



**Thambura & another v Thambura (Succession Cause
545 of 2014) [2026] KEHC 5920 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5920 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 545 OF 2014
HM NYAGA, J
APRIL 30, 2026**

BETWEEN

FREDRICK GIKUNDI THAMBURA 1ST PETITIONER

STEPHEN KINYUA THAMBURA 2ND PETITIONER

AND

JULIUS MEME THAMBURA INTERESTED PARTY

RULING

1. Julius Meme Thambura, the Applicant herein, filed the summons for Revocation of Grant dated 22nd March, 2021 and brought under Section 76 a, b, c, & e of the *Law of Succession Act*, Rules 44 & 73 of the Probate and Administration Rules, Section 68 of the *Land Registration Act*, 2012 and all other enabling provisions of the law as beneficiary of the estate of M'thambura M'kaberia who died on the 29th November, 2003.
2. The above-mentioned beneficiary sought for an order that the certificate of grant dated 2nd October, 2018 be revoked since the same was obtained by non-disclosure of material facts and/or concealment of material facts to the court on grounds that: -
 - a. That the interested party was never consulted and/or involved in the distribution of the estate.
 - b. That the interested party did not consent to the proposal on distribution made by the petitioners and he did not attend court during distribution.
 - c. That there was concealment of material facts to the court to wit that the deceased had made gifts inter-vivos and only the interested party was never provided for.
 - d. That the interested party is the sole utilizer of land parcel LR NO. NTIMA/IGOKI/2947 since the other sons are in occupation of the land gifted to them inter-vivos.



- e. That the deceased owned only 1/10 share of land parcel LR NO. NTIMA/IGOKI/2947 and his brothers M'IBARA M'KIRERA 9/10 share of the land which fact was never brought to the attention of the court during distribution.
 - f. That the interested party got wind of the confirmation when surveyors visited the land with an intention of subdividing it.
3. The application is supported by the affidavit of Julius Meme Thambura sworn on the even date. He deposed that he is a son of the deceased but the letters of administration were issued without his knowledge and involvement and that he was neither present during the confirmation of the grant nor consented to the mode of distribution proposed by the petitioners.
 4. He averred that the deceased subdivided land parcel LR NO. NTIMA/IGOKI/117 into parcels LR Nos. NTIMA/IGOKI 2947-2954 and gifted to some of his sons.
 5. He deposed that he is exclusively in occupation of LR NO. NTIMA/IGOKI/2947 and he has made permanent developments thereon and that during the confirmation of grant, other beneficiaries did conceal to the court that they had other parcels of land gifted to them inter-vivos by the deceased.
 6. He posited that if the orders sought is not granted the distribution of the deceased's estate will be inequitable since those who were gifted inter-vivos will benefit more at his expense.
 7. Fredrick Gikundi Thurania and Stephen Kinyua Thambura, the petitioners herein, filed Replying Affidavits dated 2nd December, 2021 and 11th March, 2023 in opposition to the summons for Revocation of Grant. They deposed that the deceased was blessed with sons and daughters. Namely; Stephen Kinyua, Eunice Gatimba, Monicah Japhet, Agnes Kananu, Grace Kagwiria, Nicolasia Mbaya, Fredrick Gikunda, Gerald Koome, Zakaria Kimathi, Julius Meme and Doris Kanyua.
 8. They stated that on 2nd October, 2018, the court confirmed the grant and ordered equal distribution of the estate's assets i.e. Land Parcel Ntima/ Igoki/2947, Land parcel Kiirua/Ruiri-Rware/234 & Plot Reo.Kirimara/Kithitaina Block 1/18.
 9. They admitted that the deceased did indeed subdivide some of his parcels of land and gifted to some of his children inter vivos and that the deceased did not gift any land to the Applicant.
 10. They asserted that they do not know why the deceased did so and added that none of their sisters was given any portion of land by the deceased.
 11. They deposed that the deceased left out Land Parcel No. Ntima/Igoki/2947 for his own use during his life time and he did not give directions or wish the same to be solely given to the Applicant after his demise.
 12. They deposed that as administrators they have proposed equal distribution of the deceased's estate among his 11 children and stated that the Applicant was present in court on 9th July, 2018 when the grant was confirmed.
 13. It was their contention that after the grant was confirmed and Land Parcel No. Ntima/Igoki/2947 ordered to be shared equally among the eleven children of the deceased, the Applicant constructed a permanent house on the parcel intently to defy the court orders and disinherit them.
 14. They prayed that the court upholds equal distribution of Land Parcel No. Ntima/Igoki/2947 among all the beneficiaries and order the Applicant to demolish the permanent building.



15. The Applicant swore a further affidavit in response to the Petitioners' response on 24th January, 2022. He disputed being in court during the confirmation of grant as alleged by the petitioners and reiterated that he is the only son who was not gifted any land by the deceased during his lifetime.
16. He deponed that he had all along occupied, developed and utilized Land Parcel No. Ntima/Igoki/2947 during the deceased's lifetime with his authority and the petitioners and his other brothers have never occupied or utilized the same.
17. He thus posited that it is in the interest of fairness and equity that Land Parcel No. Ntima/Igoki/2947 be wholly distributed to him.
18. Agnes Kananu Thambura, the deceased's daughter swore an affidavit of protest on 15th November, 2022 deposing that she has lived and cultivated on Land Parcel No. Ntima/Igoki/2947 since time immemorial and it should thus be shared between her and the Applicant.
19. The Summons was heard by way of viva voce evidence.
20. Julius Meme (PW1) majorly reiterated the averments in his aforementioned affidavits. He told court that the deceased subdivided land parcel no. 117 into 10 parcels and all his siblings got their respective shares and some have sold their land. He said he and his sister Agnes was to left with Land Parcel No. Ntima/Igoki/2947. He said although he was to get a share in land parcel no. Ruiru/Rware/234 as per the confirmed grant he has never received any share. He equally said that he never got any share of Kithitaina Block 1/18.
21. It was his further testimony that the deceased allowed him to stay in the subject land as he had given all his other siblings their respective shares but he died before transferring it to him.
22. Agnes Kananu (PW2) corroborated the Applicant's testimony that the deceased had subdivided land parcel number 117 as stated above and that all her siblings save for her and the applicant got their respective shares. She said she lives on 2947 with PW1, and alleged that though she was given a share of Rware 234 and Kirimara 1/18 by the court, she has never received the same.
23. Fredrick Gikunda (DW1) testified that the deceased subdivided land parcel no. 117 into plots numbers 2945 to 2955 and all his siblings save for PW1 and PW2 got their respective shares. He said all the deceased's children received their respective shares of he stated that it is still intact. He prayed that the land parcels in question be equally distributed among the beneficiaries.
24. He stated that Hellen and M'inoti, both now deceased, were their siblings and were survived by Darus and Ruth respectively and added that plots numbers 2945, 2946, 2953, 2954, and 2955 were sold by the deceased, plot no. 2950 was sold by their brother Gerald while plots nos.2949 and 2952 were sold by their brother Japhet. He further stated that he occupies plot no. 2951, that plot no. 2948 was allocated to Lawrence Mbaya and that plot no. 2947 was registered in the name of the deceased but is now under the administrators' names.
25. He indicated that PW1 &2 moved to plot no. 2947 after the deceased's demise and confirmed that they and Eunice were not given any portion of parcel no. 234. He further stated that land parcel No. 1/18 is registered in the names of the deceased and his brother M'ibara.
26. Upon the conclusion of the hearing, parties elected not to file submissions.



Issues For Determination

27. After due consideration of the summons for Revocation of Grant, the replying affidavits, Affidavit of protest and evidence on record, the main issue arising for determination is whether the confirmed grant should be revoked.

Analysis And Determination

28. The *Law of Succession Act* provides for revocation or annulment of grants under Section 76, which states 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 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.”

29. In re Estate of Prisca Ong’ayo Nande (Deceased) (2020) eKLR in expounding Section 76 it was stated that:

“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.”

30. The Applicant herein seeks to revoke the grant of letters of administration issued to the petitioners on ground that the same was obtained without his knowledge or involvement.
31. He stated that at the time of confirmation, the petitioners did not disclose to the court that some of the beneficiaries had been gifted land by the deceased during his lifetime.
32. From the record, the deceased was survived by the following beneficiaries;
 - a. Stephen Kinyua Thambura
 - b. Eunice Gatimba
 - c. Monicah Japhet
 - d. Agnes Kananu
 - e. Nicolasia Mbaya
 - f. Fredrick Gikundi Thambura
 - g. Gerald Koome
 - h. Zakaria Kimathi
 - i. Julius Meme
 - j. Doris Kanyua- granddaughter
 - k. Ruth Nthiora Muthomi- granddaughter
33. The listed assets were as follows;
 - a. Land Parcel Number Ntima/Igoki/2947
 - b. Land Parcel No. Kiirua/Ruiri Rwarera/234
 - c. Kirimara/Kithithina Block 1/18
34. According to the Certificate of Confirmation of grant dated 2nd October 2018, the above assets were to be shared equally among the above listed beneficiaries.
35. It not in doubt that the deceased subdivided his original Land Parcel No. Ntima/Igoki/117 into parcels Nos. 2947-2955. According to the copies of search annexed to the Applicant’s affidavit and marked as JMT 2a- k the parcels nos;
 - i. 2947 measuring 0.278, is registered in the names of the petitioners herein, Fredrick Kikundi Thambura & Stephen Kinyua Thambura



- ii. 2948 measuring 0.278, is registered in the name of Lawrence Mbaya Thambura
 - iii. 2949 measuring 0.278, is registered in the names of Diocese of Meru Trustee & Japhet Thambura
 - iv. 2950 measuring 0.278, registered in the name of Thambura Kaberia(deceased herein)
 - v. 2951 measuring 0.278, is registered in the name of the 1st Petitioner, Fredrick Gikunda Thambura
 - vi. 2952 measuring 0.278, is registered in the name of the deceased, Thambura Kaberia
 - vii. 2953, measuring 0.278, registered in the name of Stanley Nyaga Mbae and Lucy Kagendo Nyaga
 - viii. 2954, measuring 0.405, registered in the names of Samwel Mbae Ragwa, Justus Mwiti Marete & Joseph Koome Mugambi
 - ix. 2955, measuring 0.278, registered in the name of the deceased, M'thambura M'kareria
36. There is no proof that the Applicant and the protestor were informed of these proceedings. The court proceedings of 7th June 2018 clearly show that they were absent when the summons for confirmation of the grant was allowed.
37. There is no dispute that the deceased gifted portions of his estate to some of his beneficiaries during his lifetime. This information was not presented to the court during the confirmation of the grant. Consequently, the grant was obtained without the Applicant's or the protestor's knowledge and through the concealment of material facts from the court.
38. In the circumstances, this court is satisfied that the grounds provided for by the Applicant and protestor meet the threshold required to revoke a grant.
39. However, this court mindful that said Section 76 vests it with discretion to revoke or not revoke a grant, will not revoke the grant but instead refine how the estate should be distributed to achieve justice among the beneficiaries.
40. Section 42 of the *Law of Succession Act* provides that:
- Where an intestate has, during his lifetime or by will paid, given or settled any property for or the benefit of a child, grandchild or house; or taken had he not predeceased the intestate. That property shall be taken into account in determining the share of the set intestate estate finally, accruing to the child grandchild or house.
41. Pursuant to the above section, this court is obligated to take into account any property the deceased gave or settled during their lifetime for the benefit of his/her beneficiaries.
42. To ensure fairness, this Court will consider lifetime gifts in calculating each beneficiary's entitlement.
43. The Applicant and the protestor seek that Land Parcel No. 2947 be distributed to them. It is uncontested that the deceased did not gift them any portion of land during his lifetime. Considering that the other beneficiaries received their respective portions of land as gifts from the deceased during his lifetime, it would be unfair and inequitable to allocate them larger shares at the expense of the Applicant and the protestor. Since no other family member, apart from the Applicant and the protestor, has come forward to claim a share in Land Parcel No. 2947, I believe it will be fair to



distribute this parcel equally between the protestor and the Applicant. As for the remaining parcels, they should be distributed strictly as was ordered by the court in the certificate of grant.

44. In light of the above findings, the summons herein has merits and I hereby order that the grant confirmed on 2.10.2018 and/or the consequent Certificate of Confirmation arising therefrom is hereby reviewed or amended in the following terms:-

- i. Land Parcel No. Ntima/Igoki/2947 be shared equally between Julius Meme & Agnes Kananu.
- ii. Land Parcel No. Kiirua/Ruiri-Rwarera/234 be shared equally among Stephen Kinyua Thambura, Eunice Gatimba, Monicah Japhet, Agnes Kananu, Nicolasia Mbaya, Fredrick Gikundi Thambura, Gerald Koome, Zakaria Kimathi, Julius Meme, Doris Kanyua and Ruth Nthiora Muthomi
- iii. The deceased share in Plot No. Kirimara/Kithithina Block 1/18 be shared equally among Stephen Kinyua Thambura, Eunice Gatimba, Monicah Japhet, Agnes Kananu, Nicolasia Mbaya, Fredrick Gikundi Thambura, Gerald Koome, Zakaria Kimathi, Julius Meme, Doris Kanyua and Ruth Nthiora Muthomi
- iv. This being a family matter, each party shall bear their own costs.
- v. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF APRIL, 2026.

H. M. NYAGA,

JUDGE.

