



**In re Estate of Thurania Twerandu (Deceased) (Succession Cause 219 of 2008) [2024] KEHC 9244 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9244 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 219 OF 2008**

**LW GITARI, J**

**JULY 31, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE THURANIA TWERANDU(DECEASED)**

**BETWEEN**

**AUGUSTINO RIUNGU M'IMWITU ..... PETITIONER**

**AND**

**MARIA REGERIA GEDION ..... OBJECTOR**

**RULING**

1. The application for determination is a summons for revocation of a grant dated 6<sup>th</sup> April, 2023. The objector/applicant is seeking for orders-;
  - a. Spent
  - b. That this Honourable Court be pleased to issue an order for stay of operation of the certificate of confirmation of grant confirmed on 3<sup>rd</sup> July 2009 and dated 17<sup>th</sup> August 2009 pending the hearing and determination of this Application inter parties.
  - c. That this Honourable Court be pleased to issue an Order for stay of operation of the certificate of confirmation of grant confirmed on 3<sup>rd</sup> July 2009 and dated 17<sup>th</sup> August 2009 pending the hearing and determination of this cause.
  - d. That the Grant issued to Augustino Riungu M'imwitu and confirmed on 3<sup>rd</sup> July 2009 and dated 17<sup>th</sup> August 2009 be revoked and/or annulled.
  - e. That this Honourable Court be pleased to issue an order for cancellation of the new subdivided parcel number Nkuene/ Nkumari/ 2632,2633,26334,2635 & 2636 and the same revert back to its original parcel number Nkuene/Nkumari/613, measuring approximately five (5) Acres and under the name of the Deceased thereof.



- f. That this Honourable court be pleased to issue an order of Inhibition prohibiting any dealings with Land Parcel No. Nkuene/Nkumari/ 2632,2633,2634,2635 & 2636 or any subdivision thereof pending the hearing and determination of this cause.
  - g. That this Honourable Court be pleased to appoint Maria Regeria Gedion as new joint administrators in respect of the estate of the Deceased herein.
  - h. That this order be served upon the District Land Registrar Imenti North District for compliance.
    - i. That this Honourable Court be pleased to issue any further orders as it deem just.
  - j. That the costs of this Application be provided for.
2. The application is supported by the affidavit of Maria Regeria Gedion, the applicant in which she states that she is the biological daughter of the deceased herein and sister to the petitioner herein. That the matter was filed secretly by the Petitioner without involving all the rightful beneficiaries of the deceased herein. That the petitioner who is her brother indeed had filed the Succession Cause herein secretly and illegally leaving other beneficiaries because of his greedy to disinherit the other beneficiaries.
  3. The Applicant avers that his deceased father had 5 children namely: Augustino Riungu M'Imwitu, Stanley Mutwiri M'IMwitu, Maria Regeria Gideon, Andrian Munyugi M'Mwitu and Daniel Marangu M'Mwitu-deceased who is survived by Mary Nthure-Widow, Samson Koome Marangu, Isaac Gitonga, Kenneth Mutembei & Christopher Bundi.
  4. The Applicant further avers that the deceased left Nkuene/Nkumari/613 measuring approximately five (5) Acres and the only subject for distribution in which he was left to utilize 1 acre of land from the same but the petitioner and his other siblings chased her away from the same with intention to sell the same and indeed the petitioner herein has subdivided the same into new numbers being Nkuene/Nkumari/2632, 2633, 26334, 2635 and 2636.The Applicant annexed a copy of the green card showing the new numbers where the old number has been closed for ease of reference.
  5. The Applicant avers that the petitioner ignored, neglected and/or failed to disclose to the Honourable court that there were other beneficiaries which information he had all along but decided to not disclose so that he can defeat the justice herein.
  6. The Applicant further avers that the petitioner filed the Cause secretly and without involving her as the beneficiary of the estate of the deceased herein and he thought he will not learn of the same yet she is the legal daughter of the deceased herein and indeed she is entitled to the share of his deceased father estate. The applicant attached a copy of the said confirmed grant.
  7. The Applicant avers that has been in and out of the hospital due to breast cancer and indeed the said sickness has drained her financially and the Petitioner herein publicly said that she shall never get any share from the Estate of the Deceased as she may die any time but her God has been faithful to her as she is alive today .That the Petitioner fraudulently and dishonestly acquired the same with a motive to disinherit her.
  8. The Applicant states that the Petitioner knew very well that she will never survive because of the deadly cancer that she is suffering from and she beseeched the court to intervene and revoke Grant issued to Augustino Riungu M'Imwitu and confirmed on 3rd July, 2009 and dated 17<sup>th</sup> August, 2009.The Applicant enclosed bundles of the hospital documents marked "MRG3".



9. The Applicant further states that her Deceased Father, prior to his death he had given her 1 Acre of land and shown her the same on the ground but the Petitioner chased her away with intention to sell the same and disinherit her but due to the fear of the curse from her Deceased father, the Petitioner and her brother Stanley Mutwiri offered to give her back my 1 Acre of Land via their letters dated 20<sup>th</sup> July, 2021 but they failed to put the same under her name and she suspect they are waiting that she dies so that they remain with the Land thereof without considering that she has children. The Applicant attached two letters marked "MRG4.
10. The Applicant contends that his brother has publicly offered to sell part of the land a fact which she learnt after a potential purchaser came to view with intentions to purchase the same. That she stands to suffer great injustice if the petitioner makes good his intentions and threats of selling the subject land parcel of land and subsequently evict her from the said land which she has been utilizing since childhood.
11. The Applicant avers that she is apprehensive that her rights will be denied if the court closes its eyes and allows the Petitioner to illegally disinherit her and unless the grant herein is revoked and Order for cancellation of the new subdivided parcel numbers Nkuene/Nkumari/2632, 2633, 26334, 2635 & 2636 and the same revert back to its original parcel number Nkuene/Nkumari/613 Nkuene/Nkumari/613 Measuring approximately Five (5) Acres and under the name of the Deceased thereof.
12. The Applicant further avers that it is in the interests of justice that the grant herein be revoked and be appointed as the Administrator by that to enable her have equitable share of their Deceased's father estate and smooth transfer of the same as the Petitioner cannot be trusted to implement the estate of the Deceased herein.
13. The Applicant states that her proposal as shown below is fair considering and thus they humbly propose that the land number Nkuene/Nkumari/613 Nkuene/Nkumari/613 measuring approximately five (5) Acres be shared as equally amongst
  - (a). Augustino Riungu M'imwitu
  - b). Stanley Mutwiri M'imwitu
  - c). Maria Regeria Gideon
  - d). Andrian Munyugi M'mwitu
  - e). Share of Daniel Marangu M'mwitu-deceased to go to Mary Nthure-widow, Samson Koome Marangu, Isaac Gitonga, Kennat Mutembei & Christopher Bundi.
14. The Applicant further states that Moses Mburugu M'Rimberia listed as beneficiary and give 1.75 acres of land from the estate of the deceased herein is a stranger to the estate of the deceased as he was fixed to the cause by the petitioner with the sole intention to get the share from the estate of the deceased herein and thereafter sell the same to third parties and share the proceeds thereof so as to defeat the justice hereof and she thus urges the court to struck out his name from the cause herein and the petitioner/respondent will not suffer prejudice if the orders sought are granted.
15. The petitioner/respondent filed his replying affidavit dated 24<sup>th</sup> October, 2023. He states that they are cousins of the deceased and the persons entitled to inherit his estate. That contrary to the applicant's assertions she is not and they are not children of the deceased Thurania Twerandu (deceased) who was their father's cousin who had been childless and he was the only child of their great uncle. That the applicant is seeking the stay of implementation of a grant which was implemented a long time ago and therefore that prayer is not available to her.



16. The respondent avers that the applicant seeks to revoke the grant is unfair and unreasonable since they are the beneficiaries of the deceased and she is not solely entitled to the whole estate. That the applicant is very dishonest and economical with the truth for failing to disclose she was provided for in the estate and sold her entitlement to one Paul Kanugu Ngera and she used his money for her personal gain. The respondent annexed copies of the land sale agreement marked 1a and 1b.
17. The respondent avers that the applicant is insincere since she failed to disclose that the family had resolved the issue and that is why she got prime plots touching the tarmac road and she sold them for a substantial amount of money. That again the applicant is insincere since she did not disclose that the estate land has been sold to several people before and after distribution who include;
  - a) Moses Mburugu Rimberia
  - b) Paul Kanugu Ngera
  - c) Lucy Gakii Mwiti
  - d) Elias Kinyuru Kwiriga
  - e) Edith Kagwiria Mburugu
18. The respondent avers that the buyers have taken possession of the purchased portions of lands and made extensive developments therein including building and other permanent developments on the land. The respondent annexed photo evidence Marked ARM '2').
19. The respondent further avers that the applicant does not explain why she never acted when the buyers were taking possession of the land and making extensive and permanent developments. That the applicant is seeking to use the judicial process and take away the properties of the buyers. That the deceased left home during the state of emergency period and never came back until they later heard he died in Nakuru round 1980s and was laid to rest in a public cemetery.
20. The respondent states that the allegation by the applicant that the deceased gave her 1 Acre of the land is false and misleading since she never saw him because he disappeared from home when they were young children and some were not even born. That the deceased was a son of M'twerandu who was a cousin of their father M'imwitu and the deceased was the only child of his father and he died without any child of his own or brothers or sisters. That the applicant is alleging to have learnt of sale of an already sold land which she participated in and is being dishonest to the extreme.
21. The respondent contends that the application to revoke the grant and appoint the applicant as the sole administrator of the estate which was distributed many years ago is a scheme to settle some family scores. That the applicant's application dated 6<sup>th</sup> April 2023 is baseless, unmerited and is an abuse of the judicial process and the same ought not to be allowed. That if the orders sought are granted the same will open a Pandora's Box with the many buyers including her own lodging a litany of Civil suits to the detriment of all.
22. Jericah Kinanu Mburugu filed her replying affidavit dated 19<sup>th</sup> July 2023 wherein she avers that she is the wife of the late Moses Mburugu M'Rimberia who passed on 6<sup>th</sup> June 2021. That on 10<sup>th</sup> September 2008 her late husband bought 1.5 Acres of land from Marangu M'Imwitu Andrian Munyugi M'Mwitu, Augustino Riungu M'Imwitu and Stanley Mutwiri M'Imwitu being nephews of the late M'Thuranira M'Twarandu (Deceased) the registered owner of land parcel L.R.No.Nkuene/Nkumari/613.



23. Jericah Kinanu Mburugu avers that the registered owner M'Thuranira M'Twerandu was a brother to the seller's father M'Mwitu but the deceased had died childless and it is his brother's son who were to survive him in accordance with the Meru Customary Law. That the later the sellers sold to his late husband a further 0.25 Acres and cumulatively he bought 1.75 Acres which land was registered to him and a title deed was issued.
24. Jericah Kinanu Mburugu avers that upon the official transfer of the land to his late husband they took possession, fenced the land, installed piped water, planted trees and planted a banana plantation among many other developments. That they have since 2010 enjoyed peaceful possession, utilization and user of the whole purchased land with full knowledge of the applicant. That as was the practice at the time the succession for the deceased's estate was filed her late husband was included as a beneficiary and she got the land he had bought from the 4 nephews of the deceased which was transmitted to him directly by the administrator.
25. Jericah Kinanu Mburugu further states that the applicant is a sister to the sellers who all along knew about the purchase since their occupation and user of the land has been open and notorious. That the applicant is dishonest by claiming to be a daughter of the deceased while indeed she is a niece. That again the applicant raised the issue of her not getting anything from the estate when it was resolved before the area chief that she gets commercial plots touching the tarmac which she got and sold for value.
26. Jericah Kinanu Mburugu avers that the allegation that the cause was filed in secrecy and non-disclosure of material facts is false and misleading by the applicant who got a share of the estate.
27. Paul Kanugu Ngera also filed his replying Affidavit dated 24<sup>th</sup> October 2023 wherein he avers that on 5<sup>th</sup> July 2021 the Applicant sold to her a plot of land measuring 40 fts by 80 fts in the land registered to her brother Augustina Riungu M'Imwitu at Kshs 450,000 which amount he paid and she gladly received. That again on 3<sup>rd</sup> January 2022 the said applicant sold to him another plot of land measuring 40ft by 80 ft registered in the name of her other brother Stanley Mutwiri at kshs 600,000. He attached copies of the land agreement marked PKN 1and 2.
28. Paul Kanugu Ngera avers that the plots sold to him were subdivisions of the original land parcel LR No.Nkuene/Nkumari/613 originally owned by the late Thuranira Twerandu the seller's father's cousin who had died childless and without any brother or sister. That he is surprised that the seller who sold to her the plots of land granted possession and he made extensive developments including buildings therein is seeking to revoke the grant which would effectively revoke his title deeds and she never bothered to inform her. He annexed copies of the title deed marked PKN 3a and 3b of the title deed.
29. Paul Kanugu Ngera states that she has made permanent developments on the land with the knowledge of the Applicant and openly with the knowledge of all and sundry. That the applicant is dishonest since there are several buyers who bought the estate lands and are never informed of the pending application for the revocation which would affect their lands if allowed.
30. Paul Kanugu Ngera avers that the applicant was aware of the Succession process and she was given the prime plots touching the tarmac as her compensation from the brothers who inherited the deceased estates and she opted to sell the same to him. That the application to revoke the grant is not made in good faith but is a scheme to set family scores at the expense of innocent buyers that the estate was distributed many years back.



31. The Applicant filed a supplementary affidavit dated 26<sup>th</sup> July 2023 wherein she reiterated the contents of her supporting affidavit.
32. The Court directed that the Application be canvassed by way written submissions. The Objector Applicant filed her submissions dated 2<sup>nd</sup> May 2024 through the firm of Mbaabu M'inoti & Co while petitioner/respondent filed his submissions dated 24<sup>th</sup> May 2024 through the firm of Gichunge Muthuri & Co.

### **Applicant's Submission**

33. The Applicant submitted on the background of the matter and identified three issues for determination. On the first issue the Applicant submitted on whether the estate of the deceased was shared/distributed fairly to all the beneficiaries. The Applicant submitted that the application is entirely based on the fact that the estate of the deceased Thurania Twerandu was not fairly distributed to all the beneficiaries.
34. It is the Applicant's submission that the applicant is the biological daughter of the deceased was not given any share of the deceased's estate as her interest and the other sisters were totally disregarded in the distribution of the estate of their deceased father. The Appellant relied on Article 27 (1) (4) of the Constitution 2010 and Section 40 and 38 of the Laws of Succession Act.
35. The Applicant submitted that the act of deliberately ignoring the daughters of the deceased from getting the share of their deceased father estate amounts to discrimination. The Applicant relied in the cases of Re Estate of Solomon Ngatia Kariuki (deceased) (2008)eKLR, Peter Karumbi Keingati & 4 others v Dr. Ann Nyokabi Nguthi & 3 others (2015)eKLR., Rono v Rono and Stephen Gitonga M'Murithi v Faith Ngira Murithi (2015)eKLR and Samson Kiogora Rukunga v Zipporah Gaiti Rukunga (2011)eKLR.
36. The Applicant submitted on the second issue on whether the court was misguided into occasioning an error. It is the Applicant's submission that the court was misguided and misinformed into occasioning a very serious error. That the petitioner ignored, neglected and or failed to disclose to the court that there were other beneficiaries which information he had all along but decided to not disclose so that to defeat the justice herein.
37. It is the Applicant's submission that she was never involved or consented to the mode of distribution and thus the grant thereof was done illegally and to the best of the interest of the petitioner and the alleged buyers who were intruders in the estate of the deceased.
38. The Applicant submitted on the third issue on whether they are entitled to the orders in the application. It is the Applicant's submission that the Application is premised on the fact that there is unequal distribution of the deceased estate. That in all fairness, this the court is a court of justice and fairness and the injustice is apparent is occasioned by a well-orchestrated plan that is meant to deceive the court. The Applicant relied on section 76 of the Law of Succession Act and further relied in the case of Ibrahim v Hassan & Charles Kimenyi Macharia(2019)eKLR.
39. It is the Applicant's submission that the petitioner did not enlist all beneficiaries thus totally disregarding the Applicant herein and prayed the court be guided by the precedents cited above and grant the orders sought.



## Respondent's Submission

40. The respondent submitted on a detailed background of the matter and identified three issues for determination. The first issue identified by the respondent is whether or not the Applicant has proved the alleged forgery.
41. The respondent submitted that the Applicant alleges that she never executed the sale agreements signed any sale agreement and all the signatures thereon are all forgery.
42. It is the respondent's submission that the sale agreements were drawn by an Advocate and signed before him. That the Applicant has not adduced any evidence and /or Affidavit sworn by Wamache an advocate who executed the said agreements to demonstrate that the sale agreements were not drawn and/or executed by him. That the Applicant cannot be believed or at all.
43. The respondent submitted that the question that begs for an answer is why they kept quiet when Paul Kanugu Ngera and other purchasers took possession of their respective portions of land and commenced developing.
44. The respondent relied on section 107,108 and 109 of the *Evidence Act* on the burden of proof in a case.
45. The respondent submitted that it is settled that a party who wishes the court to give a judgement or to declare any legal right is dependent on a particular fact or sets of facts, that party has a legal obligation to provide evidence that will best facilitate the proof of the existence of those facts.
46. The respondent relied on the black's law dictionary to define fraud. The respondent further relied in the cases of *Denis Noel Mukhulo Ochwada & Another v Elizabeth Murungari Njoroge & Another* (2018)eKLR, *Evans Otieno Nyakwana v Cleophas Bwana Ongaro* (2015)eKLR, *Central Bank of Kenya Ltd v Trust Bank Ltd & 4 Others* and *Vijay Morjaria v Nansigh Madhusingth Darbar & Another* (2000)eKLR.
47. It is the respondent submission that the allegation of fraud by the Applicant has no basis or at all and the same is not proven to the required standards. That the Applicant was aware of those proceedings. That the Applicant never tendered any expert report from the Directorate of Criminal Investigation to clear doubts on the alleged forgery and further no criminal charges were laid on anyone for the alleged fraud. The respondent relied in the case of *Moses Parantai & Peris Wanjiku Mukuru Suing as the legal representatives of the estate of Sospeter Mukuru Mbeere (deceased) v Stephen Njoroge Macharia* (2020)eKLR.
48. The respondent submitted on the second issue on whether or not the Applicants have met the threshold for revocation of grant. The respondent relied on Section 76 of the *Law of Succession Act*, Cap 160 Laws of Kenya.
49. It is the respondent's submission that the grant herein was confirmed way back on 3<sup>rd</sup> July, 2009 and the Applicant was much aware of that succession cause since she fully participated in the same. That among the reasons why a grant can be revoked under Section 76 hereinabove, the only allegation by the Applicant is that the Petitioner filed the cause secretly without her involvement and was therefore left out in the distribution of the deceased estate.
50. The respondent submitted that the Petitioner has vividly demonstrated that the Applicant was aware of the cause and when she raised issues as to the distribution of the estate, the family held a meeting before the Area Chief and agreed that the Applicant should be given prime plots touching the tarmac road. That instead of the Applicant taking the plots in her name she instructed the Petitioner and her



brother Stanley Mutwiri to sell the same on her behalf. That She was a party to the agreement and received full consideration. That the Applicant is dishonest.

51. It is the respondent's submission that the Applicant cannot have her cake and still eat it by seeking now to revoke the grant. She already sold her entitlement. Further, other purchasers developed their parcels of land in full glare of the public including the Applicant herein. That it is a cardinal principal of the law that equity aids the vigilant and not the indolent.
52. The respondent submitted that the Applicant has also lied to this Court. That she alleges that she is the daughter of the deceased herein which is not true. The deceased herein was a son of M'twerandu who was a cousin to the Petitioner's and Applicant's father M'imwitu.
53. The respondent submitted that It is a cardinal rule of principle that whomsoever comes to equity must come with clean hands. Full disclosure of all material facts is a requirement that must be met if a party seeks to benefit from the Court. The respondent relied in the case of *Mobamed Shally Sese (Shab Sese) v Fulson Company Ltd & another* [2006] eKLR
54. The respondent submitted on the third issue of cost that the Applicant is attempting to harvest from what she never sows and gather crops where she never scattered seeds. That the Application herein is dishonest and only choreographed to frustrate the petitioner and the purchasers herein when already the Applicant knows that she has a claim or at all since she sold her entitlement.

### **Analysis & Determination**

55. Having considered Application, the responses filed and the submissions of the two parties alongside the legal authorities they have relied upon, the main 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*.
56. 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.”

57. 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.”

58. The Applicant invited the court to revoke the grant of letters of administration for the reasons that the Respondents obtained the confirmed grant by way of concealment of a material fact that she states that she is the daughter of the deceased and as such she is a beneficiary of the estate of the deceased. The respondents pleaded on paragraph 7 of their replying affidavit that the Applicant is not solely entitled to the whole estate which ideally means that they agree that she was also a beneficiary save that she was not entitled to the whole estate.

59. The issue which arises is whether the applicant was a beneficiary entitled to the estate of the deceased Section 29 of the *Law of Succession Act* (Cap 160 Laws of Kenya) defines the meaning of a dependant. It provides as follows:-

- “29(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased’s parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his



own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and

- (c) Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”

The applicant avers that he is biological child of the deceased. This has been denied by the respondent. The applicant has not adduced evidence to proof that she is indeed a daughter of the deceased. By denying that the applicant was a daughter of the deceased she had the burden to proof that she was a daughter of the deceased. He who alleges must proof.

Section 107 of the Evidence Act provides:-

“ 107(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

The sections places a burden on the person who alleges to proof that allegation. Section 108 & 109 of the Evidence Act is clear that the burden is on the person who would fail if no evidence is given and on any person who wishes the court to believe in the existence of that fact. The applicant has not discharged the burden to prove that she was the biological child of the deceased. The contention by the respondents that they are cousins of the deceased and person entitled to inherit his estate has not been disapproved by the applicant where a person claim to be a dependant under Section 29 (b) of the Law of Succession Act (supra) he bears the burden to proof that he/she was being maintained by the deceased prior to his death. In her Supplementary Affidavit the applicant states that she was given one care by the deceased which she never occupied. She was therefore not maintained by the deceased prior to his death. A claim for dependency is supposed to be filed before the conformation of grant. Section 27 of the Law of Succession Act gives the court discretion to make provision for such a dependant. How the Act places a limitation for bringing such application under Part III which deals with making provision for dependants. This is under Section 30 which provides as follows:-

“No application under this part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided under Section 71.”

The grant was confirmed way back in the year 2009. I find that her claim for dependency has been filed out of time. The applicant was guilty latch and the delay was in ordinate. This is a court of equity and Equity aids the vigilant not the indolent. Her claim for dependency is time barred and is not properly before this court.

60. Be that as it may, the respondent has proved that though the applicant was not given a piece of land, she was provided for in the estate of the deceased after the matter was resolved through Alternative Justice System. This is shown by the annexure marked JKM 4 to the affidavit of Jericah Kinanu Mburugu shown on 19/6/2023. The annexure JKM4 states that the applicant was compensated with two plots measuring 40x80 which she sold to willing buyer. This has been corroborated by the averments by the respondent who has annexed land sale agreement confirming the sale of the two plots measuring 40x80. The applicant appended her signature on the two agreements. The applicant has alleged fraud. This has not been proved. Fraud is a matter which connotes criminal activities which is willfully resorted



with an aim of depriving another of his right to property or other matter, see definition in [Black's Law Dictionary](#) which states in part-

“Fraud in the sense of a court in Equity properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty trust or confidence justly reposed and are injurious to another, or by which an undue and unconscientious advantage is taken of another.”

Fraud has connotation of criminal nature which calls for strict proof. A party who alleges fraud must therefore prove it to the standard of proof on a balance of probabilities. In *Vijay Moriaria – v- Nansingh M. Darban and another* 2004 C.A it was stated- “It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved and it is not allowable to leave fraud to be inferred.”

The applicant has not distinctly alleged or strictly proved fraud. The respondent has produced documents which the applicant signed. It has also been proved that the applicant was present before the chief and signed the settlement of dispute outside court. Article 159 2(c) of the [Constitution](#) gives the courts authority to promote alternative forms of dispute resolution. It provides:

“159(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms

shall be promoted, subject to clause (3)”

The applicant sold these plots which were given to her as compensation to Paul Kanunu who has sworn an affidavit to that effect.

I find that the applicant was given her share of the estate of the deceased. This court should therefore promote the Alternative Dispute Mechanism which was used and refuse to adjudicate on the dispute any further.

61. On the issue of revocation of grant, Section 76 of the [Law of Succession](#) gives the circumstances under which the court should order revocation of grant. This includes where the proceedings to obtain the grant were defective in substance, fraud, making false statements or by concealment from the court of something material to the case or that the grant was obtained by means of an untrue allegation of fact essential on a point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently. It may also be revoked where it has become useless and inoperative through subsequent circumstances.

The applicant has alleged fraud which I have stated was not proved to the required standard. The applicant has also stated that the distribution of the estate was not done fairly. The applicant who was not considered in the initial grant though I noted that her name was included in the summons for confirmation of grant was subsequently compensated with two prime plots which she accepted. The allegation that the distribution was not done fairly is an afterthought which cannot be entertained. The compensation was made to cushion buyers who have made extensive developments on the properties. The said buyers who were not joined in this suit were sold land by the respondent who was the administrator of the estate. Such buyers are protected under Section 93 of the [Law of Succession Act](#) which provides as follows:-



93(1) A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.

(2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies of the deceased have not been discharged nor provided for.”

Revocation of the grant would not serve any purpose as they bought the land from the bearer of lawful grant of letters of administration was issued and a certificate of confirmation of grant issued. The applicant was aware of the sale and took no action. She was indolent. She has not come to court with clean hands as she deponed that the deceased was her father which was not the case. She is seeking discretionary orders. She is undeserving of such orders.

I find that the applicant has not proved any of the circumstances under Section 76 of the *Law of Succession Act* (supra) to warrant this court to order revocation of grant. The application fails to meet the threshold for revocation of grant.

**Disposition:**

62. The application is without merits. I dismiss the application. Each party to bear its own costs.

**DELIVERED DATED AND SIGNED AT MERU THIS 31<sup>ST</sup> DAY OF JULY, 2024 .**

**L.W. GITARI**

**JUDGE**

