

KENYA / JUDGMENT

In re Estate of Kisilu (Deceased)

[2026] KEHC 12847 (KLR)

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COURT

High Court

BEFORE

JN Onyiego

CASE / FILE NUMBER

Succession Cause 1 of 2017

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

SUCC. CAUSE NO.1 OF 2017

IN THE MATTER OF THE ESTATE OF JOSEPH KITHOME KISILU (DECEASED)

JANET NDUNGWA KITHOME.....1ST APPLICANT

JOSEPHINE WAVINYA KITHOME.....2ND APPLICANT

VERSUS

MARY KITHOME.....RESPONDENT

RULING

1. The brief background of this matter which has been pending before this court for close to ten years is that; the deceased in this matter died intestate on 7-10-2016. Upon his death, he left behind the Respondent as the only widow having married the year 1986 together with children as heirs. The deceased had early married a 1st wife who predeceased him. They were however blessed with six children among them the Applicants herein and four other children three of whom are deceased also. With the Respondent, the deceased was blessed with two children although the Respondent herein had three children before getting married to the deceased.

2. Consequently, the Applicants petitioned for a Grant of Letters of Administration intestate which was issued on 16-01-2018. The same was however revoked on 5-7-2018 by Kariuki J, pursuant to the Respondent's application for Revocation of Grant on account of concealment and non-disclosure of material facts. Consequently, the court re-issued a joint grant in the names of the Applicants (representing the 1st house), Respondent and one Robert Musembi Kithome (representing the 2nd house).
3. Subsequently, the Respondent and Musembi Robert filed an application for confirmation dated 9-8-2018 while the Applicants filed theirs dated 14-9-2018. As such, the court proceeded to hear the two parallel applications and delivered its judgment on 29-4-2029 thus distributing the estate. Aggrieved by the decision, the Applicants herein representing the first house intimated their intention of moving to the Court of Appeal after filing a Notice of Appeal. The appeal was never filed despite securing temporary stay order for 30 days on 2-6-2020 which later lapsed.
4. Undeterred, the Applicants once again, moved to this court vide a Summons dated 14-2-2025 citing the following grounds;
5. **Proceedings to obtain the grant were defective in substance.**
6. **The grant was obtained fraudulently by making false statements and concealment from the court of some material facts.**
7. **The grant was obtained by means of untrue allegations of facts essential in prints of law to justify the grant notwithstanding the allegations were made in ignorance or inadvertently.**
8. **That one of the administrators one Mary Kithome had made it impossible to proceed diligently with the administration of the estate.**
9. **The grant has become useless and or in operative through subsequent circumstances.**
10. The application was heard and on 14-11-2025, Matheka J, delivered her Ruling thus revoking the Grant stating at par. 29 that; **"the surviving spouse (respondent) and other beneficiaries had been given the opportunity to administer the estate and have all failed to do so"**. The Court went further to revoke the grant on grounds that it had become useless and instead appointed the Public Trustee to whom a fresh grant was issued in the best interest of the estate. The court further directed the Public Trustee to administer the estate within 6 months according to the Confirmed Grant and then file a report. The Public Trustee was to appear before the Deputy Registrar to confirm receipt of the order.
11. Again, dissatisfied with this Ruling, the Applicants moved this court vide a Summons for Amendment, Rectification and or Variation of Grant application dated 26-11-2025. The application sought the following prayers;
12. **Spent.**

13. There be stay of implementation or execution of orders dated 14-11-2025 pending hearing and determination of the application **inter partes**.
14. The court does vary and amend the grant issued herein **exhibitio justitiae**.
15. The court does appoint the Applicant as the Co-Administrator to the Public Trustee and specify their responsibilities and more so the prosecution of Makindu MC ELC NO.17 OF 2024.
16. That in the alternative to prayer 4 above, the court do appoint Duncan Kaleli Musa Co-Independent Administrator.
17. That the parcel in Makindu town measuring 13107 feet in the names of Michael Nzoli Kiangi be added to the estate and the same be distributed to the 1st house.
18. That Mary Munyao to render a full statement of accounts in respect of the estate and more particularly, the entire bank statements to date for accounts KCB ACC 1116057042 and 01713066567.
19. The registrar to be appointed by the court to sell the shares at current value and to file a report.
20. The application is anchored on the grounds set out on the face of it and further amplified by the averments contained in the affidavit in support sworn by Janet Ndungwa Kithome thus deposing that, despite making every effort to trace her late father's properties and protecting the same from intermeddling from 3rd parties, the Respondent has made it impossible to proceed.
21. That sometime the year 2024, KENHA encroached into the deceased's land prompting them to proceed to court to protect their interests vide Mankindu MC ELC case 17 of 2024. That the appointment of the Public Trustee will pose some challenges due to conflict of interest between Government Departments. That the Public Trustee is not conversant with the case hence a challenge in representation. She averred that being a party in the said suit by virtue of being the Administrator to the estate, she will not appear as she has been stripped off those powers.
22. That the Respondent has failed to account for some monies in the aforesaid accounts and sale proceeds from plot No. LR 26329 and LR 123820 whose purchase price was not fully remitted. She further stated that the mode of distribution of the estate ought to be amended or adjusted to reflect actual structure of the estate.
23. She further deposed that she be appointed together with other beneficiaries as Co-Administrators with the Public Trustee.

24. In reply, the Respondent filed a Replying Affidavit sworn on 11-5-2026 thus opposing the application. She opposed the application referring to it as a form of appeal within the same court against its own judgment. She stated that the Applicants are deliberately delaying execution of the court order as they have failed to appear before the Public Trustee to execute necessary documents.
25. She further deposed that the case against KENHA is a non-starter as it's the estate's property that encroached to the road reserve hence the subject suit has nothing to do with the administration of the estate. That the proposed appointment of Ducan Kaleli as a Co-Administrator to the Public Trustee who is a stranger to the estate is untenable.
26. Regarding the bank statements and accountability, she stated that she has no knowledge of those accounts and as Administrators they should have obtained those statements and that the Public Trustee can do that. As to the plots LR 26329 and 123820, she stated that the balance of the purchase price can be remitted and the same be distributed by the Public Trustee. She averred that there are no new properties that were not included in the distribution list.
27. When the matter came up for hearing, parties basically orally submitted thus reiterating the content of their respective affidavits. The Respondent urged the Applicants to seek a Special Grant for purposes of prosecuting the Makindu ELC case if they wish despite being opposed to the filing of the suit as it has no basis.
28. I have considered the application herein and the response thereof. This file has been before this court unnecessarily long due to mistrust and greed of some beneficiaries. This is the 3rd time this court is being asked to revoke the grant. Under **Section 76 of the Law of Succession**, a Grant can be revoked under specified circumstances as hereunder;

“ 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.

1. In the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] KEHC 7143 (KLR) the court cited grounds under which a Grant for Revocation can arise as hereunder;

“The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

1. In the instant case, the Applicants have cited generally all the grounds contained under **Section 76 of the LSA**. It is not in dispute that this court on 14-11-2025 pronounced itself clearly that the four appointed Administrators had failed to administer the estate diligently as ordered in the judgment of 29-4-2020. As it stands, there is no appeal lodged against that judgment hence the Confirmed Grant is still valid and binding. Justice Matheka blamed all the Administrators for failing to discharge their mandate.
2. This court cannot be invited to redistribute the estate a fresh as prayed by the Applicants. The appointment of the Public Trustee was the last resort and in the interest of the estate. It is now 6 years since the grant was confirmed and the Administrators did nothing. To pray for re-appointment of the Applicants or any other beneficiary would not solve anything as the Applicants are not working with their step mother to distributing the estate. Therefore, the Public Trustee being a competent office, it does not need any support from people who have already failed in their mandate.
3. To suggest the appointment of an independent 3rd Party who is not the heir to the estate will amount to demeaning the ability of the Public Trustee. I will urge the parties to co-operate with the Public Trustee.
4. As to the inclusion of Makindu land in the name of one Michael to the estate, the same is not in the name of the deceased. The Public Trustee will do an inventory of the deceased’s properties not included in the Certificate for Inclusion. For now, the said plot is not in the deceased’s name. The Administrator shall follow and pursue for transfer into the of the estate through the Administrators.

5. Regarding the prosecution of the ELC case at Makindu Law Courts, the Public trustee is competent to appear or in the alternative the Applicants can seek Limited Grant for purposes of representing the estate only for that matter. See **Julian Adoyo Ongunga & Another -vs- Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased)** [2016] eKLR, where the Court (Mrima J) stated;

“15. The law further provides for various forms of limited or special grants. They include, but not limited to... and due to their limited nature, each such grant ought to be used for that specific purpose only. Given that more than one limited grant or a combination of grants can be issued depending on the circumstances of a case, there is every reason to deal with a limited grant as it specifically provides. That will undoubtedly bring order and decorum in dealing with an estate of a deceased person noting that there may be need to obtain a full grant in future...

20...Turning to the grant in this matter, the Respondent obtained and produced in evidence a Limited Grant of Letters of Administration Ad Colligenda Bona as the basis of his locus standi in the suit. I have carefully looked at the wording of the said grant which partly states as follows...

27.I believe I have said enough on the issue. Back to the matter at hand, I have already reproduced the wording of the limited grant of letters of administration ad colligenda bona above. I have also carefully gone through both the typed and the handwritten record before the trial court. Looking at the grant and the record it is clear that the limited grant of letters of administration ad colligenda bona issued to and produced in evidence by the Respondent herein does not benefit from the above exceptions. The same was issued for the specific purpose'.....only of collecting and getting in and receiving the estate and doing such things as may be necessary for the preservation of the same and until further representation be granted'

29.In this matter therefore the Respondent lacked the requisite locus standi to institute and/or maintain the suit. The result is that all the proceedings before the trial court were instituted and maintained by a person who lacked the legal capacity to do so. They are indeed a nullity and as such lack the legal leg to stand on. In coming to this finding this Court is alive to the truism that the matter is quite an old one and involves the loss of a loved one in a family. Be that as it may, it is this Court's belief that all is not lost as the matter can be legally revisited.”

1. As to the prayer for the Respondent to account for the assets of the estate and more particularly the bank accounts, the Respondent denied knowledge of those accounts. The Applicants together with the Respondent were joint Administrators to the estate and the Respondent could not do anything without their knowledge. In fact, they are bound to account for the administration of the estate. They cannot run away from such accountability as well. There is no proof that the Respondent had the capacity alone without the other Administrators to access the bank accounts. If there is any fraudulent activities, the Public Trustee shall handle that.

2. As to the prayer for appointment of a Share Registrar, it is not necessary as they were shared out equally between the two houses and the Public Trustee will effect the transfer to the respective beneficiaries.
3. In view of the above finding, I do not find any merit in the application as the same is intended to delay this case further. The Applicants should accept the reality that their father had two houses and the property was distributed six years ago and nothing has changed. They should move on with life and accept the role of the Public Trustee.
4. Accordingly, the application is hereby dismissed with costs to the Respondent. Summons to issue to the Public Trustee to appear on 17-9-2026 to appraise the court on the progress so far made in the administration of the estate.

Dated, signed and delivered virtually this 7th day of August 2026

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J. N. ONYIEGO

JUDGE

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