

REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE NO. 92 OF 2019
IN THE MATTER OF THE ESTATE OF SAMUEL MBUGUA
KIARIE alias MR. S. MBUGUA KIARIE (DECEASED)

RULING

1. **ALEX MBUGUA KIGO** filed the Summons for Revocation of Grant dated 20th May, 2024 and brought under Section 76(d)(i) & (ii) of the Law of Succession Act, Rules 49 & 73 of the Probate & Administration Rules for orders ;-
 - a) **THAT** the Grant of Letters of Administration issued herein on the 16th November, 2023 to **RICHARD NJOROGE GACHUIRI** be revoked.
 - b) **THAT** the appointment of **RICHARD NJOROGE GACHUIRI** as the Sole-Administrator of this estate be revoked and **ALEX MBUGUA KIGO** be appointed as a Co-Administrator of this estate together with **RICHARD NJOROGE GACHUIRI**.
 - c) **THAT** summons for confirmation of the Grant filed by **RICHARD NJOROGE GACHUIRI** dated 19th day of February 2024 be stayed pending hearing and determination of this application.
2. The application is based on the grounds that the estate of the deceased herein has two houses and each house was being represented by an administrator. **WILFRED KIARIE MBUGUA** the administrator representing the first house passed on and **RICHARD NJOROGE GACHUIRI** was appointed the sole

administrator on 16/11/2023 without involving the beneficiaries of the first house.

3. In his affidavit in support of the Summons for Revocation of Grant, the Applicant deposed that the estate belongs to his late grandfather. He contended that the estate has always had two administrators each representing each house. **WILFRED KIARIE MBUGUA** who was representing the 1st house passed away on 23/12/2017 and an application was filed by **RICHARD NJOROGE GACHUIRI** without involving the beneficiaries of the 1st house where he indicated that the living beneficiaries from the 1st house had agreed to having him act as the sole administrator. He contended that if **RICHARD NJOROGE GACHUIRI** proceeds to be the sole administrator, the interests of the beneficiaries of the 2nd house will not be catered for.

4. **RICHARD NJOROGE GACHUIRI, CECILIA WAIRIMU MBUGUA** and **ROSE MUKUHI GACHUIRI** each filed their replying affidavit dated 24th October, 2024 which were similar in content. It was averred that **HERMAN GITAU NJERI, SAMUEL MBUGUA NJERI** and **ROSA NYAMBURA NJERI (deceased)** are strangers and lack claim over the estate of the late **WILFRED KIARIE MBUGUA** whom they claim to be their father. The Grant of letters of administration intestate was issued to **RICHARD NJOROGE GACHUIRI** on 16th November, 2023 after the court revoked the grant of letters of administration dated 29th July, 2013, which had been fraudulently procured by **ISAAC KIGO MBUGUA** the Applicant's father. The court also erroneously appointed **WILFRED KIARIE MBUGUA** who was by then deceased, as an

administrator, which grant was revoked and **RICHARD NJOROGE GACHUIRI** was appointed as the sole administrator. The fact that the deceased had two houses does not prevent the estate from having a sole administrator. It was deposed that failure to obtain the consent of the Applicant is not a reason to revoke the grant. **GACHUIRI KAGOTHO** was inadvertently left out but the estate is willing to include him. The court was urged to appoint **CECILIA WAIRIMU MBUGUA** as a co-administrator and not the Applicant in the event it is inclined to appoint one. The Applicant was said to be intermeddling with the estate, is temperamental and irrational thus not suitable to be a co-administrator as he would frustrate the process of administration.

5. **RAHAB NJOKI KIGO** filed her affidavit dated 5th August, 2025 in support of the appointment of **CECILIA WAIRIMU MBUGUA** as an Administrator. She deposed that she is the daughter of the late **ISAAC KIGO MBUGUA**. She opposed the appointment of **ALEX MBUGUA** who is her brother as he has physically attacked their mother leading to the institution of criminal proceedings and that **ALEX MBUGUA** has also threatened to disinherit her together with her mother from the estate of the late **ISAAC KIGO MBUGUA**. She contended that appointing **ALEX MBUGUA** would not serve the best interests of the estate. In any case being a grand son, **ALEX MBUGUA** does not rank in the highest priority compared to **CECILIA WAIRIMU MBUGUA**.
6. The parties were directed to canvass the application by filing and exchanging written submissions.

APPLICANT'S SUBMISSIONS

7. The Applicant submitted that prayer one and three of his application had been overtaken by events the Court having revoked the grant issued to **RICHARD NJOROGE GACHUIRI** on 10/7/2023. He averred that the only prayer pending was for him to be appointed as a co-administrator as the same is not opposed by any beneficiary and that no other beneficiary has shown interest in being appointed as a co-administrator.

RESPONDENT'S SUBMISSIONS

8. The Respondent submitted that as much as he did not obtain consent of all the living beneficiaries and that he omitted some of the beneficiaries, it was submitted that the same was inadvertent and justifiable. **HERMAN GITAU NJERI AND SAMUEL MBUGUA NJERI** were said to have refused to undertake DNA testing as such they are strangers to the estate having failed to prove the issue of paternity. The letter by the Chief purporting to list **HERMAN GITAU NJERI AND SAMUEL MBUGUA NJERI** as the dependants of the deceased does not resolve the dispute regarding paternity. Reliance was placed in the case of ***In Re Estate of ECC (Deceased) (2025) KEHC 1287 KLR.*** Consent from **GACHUIRI KAGOTHO** was inadvertently not sought, the Beneficiary having been included in the initial Chief's letter. The family of the Applicant was embroiled in a dispute as to who was going to be appointed administrator as such their consent was inadvertently not sought. Nevertheless, that no prejudice would have been suffered as their provision was included in the distribution schedule. Further, the Court was urged to amend the grant

instead of revoking the said grant as the same would further delay the distribution of the deceased's estate. Reliance was placed in the case of ***Mary Wangari Kihika vs John Gochuki Kinuthia Succession Cause No. 407 of 1997.*** Lastly, it was submitted that save for the house of the Late **ISAAC KIGO**, all the other beneficiaries have consented to the Respondent acting as the sole Administrator of the deceased's estate. Nevertheless, the Court was urged to appoint **CECILIA WAIRIMU MBUGUA** as a co-administrator in the event the Court is inclined to appoint another Administrator. The Respondent quoted Section 66 of the Law of Succession which provides the hierarchy for the appointment of administrators. The Applicant herein **ALEX MBUGUA** was said to be a son of the late **ISAAC KIGO**, therefore a grandchild of the deceased. Reliance was placed on among others the case of ***In re Estate Gurdial Kaur Sihra (deceased) (2020) eKLR.*** The court was urged to dismiss the application with costs to the Respondent.

INTERESTED PARTY'S SUBMISSIONS

9. It was submitted that **CECILIA WAIRIMU MBUGUA** takes precedence in the order of priority for appointment of administrator as the daughter of the deceased compared to **ALEX MBUGUA** who is a grandchild to the deceased. It was submitted that appointing **ALEX MBUGUA** as an administrator would not serve the best interest of the estate as his actions suggest risk of management, undue delay in distribution and potential intermeddling with the assets of the estate.

ISSUES FOR DETERMINATION

10. Having considered the Summons, the replying affidavit and the parties' submissions, the main issue arising for determination is whether the Grant of Letters of Administration herein should be revoked.

A ANALYSIS

11. 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.”

12. The Applicant is seeking revocation of the Grant of Letters of Administration Intestate issued to the Administrator on 16/11/2023 on the grounds that one of the Administrators **WILFRED KIARIE MBUGUA** is deceased hence the need to appoint another administrator to represent the first house.

13. **RICHARD NJOROGE GACHUIRI** was also said to have been appointed the sole administrator without involving all the beneficiaries from the first house.

14. ***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.”

15. The Applicant herein submits that the only prayer pending was for him to be appointed as a co-administrator, the grant issued to **RICHARD NJOROGE GACHUIRI** having been revoked on 10/7/2023. His prayer for appointment as a co-administrator is not opposed by any beneficiary and that no other beneficiary has shown interest.
16. The administrator on the other hand states that the people claiming to be children of the late **WILFRED KIARIE MBUGUA** are strangers to the estate as they have failed to prove their paternity.
17. The administrator stated that the court had erroneously appointed **WILFRED KIARIE MBUGUA** as a co-administrator as he was by then deceased which caused the said Grant to be revoked and he was appointed as the sole administrator with the consent of the beneficiaries from the first house.
18. The administrator admitted to have inadvertently left out **GACHUIRI KAGOTHO** who he was willing to include.
19. **CECILIA WAIRIMU MBUGUA** was said to be ranking in priority in the appointment as a co-administrator and not the Applicant who was said to be intermeddling with the estate as well as being temperamental and irrational.
20. A perusal of the record shows that vide the summons dated 6/9/2023, the administrator herein applied for the grant issued on 5/8/2022 jointly to himself and **WILFRED KIARIE MBUGUA** be revoked and a fresh grant of letters

of administration be issued to him as the sole administrator.

21. There is evidence that not all beneficiaries from the first house were involved a mistake which the administrator submits was inadvertent and that in any case the said beneficiaries have been provided for hence the grant should not be revoked but instead should be amended and that the court if inclined, should appoint as a co-administrator and not the Applicant as he will frustrate the process of administration.
22. The appointment of **CECILIA WAIRIMU MBUGUA** as a co-administrator is supported by **RAHAB NJOKI KIGO AND ROSE MUKUHI GACHUIRI** both from the first house.
23. This court, has considered all the parties averments herein, it is noted that on 16/11/2023, **RICHARD NJOROGE GACHUIRI** was appointed by this Court as the sole administrator and he has conceded that the process of obtaining the Grant was defective, because some mandatory procedural step was not followed and that it be revoked to include another co-administrator
24. Be that as it may, and after considering the instant, application, this court is satisfied that the process was defective and is inclined to appoint **CECILIA WAIRIMU MBUGUA** as a co-administrator so as to safeguard the interests of the second house.

25. The said co-administrator ranks higher in priority being that she is a daughter of the deceased whereas the Applicant herein is a grandchild of the deceased.
26. The Applicant has sought to revoke the grant issued to the administrator herein on 16/11/2023 and in the interest of justice, this court will indeed revoke the said grant and a fresh Grant be issued to include **CECILIA WAIRIMU MBUGUA** as a co-administrator.
27. In the circumstances, this Court is satisfied that the application is partially meritorious on the issue of revocation but not entirely in the terms of the Applicant's prayers.

FINDINGS AND DETERMINATION

28. For the forgoing reasons this Court makes the following findings and determinations;
- (i) The Grant of Letters of Administration issued herein on the 16th November, 2023 to **RICHARD NJOROGE GACHUIRI** be and is hereby revoked.
 - (ii) **CECILIA WAIRIMU MBUGUA** be and is hereby appointed as a Co-Administrator of this estate together with **RICHARD NJOROGE GACHUIRI**.
 - (iii) A fresh Grant be issued in the joint names of **RICHARD NJOROGE GACHUIRI and CECILIA WAIRIMU MBUGUA**.
 - (iv) The summons for confirmation of the Grant filed by **RICHARD NJOROGE GACHUIRI** dated 19th day of February 2024 be stayed pending amendment to include both administrators as well as all the

ascertained beneficiaries of the deceased's estate who had been left out.

(v) This being a family matter each party shall bear its own costs.

(vi) Mention on 28/09/2026 before the Presiding Judge for directions.

Orders Accordingly.

**DATED SIGNED AND DELIVERED VIA TEAMS AT VOI THIS
8TH DAY OF MAY, 2026**

**A. MSHILA
JUDGE**

In the presence of;

Sanja/Millicent - Court Assistant

The Applicant - Alex - acting in person

Nalianya - for the Respondent

Mutinda - h/b for Matio for the Interested Person