



REPUBLIC OF KENYA



In re Estate of Davidson Ngibuini Kuguru (Deceased) (Succession Cause 417 of 2000) [2025] KEHC 7490 (KLR) (28 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 417 OF 2000
DKN MAGARE, J
MAY 28, 2025**

**IN THE MATTER OF
JOHNSON GIKANDI NGIBUINI APPLICANT**

RULING

1. This Ruling is in respect of the Summons for Revocation of Grant dated 25.10.2024 and filed by the Applicant.
2. The Summons seek for the following reliefs:
 - a. The Grant of Letters of Administration issued to Johnson Gikandi Ngibuini, Nguyo Ngibuini and Fredrick Maguta Ngibuini on 9.2.2001 be revoked.
 - b. The Applicant be appointed as sole Administrator of the Estate of the above-mentioned deceased and be issued with a Grant of Letters of Administration Intestate.
 - c. The mode of distribution of the part of the estate of the deceased herein be reviewed as proposed in paragraph 13 of the Affidavit in support of this Summons and a Certificate of Confirmation of Grant be issued.
3. The application is supported by the Affidavit of Johnson Ngibuini Gikandi sworn on 25.10.2024 premised on the following grounds:
 - a. The Grant of representation was issued on 9.2.2001 and confirmed on 30.12.2003.
 - b. The said grant has become useless and inoperative.
 - c. Nguyo Ngibuini and Fredrick Maguta Ngibuini are since deceased making it practically impossible to distribute the estate.
 - d. Part of the property constituting the estate being Title No. Kiine/Sagana/2XX8 and Title No. Kiine/Sagana/2XX7 are yet to be distributed as some of the beneficiaries are also deceased.



4. The summons is unopposed. The Applicant did not file submissions.

Analysis.

5. The issue before me for determination is whether the grant issued on 13/1/2023 should be revoked and the mode of distribution proposed under paragraph 13 of the Applicant's Supporting Affidavit dated 25.10.2024 adopted with the Applicant as sole Administrator.

6. The grounds for revocation or annulment of grant of Letters of Administration are set out in Section 76 of the Law of Succession as follows:

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.

7. The main ground cited by the Applicant for seeking revocation of the grant herein relate to the grant having become inoperative and useless due to death of co-administrators. The Applicant is one of the three administrators of the estate of the deceased, two of whom are now deceased. The Applicant as a personal representative is bound to account for every action he takes on behalf of the estate in the exercise of delegated powers. He has the authority to do what ought to be done, in good faith, and dutifully and refrain from what ought not to be done as by law expected of him. Musyoka J in the High Court case of *In re Estate of Julius Mimano (Deceased)* [2019] eKLR analyzed the unique position in law held by the personal representative of a deceased person by stating as follows:

“...personal representatives administer estates on the strength of legal instruments made to them by the probate court. The vesting of the estate of the deceased on the personal representatives by virtue of section 79 of the Act, flows from the instrumentality of the grant of representation. Upon representation being made, the grant holder then becomes entitled to exercise the statutory powers conferred upon personal representatives by section 82 of the Act and incurs the duties imposed on them by section 83 of the Act. Additional powers flow from and duties are imposed by other statutes, such as the *Trustee Act*. Under section 82 of the Act, there are powers to enforce and defend causes of action on behalf of the estate, to sell or convert estate assets, to assent to vesting of bequests and legacies



on the beneficiaries, among others. Acts done or actions taken on behalf of the estate or for the benefit of the estate would have to be accounted for. In other words, the personal representatives are bound to account for every action they take on behalf of the estate, for they exercise the powers on delegation.”

8. The uncontroverted case of the Applicant is that the trustees of Title No. Kiine/Sagana/2XX8 are himself, Fredrick Maguta Ngibuini and Nguyo Ngibuini and that Fredrick Maguta Ngibuini and Nguyo Ngibuini are since deceased. The revocation of grant is a matter of discretion which must be exercised in accordance with the law. In the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No.158 of 2000, the Court stated as follows:

“(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.”

9. The Applicant’s case is also that the beneficiary of Title No. Kiine/Sagana/2XX7 is Duncun Ngibuini who is deceased and Joyce Wanjiru Githinji and Robert Ngibuini Kuguru are his administrators. In *Re Estate of Prisca Ong’ayo Nande (Deceased)* [2020] eKLR the Court observed as doth:

“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.”



10. When a sole administrator dies, the grant becomes inoperative. Equally, when a co-administrator dies, the grant becomes inoperative. In *Andrea Ruithibu R. Kanyiri v Teresia Njoki Mbugu* [2016] eKLR, the Court held as doth:

“...what is the effect of the death of a co-administrator? W. Musyoka, J in discussing a similar issue In the matter of the estate of Edward Kanyiri Kunyia (Deceased) (2013) eKLR stated as follows: -

“Regarding the death of the co-administrator, the position is that the grant....has become inoperative. The grant was made jointly to the applicant and his mother, who has now died. It was intended that the two act together in the administration of the estate. A grant is a certificate. It is issued to a particular person or persons. If the holder of the grant dies the grant becomes useless, as it cannot be transferred to another person. If it was made to two persons and one dies it becomes inoperative. Under section 76 of the *Law of Succession Act* such grant is liable to revocation. It should be revoked and another grant made.”

11. It is thus the finding of this court that it was expected that Johnson Gikandi Ngibuini, Nguyo Ngibuini and Fredrick Maguta Ngibuini are to act jointly at all times with respect to the administration of the estate. With the death of Nguyo Ngibuini and Fredrick Maguta Ngibuini, the grant becomes useless as the surviving sole administrator cannot act on the basis of a grant which still bears the name of the two dead administrators. A similar opinion was expressed in the *Estate of Simon Ngugi Nganga (Deceased)* [2013] eKLR as doth:

“The matter of the death of a co-administrator cannot be dealt with as a rectification or review of the certificate of confirmation of grant. It is more fundamental. It touches on appointment of administrators. The grant....was made to two persons. It is expected that the two are to act jointly at all times with respect to the administration of the estate. With the death of one of them, the grant becomes useless as the surviving sole administrator cannot act on the basis of a grant which still bears the name of a dead administrator.... Since the grant has become useless and inoperative, it ought to be revoked and fresh appointments of administrators be made. The surviving administrators cannot even use the grant, as it is useless, to seek orders that the applicant now seeks in this application.”

12. It means that the surviving administrator herein cannot really make any move with regard to the grant on account of one or more co-administrators being deceased. In the instant case, the Applicant has properly sought revocation of the grant under Section 76(e) of the *Law of Succession Act*, to have a grant issued in his sole name and I find no basis to deny his proposal.
13. As some beneficiaries are also deceased and there is no contrary information that they are well represented by the administrators of their respective estates, I am persuaded that the proposed mode of distribution under paragraph 13 of the Supporting Affidavit is permissible and I allow it. The estate of Duncun Kuguru Ngibuini who is now deceased and to whom Title No. Kiine/Sagana/2XX7 had been allocated is represented by Joyce Wanjiru Githinji and Robert Ngibuini Kuguru who are now proposed to be the beneficiaries.
14. The net effect is that the Summons for Revocation of the Grant filed herein is merited and is allowed as prayed.

Determination.

15. In the upshot, I make the following orders:



- i. The Grant of Letters of Administration issued to Johnson Gikandi Ngibuini, Nguyo Ngibuini and Fredrick Maguta Ngibuini on 9.2.2001 be and is hereby revoked.
- ii. The Applicant is hereby appointed as sole administrator of the estate of the above-mentioned deceased and a resultant Grant of Letters of Administration Intestate to issue forthwith.
- iii. The mode of distribution in respect of Title No. Kiine/Sagana/2XX8 and Kiine/Sagana/2XX7 be and is hereby set aside and the mode as proposed in paragraph 13 of the Affidavit in support of this Summons and a Certificate of Confirmation of Grant is issued in respect of the 2 properties as follows:

DESCRIPTION OF ASSETS	MODE OF DISTRIBUTION
TITLE NUMBER KIINE/SAGANA/2XX8	TO JOHNSON GIKANDI NGIBUINI, DR. FREDRICK GIKANDI AND WILSON KIAMA NGIBUINI IN TRUST FOR THEMSELVES AND ALL THE OTHER BENEFICIARIES OF THE ESTATE OF DAVIDSON NGIBUINI KUGURU
TITLE NUMBER KIINE/SAGANA/2XX7	TO JOYCE WANJIRU GITHINJI AND ROBERT NGIBUINI KUGURU JOINTLY

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 28TH DAY OF MAY, 2025.

RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of: -

Mrs. Magua for the Applicant

Court Assistant – Michael

