



REPUBLIC OF KENYA



**Kiai & another v Wahu (Succession Cause 745 of 2010)  
[2025] KEHC 380 (KLR) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 380 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 745 OF 2010**

**M MUYA, J  
JANUARY 27, 2025**

**BETWEEN**

**CHARLES ALEXANDER KIAI ..... 1<sup>ST</sup> APPLICANT**

**MONICA MUTHONI NJAU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**HELLEN WAHU ..... RESPONDENT**

**RULING**

**Introduction**

1. This summons for revocation or annulment of grant is dated 29th October, 2018.
2. It seeks for the annulment of a grant of letters of administration issued to HELLEN WAHU MUGO on the 3<sup>rd</sup> day of May, 2011.
3. The grounds are that:-
  1. The applicant failed to include the second wife and her children as beneficiaries of the estate of the deceased JULIUS MUGO MAINA.
  2. That the Respondent failed to disclose that her son was facing murder charges in criminal case no. 51 of 2007 at Nyeri High Court which was in respect to the death of her late husband which was contrary to the provisions of Section 96 of probate and administration rules.
4. The summons for revocation of the grant are opposed. The grounds are:-
  1. That it is clearly on record that the petition commenced by way of citing the 2<sup>nd</sup> applicant.
  2. That the 2<sup>nd</sup> applicant is a stranger to the petitioner as she was not a lawful wife of the deceased.
  3. That the allegations of the offence of murder in criminal case no. 51 of 2007 were not proved.



4. The applicants knew the existence of the petition but did not object to the grant being confirmed.
5. That 1<sup>st</sup> applicant with the connivance of the local chief included the 2<sup>nd</sup> applicant in the list of beneficiaries of the estate.
6. The applicants did not raise any objections at the time of the confirmation of the grant of letters of administration.

### **The Law**

5. Under Section 76 of the *Law of Succession Act*, a grant of representation may be revoked or annulled if the court decides that:-
  - 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 untrue allegation of the 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 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.
    - iii. To produce to the court within the time prescribed any such inventory or account of administration as is required by the provisions of paragraph (e) and (g) of the Section 83.....
  - e. That the grant has become useless and inoperative through subsequent circumstances.

### **The Applicant's Case**

6. The contention by the applicants is that the respondent failed to include the 2<sup>nd</sup> applicant and her children as beneficiaries of the estate of the deceased. It is noted that this petition commenced as a citation. The 2<sup>nd</sup> applicant was cited by the respondent though she alleges that the 2<sup>nd</sup> applicant was not a lawful wife to the deceased.
7. It is instructive to note that the letter by the chief introducing the parties does indicate the 2<sup>nd</sup> applicant and all her children as beneficiaries to the estate of the deceased.
8. A perusal of the affidavit sworn on 19<sup>th</sup> august, 2010 does indicate that the respondent does consider the 2<sup>nd</sup> applicant as a co-wife. It is not entirely correct therefore to assert that the respondent failed to include the 2<sup>nd</sup> applicant as a beneficiary of the estate.
9. Upon a careful perusal of all the affidavits and annexures thereto, I am satisfied that the 2<sup>nd</sup> applicant and her children were duly recognized by the respondent as beneficiaries of the estate of the deceased.
10. However, she deliberately failed to include them in her application for confirmation of the grant of letters of administration of the estate.



11. In her affidavit in support of summons for confirmation of grant at paragraph 5, she deposes that the persons beneficially entitled to the estate are herself. The property is identified as Loc. 14/Kiru/3758 to be transferred to herself wholly.
12. I find that the respondent deliberately concealed from the court, a material fact, which was that, she had not included the 2<sup>nd</sup> applicant and her children in the distribution of the estate.
13. In the summons for revocation of grant it is also contended that the respondent failed to disclose material facts that her son was facing murder charges in criminal case no. 51 of 2017 at Nyeri High Court for the murder of the deceased and therefore is debarred by Section 96 of probate and administration rules.
14. Section 96 of the rules provides:-

Notwithstanding any other provision of this Act, a person who while sane, murders another person shall not be entitled directly or indirectly to any share in the estate of the murdered person and the person beneficially entitled to shares in the estate of the murdered person, shall be ascertained as though the murderer had died immediately before the murdered person.

(2) For the purpose of this Section the conviction of a person in criminal proceedings of the crime of murder shall be sufficient evidence of the fact that the person so convicted committed murder”
15. A perusal of the proceedings before the court do show that a son to the 2<sup>nd</sup> applicant was indeed arrested at the stage of investigations for the murder of his father but was released by police. No murder charges were proved in a court of law and therefore Section 96 does not apply in this case.
16. The upshot is that the summons for revocation of the grant dated 3<sup>rd</sup> May, 2011 issued to the respondent is hereby revoked and or annulled.
17. Land titles emanating from mother title no. Loc. 14/Kiiru/3758 which are Loc. 14/Kiiru/5013, Loc. 14. Kiiru/5014, Loc. 14/Kiiru/5015, Loc. 14/Kiiru/5016, Loc. 14/Kiiru/5017 are ordered cancelled and to revert back to the mother title Loc. 14/Kiiru/3758. The land registrar to comply. Costs in the cause.

**RULING READ AND DELIVERED IN OPEN COURT THIS 27<sup>TH</sup> DAY OF JANUARY, 2025.**

.....

**M. MUYA**

**JUDGE**

In the presence of:-

Kiori for the Respondent

Applicant absent

Court Assistant

