



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of Silas Mbugua Mutuma (Deceased) (Succession Cause
212 of 2006) [2025] KEHC 5839 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 5839 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 212 OF 2006
SM MOHOCHI, J
MARCH 28, 2025**

IN THE MATTER OF THE ESTATE OF SILAS MBUGUA MUTUMA (DECEASED)

BETWEEN

**NANCY NJOKI MBUGUA 1ST APPLICANT
HELLEN WAIRIMU MBUGUA 2ND APPLICANT**

AND

**ELUID MUTUMA MBUGUA 1ST RESPONDENT
JANE WATHONI 2ND RESPONDENT
STEPHEN GITHUI 3RD RESPONDENT
JOEL NJOROGE 4TH RESPONDENT
ANNE WAIRIMU 5TH RESPONDENT
PETER NJUGUNA 6TH RESPONDENT
LUCY WANJIKU 7TH RESPONDENT
JOHN MUNGAI 8TH RESPONDENT
ANNE MUTHONI 9TH RESPONDENT
ONESMUS MUTUMA MBUGUA 10TH RESPONDENT
ELIZABETH WANJIKU 11TH RESPONDENT
FLORENCE WANJERI 12TH RESPONDENT
PERIS WANGUI 13TH RESPONDENT**



RULING

1. Before Court for determination are two Applications, the 1st Application is a summons for revocation of Grant dated 1st February, 2024 the 1st and 2nd Applicant and the Summons dated 4th December, 2024 by the executor seeking injunctive relief.
2. The 1st Application seeks inter alia the following relief(s);
 - i. Spent;
 - ii. Spent;
 - iii. The Honourable Court be pleased to suspend certificate of confirmation of Grant dated 20th July 2007, rectified certificate of confirmation of grant dated 19th April, 2021 and further Rectified Certificate of confirmation of grant dated 30th May, 2023.
 - iv. The Honourable Court be pleased to annul Kenya Gazette Notice Number 6938 dated 25th May, 2006 and Grant of Letters of Administration issued to the 1st Respondent herein.
 - v. The Honourable Court be pleased to revoke certificate of confirmation of Grant dated 20th July 2007, rectified certificate of confirmation of grant dated 19th April, 2021 and further Rectified Certificate of confirmation of grant dated 30th May, 2023.
 - vi. The cost of the Application.
3. The 2nd Application by the Executor seeks inter alia the following relief(s);
 - i. That the Respondent be ordered to remove the security guards she has placed on Title Number Elburgon/Arimi Ndoshwa Block 4/10 (Nyakiambi) forthwith.
 - ii. That this Honorable Court do issue an order restraining the Respondent from placing any security guards on Title Number Elburgon/Arimi Ndoshwa Block 4/10 (Nyakiambi) or in any other way intermeddling with the said parcel of land.
 - iii. That the Officer Comuaning Station (OCS) Elburgon Police Station enforces the orders granted herein.
 - iv. That the costs of the Application be provided for.

Applicant/Objector's Case

4. It was the 1st Applicants case that, the 1st Respondent applied for grant of probate of written will vide Nakuru Succession Cause 212 of 2006 and the same was concluded in 29th January, 2023. The matter was then gazetted vide Kenyan Gazette Notice Number 6938 dated 25th May, 2006. A Certificate of Confirmation dated 20th July, 2007 was issued to that effect and later rectified on 28th August, 2016 and further rectified on 30th May, 2023.
5. That the 1st Applicant filed another ELC matter vide Nakuru ELC case Number E.238 OF 2023, where she sued the 1st Respondent together with 8th, 5th, 11th, 12th and 13th respondents herein.
6. That, on the 13th December, 2023 the Court issued order restraining the Respondents from transferring, taking over ownership, occupying alienating, disposing off, leasing out or in any way



interfering with house located on parcel of land known as Elburgon/Arimi Ndoshwa Block 4/10 (Nyakiambi). The matter is still pending before Court.

7. It is the 1st Applicant's submission that the Respondents did not involve her in any succession proceedings and she later came to learn about it through a replying affidavit filed by the Respondents in Nakuru ELC case Number E.238 OF 2023. It is also her evidence that all the purported signatures bearing her name are not hers, which prompted the filing of this present Notice of Motion Application seeking to revoke certificate of confirmation of Grant dated 20th July 2007, rectified certificate of confirmation of grant dated 19th April, 2021 and further Rectified Certificate of confirmation of grant dated 30th May, 2023.
8. That the 1st Respondent herein filed a Replying affidavit to that effect through their Advocate on 19th February, 2024 and the Court directed that this Application be canvassed by way of written submissions.
9. Has framed a solo issue for consideration, Whether the applicant/objector has met the threshold for revocation of a grant?
10. That Section 76 of the *Law of Succession Act* provides for circumstances under which a grant of representation may be revoked. It provides that: -

“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 has ordered or allowed; 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.”
11. In light of the above provision, it is 1st Applicant's submission that the Certificate of Confirmation should be revoked on the following grounds:
 - i. That the proceedings to obtain the grant were defective in substance.



- ii. That the grant was obtained fraudulently by the making of a false statement or by the concealment from the Court of something material of the case;
 - iii. That the grant was obtained by means of untrue allegations of a fact essential in point of law to justify the grant;
 - iv. That the Applicants' consent was not obtained and that the consent form attached to the petition for grant is a forgery since at the time the application was presented, none of the Applicant was present and so none could have appended their signature to the consent and that they in fact never signed the purported consent to the making of the grant;
 - v. That the persons to whom the grant was made have failed to proceed diligently with the administration of the estate which is at risk of being laid to waste;
 - vi. The grant has been otherwise rendered useless and Inoperative.
12. That the 1st Applicant herein is the daughter of the late Tabitha Wambui Mbugua And Silas Mbugua Mutuma (both deceased) who died testate and that she has been living in Melbourne, Australia since 1996, when the various processes leading to the making of the grant were done she was never consulted and never consented to the apportionment of the property in the manner reflected in the amended certificate of grant, further, the Applicant did not execute any of the consents which supported the summons for confirmation or rectification of the grant, saying the signatures attributed to her are not hers. It is also her submission that she did not attend any proceedings during the hearing of the succession cause.
13. It is Applicants' case that their parents in the will bequeathed her part of Elburgon/Arimi Ndoshwa Block 4/10 (Nyakiambi), the matrimonial home, where she has constructed her house. The Applicant herein singlehandedly built the house without support of the Respondents' hoping that they would have adhered to their parents' will draw the Court's the attention to the minutes produced by the respondents herein dated 8th August, 2023. It clearly indicates that the Applicant was not present and it was decided that the 10th Respondent to take over the portion of land where she had been allocated without her consent.
14. It is worth noting that the Respondents were also bequeathed properties from estate of their parents but they are hell bent to go against their parents' wishes as deponed in their will. Their brother (1st respondent) has forcefully taken over the running of the entire estate in total disregard to the welfare and social rights of the 1st Applicant who was assigned a said portion of land by their parents as drawn in the will attested she has repeatedly had to confront the Respondents over the same issue but she has always been dismissed hence this present Application.
15. It is the Applicants case that, the petitioner, while applying for letters of Administration for the Estate of the late Silas Mbugua Mutuma, failed to inform the Objector of his intention to take out letters of administration for the Estate of her late father and besides that her consent was not obtained. Further, that the consent form attached to the petition for grant is a forgery since at the time the application was presented, the Applicants were not present and therefore none could have appended their signature to the consent despite any assertions or allegations by the respondents.
16. Drawing from the provisions of Section 76 of the Law of Succession Act, Cap 160 Laws of Kenya, it is our submission that the grant should be revoked for the principal reason that there was material concealment of facts and therefore the grant was obtained fraudulently by making false statements in addition, the administrators have not proceeded diligently with the administration of the estate



17. The 1st and 2nd Applicants further submit that the Honorable Courts have consistently revoked grant of letters of administration procured using consents and affidavits that were not actually signed by the makers, especially where the beneficiaries are purported to have signed such documents. Reliance is made on the following cases;
- i. In re Estate of Gathuku Gathuna (Deceased) [2020] KLR,
 - ii. Mary Ruguru Njoroge -V- Peter Muriithi Gichuru, [2016] eKLR and
 - iii. Penina Akumu Nyabola -V- Robert Mbal Nyabola& Another [2011] KLR.
18. In re Estate of GathukuGathuna (Deceased) [2020] KLR (Meoli. J), the Honorable Court revoked a grant issued on the basis of, inter alia, forged signature of one of the beneficiaries, and stated that
- “ [a]grant obtained through forged documents cannot be allowed to stand.”
19. The Applicant concedes in having the burden to prove on a balance of probability that the signature that is borne on the documents filed in Court to procure the grant of letters of administration, the confirmation and revocation thereof, was not hers. In her testimony, the 1st Applicant/Objector submitted that she was away in Melbourne Australia at the time when she was alleged to have signed the document, and therefore she could not have signed the document. She also did not receive any document or notice related to the succession proceedings herein.
20. The Applicant submits that she has met two of the limbs envisaged under Section 76 of the Law of Succession Act, namely that;
- i. there was non-disclosure as regards the absence of the applicant (which if the Court had been informed, I am sure it would have set certain conditions to be met so as to be certain that he applicant was aware of the on-goings and had consented
 - ii. Secondly, there was obvious misrepresentation as to who signed all the documents against the Applicants name so as to make it appear that they were the signatory, yet at the time the Applicant was out of the country.
21. The Applicants submit that the applicants have met the threshold for revocation of grant. It is not disputed that their late parents left a will and bequeathed part of the suit property to the applicant where she built a house and developed the parcel. The Respondents have no right to fail to disclose this material fact to the Court.
22. Further, the Applicants/Objectors have informed this Honorable Court that they were never given any notice and that the signatures appended to the Respondents application are not theirs. The Honorable Court can only find that the Applicants have met the threshold set out under Section 76 of the Law of Succession Act and revoke the grant issued out to the respondents.

The Respondents Case

23. The Respondent opposed the Notice of Motion as well as filed an Interlocutory Application seeking to move the succession in distribution as per the grant made and confirmed.
24. It was the 1st and 2nd Respondents' case that the gravamen of the Applicants' application is that they were not aware of this succession cause until 29th January 2024 when they were served with a replying affidavit in Nakuru CM ELC 238/2023. That the Applicants state so in ground No.5 of the application and at paragraphs 6, 7,8,9,10, 11 and 12 of the 1st applicant's supporting affidavit. At paragraph 7 of



- her affidavit the 1st Applicant erroneously states that she learnt of this cause on 29th January, 2023 when she was served with a replying affidavit in Nakuru CM ELC 238/23.
25. That the correct date should be 29th January 2024 as stated in ground No. 5 of the application. This is because Nakuru CM ELC 238/2023 was filed in Court on 1st December, 2023 and the served replying affidavit thereto was filed in the Court on 17th January, 2024.
 26. That the Applicant has attached 3 consents to her affidavit which she says that she did not sign. In the consent dated 20th December, 2019 her signature appears against her name. At paragraph 6 (i) of the replying affidavit, the 1st respondent deposed that she signed that consent when she visited Kenya. At paragraph 9 of her affidavit, the 1st Applicant states that, she has visited Kenya several times since she left for Australia in the year 1996. In the 2nd consent dated 19th October, 2022 the name of the 1st applicant does not appear as her copy was sent to her via email address as evident from the emails attached to the replying affidavit.
 27. Lastly, in the 3rd consent dated 21st January, 2016 it is clear that it was to be signed by Ann Wairimu and Nancy Njoki (1st applicant) but it was only signed by Ann Wairimu. The 1st Applicant did not appear before the Notary Public who cancelled out her name, signed against the cancellation, and notarized for Ann Wairimu.
 28. The 2nd Applicant has not filed a supporting affidavit. She has not denied knowledge of this cause or signing the relevant documents and consents.
 29. That the 1st and 2nd Respondent has fled a detailed affidavit in answer to depositions of the 1st applicant. In a nutshell, his position is that the 1st applicant has all along been aware of this succession cause and has participated, albeit reluctantly, with a view to delaying its conclusion and to arm twist her siblings to pander her whims.
 30. That the following key deposed events, remain uncontroverted as the 1st applicant never filed a further affidavit, show that the applicants have known about this cause from the outset:
 - a. She was present when the will of the deceased was read and family members agreed that the 1st respondent, as the executor, applies for Grant of Probate of Written Will. (Paragraphs 4 and 5 of the Replying Affidavit)
 - b. On 23/12/2015 she together with Ann Wairimu (5th respondent) signed a consent for rectification of Grant which they sent to the 1st respondent's advocates without notarization (Para 6 (c) and (d) and Ex 2).
 - c. The applicant signed the consent dated 20th December, 2019 as she was in Kenya at that time (Para 6 (1.)).
 - d. On 20/1/23 the 1st applicant forwarded via email to the 1st respondent's advocates the Transfer, Affidavit and Consent duly signed by herself but not notarized as requested (Para.6 (m) and Ex. 8).
 - e. That on 2/6/23 the 1st respondent spoke to the 1st applicant on phone and impressed upon her to sign the Transfer, Affidavit and Consent duly signed before a notary public as requested by the advocate. She confirmed this conversation in her email of 3/6/2023 (Paragraphs *para_6 6* (0) and (p) and Ex. 10).



- f. That, on 22/1/24 the 1st applicant forwarded to the 1st respondent's advocates the Transfer, Consent and Affidavit duly signed by her and attested to by a Justice of the Peace. (Para 6 (r) and Ex 12).
31. That the Applicants have the burden to prove any of the grounds for revocation of grant under Section 76 of the Act. In the Estate of Kimining Arap Kiboigut (deceased) (2021) eKLR the Court held thus
- “...it is the duty of the applicant to prove that any of the grounds set out under Section 76 has been committed before the Court can revoke a grant already issued...”
32. The Respondents submit that, this Honourable Court has discretion to refuse revocation under Section 76 of the Act even if a ground thereunder has been proved if the circumstances of the case warrant such refusal.
33. Reference is made In re Estate of Amos Kiteria Madeda-deceased (Probate & Administration E004 OF 2021) (2022) KEHC 12950 (KLR (21 September 2022) (Ruling) the Court held thus;
- “The net position then is that an applicant for revocation must, in order to succeed, establish just cause within the meaning of section 76 (a) to (e) thereof, but, even if just cause be established, revocation may still be refused by the Court in the exercise of its discretion under that section, if the facts and circumstances of the particular case would warrant such refusal”.
34. The Respondents submit that the proceedings herein are not defective. No defect has been proved by the applicants. In re-Estate of Prisca Onga'yo Nande (Deceased) (2020) eKLR the Court explained defective proceedings thus;
- “The first would be where the process was defective, either because some mandatory procedural step was omitted, or the person 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.”
35. That the allegations by the 1st Applicant that she never signed the consents or that she was not aware of these proceedings have not been proved. In fact, they have been sufficiently answered to by the 1st Respondent. She signed the consents and was fully aware of this cause and has participated in it. No forgery has been proved. In re Estate of Julius Mimano (deceased) (2019) eKLR the Court held that:
- “The allegation of forgery placed a heavy burden upon the applicant to prove beyond reasonable doubt, or at least beyond balance of probability, that indeed the signatures were forged. He led no evidence on the alleged forgery”.
36. It is not the Applicants' case that the grant herein was obtained on an untrue allegation of fact. The will of the deceased is not contested; neither the beneficiaries nor the devises and bequests.



37. The allegations relating to the signing of consents and the knowledge of these proceedings by the Applicants have been sufficiently answered by the 1st respondent. In *Fredrick Omondi -vs- Maria Akello Otieno* (2016) eKLR the Court held that

“...mere assertion is not sufficient to displace the evidence of the dates and facts in the certificate and neither does it displace the presumption of it being genuine.”

38. It is not the Applicants' case that the grant herein has become inoperative or useless or that there has been lack of diligence in the administration of the estate by the 1st Respondent.

39. Lastly, the 1st and 2nd Respondents submit that, in the circumstances of this case, it is not in the interest of justice to revoke the grant. It is not warranted. The executor is at the tail end of concluding it.

40. Some of the transmitted assets have been sold off to third parties. The executor has deposed that the real motive behind this application is to arm twist the siblings to pander the Applicants' scheme to acquire the matrimonial home during the distribution.

41. The 1st and 2nd Respondent urges the Court to dismiss the applicants' application.

Analysis and Determination

42. 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.

43. 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.

44. 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.”

45. 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.”

46. The 1st and 2nd Applicants invited the Court to revoke the grant of probate of written will on the basis that the 1st Applicant never signed the consents to making of grant or confirmation thereof or that she was unaware of these proceedings and only realized the same on 29th January 2024 the 2nd Applicant on her part never swore an affidavit as to her personal aggrievement.
47. To this Court it is unbelievable that the 1st Applicant would have been unaware of these proceedings of a probate of a written will for nineteen (19) years since the demise of the deceased.
48. The 1st Applicant has not explicitly stated of being unaware of the written will of the deceased as obviously she was present when the same was read out to all beneficiaries.



49. The will of the deceased or his last wishes has never been in contest and as such, the assertion that, the probate was obtained through untrue allegation of fact, is hollow empty and unproven. The Court notes the current further rectified certificate of confirmation of grant dated 30th May 2023 reflect the last wishes of the deceased with regards to LR No Elburgon/Arimi Ndoshwa Block 4/10(Nyakiambi).
50. A probate of a written will cannot be annulled or revoked but can be cancelled upon evidence within the parameters of Section 76 of the Law of succession Act. This Court further notes that, the respect of the last wishes of the deceased is a constant running strand in the administration and settlement of a probate of a written will and in fact under Section 18 of the Law of succession act provides for the manner and how a will can be revoked.
- (1) Save as provided by section 19, no will or codicil, or any part thereof, shall be revoked otherwise than by another will or codicil declaring an intention to revoke it, or by the burning, tearing or otherwise destroying of the will with the intention of revoking it by the testator, or by some other person at his direction.
 - (2) A written will shall not be revoked by an oral will.
51. This Court notes the distribution awaited and the share entitlement of the 1st and 2nd Applicant upon LR No. Elburgon/Arimi Ndoshwa Block 4/10(Nyakiambi) noting that theirs is a smaller portion in relation to all the other beneficiaries awaiting their bequest.
52. 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.
53. The upshot of the above is that the summons for revocation of Grant dated 1st February, 2024 is found to be lacking merit and is hereby dismissed. The Summons dated 4th December, 2024 is partially found to be with merit and is hereby allowed. The Court makes the following resultant orders:
- i. The Executor shall strictly sub-divide and distribute shares in LR No. Elburgon/Arimi Ndoshwa Block 4/10(Nyakiambi) as per the Will dated 3rd March 2003;
 - ii. The 1st and 2nd Respondents shall allow full and unfettered access to the executor LR No. Elburgon/Arimi Ndoshwa Block 4/10(Nyakiambi) for purposes of Survey Sub-division and ultimate distribution.
 - iii. The 1st and 2nd Respondents may maintain the Security Guards onLR No. Elburgon/Arimi Ndoshwa Block 4/10(Nyakiambi) with instructions not to interfere in any way whatsoever with the Executor while performing his duties.
 - iv. Any expenses relating to private security guards situated onLR No. Elburgon/Arimi Ndoshwa Block 4/10(Nyakiambi) Shall not constitute and expense to the estate of the deceased.
 - v. The Executor shall undertake the Distribution of LR No Elburgon/Arimi Ndoshwa Block 4/10(Nyakiambi) within the next six (6) months from today.
 - vi. Nancy Njoki Mbugua and Hellen Wairimu Mbugua shall personally bear the costs of this Application

It is so Ordered.

DELIVERED, DATED AND SIGNED AT NAKURU ON THIS 28TH OF MARCH, 2025

MOHOCHI S.M.



JUDGE

