



**In re Estate of Chabari M'Barigi (Deceased) (Succession Cause
315 of 2015) [2025] KEHC 4653 (KLR) (25 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4653 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
SUCCESSION CAUSE 315 OF 2015**

LW GITARI, J

MARCH 25, 2025

IN THE MATTER OF THE ESTATE OF CHABARI M'BARIGI (DECEASED)

BETWEEN

MURITHI JOHN APPLICANT

AND

NICHOLAS MUTEMBEI CHABARI RESPONDENT

JUDGMENT

1. The matter pending before this court is the summons for revocation of grant dated 8/02/2022 which is brought under Section 47 and Section 76 of the *Law of Succession Act* and Rules 44, 49 and 73 of the Probate and Administration Rules.
2. The applicant prays that the amended certificate of confirmed grant issued to the Administrator Nicholas Mutembei Chabari on 7/06/2021 be revoked, canceled and or annulled. The application is based on the ground that the proceedings to obtain the grant were defective in substance and the grant was obtained fraudulently by the making of a false statement as well as concealment from court of some vital material facts. It is also contended that the grant was obtained by means of an untrue allegations of facts essential in a point of law to justify the grant.

Brief Background

3. This cause relates to the estate Chabari M'Bagiri (deceased) who died intestate on 10/08/1984. A grant of letters of Administration Intestate was issued to Nicholas Mutembei Chabari on 31/09/2011. The grant was later confirmed on 18/05/2016 and the estate was distributed. Later a summons to alter and amended the grant was filed on 10/11/2020. The summons was based on the ground that the widow of the deceased Jiogweni Chabari had passed away after the grant was confirmed. The grant was amended and an amended grant was issued by this court on 7/6/2021. It is this grant which the applicant now seeks to have revoked.



The Summons For Revocation Of Grant

4. The applicant Murithi John in the supporting affidavit to the summons depones that he is the son of Mwiandi Chabari (deceased) who is a son of Chabari M'Bagiri (deceased) in the present cause. He depones that his father was disinherited as he had already died and his wife and children were not considered when the estate was distributed. According to him, his father was survived by a wife and six children, four sons and two daughters. The applicant contends that they were not notified when the summons to amend the grant was filed nor did they give consent to the amendment of the grant and the distribution of the estate. The applicant contends that the amendment was in breach of the Law of Succession Act and was obtained through concealment of material facts from the court.

Respondent's Reply

5. The respondent opposed the application and filed an affidavit sworn on 5/4/2022 and avers that though the grant was confirmed on 17/5/2016, the estate was not distributed as the family Matriarch Jiogweni Chabari fell very sick while in the process. She later passed away on 9/8/2019 necessitating an amendment to the certificate of grant. That the beneficiaries had agreed that he be registered as the administrator.
6. He further avers that the deceased had three wives and had distributed his estate to his three wives. The applicant's father Mwiandi Chabari was from the second house and the property was given to the second wife of deceased. That the interest of the applicant is in the Estate of Mwiandi Chabari who is his father and has no right of audience in these proceedings. That the applicant's father was given land which is still intact and he should therefore claim from the estate of his father. He contends that he is not guilty of any wrong doing. The summons proceeded by way of oral evidence in court.

Applicant's Case

7. He testified as PW1 and told the court that the deceased is his grandfather, as he is the father of his late father. He claims land Parcel No. Mwimbi/C.Magutuni/58 as his father is entitled to a share from that Land Parcel. In cross-examination he told the court that his deceased father died in the year 2005 and is buried on Land Parcel No. Mwimbi/Central/Magutuni/735 which he had purchased and was not an inheritance from his late father. The applicant testified that he lives on Land Parcel No. 735 where he has his home.
8. PW2 Kenneth Kiambi is a brother to applicant's mother and testified that the applicant is entitled to Land Parcel No. Mwimbi Magutuni/58 as it belongs to his grandfather and his two brothers live there, that is Gitonga and Mwirigi and they live on the land. The two are brothers of the applicant. He told the court that Land Parcel No. Mwimbi/Central/Magutuni/735 is registered in the name of Mwiandi Chabari the applicant's father and is where the applicant lives. That the applicant has not filed succession in the estate of his father. He also admitted that the applicant's father is the registered owner of Land Parcel No. 681. That Mwiandi Chabari is buried on Land Parcel No. 735. He contradicted the applicant on some material particulars. He is not on respondent witness.
9. PW3 Franklin Karimi testified that the applicant is a grandson of the deceased. He testified that the applicant's father bought Land Parcel No. 735 from one Peterson M'akarithi and he therefore did not inherit it from his deceased father. No evidence was produced to prove that he bought the land. In cross-examination he testified that the applicant lives on his father's land which is Land Parcel No. Mwimbi/Central/Magutuni/735, this contradicts the applicant's testimony that the applicant's father also owns other Land Parcel No. Mwimbi/Central/Magutuni/618 which he was given by the deceased.



The Respondent's Case

10. DW1 was Nicholas Mutembei Chabari who testified that the applicant is not his brother. He produced a Chief's letter Exhibit 1 showing how they had agreed to share the estate. That the applicant is grandson of the deceased and therefore not a dependant. That the applicant's father was given Land Parcel No. Mwimbi/Central Magutuni/735 during the lifetime of the deceased where the applicant is settled. That Mwiandi Chabari was also given Mwimbi Central/Magutuni 618. He further testified that the deceased had three wives who were:

[A] Ciankugwe Chabari whose children are:

- (1) Muchiri Chambari
- (2) Mpiuki Chambari
- (3) Anselimina Chabari

[B] Ciamuthamia Chabari whose children are:

- (1) Mwiandi Chabani – father to Murithi John
- (2) Kirigu Chabari
- (3) Philista Chabari

[C] Jiogweni Chabari whose children are:

- (1) Nicholas Mutembei Chabari
- (2) Julius Mubuta Chabari
- (3) Mutembei Chabari

11. He testified that the applicant can claim land from the estate of his father or his uncles. That the deceased had given land during his lifetime to his two wives Ciankugwe Chabari and Ciamuthamia Chabari during his lifetime but the children of Jiogweni Chabari were left to inherit Mwimbi Central Magutuni 58.

Analysis And Determination

12. I have considered the evidence adduced and the submissions. The issues which arise are:

1. Whether the applicant is a dependant of the estate of the deceased.
2. Whether the applicant has satisfied the grounds under Section 76 of the [Law of Succession Act](#) to warrant this court to order revocation of grant.

13.

(1) Whether the applicant is a dependant

A dependant is defined under Section 29 of the [Law of Succession Act](#) as follows:

“For the purposes of this Part, “dependant” means—

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;



- (b) such of the deceased’s parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”

14. In this matter there is no dispute that the applicant is a grandson of the deceased Chabari M’Bagiri whose estate is the subject of this cause. He is not a first line dependant and therefore under the [Law of Succession Act](#) he is bound by two conditions for him to be considered as a dependant. The first condition is under Section 26 of the [Law of Succession Act](#). The second is Section 29 (b) of the Act. Section 26 of the [Law of Succession Act](#) provides as follows:

“Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased’s estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased’s net estate.”

15. The Act under Section 27 gives the court the sole discretion to order a specific share to be given to the dependants. In determining whether any order should be made under this part the court is guided by Section 28 of the Act which provides as follows:

“In making provision for a dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.”

16. The Act limits the period under which such claims for dependency should be made. Section 30 of the [Law of Succession Act](#) provides as follows:

“No application under this Part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided by Section 71.”

17. The applicant has filed a claim for dependency. Such a claim as Section 30 (Supra) requires, should be filed and determined before the grant is confirmed. In Re-Estate of Phylis Wasuna Kamau (Deceased) Succession Cause No. 25 (2019) 2022 KLR (7 July 2022) Judgment. The Judge stated that:

“The provisions of Section 26, 27 & 28 of the [Law of Succession Act](#) applies subject to the limitation set out in Section 30 of [Law of Succession Act](#).”

18. The applicant came to this court long after the grant was confirmed. The claim is time barred as provided under Section 30 of the [Law of Succession Act](#) (Supra). I should also consider whether the applicant is properly before this court. The applicant has stated that the application seeks to get the share of his deceased father. In the case of Beatrice Ciamutua –vs- Fredrick Nkari Mutegi & 5 Others (2016) eKLR it was held that a dependant under Section 29(b) and (c) of the Act must prove that he



or she was being maintained by the deceased immediately prior to his demise. It is not the fact or mere relationship that matters, a party must prove dependency.

19. I made a similar determination in the case cited by the counsel for the respondent, that is the case of Re-Estate of the Late M’Kigai Muchangi (deceased) 2020 eKLR where I stated that there is a condition precedent which a person claiming dependency has to establish. It requires that a person claiming dependency under Section 29 (b) of the [Law of Succession Act](#) must prove that he or she was being maintained by the deceased immediately prior to his demise.
20. The applicant is claiming the share of his father from the estate of his grandfather. There is no dispute that the applicant is a grandchild of the deceased. Section 39 of the [Law of Succession Act](#) makes grandchildren Levis in intestacy where parents are deceased.

“(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—

- (a) father; or if dead
- (b) mother; or if dead
- (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
- (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
- (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.”

21. Under the Section, grandchildren are heirs in intestacy where their own parents who are biological children of the deceased are dead. The Act enables the grandchildren to step into the shoes of their own parents and when they are claiming from the estate of grandparents the share that should have gone to their parents they are not required to take out letters of administration.
22. Section 41 of the [Law of Succession Act](#) provides as follows:

“Where reference is made in this Act to the “net intestate estate”, or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.”

23. In this case, the applicant has filed the summons for revocation of grant as he is a son of a dead son of the deceased. The law allows him to file the summons without taking out letters of administration. See in Re-Estate of Imoli Luhats Paul (Deceased) (2021) eKLR Musyoka J and in Re-Estate of Veronica Njoki Wakagoto where the Judge stated that an applicant in summons for revocation of grant and is a child of the dead son of the deceased does not require to take out letters of administration to intervene in the estate of his late grandfather where his parents are dead. The applicant is a dependant and is therefore property before this court and has locus standi to apply for revocation of grant.



REVOCAION OF GRANT

24. The law on revocation of grant is anchored under Section 76 of the *Law of Succession Act*. The section provides:

“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.”

25. The applicant seeks an order that the amended certificate of confirmation of grant issued to the respondent to be revoked, cancelled and or annulled. The respondent holds a grant of letters of administration to the estate of the deceased. The applicant is not seeking other orders in the summons.

26. For a court to order revocation of grant, the party seeking the order must prove that the process of obtaining the grant was defective for reasons that the procedural steps were not followed as required under the Act, the person who obtained the grant was not suitable or competent for appointment as the administrator or executor. The party is also required to demonstrate that the grant was obtained fraudulently, through misrepresentation or concealment of something material to the case. The grant may be revoked where the administrator fails to apply for its confirmation within the stipulated time or that the grant has become useless and inoperative following subsequent circumstances.

27. See *In Re-Estate of Prisca Onga’yo Nande (deceased) 2020 eKLR*. The provision for application for grants of representation is as provided under Section 51 of the Law of Succession. The Section requires that the application be in the prescribed form signed by the applicant and witnessed as prescribed and to include the name of the deceased, place of death and date of death, relationship between the deceased and the applicant. The names of surviving spouses, children, parents, brother and sisters of the deceased and of children of any child of his or hers then deceased in the case of total or partial intestacy. The full inventory of all the assets and liabilities of deceased must be disclosed.



28. Rule 26 (1) of the Probate and Administration Rules provides that:

“Letters of Administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.”

The rule further requires that where a person is applying for grant of letters of administration intestate, he must get consent from persons of equal or lower priority than him. In this case there is no dispute that the applicant is a grandchild of the deceased. The applicant is not seeking the revocation of the grant which was issued to the applicant. He seeks revocation of the certificate of confirmation of grant.

29. This court has heard evidence of the parties. It is not in dispute that the deceased had three wives. The respondent contends that all the other wives of the deceased were catered for apart from the house of his mother who were supposed to get the remaining estate. The respondent contends that the applicant's father was given Land Parcel No. Mwimbi/Central Magutuni/735 where the applicant's father lived and was buried there. The applicant himself has settled on the Land Parcel No. Mwimbi/ Central Magutuni/ 735. Though the applicant alleged that his brothers live on Land Parcel No. Mwimbi/ C. Mugutuni/58, this was not proved. The applicant also contended that his father bought Land Parcel No. Mwimbi/Central Magutuni/735. No evidence was adduced to prove that his deceased father bought that land from any person or at all.

30. I am inclined to believe that Land Parcel No. Mwimbi/Central Magutuni/735 was given to Mwiandi Chabari by the deceased as testified by the respondent. If you look at the certificate of official search for Mwimbi/Central Magutuni/58 which was used to prove that it is the estate of the deceased, it shows that the deceased was registered on 22/9/1977. On the other hand, the green card for Mwimbi/Central Magutuni/735 was registered on the same date, that is 22/9/1977 as a first registration.

31. This disapproves the applicant's contention that his father bought this land. The possibility is that the deceased registered Mwiandi Chabari who is the applicant's father and he lived there with his family up to the time of his death and he was buried there. The applicant admitted that the deceased had distributed his land to all his children apart from his father who was the son of his third wife. The applicant admitted that his father's house was given land by the deceased at Mutoga valley for agricultural purposes. The applicant admitted that the respondent who is the deceased son has no land. The evidence of the applicant and that of Pw2 was contradictory. This shows that their evidence is not credible.

32. The applicant confirmed the respondent evidence that the deceased had given land to all his wives and their children and the respondent's house has no other land apart from what they are claiming in this cause. The applicant is entitled to inherit land which his father got from his father, the applicant's grandfather. He has not filed Succession in the estate of his deceased father. He has not come to court with clean hands.

33. On the prayer for revocation of certificate of grant;

In Re- Estate of Savenio Ruri Njuiri (deceased) (2021) eKLR it was held:

“However Section 76 provides for revocation of grant before or after confirmation conditions limited to obtaining a grant.”



34. In Re-Estate Juma Shitseswa Linani (2021) eKLR held:

“Where a person is unhappy with the process of confirmation of grant, such a person ought not to move the court under Section 76 for revocation of grant, instead a person should file an appeal against the orders made by court on distribution or apply for review of the said orders. This is because the court confirming a grant becomes functus officio so far as confirmation of grant is concerned and cannot revisit the matter unless upon review.”

35. Similarly, Musyoka J in the case of Re-Estate of Prisca Onga’yo Nande (Deceased) (2020) eKLR held as follows:

“The Section 76 of the *Law of Succession Act* has nothing to do with confirmation of grants. It carries no provision which relate to what a court should do with confirmation orders or certificates of confirmation of grants. Indeed, the provision says nothing about the powers prescribed in it being used for the purpose of the court interviewing in the confirmation process once orders are made on a confirmation of grants and revocation of grant is that set under Section 76 (d) (1) of the *Law of Succession Act* it has nothing to do with a grant having been confirmed, rather it deals with situations where a personal representative or holder of grant or administrator has failed to apply for confirmation of their grant. Section 76 of the Act relates to confirmation of grant to that very limited extent not with confirmation itself but the failure to apply for confirmation. A person aggrieved by the orders made with respect to a confirmation application which are encapsulated in the certificate of confirmation of grant has no remedy under Section 76 of the *Law of Succession Act* for that provision does not envisage revocation of certificates or confirmation of grant.

I have very closely perused thro’ the provisions of *Law of Succession Act* and I have not come across any provision that provides a remedy to a person who is aggrieved by confirmation orders. Section 71, 72 & 73 of the *Law of Succession Act* which deal with confirmation of grants do not address the question of redress for parties who are unhappy with the confirmation process, nor do they deal generally with confirmation process as stated above Section 76 has nothing to do with confirmation process and provides no relief at all to any person unhappy with the confirmation process.

In the absence of any provision in the *Law of Succession Act* for relief or redress for persons aggrieved by such orders the aggrieved parties have only two recourses under the general civil law to say, appeal or review to the extent that the same is permissible under the *Law of Succession Act*.

I would believe that one can also apply for setting aside or vacating of the confirmation orders where the same are obtained thro’ abuse of procedure.”

36. I am persuaded by this holding. The applicant is seeking revocation of the certificate of grant without seeking other orders. If the court were to allow the application, the respondent remains the administrator with a confirmed grant. The application is asking the court to act in vain.

37. It goes to show that the application has no sound basis. I note that he is the only one challenging the grant. The other house is content with what they get from the deceased. The applicant has not proved the grounds under Section 76 of the Act to warrant the court to revoke the grant.



Applicants Submissions

38. The applicant submits that the deceased is his grandfather as his father was the son of the deceased whose estate is the subject matter of these proceedings. The applicant submits that the respondent moved the court secretly, made false statements and concealed from this court same material facts. That the grant was obtained by means of untrue allegations of facts essential in a point of law to justify the grant. That the proceedings to obtain the grant were defective in substance and in breach of the provisions of the Law of Succession Act because neither his mother nor his siblings or himself were notified and/or consented prior to and/or during the cause of the proceedings.
39. The applicant submits that concealment of material facts is fatal and detrimental to the proceedings. Upon which the amended grant was issued. He relies on Section 76 of the Law of Succession Act (Cap 160 Law of Kenya). He has also relied on In Re Estate of Magangi Obuki, deceased (2020) eKLR and Jamleck Maina Njoroge -vs- Mary Wanjiru Mwangi (2015) eKLR where the court discussed. The court stated that the circumstances that can lead to the revocation of grant are set out under Section 76 Law of Succession Act (Supra). He prays the court to order that he is entitled to a share out of land Parcel No. Mwimbi/ Magutuni where they were raised. He prays that the grant be revoked and the estate be re-distributed.

Respondent's Submissions

40. For the respondent it was submitted that the land in dispute in this application is LR No. Mwimbi Central Magutuni/58 which is the property of the late Chabari M'Bagiri who is the father of Nicholas Mutembei Chabari. The applicant is not a brother to Nicholas Mutembei Chabari but a son of Mwiandi Chabari who is the registered owner of Mwimbi Central/Magutuni/618 and Mwimbi Central/Magutuni/625 which are on record as properties of the late Mwiandi Chabari. That it is important for this court to note that the applicant lives on Mwimbi/Central Magutuni/618 owned by his late father Mwiandi Chabari who also owns Mwimbi Central Magutuni/625. That it has been established that the applicant is not landless but wants to illegally expand his boundaries by taking the land belonging to the estate of Chabari M'Bagiri.
41. It is further submitted that the applicant who is a grandson of the deceased cannot inherit from the estate of the deceased while the properties of his father are still intact. He relies on Section 38 of the Law of Succession Act which provides that all children of the deceased are entitled to this estate of the deceased in equal shares and grandchildren have no room in that estate. In response to the applicant's submissions, he submits that he is perpetuating a false hold that he could be a son of the deceased herein. He submits that the applicant has not called his siblings as his witnesses but has instead called his witness from Meru County where the 'locus in quo' is in Tharaka Nithi County. He submits that the applicant lied to court that he lives on Land Parcel No. Mwimbi Central Magutuni/58 when he has never lived as testified by Nicholas Mutembei but lives on Land Parcel No. Mwimbi Central Magutuni/618 and also occupies 625.
42. The respondent has urged the court to find that the respondent has not established any ground to warrant this court to revoke the grant. It is submitted that the applicant has not proved dependency and is not entitled to the estate of the deceased.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 25TH DAY OF MARCH 2025

HON. LADY JUSTICE L. GITARI

JUDGE

