant has no locus standi in this matter '**Locus standi**' is a latin term which literally means place of standing and refers to the right of an individual to participate in a suit.
18. Admittedly, the Applicant is not a '**child**' of the Deceased. However the Applicant is a grand-child of the Deceased from the 2nd House. The 2nd wife of the Deceased is also herself passed on and there is no child from this 2nd House who is still alive. In the circumstances the law allows for the Applicant though a grandchild to step into the shoes of her deceased parent to claim the share of the estate that ought to have gone to that deceased parent. The Applicant cannot be said to be a 'stranger' to the estate.
19. The Respondents further submitted that having not obtained letters of Administration to represent the estate of her late mother the Applicant had no legal mandate to appear in this cause. Grandchildren have no need to file for letters of Administration of the estate of their deceased parents before being able to seek to inherit the share of an estate due to said deceased parents.

20. **In re Estate of Imoli Luhitse Paul (Deceased) [2021] eKLR, Hon. Justice Musyoka** stated as follows:

In the instant case, the applicant, in the summons for revocation of grant, is a child of a dead son of the deceased herein. The applicant is claiming directly by dint of In re Estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR (Musyoka J) and In re Estate of Florence Mukami Kinyua (Deceased) [2018] eKLR (T. Matheka J), and does not require to take out letters of administration to intervene in the estate of her late grandfather, where her own parents are dead. Secondly, apart from case law, the provisions of the Law of Succession Act cover these situations. Section 39 of the Law of Succession Act makes grandchildren heirs intestacy, where their own parents, who are biological children of the deceased, are dead. Section 41 of the Law of Succession Act is the provision that enables grandchildren to step into

the shoes, of their own parents, and to step into those shoes they need not take out letters of administration. [Own emphasis]

21. I find and hold that the Applicant does have proper locus standi in this succession cause. This court is sitting as a Probate Court whose primary mandate is to oversee the distribution of the estate of the Deceased to the genuine beneficiaries. In the case of **PRISCILLA NDUBI and ZIPPORAH MUTIGA -vs- GERISHON GATOBU MBUI [2013] eKLR** it was held that:-

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity the estate property must be identified.”

22. The grounds upon which a Grant may be revoked are set out in **Section 76, Law of Succession Act Cap 160 Laws of Kenya** 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 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**
- (iv) that the grant has become useless and inoperative through subsequent circumstances.”**

23. This provision of the law was expounded upon in the case of **RE ESTATE OF PRISCA ONG'AYA MANDE (Deceased) 2020 eKLR** where it was held as follows:-

“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 fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the ground has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no 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.”

24. The Applicant accuses the Respondents of moving to court and filing this succession cause without informing and/or involving her yet she was entitled to inherit the share of the estate due to the 2nd House.

25. On their part the Respondents do not deny that they sought and obtained Grant of Letters of Administration, which Grant was later confirmed in their favour on **24th September 2024**. I have perused the petition filed by the Respondents and I note that no mention was made of the Applicant and/or the daughter of the Deceased from the 1st House. The Respondents do not deny that they omitted the two.
26. A look at the mode of distribution as per the confirmed Grant reveals that neither the Applicant nor this '**Wanjugu Gathigo**' were allocated any share of the estate. The estate was to be distributed between the three (3) sons from the 3rd House and two male grandchildren also from the 3rd house. The main question which arises in this case is whether the Applicant has any right to inherit a share of the estate of the Deceased.
27. The deceased having been a polygamous man who died intestate his estate ought to be distributed in accordance with **Section 40** of the Law of Succession Act taking into account **all** the three Houses. The Respondents were fully aware of the existence of the Applicant since the Applicant

lived with her children in the home of the deceased's second wife. Equally I have no doubt that the Respondents were fully aware of the existence of the daughter of the Deceased from the 1st house. Yet in this petition for Grant the Respondents did not involve these two persons and deliberately failed to include the two as beneficiaries of the estate.

28. It is not in dispute that the Applicant herein is the daughter of one **Rachael Gitare Kanene** who was the biological daughter of the deceased and his second wife **Kagina Miano**. It is also not in dispute that this 2nd wife and all her children are now deceased.
29. Being a grandchild the Applicant would not have a right to inherit directly from the estate of the Deceased. However that is not to say that grandchildren can never inherit from the estate of their grandparents. Where the child of a deceased person passes away then the grandchild of that Deceased may step in and inherit the share of the estate which would have been due to his/her deceased parents.

Therefore the Applicant would only be entitled to the share of the estate that would be due to her mother who was a daughter to the Deceased. **Section 41** of the **Law of Succession Act** enables a grandchild to step into the shoes of their own deceased parents, who are beneficiaries of the estate.

30. In the case of **CHRISTINE WANGARI GACHEGE -VS- ELIZABETH WANJIRU EVANS & 11 Others [2014] eKLR** the Court of Appeal stated as follows:-

“Although Section 35 and 38 of the Law of Succession Act is silent on the fate of surviving grand children whose parents predeceased the deceased, the rate of substitution of a grandchild for his/her parent in all cases of intestate known as the principle of representation is applicable. The Law is section 41. If a child of the intestate has pre-deceased, the intestate then that child’s issue alive or in centre as mere on that date of the intestate’s death will take in equal shares per stirpes contingent on attaining the age of

majority. Per stirpes means that the issue of a deceased child of the intestate take between them the share their parents would have taken had the parent been alive at the intestate's death." [Own emphasis]

31. Likewise in the **RE ESTATE OF WAHOME NJOKI WAKAGOTO [2013] eKLR** the Court observed that

"Under Part I of the Act grandchildren have no automatic right to inherit [from] their grandparents who died intestate after 1st July 1981. The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents indirectly through their own parents (the children of the Deceased). The children inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the

grandchildren's own parents are dead....."

[Own emphasis]

32. From the above the Applicant is entitled to inherit the share of the estate which would have been due to her deceased mother.
33. The Respondents argue that their exclusion of the Applicant in their petition for Grant was justified as the clan elders had sat in a meeting on **5th October 2009** and decided how the land left behind by the Deceased was to be distributed. The Respondents have annexed to their replying affidavit dated **17th November 2024** a copy of the minutes of the said clan meeting. [Annexure '**GMT**'). Firstly this court is guided not by clan decisions but by the relevant law in position being the **Law of Succession Act**. Secondly the action of the clan in giving the Applicant notice to leave the Property is of no effect as the land in question belongs to the Deceased and not to the clan.
34. It is quite obvious that the Respondents action is concealing the names of the Applicant and the daughter from the 1st house was motivated by greed i.e the less people there were

to inherit the more land would be available for themselves. Further I note that no female relative has been included in the distribution of the Deceased's estate probably based on the traditional customary thinking which excluded women from the right to inherit. The view is repugnant to morality and justice.

35. The Respondents have ignored the fact that the Deceased left three houses and have concentrated only on the 3rd house to which they belong. What provision has been made for the 1st and 2nd houses which under **Section 40** deserved to be considered in the distribution of the estate?
36. In conclusion I am satisfied that the Respondents obtained the grant fraudulently by deliberately concealing material information to wit the existence of members of the 1st and 2nd houses. As such I find that the summons for revocation of Grant has merit and is allowed.
37. Finally this court makes the following orders:-

(1) The Certificate of Confirmation of Grant issued to the Respondents Gitonga Miano and Edward

Kariuki Miano on 24th September 2024 be and is hereby revoked.

(2) The mode of distribution of the estate of the Deceased contained in the Certificate of Confirmed Grant dated 24th September 2024 be and is hereby set aside.

(3) The properties known as

(i) RUGURU/KIAMARIGA/1139

(ii) RUGURU/KIAMARIGA/564

**to revert back into the name of the Deceased
MIANO S/O KARIUNGI alias MIANO KARIUNGI**

(4) The parties to hold discussion and nominate a fresh set of administrators to include representatives from all the three (3) houses.

(5) This being a family matter each party to bear their own costs.

Dated in Nyeri this 30th day of April 2026

**.....
MAUREEN A. ODERO
JUDGE**

ORIGINAL