



In re Estate of Magoiga Maroa (Deceased) (Succession Cause E005 of 2024) [2025] KEHC 7250 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 7250 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
SUCCESSION CAUSE E005 OF 2024**

A. ONG'INJO, J

APRIL 30, 2025

IN THE MATTER OF THE ESTATE OF MAGOIGA MAROA (DECEASED)

AND

**IN THE MATTER OF AN APPLICATION FOR
REVOCATION OR ANNULMENT OF GRANT**

BETWEEN

MOKAMI MAGOIGA APPLICANT

AND

CHARLES MWITA GITURA RESPONDENT

RULING

1. By way of summons for revocation or annulment of grant dated 16th August 2024 brought pursuant to the provisions of Section 76 (a), (b) and (c) of the [Law of Succession Act](#) and Rules 44 and 73 of the Probate and Administration Rules, the Applicant/Objector sought the following orders against the Respondent/Petitioner;
 - i. Spent
 - ii. That the Honourable Court be pleased to issue an Order revoking and/or annulling the Grant of Letters of Administration intestate issued herein on 19th November 2021 and confirmed on 18th August 2022.
 - iii. That the Respondent/Petitioner be restrained by himself, his servant(s), agent(s), employee(s) and/or anybody else deriving title from him in any way transferring, cultivating, alienating, dealing in or with or otherwise interfering with land parcel no. Nyabasi/Bomerani/332 until this application is heard and determined.



- iv. Pending hearing and determination of this Application, an Order of inhibition be registered against Parcel no. Nyabasi/Bomerani/332 inhibiting any transfer to any Third Party by the Respondent/Petitioner or any other dealing in said parcel of land by the Respondent/Petitioner.
 - v. That in the alternative and without prejudice to prayers 2 and 3 above, any transfer and/or sub-division of the title to the land parcel no. Nyabasi/Bomerani/332 from the name of the deceased into the name of the Respondent/Petitioner or to any other party be cancelled, revoked and/or be annulled.
 - vi. That the costs of this application be costs in the cause.
2. The summons application is premised on the grounds on its face and supported by an affidavit of even date by Mokami Magoiga, the Applicant herein. In the said affidavit, he deposes that he is a son to the late Magoiga Maroa (deceased) who died in Nyamanche in Kegonga Sub-location on 3rd March 2000. Prior to commencing succession of the estate of his late father the area Chief issued him with a letter to facilitate the succession. He avers that they commenced the succession cause in Kehancha PM Court vide Succession Case No. 55 of 2022, which was successfully finalized and grant was confirmed.
 3. He deposed that unknown to him and the other beneficiaries of his father's estate, the Respondent had fraudulently commenced and finalized another succession vide Succession Cause No. 30 of 2020 and had proceeded to have his father's property transferred to his name. He states that upon carrying out a search he confirmed that the property in question Nyabasi/Bomerani/332 had been transferred to the Respondent pursuant to succession cause No. 30 of 2020 on 9th September, 2022.
 4. The Applicant deposes that on perusal of green card, he also noticed that his late father's identity card number details were wrongly captured on the green card and the letter from the area chief indicated that his late father died on 15th March 1999, and which letter enumerated the beneficiaries to his estate as the Respondent, his two brothers as well as other persons.
 5. He deposed that the Chief's letter purportedly used by the Respondent in his succession cause conspicuously did not mention his mother or his other siblings but proceeded to indicate persons other than my late father's children in the list and in effect attempting to disinherit them. He stated that his late father was married to one wife, the late Twebe Magoiga who is his mother.
 6. The Applicant on noticing the fraud carried out by the Respondent proceeded to report the said fraudulent activities to the DCI and the Respondent and other persons were charged in Kehancha Law Courts vide Criminal Case No. E001 of 2022 and currently charged with the same offences at the Migori Law Courts vide Criminal Case No. E391 of 2024. The Respondent used fraud in a bid to procure succession proceedings in the lower court and misled the court to obtain the letters of administration.
 7. The Applicant swears the affidavit in support of his application for the Revocation and or Annulment of the Grant issued herein to the Respondent/Petitioner on 19th August 2021 and confirmed on 15th August, 2022 and the same be issued to him.
 8. The Respondent/Petitioner failed to enter appearance or file any response to the summons.
 9. On 30th January 2025, this Court issued directions on filing of written submissions. The Applicant complied and filed submissions dated 24th February 2025.



Applicant's submissions

10. The Applicant submitted that the application is brought under Section 76 of the [Law of Succession Act](#) which provides for the grounds under which a grant of representation may be revoked. Any party an application for revocation or annulment of a grant must demonstrate the existence of any of the grounds. The court is bestowed with the powers to revoke the grant on its own motion so long as there is evidence of the existence of the conditions under Section 76.
11. According to the Applicant, he led evidence showing outright forgeries and a culmination of a charging of the respondent in court in Kehancha CR E001 of 2022 and subsequently in Migori CR E391 of 2024. The Applicant submitted that he provided letters from the are chief, annexed evidence of the Respondent having transferred property as a result of succession 30 of 2020. The Applicant urges this court to find that indeed the actions of the Respondent amounted to fraud. Further, the Letter of the chief dated 16th January 2023 and annexed as MM-1 is clear as to who are the beneficiaries of the Estate of Magoiga Maroa (deceased). The Applicant cited the case of In re Estate of Harjit Singh Brah alias Harjit Singh Nihal (Deceased) (Succession Cause 3 of 2019) [2023] KEHC 25531 (KLR) (20 November 2023) (Ruling) where Justice Aburilli echod the observations by Gikonyo J in Re Estate of Julius Ndubi Javan [2018] eKLR (Deceased) when he stated that:

“...in any judicial proceedings, parties must make full disclosures to the court of all material facts to the case including succession cases....non-disclosure of material facts undermines justices and introduces festering waters into pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law.”
12. The Applicant contended that it is clear that the Respondent while carrying out succession in Kehancha Cause 30 of 2020 did not make full disclosures and intentionally misled court that he was a beneficiary when indeed, he was not.
13. The Applicant also cited the Court of Appeal decision in Matheka and Another vs Matheka [2005] 2 KLR 455 laid down the above principles under which a grant of representation may be revoked.
14. The Applicant opined that he has met the laid down principles and satisfied Section 76 (a), (b) and (c) of the [Law of Succession Act](#).

Analysis and Determination

15. I have read and considered the summons and the affidavit in support together with the attached annexures on record. I find the following sole issue condensing for determination: -

Whether the grant of letters of administration issued to the Respondent on 19th August 2021 and confirmed on 15th August, 2022 should be revoked or annulled?
16. The law on revocation or annulment of a grant is Section 76 of the [Law of Succession Act](#). The said Section provides as follows;

76. 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.”
17. Under Section 76 of the Act aforementioned, the court may revoke a grant either on its own motion or on application by a party. Further, a grant may be revoked or annulled if the proceedings to obtaining the grant were defective, 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, the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, the person to whom the grant was made has failed to apply for confirmation within one year or proceed diligently with administration of the estate or produce in court any inventory or account of administration and the grant has become useless and inoperative through subsequent circumstances.
18. I am guided by the decision in re Estate of Prisca Ong’ayo Nande (Deceased) (2020) eKLR where the court 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.”



19. The power to revoke or annul a grant is discretionary to be judiciously exercised based on the grounds enumerated by the applicant. This principle of discretion was articulated in *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR where the court stated that: -
- “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.”
20. In the instant summons application, the Applicant contended that the grant was obtained through fraud and the matter was reported to the DCI and the Respondent and other persons were charged in court vide Criminal Case No. E001 of 2022 and currently charged with the same offences at the Migori Law Courts vide Criminal Case No. E391 of 2024. He stated in his affidavit that the Respondent used fraud in a bid to procure succession proceedings in the lower court and misled the court to obtain the letters of administration. The Applicant also raised issue that the Respondent is not in any way related to his deceased father together with the persons enumerated as beneficiaries.
21. Section 29 of the *Law of Succession Act* provides that;
- “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, grandparents, 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.”
22. The Applicant stated that before commencing succession of the estate of his late father the area chief issued him with a letter to facilitate the succession. He eventually commenced the process in court vide Succession Case No. 55 of 2022, which was successfully finalized and grant was confirmed. The Respondent had already fraudulently commenced and finalized another succession vide Succession Cause No. 30 of 2020 and the property Nyabasi/Bomerani/332 transferred to his name pursuant to Succession Cause No. 30 of 2020 on 9th September, 2022.
23. From the evidence adduced in the Applicant’s affidavit and the submissions filed there is evidence of fraud on the part of the Respondent who failed to respond to the application herein. In the circumstances this court the grant of letters of administration made to the Respondent on 19th November 2021 and confirmed on 18th August 2022 in Kehancha Succession Cause No 30 of 2020 is hereby revoked and/ or annulled.
24. The subsequent transfer and/or subdivision of the parcel No. Nyabasi/Bomerani/332 from the name of the deceased into the name of the Respondent/Petitioner or to any other party is hereby cancelled.
25. Costs of the application to be borne by the Respondent. Orders accordingly.



SIGNED DATED AND DELIVERED AT MIGORI THIS 30TH DAY OF APRIL, 2025.

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A. ONG'INJO

JUDGE

