

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**FAMILY DIVISION**  
**PROBATE & ADMINISTRATION CAUSE 2748 OF 2004**

***IN THE MATTER OF THE ESTATE OF ESTHER WAITHIRA Karii ALIAS  
ESTHER WAITHERA ALIAS ESTHER WAITHIRA ALIAS ESTHER WAITHIRA  
WAINAINA ALIAS ESTHER WAITHERA WAINAINA ALIAS ESTHER KIARIE  
ALIAS ESTHER WAITHIRA NJUGUNA (DECEASED)***

**ANNE MARY WAMBUI**

.....

**APPLICANT**

**VERSUS**

**PETER MWANGI**

.....

**RESPONDENT**

**RULING**

1. The Deceased herein passed away on 1 September 2001. She died intestate and was survived by three children, namely, ANNE MARY WAMBUI, PETER MWANGI and ROSEMARY WAIRIMU.
2. The Grant of Letters of Administration Intestate was issued to Peter Mwangi on 12 May 2009, confirmed on 9 June 2014 and subsequently amended on 14 October 2015. The assets of the estate were distributed amongst the 3 beneficiaries.
3. The Applicant herein filed Summons for Revocation of Grant dated 2 December 2024, which application is supported by an Affidavit. The Applicant avers that one of the properties distributed to her is PLOT NO. INNERCORE BLOCK B/63, Umoja, Innercore, Nairobi. It would seem that since Confirmation of Grant in 2014, the property had never been transmitted to the Applicant and was still in the name of the Deceased.

4. The Applicant had enjoyed quiet possession thereof until 25 July 2018 when she found one, Ephantus Keru Maina, attempting to destroy the fence around the property. The Applicant lodged a complaint with the Directorate of Criminal Investigations which led to criminal proceedings against the said trespasser, in Makadara Criminal Case No. 259 of 2019. The Applicant now wishes to pursue a claim in the Environment and Land Court and is unable to do so since the Administrator is not in the country.
5. The Applicant avers that she and her Advocates have tried several times to contact the Administrator in a bid to get him to sign court documents, but the Administrator has refused to do so. The Applicant states that the matter has been in Court on various dates, each time the Administrator/Respondent has failed to turn up despite being served. Eventually, on 28 March 2022, Hon. Justice Thande advised the Applicant to file an application for revocation of Grant.
6. The Application is brought under section 76 of the Law of Succession Act and Rules 44 and 73 of the Probate & Administration Rules. Section 76 provides 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. 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."*

8. The Application herein is not anchored on any particular ground under section 76. The Applicant merely avers that the Administrator/Respondent has failed to appear in Court when required to and refused to sign Court documents. In a word, the Administrator/Respondent is unco-operative. The Applicant previously filed an application to be included as an Administrator. She has demonstrated that she has consistently contacted the Administrator/Respondent to complete the administration, but her efforts have been in vain. To me, this appears to fall under section 76 (d)(ii).
9. Under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administrations Rules, the Court has unfettered discretion to make orders either to meet the ends of justice. Section 47 provides that:

*“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient: Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.”*

10. Rule 73 of the Probate and Administration Rules provides:

*“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”*

11. An administrator's office of the deceased's estate is an office built on the foundation of trust and goodwill. Where such is seen to be lacking, the Court ought to invoke its unfettered powers and discretion to ensure that justice is done to the beneficiaries.
12. It is well settled law that the power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the case of **Albert Imbuga Kisigwa vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000** where Mwita 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.”*

13. I note that it has been over 10 years since the Grant was confirmed, and administration of the estate is yet to be completed. Coupled with the uncooperativeness of the Administrator, it is in the interest of the estate and the beneficiaries that a new Administrator be appointed to complete the tasks. However, it is notable that the Applicant has not proposed any other person to be appointed as administrator. Further, there is no consent attached from the third beneficiary, Rosemary Wairimu. In order to ensure smooth administration of the estate to conclusion and avoid any potential disagreements, I make the following orders:

- (i) The Grant of Letters of Administration Intestate issued to Peter Mwangi on 12 May 2009 is hereby revoked;
- (ii) In exercise of the powers conferred by Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, I hereby appoint Anne Mary Wambui and Rosemary Wairimu as administrators of the estate of the Deceased herein;
- (iii) The co-administrators shall within 90 days prepare and execute all the necessary documents required to transmit to each beneficiary their entitlement as set out in the confirmed Grant. The costs thereof shall be borne by the estate and if that is not possible, each beneficiary shall contribute equally to the same;
- (iv) I make no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF AUGUST**

**2025**

**HELENE R. NAMISI  
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Applicant: Ms. Ndungu

Respondent: N/A

Court Assistant:

Ruling