



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Tabitha Kitilau Mutua (Deceased) (Succession Cause 614 of 2007) [2025] KEHC 5047 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KEHC 5047 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 614 OF 2007
SM MOHOCHI, J
MARCH 28, 2025**

IN THE MATTER OF THE ESTATE OF TABITHA KITILAU MUTUA (DECEASED)

BETWEEN

TONY MATIVO KASINGA APPLICANT

AND

KENETH MAWEU KASINGA RESPONDENT

RULING

1. The deceased Tabitha Katilau Mutua died on 10th May 2005 at Coptic Hospital in Nairobi her son Kenneth Maweu Kasinga on 23rd July 2007, petitioned for a Grant of Letters of administration intestate granted on 3rd October 2007, and the grant was confirmed on 7th July 2008.
2. In the Certificate of confirmed grant where only the Applicant and Respondent are listed as beneficiaries the estate of the deceased was to be shared out as follows
 - a. Kwale/Pungu Fuel/00
 - i. Tony Matibo Kasinga.....1½ share
 - ii. Kenneth Maweu Kasinga.....1½ share
 - b. Machakos/konza North Block 1/843
 - i. Tony Matibo kasinga.....1½ share
 - ii. Keneth Maweu Kasinga.....1½ share
 - c) Nairobi Eastleigh Block 36/1/399
 - i. Kenneth Maweu Kasinga.....1 Share



3. The Application before me is a summons for revocation of grant dated 27th April 2023 filed pursuant to Section 76 of the Law of Succession Act, Cap 160 Laws of Kenya, Rule 44 and Rule 73 of the Probate and Administration Rules, 1980) where the Applicant seeks;
 - i. Spent
 - ii. That, this Honourable Court be pleased to revoke the Grant of Letters of administration intestate herein dated 3rd October 2007, issued to Kenneth Maweu Kasinga in respect of the Estate of Tabitha Katilau Mutua (deceased).
 - iii. That, this Honourable Court be pleased to issue any other orders as the Court may deem fit and just to grant in the circumstances of this case to prevent intermeddling, plunder and/or wastage of the Estate of Tabitha Katilau Mutua (deceased) by Kenneth Maweu Kasinga.
 - iv. That, this Honourable Court Appoints, Tony Mativo Kasinga as the interim administrator of the Estate of Tabitha Katilau Mutua (deceased).
 - v. That, the costs of this Application be provided for.
4. The Summons was Supported by the Applicants Sworn affidavit and was anchored upon the following grounds;
 - a. That the Applicant is extremely apprehensive that the purported administrator of the estate one Kenneth Maweu Kasinga has unlawfully been administering the same on the basis of an invalid grant that does not express the true wishes and intentions of the Deceased as to disposition of his property amongst her lawful beneficiaries.
 - b. That it is in the interest of justice that the application herein be certified extremely urgent and the orders sought granted so as to preserve the substance of these proceedings, pending hearing and determination of the question as to the issuance of the grant of letters of administration intestate to one, Kenneth Maweu Kasinga
 - c. That the Grant of Letters of administration intestate was obtained improperly through making of a false statement and concealment from Court of material facts as follows:
 - i. The Petition for Grant of Letters of administration intestate and the Affidavit in support of the Petition was sworn by Kenneth Maweu Kasinga alone without the other beneficiaries.
 - ii. The purported affidavit sworn by Tony Mativo Kasinga is a forgery and a sham as the said deponent has never sworn such an affidavit or any other affidavit thereof.
 - iii. That at the point of Petitioning for Grant of Letters of administration intestate and swearing of the Affidavit in Support of the Petition, there was no citation issued to the beneficiaries to execute the above-mentioned documents.
 - iv. There is material discrepancy in the Petition of letters of administration and the annexed affidavit and it is only fair that the applicant is given audience by this Honorable Court.
5. The Court directed a viva voce hearing and the Applicant testified on oath on the on the 17th October 2024.
6. On the hearing the protestors case it emerged and was admitted that the deceased never had any asset in her name at the time of her demise.



7. The Respondent/Administrator opted not to tender any evidence and in submission contended that as admitted by the Applicant on oath in cross-examination, the Estate of the Late Tabitha Katilau Mutua Deceased was insolvent. At the time of her demise none of the properties in the Certificate of Confirmation of the Grant were under her names.
8. The Applicant confirmed that all the assets listed in the Certificate of Confirmation of the Grant dated/ issued on 7th July 2008 were in the names of his late father (the late Wilson Mutua Kasinga - Deceased) whose Estate was petitioned at the Nairobi High Court.
9. The Applicant admitted that all the assets belong to and are registered in the name of their late father and that they have never been transferred by transmission or otherwise to the beneficiaries and they are Subject Matters in another cause at Nairobi.
10. The Respondent/Administrator urges the court to decline the Application because revoking the Grant and re-issuing it to the Applicants shall serve no utility because there are no assets in the name of the late Tabitha Katilau Mutua (Deceased) that shall ultimately be transmitted to the surviving children out of this otherwise insolvent Estate.
11. That if the court is inclined to revoke the Grant and Re-issue it afresh to the Petitioner and may be three of the Applicants, then the court will have to deem it necessary to delete all the assets currently featuring in the Certificate of Confirmation because the witness has clearly stated on oath that none of them belongs or even belonged and/or were ever registered in the names of Tabitha Katilau Mutua (Deceased).
12. That the Grant and the Certificate of Confirmation of the Grant re-issued shall serve no use for the parties herein humbly urging the court to decline issuing Orders in vain.

Applicants Case

13. The Applicant has put up a spirited fight in its written submissions dated 24th January 2025 contending that;
 - i. The confirmed administrator deliberately obtained the grant through misrepresentation and concealment of material facts. The named administrator filed the Petition in total secrecy and malice designed to disinherit and/or unlawfully take what belongs to all the other rightful beneficiaries. He knowingly failed to include all the beneficiaries and/or effect service on any other interested parties.
 - ii. The Respondent's deliberate acts, of obtaining this grant of letters of administration intestate without citing the other lawful beneficiaries nor serving upon them the petition, are intentionally aimed at disinheriting the other beneficiaries of the entire estate of the deceased and thus, these acts constitute an approach to the court with unclean hands. He who comes to equity must come with clean hands. The Administrator has approached this Honourable Court with unclean hands and therefore does not deserve any audience at this juncture.
 - iii. The purported administrator, Kenneth Maweu Kasinga has been administering the estate of the deceased on the basis of a grant that does not capture the true intentions of the deceased as to the disposition of her property to her lawful intended beneficiaries thus he has failed to proceed diligently with the administration of the estate. Therefore, the grant has become useless and inoperative and should be revoked by this Honorable Court.
 - iv. That based on these two grounds of a defective process of obtaining the grant and failure by the administrator to proceed diligently with the administration of the estate thereby making the



grant useless and inoperative, the Grant of the Letters of Administration to Kenneth Maweu Kasinga should be revoked and the court should issue orders to prevent the wastage of the estate of Tabitha Katilau Mutua (deceased) by the said administrator.

- v. The threshold for revocation of Grant of Letters of Administration intestate is established under Section 76 of the *Law of Succession Act*.
- vi. The administrator had applied for Grant of Letters of Administration in secrecy, full of ill intentions, forging signatures and omitting some administrators to the estate of the deceased. This constitutes concealment of material facts from the court.
- vii. It is the Applicants submission that the process of obtaining the instant Grant of Letters of Administration issued is marred with fraud, misrepresentation and concealment of material facts.
- viii. That while in the process of obtaining this grant of letters of administration intestate, the Administrator did not cite the other beneficiaries nor serve upon them the petition. The Administrator deliberately sidelined them undoubtedly with the aim of inheriting the entire estate and his actions constitutes an approach to the court with unclean hands. He who comes to equity must come with clean hands. The Administrator has approached this Honourable Court with unclean hands and therefore does not deserve any audience at this juncture.
- ix. It is the Applicant's submission that the process of obtaining the Grant of Letters of Administration issued on 3th October 2007 and confirmed on 7th July 2008 is marred with fraud, misrepresentation and concealment of material facts such that some beneficiaries are not disclosed or rather deliberately excluded, no citation was issued to the other beneficiaries to execute the Petition and the Supporting Affidavits and that the purported sworn Affidavit by Tony Mativo Kasinga is a forgery and a sham as the said deponent has never sworn such Affidavit or any other Affidavit thereof.
- x. As to Whether the Court should include the Applicant as the interim administrator for the estate of the deceased Tabitha Katilau Mutua the applicant seek solace in Rule 73 of the Probate and Administration Rules the Court has the inherent power to make such orders as may be necessary for the ends of justice or to prevent an abuse of the process of the Court.
- xi. Therefore, the Applicants firmly submits that the Court should find the process of obtaining the grant of letters of administration intestate issued on 3rd October 2007 and confirmed on 7th July 2008 to be marred with fraud, misrepresentation and concealment of material facts
- xii. The Applicant aver that this court should revoke the Grant of on grounds of fraud, misrepresentation and concealment of facts material to this Honourable Court.
- xiii. That Consequently, upon revocation of the Grant of Letter of Administration intestate, that this Court should stay any further administration and transmission of the estate by the Administrators pending the hearing and determination of this Application.
- xiv. The Applicant thus urges the Court be pleased to revoke the Grant of Letters of Administration intestate dated 3rd October 2007 issued to Kenneth Maweu Kasinga in respect of the estate of Tabitha Katilau Mutua (the deceased).
- xv. That this Court be pleased to issue an order as it may deem just and fit in the prevention, intermeddling, plunder and/or wastage of the Estate of Tabitha Katilau Mutua.



- xvi. That this honorable court appoints Tony Mativo Kasinga as the interim administrator of the Estate of the deceased, Tabitha Katilau Mutua.
- xvii. That the costs of this Application be provided for.

Analysis and Determination

14. For avoidance of doubt, Section 76 of the [Law of Succession Act](#) states 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) and inoperative through subsequent circumstances.”

15. Section 76 was clearly expounded on 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.”

16. Revocation of grant is an ultimate tool where it is apparently demonstrated that the Administrators can no longer be allowed to be.
17. The power to revoke a grant is discretionary as was restated in the case of *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa*, Succession Cause No.158 of 2000, Mwita J. noted thus:
 - “(13) 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. There must be evidence of wrong doing for the Court to invoke section 76 and order to revoke or annul a grant. And 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.”
18. The Applicant has urged to be appointed as an administrator to preserve the estate.
19. This court has considered the arguments by the parties, the admission that the estate was insolvent and the scrutiny of the Petition filed and note the following;
 - i. The Deceased died in Coptic Hospital Nairobi.
 - ii. At the time of her demise the deceased was living in Machakos
 - iii. None of the Assets of the deceased as disclosed were based in Nakuru.
 - iv. Save for the Petitioner listing his postal address as being in Nakuru and the Nakuru Town Location Chief’s letter dated 23rd July 2007 identifying the deceased as having been living in Nakuru at the time of her demise, it can safely be concluded the deceased was not living in Nakuru, she never had any assets or properties in Nakuru and as such the probate was irregularly filed.
 - v. The original petition filed on the did have two copies of official search reports for Kwale/Pungu Fuel/00 dated 27th April 2007 indicating the registered owner to be Wilson Mutua Kasinga.
 - vi. No proof of ownership was ever availed for Machakos/konza North Block 1/843 or Nairobi Eastleigh Block 36/1/399.



20. While I find the entire probate to be dubious to the extent that an insolvent cannot be subject to the *law of Succession Act* as there is nothing to administer or distribute I find in favor of the Applicant in the following terms;
- a. To ensure this probate comes to an end I invoke the inherent jurisdiction to review the Grant dated 3rd October 2007 and appoint Mr. Tony Mativo Kasinga as co-Administrator to Kenneth Maweu Kasinga both of whom shall forthwith undertake the transmission and transfer of the assets (if any).
 - b. The Certificate of confirmed grant dated 7th July 2008 shall be rectified accordingly and a rectified certificate of confirmed grant shall issue.
 - c. The two Co-Administrators shall be expected to wind-up the estate by transmitting the assets of the deceased as per the mode proposed in the Affidavit in support by Keneth Maweu Kasinga dated 23rd June 2008.
 - d. It is the duty of the two Co-Administrators to move the court if the estate has nil assets and urge the probate file be accordingly marked as closed.
 - e. It is the duty of the Co-Administrator to conclude the distribution within six (6) months of today and to file an account indicating settlement of the estate leading to the closure of the probate file. However, in this case failure by the co-administrator to wind-up the estate or appear before court as directed shall automatically lead to the closure of the probate file without reference to the parties.
 - f. Parties shall bear their respective costs

It is so Ordered

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

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Mohochi S.M

JUDGE

