



REPUBLIC OF KENYA



In re Estate of Joyce Truphosa Apiyo (Deceased) (Miscellaneous Succession Application E010 of 2022) [2026] KEHC 5273 (KLR) (24 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5273 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS SUCCESSION APPLICATION E010 OF 2022**

A MABEYA, J

APRIL 24, 2026

**IN THE MATTER OF THE ESTATE OF JOYCE TRUPHOSA APIYO – DECEASED
AND IN THE MATTER OF REVOCATION/ANNULMENT OF GRANT
OF LETTERS OF ADMINISTRATION ISSUED TO JANE. A. OTIENO**

BETWEEN

**WILLYS OTIENO ONYONYI 1ST OBJECTOR
BENSON OCHIENG OGONDA 2ND OBJECTOR
MARY ACHOLA 3RD OBJECTOR
GRACE ODUOR 4TH OBJECTOR
BEATRICE ADHIAMBO 5TH OBJECTOR
KENNEDY ODONGO 6TH OBJECTOR
SUSAN AMONDI OBUNDE 7TH OBJECTOR
MILLICENT WASONGA 8TH OBJECTOR**

AND

JANE ATIENO RESPONDENT

RULING

1. Following the death of TRUPHOSA JOYCE APIYO on the 25/11/2018, at Kaloleni - Pembe Tatu Estate Kisumu, Grant of Letters of Administration Intestate was granted to Willys Otieno Onyonyi, Benson Ochieng Ogonda and Jane Atieno Otieno on the 17/5/2023.



2. The administrators lodged an application for confirmation of the Grant which was however, opposed by Willys Otieno Onyonyi and Benson Ochieng Ogonda who lodged a protest against the mode of distribution.
3. That Protest was dismissed for want of prosecution or non-appearance on the 3/6/2024 and a Certificate of Confirmation of Grant issued on the same day. The applicants then sought to set aside the proceedings leading up to the dismissal of their Protest. By a ruling delivered on the 20/6/2025, the said application was found to lack merit and consequently dismissed.
4. The applicants have now approached this Court again, seeking another bite of the cherry. Vide their Summons for revocation of grant dated 18/8/2025, they sought an injunction against the respondent from interfering with the tenants on land parcel Kisumu/Manyatta “A”/719 as well as an order revoking the grant issued to her.
5. The Summons was brought under the provisions of section 76 of the Law of Succession Act and Rules 44 (1) as read with 26 (1) of the Probate and Administration Rules.
6. The Summons was supported by the affidavit jointly sworn on the 15/8/2025 by Willys Otieno Onyonyi and Benson Ochieng Ogonda. It was their contention that the respondent failed to disclose material facts to the Court prior to the issuance and confirmation of grant despite their protest specifically that certain properties included in the deceased’s estate did not belong to the deceased i.e. land parcel number Kisumu/Manyatta “A” 721 which was allocated to one Susan Amondi Obunde. That as a result of this, the said beneficiary would be shortchanged.
7. That the respondent has embarked on deliberate destruction and wastage of the deceased’s estate by illegally and unilaterally raising rent for the tenants and vandalizing the gate and unless the orders sought are granted the deceased’s estate stands wasted.
8. In response, the respondent relied on Grounds of Opposition dated 26/8/2025 in which she stated that the application was incompetent, frivolous and vexatious. That it failed to meet the criteria for grant of orders sought and was thus a clear abuse of the court process that ought to be dismissed with costs.
9. The applicants filed submissions reiterating the allegations in their Summons and urged the Court to revoke the grant issued to the respondent. By the time of writing this ruling, the respondent’s submissions were not on record.
10. The Court has considered the record and will proceed to determine the Summons on merit. The application for temporary injunction pending determination of the summons is overtaken by events.
11. The primary order sought by the applicants is revocation of grant alleged to have been issued to the respondent. In reality, this is not the case, there was no grant issued to the respondent herein solely. The Grant of Letters of Administration Intestate was jointly granted to Willys Otieno Onyonyi, Benson Ochieng Ogonda (the applicants herein) and Jane Atieno Otieno on the 17/5/2023 and confirmed on the 31/10/2024.
12. The Law of Succession Act (“the Act”) provides for revocation of grants under section 76, which provides: -

“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.”

13. In this regard, a court may revoke a grant on three broad grounds. Firstly, where the process of obtaining the grant is marred by irregularities. Secondly, where the grant is obtained procedurally, but the administrator, thereafter, gets 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. And, thirdly, 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 becomes infirm.

14. In the present case, the applicants’ claim was based on the allegation that the respondent obtained the grant fraudulently by misleading the Court that certain properties included in the deceased’s estate did not belong to the deceased i.e. land parcel number Kisumu/Manyatta “A” 721.

15. I have perused the record and specifically P&A 5 wherein a list of the deceased’s estate was provided. Land parcel number Kisumu/Manyatta “A” 721 is not provided as part of the deceased’s estate. The said property was however listed in the proposed mode of distribution by the respondent which was confirmed on the 31/20/2024. It is evident that this was an error.

16. It is evident that the process leading up to the issuance of grant to the parties herein was not flawed. Troubles arose when distribution of the estate came up as was evident from the applicants’ protest. This protest was considered by the Court and dismissed on merit. In my view, seeking to revoke the grant issued to them is not the proper way to approach the matter.

17. In re estate of Charles Kibe Karanja (deceased) [2015] eKLR, the court stated: -

“If a party wishes to have the assets of the estate redistributed or there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be effected without touching the orders made by the Court at



the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant. The remedy of review of Court orders is not directly provided for in the Law of Succession Act and the Probate and Administration Rules, but it is imported into probate practice by Rule 63 of Probate and Administration Rules, which has adopted a number of procedures from the Civil Procedure Rules.....

Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiaries on the basis that the said assets or heirs were left out by mistake or error. Where assets are discovered after the Court has confirmed the grant or a heir or survivor of the deceased who had previously been unheard of materializes after distribution, the Court may review its orders made at the point of confirming the grant on the ground of discovery of new and important evidence that was not available at the time the grant was being confirmed.....

New assets cannot be introduced and distributed by merely rectifying the certificate of confirmation of grant. That calls for going back to the distribution orders, so as to have them altered or revised. (mine emphasis)

18. Similarly, where an asset has wrongly been included as part of the deceased's estate and awarded to a beneficiary a party is free to apply for review of the grant. However, the application must meet the substantive requirements of an application brought for review set out in Order 45 of the Civil Procedure Rules. Similarly, a party is free to appeal the decision of the court in confirming the grant.
19. The upshot of the above is that I find the Summons for revocation of grant dated 18/8/2025 to be without merit and I dismiss the same with costs to the respondent.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2026.

A. MABEYA, FCI Arb

JUDGE

