



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of William Kamiri Ngeru (Deceased) (Succession Cause
E2237 of 2021) [2025] KEHC 9256 (KLR) (Family) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9256 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE E2237 OF 2021

PM NYAUNDI, J

JUNE 27, 2025

IN THE MATTER OF THE ESTATE OF WILLIAM KAMIRI NGERU (DECEASED)

BETWEEN

MARY WAIRIMU KABIRI APPLICANT

AND

JACINTA WAMBUI KAMIRI 1ST RESPONDENT

JACQUELINE NJAMBI KAMIRI 2ND RESPONDENT

JUDGMENT

1. This matter relates to the Estate of William Kamiri Ngeru who died intestate on 23rd August 2019. Jacinta Wambui Kamiri and Jacqueline Njambi Kamiri in their capacity as daughters of the deceased petitioned for letters of administration of grant intestate. The grant was issued to them on 21st July 2022. 2010. The grant is yet to be confirmed.
2. The deceased is said to be survived by the following persons;
 - i. Mary Wairimu Kabiri Widow.
 - ii. Lucy Njeri Hager Daughter.
 - iii. Jacinta Wambui Kamiri Daughter.
 - iv. Scholastic Wanjiku Fasel Daughter.
 - v. Jackline Njambi Kamiri Daughter.
 - vi. Joan Nyagatu JohnNgeru Daughter in law.



- vii. Jane Wangui Kimani Daughter in law.
 - viii. Irene Wanjiru Ngugi Daughter in law.
 - ix. Patricia Wanjiku Kamiri Daughter.
 - x. Charles Ngeru Kamiri Son.
 - xi. George Gathungu Kamiri Son.
 - xii. Duncan Ndichu Kamiri Son.
3. He had the following assets;
- a. LR. No. Githunguri/githiga/430.
 - b. LR No. Githunguri/ikinu/35.
 - c. LR No. Ndumberi/tinga'ng'a/125.
 - d. Property Along Kugeria Close Nairobi.
 - e. Property In Eastleigh Nairobi.
4. Mary Wairimu Kabiri [the Applicant] then filed summons for revocation of grant dated 8th May 2024 seeking the following orders;
1. Spent.
 2. The grant of letters of administration intestate made on 21st July 2022 be and is hereby revoked.
 3. Spent.
5. In her supporting affidavit sworn on 8th May 2024, she averred that she is the wife of the deceased. She had four children with the deceased. The Respondents are her step daughters. She avers that the Respondents applied for letter of administration intestate without informing her. She argued that consent was not signed by some beneficiaries including herself. She averred that the mode of distribution proposed by the Respondents is not as per the wishes of the deceased and is meant to disinherit her and her children. she urged the court to revoke the grant issued to the Respondents.
6. The summons was opposed by the Respondents vide a Replying Affidavit sworn on by Jane Wambui Kamiri [the 1st Respondent] and on behalf of the 2nd Respondent. She denied the allegation that they took out letters of administration without informing the Applicant. She avers that she tried to reach the applicant twice with the intention of taking out proceedings in regard to the estate. According to her, it was too soon to take out letters of administration. The applicant was aware that they visited the chief's office to identify the beneficiaries of the estate.
7. It was argued that the applicant was aware of every step the Respondents took including identifying the assets of the deceased. The applicant refused to participate in identifying the deceased's assets. The matter was even referred to mediation but the applicant failed to show up. The Respondents argued that the applicant had not proved that she was not aware of the succession proceedings. They urged the court to dismiss the summons for revocation and proceed to confirm the grant.

Applicant's Submissions.

8. The applicant's submissions are dated 18th March 2025. It was her submission that the 2nd Respondent misled the court in her swearing affidavit that she was the widow of the deceased. She submitted that



according to the provisions of Section 66 of the *Law of Succession Act*, she ranks in priority in the list of persons who should be issued with letters of administration. She sought to rely on the decision of *In Re the Estate of Efstratios Meimaridis Phaendon [Deceased]* [2005] eKLR where the court held that a widow ranks in priority to apply for letters of administration. She faulted the Respondents for failing to serve her with a citation as provided under Section 62 of the *Law of Succession Act* and Rule 21 of the *Probate and Administration Rules*.

Respondents Submissions

9. The Respondents submissions are dated 26th October 2024. It was their submission that revocation of a grant is the discretion of the court. In this case, they argued that the applicant has not met the threshold for revocation as stated in Section 76 of the *Law of Succession Act*. They argued that the applicant was aware of the succession proceedings but refused to participate in the proceedings.
10. They further submitted that although Section 66 of the *Law of Succession Act* states that a widow ranks in priority in petitioning for letters of administration, in this case, they disclosed to the court that the applicant was the deceased's wife. That the court should not revoke the grant on the ground that the grant was not petitioned by the deceased's widow. They argued that the applicant did not inform the court that the Respondents had tried to reach her before and during the succession proceedings. They urged the court to include the applicant in the confirmed grant instead of revoking the grant. reliance was placed on the decision of *In re Estate of Kimining Arap Kiboigut [Deceased]* [2021] eKLR.

Analysis and Determination

11. The issue for determination herein is whether the Applicant's application meets the threshold for the revocation of a grant within the meaning of Section 76 of the *Law of Succession Act*.
12. For avoidance of doubt, Section 76 of the *Law of Succession Act* states as follows:

76. Revocation or annulment of grant

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.

13. Section 76 was clearly expounded on by the court *In re Estate of Prisca Ong'ayo Nande [Deceased]* [2020] eKLR where it was 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.

14. The courts have further held that the power to revoke a grant is a discretionary one. In *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* Succession Cause No 158 of 2000 where Mwitia J stated:-

“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 Applicant invited the court to revoke the grant of letters of administration for the reasons that the Respondent did not inform her that they were taking out letters of administration. She also argued that her consent was not sought and the fact that she has priority over the Respondents warrants revocation.

16. It is not in dispute that the applicant is the widow of the deceased and the step mother of the Respondents. Section 66 of the *Law of Succession Act* sets out the order of preference with respect to administration intestate. The court in exercise of the said discretion is mandated to accept as a general guide the following order of preference; -

- a. surviving spouse or spouses, with or without association of other beneficiaries;



- b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by part v;
 - c. the public trustee; and
 - d. creditors:
17. The surviving spouse is given priority over the surviving children and other relatives of the deceased.
18. I have noticed that in the affidavit in support of petition for letters of administration intestate, Jacqueline Njambi Kamiri was indicated as the widow of the deceased. The applicant's name was not included in the list of beneficiaries of the estate. I find this a misrepresentation of facts. Although the Respondents argue that the applicant was listed as a beneficiary in the chief's letter, this does not cure the fact that the court was misled to believe that the widow was the 2nd Respondent and not the Applicant. This is a ground for revocation of the grant issued by this court.
19. Section 66 of the *Law of Succession Act* bestows this court with the discretion to appoint the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made.
20. Having found that the Applicants did not comply with the mandatory provisions of Rule 7 [7] of the *Probate and Administration Rules*, I am compelled to revoke the grant that was issued herein on 21st July 2022 and order that a fresh grant issue with the Applicant as one of the Co- Administrators.
21. Thus the court issues the following orders;
- i. The grant of letters of administration issued on 21st July 2022 is revoked.
 - ii. Grant of Letters of Administration be issued jointly to the applicant, Mary Wairimu Kabiri, Jacinta Wambui Kamiri and Jacqueline Njambi Kamiri.
 - iii. The administrators will summons for Confirmation and the proposed mode of distribution within 60 days. In the event the administrators are unable to file a joint summons, any of the administrators will file the summons and serve it on all the beneficiaries. Any beneficiary opposed to the summons for confirmation will file affidavit of protest within 14 days of service
 - iv. Mention on 30th September 2025 to confirm compliance and take further directions
 - v. Each party will bear their own costs.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 27TH DAY OF JUNE, 2025.

P. M NYAUNDI

JUDGE

In the presence of:

Gichamba for Administrators

Fardosa Court Assistant

