



REPUBLIC OF KENYA



**In re Estate of Perminus Mwangi Githengi (Deceased) (Succession Cause 1 of 1999) [2025] KEHC 4107 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4107 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 1 OF 1999  
SM MOHOCHI, J  
MARCH 28, 2025**

**BETWEEN**

**JOSEPH KAMAU MWANGI ..... APPLICANT**

**AND**

**PHYLIS MUTHONI MWANGI ..... 1<sup>ST</sup> RESPONDENT**

**JUDY MUTHONI MWANGI ..... 2<sup>ND</sup> RESPONDENT**

**MARGARET WAITHIRA NJIHIA ..... 3<sup>RD</sup> RESPONDENT**

**SIMON GITAHU KIBIRAHU ..... 4<sup>TH</sup> RESPONDENT**

**HEZEKIA WAIGURU NJAU ..... 5<sup>TH</sup> RESPONDENT**

**THE DISTRICT LAND REGISTRAR, NAIVASHA ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. On the 13<sup>th</sup> March 2025 I delivered an Ex-Tempore Ruling upholding the notice of preliminary objection dated 18<sup>th</sup> March 2024 and striking out the Application dated 8<sup>th</sup> February 2022.
2. Advocate Onami for the Applicant indicated of the pendency of the instant Application dated 23<sup>rd</sup> September 2024 urging for a ruling in the same.
3. This Court recalls that on the proceedings for the 24<sup>th</sup> September 2024 whereby Mr Onami indicated having filed a notice to withdraw an Application dated 8<sup>th</sup> September 2022, the 1<sup>st</sup> Applicant indicated that, “he is no longer interested in this case, I wish to withdraw from the case” consequently owing to arguments on representation by counsel, the Court directed filing of written submissions as a way of disposal.
4. It is noteworthy that the Application is undefended and no submissions were filed save for the written submissions dated 30<sup>th</sup> January, 2025.



5. Before Court for determination is a Summons for Revocation of Grant dated 1<sup>st</sup> February, 2024 the 1<sup>st</sup> and 2<sup>nd</sup> Applicant and the Summons dated 4<sup>th</sup> December, 2024 by the executor seeking injunctive relief.
6. The Summons for Revocation of Grant dated 23<sup>rd</sup> September, 2024 seeks the following orders:
  - a. Spent
  - b. Spent
  - c. Spent
  - d. Spent
  - e. That, pending the inter partes hearing and final determination of these Summons this Honourable Court be pleased to order the alleged Administratrix PHILLIS MUTHONI MWANGI and/or JUDY MUTHONI MWANGI to produce to the Court a proper, full and accurate account of the Estate of the late PERMINUS MWANGI GITHENGI, as of the date of the account.
  - f. That, the Grant of Letters of Administration Intestate in relation to the Late Perminus Mwangi Githengi which were issued by this Honourable Court to Florence Wangui Mwangi and Susan Njoki Mwangi (former Administratrix) on or about the year 1999 and/or confirmed on the 2<sup>nd</sup> of December, 1999 and/or any other dates whatsoever and subsequently rectified, to include Phillis Muthoni Mwangi and Judy Muthoni Mwangi as the current Administratrix, on or about the 19<sup>th</sup> of October, 2010 and/or subsequently howsoever to reflect Judy Muthoni Mwangi as the sole administratrix, be and is hereby revoked and/or annulled.
  - g. That, all the steps taken pursuant to the aforementioned Grant of Letters of Administration, the Certificate of Confirmation of Grant and/or the Rectified Certificate of Confirmation of Grant which may have changed the ownership status to any properties that are/ were part of the Deceased's Estate herein, be and hereby declared nullity and void in law.
  - h. That, this Honourable Court be pleased to issue an Order to reverse all dispositions, registrations and dealings made pursuant to the aforementioned Grant of Letters of Administration in all properties forming part of the Estate of the Late Perminus Mwangi Githengi which include, but is not limited to: Naivasha/Mwichiringiri Block 4/3260, Naivasha/ Mwichiringiri Block 4/22298, Naivasha/ Mwichiringiri Block 4/22299, Naivasha/ Mwichiringiri Block 4/22298, Naivasha/Mwichiringiri Block 6/242, Naivasha/ Mwichiringiri Block 6/241, Naivasha/Mwichiringiri Block 4/3260, Naivasha/ Mwichiringiri/ Karagita Block 6/221, Naivasha/ Mwichiringiri/ Karagita Block 6/242, Naivasha/ Mwichiringiri/ Karagita Block 12/84, Nyandarua/Malewa/602, Nyandarua/Malewa/4274, Nyandarua/ Malewa/4275, Nyandarua/Malewa/1128, Nyandarua/Malewa/1129, Naivasha Karagita S.h Group Plot No. 66, Karagita S. H. Group Plot No. 396/31/57, Share With Njoro Farmers Group, Malewa Scheme Plot No 602, Kenya Commercial Bank Shares, thereby to revert the registration of properties back to the name of the Deceased Perminus Mwangi Githengi.
  - i. That, any of the Orders issued herein be served upon the Land Registrar, Naivasha, Nyandarua and/or the respective land registry, as the case may be, for compliance.
  - j. That, this Honourable Court be pleased to order the alleged Administratrix Phillis Muthoni Mwangi and/or Judy Muthoni Mwangi to produce to the Court a proper, full and accurate account of the Deceased's Estate and their dealings to the date of the account.



- k. That, in the alternative to the foregoing, this Honourable Court be pleased to review the Grant of Letters of Administration Intestate together with the Certificates of Confirmation of Grant (including the Rectified Certificates) in relation to the Estate of the late Perminus Mwangi Githengi which were issued by this honourable Court To Florence Wangui Mwangi and Susan Njoki Mwangi (former Administratrix) on or about the year 1999 and/or confirmed on the 2<sup>nd</sup> of December, 1999 and/or any other dates whatsoever and subsequently rectified, to include Phillis Muthoni Mwangi and Judy Muthoni Mwangi as the current Administratrix, on or about the 19<sup>th</sup> of October, 2010 and/or subsequently howsoever to reflect Judy Muthoni Mwangi as the sole administratrix, thereby to redistribute the whole and entire Estate equally, justly and/or as may be agreed, with each beneficiary obtaining his/her rightful portion and the said redistribution be confirmed forthwith.
  - l. That, this Honourable Court be pleased to appoint and confirm the Applicant Joseph Kamau Mwangi as one of the Administrators to the estate of the late Perminus Mwangi Githengi.
  - m. That, this Honourable Court be pleased to make any other and further orders that it deems just.
  - n. That, the costs of and occasioned by this application be provided for.
7. The Application is supported by the Affidavits sworn by the 2<sup>nd</sup> Applicant Joseph Kamau Mwangi dated 23<sup>rd</sup> September, 2024 and his sister Jane Wanjiru Mwangi dated 24<sup>th</sup> January, 2025 a son and daughter of the Deceased and beneficiaries of the Estate.
  8. The 2<sup>nd</sup> Applicant's case and evidence is that, vide Notice of Withdrawal dated 23<sup>rd</sup> September, 2024 as well as the Court appearance on the 24<sup>th</sup> of September, 2024 he caused to be indicated his desire and instructions to withdraw the Application dated 8<sup>th</sup> September, 2022 and filed on the 7<sup>th</sup> of February, 2023 for the reason that the same did not succinctly articulate my desires/prayers and/or wishes in connection with his interest in his father's estate herein.
  9. That, on or about the same 24<sup>th</sup> of September, 2024 the 2nd Applicant to Application dated 8<sup>th</sup> September, 2022 and filed on the 7<sup>th</sup> of February, 2023 (Githengi P. Mwangi) personally indicated in open Court that he will be similarly withdrawing his part of the said Application.
  10. That, the 2<sup>nd</sup> Applicant however opted to file Application dated 23<sup>rd</sup> September, 2024 so as to obtain his rightful share of his father's inheritance and that of his generation.
  11. That, the Respondents are yet to Respond to the Application dated 23<sup>rd</sup> September, 2024, hence the same is unopposed.
  12. That, the potent of the Application herein suffices to resolve all of his longstanding, pending and unresolved issues in connection with his Father's Estate herein, once and for all.
  13. That, the Deceased is the 2<sup>nd</sup> Applicant's father who died on or about the 23<sup>rd</sup> of October, 1998 and was survived by the following beneficiaries as setout in the Chief's letter dated 23<sup>rd</sup> December, 1998:
    - I. Florence Wangui Mwangi First Widow (Deceased)
    - II. Githengi P. Mwangi (Son)
    - III. Phyllis Muthoni Mwangi (Daughter) (Now) Deceased
    - IV. Paul Muya (Son) (Deceased) left Children Naomi, Sam, Jane, Phyllis and Njeri Muya



- V. Joseph Kamau Mwangi
  - VI. Ben Mwangi Waweru (Son) (Deceased) left Wife Benetta Njeri and daughter Florence Wangui Mwangi
  - VII. Jane Wanjiru Mwangi
  - VIII. Samuel Githaiga (son) (Deceased) Died in childhood.
  - IX. Susan Njoki Mwangi (Second- Widow) (Deceased)
  - X. Judy Muthoni Mwangi (Daughter)
  - XI. Joseph Kanina Mwangi (Son)
  - XII. Mary Njeri Mwangi (Daughter)
  - XIII. Stephen Kariuki Mwangi (Son)
14. That, since the death of their father, the Deceased's beneficiaries have to date never sat as a family and/or agreed as to who were going to be the administrators of the Estate and neither the mode of distribution of the same.
  15. That, the Applicant has also never been involved or consented to the issuance of any letters of administration, rectification and/or distribution of the Estate of his father.
  16. That, the Applicant has never attended any Court proceedings wherein to give his input and/or consent as to the issuance of any grant of letters of administration, the amendments/ rectification and/or the distribution therein.
  17. That, from inception/beginning, all of the alleged and purported signatures on his behalf are complete and utter forgeries and fraudulent, as can be seen by naked eyes.
  18. That, had he participated in the said proceedings he would surely have asked for his portion to his name, once and for all.
  19. That, a fraud was/has thus been perpetrated against this Honourable Court by the self-appointed Petitioners (the former and current Administratrix) who unlawfully obtained the Grant of Letters of Administration to the Deceased's Estate herein. ((Evidently from the Petitions for Letters of Administration dated 11<sup>th</sup> January, 1999, Summons for Rectification of Grant dated 18th August, 2010 and Certificate of Confirmation of Grant 19th October, 2010.
  20. That, the said fraudulent Grant (s) (as well as the amendments therein) are now being used to stealthily, surreptitiously and unlawfully deprive the 2<sup>nd</sup> Applicant of his lawful inheritance and interests in his father's Estate.
  21. That, the said Grant of Letters of Administration issued by this Honourable Court to Florence Wangui Mwangi and Susan Njoki Mwangi (former Administratrix) on or about the year 1999 and/or confirmed on the 2<sup>nd</sup> of December, 1999 and/or any other dates whatsoever and subsequently rectified, to include Phillis Muthoni Mwangi and Judy Muthoni Mwangi as the current Administratrix, on or about the 19<sup>th</sup> of October, 2010 and/or subsequently howsoever to reflect Judy Muthoni Mwangi as the sole administratrix were obtained fraudulently by the said Administratrix who:
    - i. Deliberately misrepresented, concealed, refused and/or failed to disclose all the surviving children of the Deceased in blatant disregard of the mandatory provisions of the law.



- ii. Deliberately and fraudulently failed to involve and/or obtain the Applicant's consent as among the surviving children of the Deceased in blatant disregard of the mandatory requirements of the law.
  - iii. Deliberately forging and/or falsifying the Applicant's signatures as well as other beneficiaries.
  - iv. Have dismally failed to diligently proceed with the administration of the estate herein to the damage, detriment and/or prejudice of the Estate herein and himself.
22. That, the procedure adopted in obtaining the Grant of Letters of Administration and subsequent rectification and confirmation thereof were thus grossly flouted.
  23. That, besides the forgeries as to the 2<sup>nd</sup> Applicant's signature and lack of valid consent therein from inception, it is glaringly notable that their first-born brother Githengi P. Mwangi's name and signature are also wrongfully missing on the Affidavit and/or Consent dated 18<sup>th</sup> August, 2010 purportedly in support of the support of the Summons for Rectification of Grant.
  24. That, at present, the current Administratrix have connivance with the Office of District Land Registrar, Naivasha moved to wrongfully and unlawfully register the Estate properties in their sole names and are now whimsically disposing the same to 3<sup>rd</sup> Parties (such as the 3<sup>rd</sup> and 4<sup>th</sup> Respondents) to the exclusion and detriment of the Applicant as well as other beneficiaries.
  25. That, in breach of the purported trust the Administratrix have indeed suo motu sold off some of the properties forming part of the Deceased's Estate to the exclusion, damage, detriment and/or prejudice of the Applicant herein, except for their sole benefit.
  26. That, in brazen greed and highhandedness the current Administrator has caused to be demanded and further pestering that some beneficiaries do vacate the properties with the view to facilitate the suo motu sale of the Estate properties.
  27. That, to date the 2<sup>nd</sup> Applicant has not received any portion as his rightful share of inheritance to his name from the Estate and he is thus dreadfully anxious about the same, especially in light of the conduct of the Administratrix herein.
  28. That, given his age, time is of essence because he needs to enjoy the use and fruits of his inheritance.
  29. That, it is therefore best interest of justice that the grant be revoked and/or due process followed so that he can participate and obtain his rightful share of inheritance once and for all.
  30. That, the Deceased's Estate is of sentimental value to the Applicant and it is unfair that he has been denied his rightful portion of the same.
  31. That, in the premises, unless this Honourable Court urgently intervenes by granting the orders sought herein, there is real and present danger that the current Administratrix may unduly and adversely continue dealing in the Estate properties to his detriment as well as the Estate of the Deceased herein, thereby occasioning irreparable loss and damage
  32. That, in the premises unless this Honourable Court intervenes by granting the orders sought herein there's immense risk that the Estate of the Deceased herein shall be wasted and/or dissipated to the Applicant's utter detriment as well as the Estate of the Deceased herein, thereby occasioning irreparable loss and damage.



33. That, in the premises unless this Honourable Court intervenes by granting the orders sought herein there's immense risk that he shall continue to suffer gross violation of his constitutional and proprietary rights to property hence irreparable loss and harm.
34. That, the Application herein has been brought in utmost good faith.
35. That, no prejudice stands to be suffered should the orders sought herein be granted. That, the Application is supported by the 2<sup>nd</sup> Applicant's sister and daughter to the Deceased that, since the death of their father they have never sat as a family and/or agreed as to who were going to be the administrators of their father's Estate and neither the mode of distribution of the same.
36. That, she has also never been involved or consented to the issuance of any letters of administration, rectification and/or distribution of the Estate of her father to her mothers and/or her sisters.
37. That, she has never ever sought to be represented in this suit in whatsoever way.
38. That, this was the first time she was attending and/or making any representations before this Court in connection with the Estate of her father.
39. That, in the premises unless this Honourable Court intervenes by granting the orders sought herein there's immense risk that the Estate of the Deceased herein shall be wasted and/or dissipated to the Applicant's utter detriment as well as the Estate of the Deceased herein, thereby occasioning irreparable loss and damage.
40. That, in the premises unless this Honourable Court intervenes by granting the orders sought herein there's immense risk that she shall continue to suffer gross violation of her constitutional and proprietary rights to property hence irreparable loss and harm.
41. That, the Application herein has been brought in utmost good faith and no prejudice stands to be suffered should the orders sought herein be granted.
42. That, since the death of their father they have never sat as a family and/or agreed as to who were going to be the administrators of our father's Estate and neither the mode of distribution of the same
43. That, she has also never been involved or consented to the issuance of any letters of administration, rectification and/or distribution of the Estate of his father to his mothers and/or his sisters.
44. That, she has never ever sought to be represented in this suit in whatsoever way.
45. That, this was the first time she was attending and/or making any representations before this Court in connection with the Estate of her father.
46. That, she is also surprised to learn that someone had forged her signature to falsely insinuate that she had given her consent to the issuance of letter the letters or administration as well as the to the distribution of the Estate herein.
47. That, it is also glaringly notable that her brother Githengi P. Mwangi's name and signature are also wrongfully missing on the Affidavit and/or Consent dated 18<sup>th</sup> August, 2010 purportedly in support of the support of the Summons for Rectification of Grant.
48. That, the entire letters of administration and certificates of confirmation of grant are thus fatally defective, hence should be revoked.



49. That, it was very shocking to learn that her sisters had subsequently appointed themselves as administratrix and proceeded to share the Estate among themselves to the exclusion of everyone entitled therein.
50. That, a quick look at the signature contained in the Affidavit/ Consent in Support of the Rectification of Grant does not resemble her real signature, which she had replicated in her affidavit.
51. That, no beneficiary has preferential rights and that all beneficiaries are equal.
52. That, she could not go without mentioning that it has come to her knowledge that her brother Githengi P. Mwangi is currently being wrongfully and unlawfully evicted, by third parties (3<sup>rd</sup> Respondent) who allege to have purportedly albeit secretly bought the same from the Administratrix herein, from property now known as NAIVASHA/Mwichiringiri/ BLOCK 4/22298 which was rightfully bequeathed to him by their father (the Deceased herein).
53. That, the Administratrix has not only wrongfully and unlawfully deprived the beneficiaries of their rightful inheritance but also the rights to enjoy the fruits and economic benefit therein over many years.

### **Analysis and Determination**

54. The power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously.
55. There must be evidence of wrong doing for the Court to invoke Section 76 of the *Law of Succession Act* and order for revocation of or annulment of a grant. Besides, when a Court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice. Generally, the Trial Court has jurisdiction to revoke a grant if the conditions under section 76 are satisfied.
56. For avoidance of doubt, Section 76 of the *Law of Succession Act* provides as follows:

“

“76. Revocation or annulment of grant

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.”

57. The above Section 76 was expounded In re Estate of Prisca Ong’ayo Nande (Deceased) [2020] eKLR where 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.”

58. The 2<sup>nd</sup> Applicant’s affidavit in support dated 23<sup>rd</sup> September 2024 alleges fraud without any proof, equally feign having been unaware of the proceedings without explaining when and how an awakening occurred after twenty-six (26) years.

59. The Affidavit in support of the summons dated 10<sup>th</sup> January 2025 by Jane Wanjiru Mwangi is ingenious and unbelievable to the extent that she maintains of having been unaware of the probate and administration never been involved or consented to the issuance of any letters of administration, rectification and/or distribution of the Estate of her father to her mothers and/or her sisters for the last twenty-six (26) years.

60. Jane Wanjiru Mwangi has not explained when she became aware only states of now being surprised of the developments now burst into the scene demanding a revocation of grant. She alleges fraud without proving the same.

61. No evidence of wrong doing has been presented or laid out against the 3<sup>rd</sup> to the 6<sup>th</sup> Respondents.

62. To this Court takes a dim view of instances where parties would approach the Court for discretionary relief while either concealing information or with unclean hands and expect a positive outcome.



63. The revocation of a grant is an ultimate tool to remedy manifest illegalities and the same is discretionary and should sparingly be used. In this instance where a party moves Court after decades then such a party ought to go an extra mile in justifying his delay and making solid and cogent presentation of his case.
64. The practice of litigating forever in succession proceedings runs contra to the principles enshrined in Article 159 (2) b and d of *the constitution* of Kenya.
65. The upshot of the above is that the summons for Revocation of Grant dated 23<sup>rd</sup> September 2024 is found to be lacking merit and is hereby dismissed. The Court makes the following resultant orders:
  - i. The Administrator shall file a final return (within 60 days) to Court detailing the transmissions undertaken in distribution of the shares to respective beneficiaries;
  - ii. Joseph Kamau Mwangi shall personally bear the costs of this Application.

It is so Ordered.

**DELIVERED, DATED AND SIGNED AT NAKURU ON THIS 28<sup>TH</sup> OF MARCH, 2025**

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**MOHOCHI S.M.**

**JUDGE**

