



**In re Estate of Kariuki Muya (Deceased) (Succession Cause
68 of 1985) [2025] KEHC 11506 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 68 OF 1985
HI ONG'UDI, J
JULY 31, 2025**

IN THE MATTER OF THE ESTATE OF KARIUKI MUYA (DECEASED)

BETWEEN

**NGUGI JOSEPH KARIUKI 1ST APPLICANT
DAVID KARIUKI MUYA 2ND APPLICANT
MIRIAMU WANGUI KIUNI 3RD APPLICANT
CHRISTINE NJOKI MWAURA 4TH APPLICANT**

AND

MOSES RUGU KARIUKI ADMINISTRATOR

RULING

1. This ruling is in respect of two applications. The first one is dated 18th January 2023 while the second one is dated 22nd May 2023.
2. The first application which was filed by the administrator seeks the following orders;
 - a. That the honourable court be pleased to further rectify the rectified grant of letters of administration and rectified certificate of confirmation of grant to reflect the correct names of the administrator to read Rugu Kariuki as it appears on his national identity Card.
 - b. That costs of this application be in the cause.
3. The said application is premised on the grounds on its face as well as the affidavit of the administrator/ applicant. He deponed that the rectified grant of letters of administration intestate and rectified certificate of confirmation of a grant was issued him on 8th December, 2022. However, during the typing of their application seeking rectification his name was erroneously written as Moses Rugu Kariuki instead of Rugu Kariuki as it appears in his national identity card. He urged the court to re-issue



a rectified grant of letters of administration and rectified certificate of confirmation of grant bearing the correct names of the administrator since finalizing the distribution process had been rendered impossible due the said error.

4. In the second application the applicants are seeking the following orders;
 - a. The rectified grant of the letters of administration intestate of Kariuki Muya (deceased) issued on 8th December 2022 to Moses Rugu Kariuki be annulled/revoked.
 - b. Susan Wanjiru Kariuki's share in the estate herein be distributed to all her surviving sons, daughter and daughter in law.
5. The said application is premised on the grounds on its face as well as the affidavit of the 1st applicant Ngugi Joseph Kariuki. He deponed that the rectified grant dated 8th December 2022 vested their deceased mother's (Susan Wanjiru Kariuki) share in the respondent leaving them out yet they also survived her. He stated that allocating the respondent the entire share amounted to disinheriting him together with his siblings.
6. The respondent/administrator filed a replying affidavit sworn on 22nd June 2023. He averred that all properties and assets that comprised the estate of their deceased mother were distributed in terms of the confirmation of letters of grant. Further, that all the beneficiaries from their household got their rightful share of the estate. He stated that revoking the grant as prayed would have no legal meaning as the same had been implemented. He added that a similar application for revocation had been filed in this court by another party and the same was dismissed by Hon. Justice Ondo. Thus, determining the present application would be a waste of the court's time.
7. The two applications were canvassed by way of written submissions.

Applicant's submissions on the application dated 22nd May, 2023

8. These were filed by Waweru Gituke & company advocates and are dated 21st October, 2024. Counsel submitted that the applicants in the 2nd application were not opposed to the application dated 18th January 2023. Regarding the application dated 22nd May 2023, counsel urged the court to find that the applicants are entitled to a share of their mother's estate.
9. He placed reliance on section 38 of the *Law of Succession Act* and the decision in the Court of Appeal in the case of Stephen Gitonga M'murithi vs. Faith Ngira Murithi [2015] eKLR held as follows: -

“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried...”

Respondent/administrator's submissions

10. These were filed by Mutonyi Mbiyu & company advocates and are dated 21st March, 2025. Counsel identified two (2) issues for determination.
11. The first issue is whether the rectified grant of letters of administration intestate issued by this court on 8th December 2022 should be revoked/annulled. Counsel submitted that the prayer for revocation was unmerited since the applicants had not proved the requisite grounds to allow the court revoke the said grant. He urged the court to dismiss the said prayer.



12. He placed reliance on the decision in re Estate of Martha Wanjiku Gachugu (Deceased) [2017] eKLR, where the court held as follows:

“There is no discretion given to the court under section 76 to revoke grants on account of problems or difficulties with the confirmation process. So on that score the application before me is grounded on the wrong provisions. A party unhappy with orders made at confirmation of grant should move the court for review or setting aside of the confirmation orders but not for revocation of the grant itself”

See also; In re Estate of Wilfred Thuo Ngugi (deceased) [2002] eKLR

13. On the second issue on whether Susan Wanjiru Kariuki’s share should be distributed amongst all her surviving sons, daughter and daughter in law, counsel urged the court not to disturb the distribution of the estate thirty-four (34) years later as that would result to an injustice.

Analysis and Determination

14. I have considered both applications, affidavits and rivalry submissions by the parties. In my view the issue for determination by this court is whether both applications or either of them is merited.
15. I will first deal with the application dated 22nd May 2023 where the applicants have sought for annulment/revocation of the rectified grant of letters of administration issued to the respondent on 8th December 2022 and that the share of Susan Wanjuru Kariuki (deceased) be transferred to the applicants in equal measure. They argued that allocating the respondent the entire share amounted to disinheriting them. On his part, the respondent argued that revoking the grant would be a waste of the court’s time since the same had been implemented. Further, that a similar application had been filed in this court by another party and the same was dismissed by Hon. Justice Ondeyo.
16. On the issue of annulment/revocation of the rectified grant of letters of administration issued to the respondent on 8th December 2022, this court reiterates the finding in its ruling dated 30th May 2025 in this matter where the applicant who is one of the beneficiaries in the deceased’s estate sought for similar orders. This court relied on the decision in Re Estate of Kathendu Muntu Wanjoya (Decreased) [2022] KEHC 2336 (KLR) cited with approval the decision in Re Estate of Juma Shitseswa Linani (Deceased) [2021] eKLR where the court held that 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, the person should file an appeal against the orders made by the court on distribution or apply for review of the said orders. This is because the court confirming a grant largely becomes functus officio so far as confirmation of the grant is concerned, and cannot revisit the matter unless upon review.
17. Consequently, the prayer for revocation and/or annulment of rectified certificate of confirmation of grant issued to Moses Rugu Kariuki on 8th December 2022 is dismissed.
18. The applicants also sought for orders directing the share of Susan Wanjuru Kariuki (deceased) to be transferred the them. This court upon carefully perusing its record notes that in an application dated 14th November 2022 the respondent sought for orders that the shares belonging to Susan Wanjuru Kariuki (deceased) be transferred to him. There was no objection to the said prayers and this court on 8th December 2022 allowed the said application and a rectified certificate of confirmation of grant was issued to the respondent/ administrator who is the applicants’ sibling.



19. The said orders of 8th December, 2022 are still in force as no evidence has been placed before this court to show that those orders have been reviewed or appealed against. I therefore find the application dated 22nd May, 2023 to be misplaced and without merit. The same is hereby dismissed.
20. I now move to the second application seeking to further rectify the rectified grant of letters of administration and rectified certificate of confirmation of grant to reflect the correct names of the administrator to read Rugu Kariuki as it appears on his national identity Card. This court notes that the same is not opposed and that the names appearing on the administrator's identification ID No. 6606139 and those appearing on the rectified grant issued on 8th December, 2022 indeed differ.
21. For the said reasons this court finds the application dated 18th January 2023 to be merited and the same is allowed in terms of prayer 1. The rectified grant of letters of administration and rectified certificate of confirmation of grant be rectified to reflect the names of the administrator to read as "Rugu Kariuki".
22. The application dated 22nd May, 2023 is dismissed.
23. This being a family matter each party shall bear its own costs in both applications.
24. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 31ST DAY OF JULY, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

