



**In re Estate of Munyeria Mundu wa Muru wa Ruturu alias Misheck Muru wa Ruturu  
(Deceased) (Succession Cause 442 of 2010) [2025] KEHC 7904 (KLR) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7904 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 442 OF 2010**

**DKN MAGARE, J**

**MAY 28, 2025**

**IN THE MATTER OF THE ESTATE OF MUNYERIA MUNDU  
WA MURU WA RUTURU ALIAS MISHECK MURU WA  
RUTURU (DECEASED)**

**BETWEEN**

**SAMUEL MIGWI THEURI ..... APPLICANT**

**AND**

**CHARLES GITAHU MUNYERIA ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the summons for revocation of grant dated 5.3.2024 seeking revocation of the grant issued on 12.8.2016. The summons sought the following orders:
  - a. The grant issued to the administrator on 12.8.2016 be revoked or annulled for the reason that the Respondent has failed to faithfully administer the estate.
  - b. The court be pleased to hold the Administrator in contempt of court for disobedience of the court order dated 8.12.2022.
  - c. The Court be pleased to appoint from among the list of beneficiaries Administrators for due administration of the estate.
2. The application was supported by the Supporting Affidavit and Further Affidavit of Samuel Migwi Theuri premised on the following grounds:
  - a. The Respondent has failed to file documentary evidence showing the total amount of money received from Muhotetu Farmers Company Limited as ordered by the court on 8.12.2022.
  - b. Without records, the other beneficiaries are unable to estimate the value of the estate.



- c. The Respondent is incapable of remaining as Administrator.
3. The Respondent opposed the summons for revocation of grant vide the affidavit and further affidavit both sworn by Charles Gitahi Munyeria. It was deposed that the Respondent administered faithfully and had in fact complied with the court directions.
4. It was also deposed that the shares in the company would be ascertained from the company after confirming the grant.

### **Submissions**

5. The Applicant filed submissions on 11.12.2024. It was submitted that the Applicant had satisfied the conditions under Section 76 of the Law of Succession Act. Reliance was placed on Re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR, which outlined three general grounds for revoking a grant: defects in the process of obtaining the grant, issues arising during administration such as failure to account or confirm the grant, and subsequent circumstances rendering the grant inoperative, such as the death or incapacity of the administrator or their disqualification to hold office.
6. Reliance was also placed inter alia on Re Estate of Charles Ngari Maina (Deceased) [2020] eKLR, where the Court held that administrators have a statutory obligation to provide complete and truthful accounts of the estate. Where they fail to do so, the court is justified in revoking the grant.
7. The Respondent filed submissions dated 6.3.2025. It was submitted that the Respondent has faithfully and diligently administered the estate.
8. The Respondent submitted that he had complied with Section 83 of the Law of Succession Act in dealing with the expenses of the estate of the deceased.
9. It was further submitted that that the Respondent had stayed with the deceased in Nanyuki for 13 years when the Applicant's father was in America and the Applicant had not approached court with clean hands.

### **Analysis**

10. The issues for determination are as follows:
  - a. Whether the Certificate of Confirmation of Grant dated 12.8.2016 should be revoked.
  - b. Whether the Respondent should be held in contempt of the court order dated 8.12.2022.
  - c. Whether the court should appoint an administrator in the circumstances of this case.
11. 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.

12. The main ground cited by the Applicant for seeking revocation of the grant herein relate to failure to apply for confirmation of the grant within one year, failure to diligently administer the estate and failure to provide accounts. 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.”

13. On the other hand, the Respondent maintained that he administered the estate diligently and faithfully. He deposed that the onus was on the Applicant to prove allegations and the Applicant had failed to do so. That the Applicant did not file evidence of unfaithful administration of the estate as alleged. The basis for revocation of the grant thus appears chiefly premised on the failure by the Respondent to heed to the terms of the ruling of court dated 8.12.2022 that required the Respondent to inter alia within 2 months file documentary evidence showing the total amount of money received from Muhotetu Farmers Company Limited.

14. 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.”

15. The grant herein is yet to be confirmed. Vide the ruling dated 8.12.2022, this court required the Respondent to file accounts demonstrating the amount of money he had received from Muhotetu Farmer's Company Limited to enable confirmation of the grant. The Respondent clearly filed no such records and his case is that there is no evidence that he received any money. The reason the grant herein is not confirmed is therefore because the Respondent has not filed documentary evidence as ordered by this court on 8.12.2022. 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.”

16. The court thus finds conduct on the part of the Respondent that runs contrary to the overall duty of the Administrator's office under the law. The explanation rendered by the Respondent on the value and position of Muhotetu Farmer's Company Limited is not plausible. This position was also adopted and exemplified in the matter of the *Estate of Mbaabu M'Abutu (Deceased) [2020] eKLR*, where Gikonyo J stated as following:

...Needless, to state that such conduct runs counter to the overall statutory duty of the administrators; to administer the estate of the deceased diligently and without undue delay. Therefore, where an administrator willfully fails or refuses to diligently carry out his statutory duties, the grant made to him should be revoked rather than authorize the court administrators to sign transmission papers, yet, leaving the indolent administrator in situ. I propose courts to take this path in order to relieve estates of deceased persons of belligerent administrators, thereby, enhancing efficiency in administration of those estates by appointing compliant administrators. Nonetheless, notice of such precipitate action



should be given to the administrator whose grant is subject of revocation. See section 76 of the *Law of Succession Act*. For emphasis, it makes real legal sense to revoke the grant made to recalcitrant administrators, rather than turn court administrators into administrators of sort of the estate of the deceased, yet, leaving such administrator in the office of personal representative of the deceased.

17. As to whether the Respondent is in contempt of court order of 8.12.2022, the grant cannot stay pending confirmation in perpetuity because the Administrator has not availed the necessary documentary evidence which are clearly within his powers. Court orders cannot be issued in vain. in *B vs. Attorney General* [2004] 1 KLR 431, the court stated as follows:

The Court does not, and ought not to be seen to make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.

18. The court will however not hold the Respondent in the contempt of the court order dated 8.12.2022 in the interest of justice. The Respondent as administrator herein must account for his administration of the estate during the period that he has acted as such and that time for account is not closed and is a statutory duty. In *re Estate of Onyango Ogotu alias Benedcit Onyango (Deceased)* [2018] eKLR, the court stated as follows:

I believe the best thing in the circumstances is to require the administrators herein to account for their administration of the estate during the period that they have acted as such. Rendering accounts is a statutory requirement. It is stated in the *Law of Succession Act*, as well as in the *Trustee Act*, Cap 167, Laws of Kenya. Accounts ought to be rendered by administrators whether called for or not. It is duty that the administrators incur upon their appointment.

19. This is in line with the statutory duty of the Respondent as administrator of the estate of the deceased herein. The court's discretion to abate an injustice descends in to salvage situation where administrators have declined to execute their duties. This amplifies the duty of personal representatives to complete the administration of the estate as required under Section 83 of the *Law of Succession Act* as detailed below:

Personal representatives shall have the following duties—

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...
- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;



- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”
20. The role of the Respondent accrued from the moment the grant was issued to him and he became responsible to the court in the carrying out of the duties of administrator. Accounts are an accountability tool that will tell the court whether the administrator has been faithful to the role entrusted to him. In re Estate of Joseph Eric Owino alias Joseph Eric Owino Nyaburi -Deceased (Succession Cause 58 of 2020) [2022] KEHC 15453 (KLR) (18 November 2022) (Ruling)
- The production of accounts however is a key component of the administration process of a deceased person’s estate. From the moment a grant is issued to a personal representative of a deceased person, the grant holder becomes responsible to the court in the carrying out of the duties of administrator. Accounts are an accountability tool that will tell the court whether the administrator has been faithful to the role entrusted to him or her. When an administrator fails to file accounts as required, questions as to the integrity of the process are bound to arise as in the present case. The law has empowered the court on either of its own motion or on the application of any interested party in the estate, to order an administrator to produce a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.
21. As to whether the court should appoint an administrator in place of the Respondent, the Court finds that the Respondent has not been diligent with the administration of the estate. The concern of this court is for expeditious confirmation thereof. This cannot be achieved by revoking the grant. To cater for the interests of all beneficiaries and expedite the matter, this Court declines to grant the prayer for revocation, but instead under Section 66 Law of Succession Act appoints the Applicant Perpetual Muthoni Wanjiru as co administrator of the estate of the deceased.

### **Determination**

22. In the upshot, I make the following orders:
- i. I revoke the grant issued to Charles Gitahi Munyeria, the respondent alone and issue a fresh one to Charles Gitahi Munyeria and Perpetual Muthoni Wanjiru as co-administrators of the estate of the deceased herein and a fresh Grant to issue forthwith to that effect.
  - ii. The Administrators or either of them shall within 60 days from the date hereof file fresh summons for confirmation of grant incorporating all the properties and beneficiaries of the estate of the deceased.
  - iii. I dismiss the prayer for contempt as it lacks merit.
  - iv. Each party to bear their own costs.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 28<sup>TH</sup> DAY OF MAY, 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**



**JUDGE**

In the presence of: -

Ms. Kiunga for the Applicant

Respondent present

Court Assistant – Michael

**M. D. KIZITO, J.**

