



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of the Late Sisungo Soita (Deceased) (Succession Cause  
148 of 1994) [2024] KEHC 10444 (KLR) (23 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10444 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 148 OF 1994**

**DK KEMEL, J**

**AUGUST 23, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE SISUNGO  
SOITA(DECEASED)**

**BETWEEN**

**SIMIYU SISUNGO SOITA ..... APPLICANT**

**AND**

**WAFULA SIMIYU ..... 1<sup>ST</sup> RESPONDENT**

**BERNARD WAFULA WANGILA ..... 2<sup>ND</sup> RESPONDENT**

**FLORENCE NANJALA WEKESA ..... 3<sup>RD</sup> RESPONDENT**

**LENAH NANG'ONI WAFULA ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. *Vide* summons for revocation or annulment of grant dated 23<sup>rd</sup> October 2020, the Applicant herein seeks orders that: -
  - a. That the Applicant Simiyu Sisungo Soita be and hereby substituted in place of the deceased administrator Masili Sisungo.
  - b. That the 1<sup>st</sup> to 4<sup>th</sup> Respondents be and hereby respectively substituted in place of the deceased heirs herein as hereunder:
    - i. Masili Sisungo by Wafula Simiyu (his son)
    - ii. Wangila Sisungo Soita by Bernard A. Wafula Wangila (his son)
    - iii. Nalianya Sisungo by Florence Nanjala Wekesa (his daughter-in-law)



- iv. Peter Sisungu Osulo by Lenah Nang'oni Wosula (his wife)
  - c. That the grant of letters of administration intestate made to, confirmed and certificate of confirmation issued on 4<sup>th</sup> January 1996 to the Administrator Masili Sisungu now deceased, be revoked/nullified.
  - d. That the County Land Registrar Bungoma be and is hereby ordered to revert original land title number Kimilili /kamukuywa/723 into the names of the deceased Sisungu Soita and the Applicant file afresh, apply and file summons for confirmation of grant.
  - e. In the alternative this Court to give directions and grant orders as it deems just and fit.
  - f. That the costs of the application be paid out of the cause.
2. In support of the summons for revocation, the Applicant herein swore an affidavit on 23<sup>rd</sup> October 2020, wherein he avers that the grant of letters of administration were made out to the Administrator, Masili Sisungu, now deceased irregularly as erroneous material facts were presented before the Court. According to him, a large section of the family members, lawfully entitled to benefit from the estate of the deceased herein, were disinherited and that he seeks the intervention of the Court. He avers that all the heirs of the estate of the deceased are residents of the suit land as they await the finalization of the Kimilili succession cause no. 6 of 1978 be finalized only for the deceased's Administrator in this present cause to proceed without the knowledge of other family members did proceed to file Petition proceedings in the estate of the deceased before this Court. The Applicant seeks to have the title of the deceased's asset revert to its estate to enable proper distribution.
3. In response to the summons, the 1<sup>st</sup> Respondent herein with authority of the 2<sup>nd</sup> to 4<sup>th</sup> Respondents, filed a replying affidavit sworn on 2<sup>nd</sup> October 2021 and filed on 5<sup>th</sup> October 2021. He avers that the Applicant had all the ample time to contest the grant and/or file an appeal during the proceedings of these succession cause but failed to do so. He contends that the application before this Court is overtaken by events and that the revocation cannot succeed. He further avers that the Applicant does not have a share on the land parcel Kimilili/Kamukuywa/723 and that the application ought to be dismissed.
4. The Applicant in response to the respondent's replying affidavit swore a further affidavit on 20<sup>th</sup> January 2022, averring that the land parcel Kimilili/Kamukuywa/723 is an ancestral land and belongs to the estate of the deceased and thus meant to be shared amongst all the deceased's beneficiaries. He insisted that the said parcel's title should revert back to the name of the deceased to ensure proper distribution of the estate of the deceased.
5. The application was set to be dispensed with *vide viva voce* evidence but the 1<sup>st</sup> Respondent in further response to the application raised a Preliminary Objection dated 14<sup>th</sup> January 2022.
6. *Vide* a ruling delivered on 28<sup>th</sup> February 2022, this Court found the 1<sup>st</sup> Respondents Preliminary Objection dated 14<sup>th</sup> January 2022, to lack merit and proceeded to dismiss the same with no order as to costs. The Summons for Revocation was set down for hearing via *viva voce* evidence.
7. OB-PW1 was Simiyu Sisungu Soita, who testified that he is the Objector herein and the Applicant in the application dated 23<sup>rd</sup> October 2020. According to him, the deceased herein was his father and that he is his last-born child. He relied on his affidavit sworn in support of his application dated 23<sup>rd</sup> October 2020 as well as his witness statements. He testified that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein are the sons of his late brothers and that the 3<sup>rd</sup> Respondent is the wife to his son while the 4<sup>th</sup> Respondent



is the wife to his late brother. He told the Court that he wants the grant to be revoked so that he can organize the proper distribution of the estate of the deceased.

On cross-examination, he told the Court that the deceased administrator herein, Masili Sisungu, is his late brother and that he could not recall the date he died. He testifies that his late mother was the eldest wife and that he only learnt about these proceedings sometime in 1996.

During cross-examination, the witness was stood down as he refused to answer some vital questions that would avail evidence critical in aiding the Court's determination of this matter.

On 29<sup>th</sup> September 2022, the Court proceeded with the hearing. OB-PW1 was ordered to continue with his evidence.

On further cross-examination, he testifies that he did not file the application for summons earlier as every beneficiary was occupying their respective portions as given by the deceased herein. He told the Court that he was satisfied with his portion as his late father had cautioned everyone not to encroach on each other's portions. According to him, he was not aware of these succession proceedings as instituted by his brother and only learnt of the same when he heard him bragging about succeeding to secure the title for the land of the deceased. He testifies that on escalating the issue to the District Officer, in the year 1990, his brother admitted to lodging succession proceedings without his consent and that he used the issued and confirmed grant to transfer the deceased's land to his own name. After the meeting at the District Officer, he proceeded to register a caution of the land parcel. He confirmed before this Court that he did not take any action from 1999 to 2009 when his late brother died.

8. OB-PW2 was Jacob Wanyonyi Wabulita, who testified that the Objector herein is his cousin and that the deceased was his uncle. According to him, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein are sons to his brothers while the 3<sup>rd</sup> and 4<sup>th</sup> Respondents are wives to the sons of his brother. He adopted his recorded statement dated 11<sup>th</sup> November 2021 as his evidence in chief.

On cross-examination, he told the Court that the deceased herein had children who included the Administrator herein, Masili Sisungu and that the late Masili Sisungu lodged these succession proceedings without the consent and knowledge of his family members. Further, that the late Masili proceeded to register land parcel land parcel Kimilili/Kamukuywa/723 in his name. He confirmed that the land parcel was registered in the name of the deceased herein. According to him, the deceased herein had distributed the upper portion of land parcel Kimilili/Kamukuywa/723 prior to his demise and that they distributed the lower swampy section. He testifies that the late Wangila Sisungu purchased land parcel Kimilili/Kamukuywa/717 but he did not have any evidence to substantiate the claims. He told the Court that the deceased had six children and it is only the Objector herein who is still alive. He stated that he lacks the minutes indicating that the deceased distributed land parcel Kimilili/Kamukuywa/723 upper section as alleged and after his demise the clan distributed the remaining lower section.

On re-examination, he told the Court that the deceased had six children and that he had distributed the upper portion of land parcel Kimilili/Kamukuywa/723 to the exclusion of the lower section.

9. At the close of the Objector's case, this Court proceeded to hear the Respondents case.
10. RI-PW1 was Wafula Simiyu who testifies that he is the 1<sup>st</sup> Respondent herein and that the deceased herein was his grandfather. He adopted his recorded witness statement 15<sup>th</sup> March 2023 as his evidence in chief. He told the Court that he is the son of the late Masili Sisungu and that the Objector herein is the brother to his late father. According to him, his father instituted these succession proceedings in 1994 and was issued with a grant of letters of administration. That the Objector herein did not institute any objection proceedings and at his father's demise in 2009 there were no objection proceedings.



He told the Court that land parcel Kimilili/Kamukuywa/723 was registered in his father's name in 1996. He told the Court that there was a case lodged at the land dispute tribunal in 1999 between Wangila Sisungu, Nalianya Sisungu against his late father with his late father lodging an appeal against the decision at the ELC Bungoma under ELC Appeal no. 46 of 1993 and that the same is yet to be dispensed with. He testifies that all the claimants in the tribunal matter are deceased. He told the Court that he lodged a citation over the estate of his late father roping in the 2<sup>nd</sup> to 4<sup>th</sup> Respondent in the ELC Bungoma under ELC Appeal no. 46 of 1993. He insists that land parcel Kimilili/Kamukuywa/723 belongs to the late Masili Sisungu and does not form part of the estate of the deceased herein.

On cross-examination, he testifies that his late grandfather did not distribute any land and that his late father was buried on land parcel Kimilili/Kamukuywa/723. He told the Court that the deceased obtained title in 1965.

On re-examination, he told the Court that land parcel Kimilili/Kamukuywa/723 is registered in the name of his late father and that the Applicant never filed any objections when the grant was issued and confirmed.

11. RI-PW2 was Francis Wafula Julius adopted his recorded statement dated 15<sup>th</sup> March 2023 as his evidence in chief. He testified that the 1<sup>st</sup> Respondent herein is his brother and that the late Masili Sisungu was his father. According to him, his late father filed this succession cause and was issued with a grant in 1996. That the Objector herein never instituted any objection proceedings and that he only lodged these proceedings after the demise of his father.

On cross-examination, he testifies that the deceased herein never distributed his land and that he had two wives. He insisted that land parcel Kimilili/Kamukuywa/723 belongs to his late father.

On re-examination, he told the Court that he is yet to be shown evidence in form of documents indicating that the deceased herein distributed land parcel Kimilili/Kamukuywa/723 and that the Objector never lodged any objections against the proceedings that had been lodged by his late father.

12. At the close of the Respondents case, this Court directed the parties to file and exchange their respective written submissions. All parties duly complied.
13. 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*.
14. 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.”

15. 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.”

16. In the instant case, the Applicant appears to anchor his case on the first general ground, that there were issues with the manner the grant was obtained. He has raised arguments about the process of obtaining the grant having had challenges. He has not complained about anything that would bring the case within the second general ground, nor the third ground. My understanding of his case, therefore, is that the process of obtaining the grant was defective, as the administrator used fraud, misrepresentation and concealed matters from the Court. His principle argument appears to be that his consent was



not obtained before the grant herein was sought and that he was not aware of the alleged succession proceedings.

17. My understanding of Section 51(2) (g) is that the Administrator herein, the late Masili Sisungu, was required to disclose all the surviving spouses and children of the deceased. The provision is in mandatory terms. Upon vast perusal of the Court record, there is no indication that the respective five children of the deceased were aware of these proceedings. It is also imperative to note that the estate of the deceased had only one sole Administrator who is now deceased making the grant useless and inoperative.
18. It is important to bear in mind the provisions of Section 47 of the *Law of Succession Act* which enjoins the High Court to entertain any application and determine any dispute under the Act and pronounce such decrees and make such orders therein as may be expedient. Further under Rule 73 of the *Probate and Administration Rules* provides that "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."
19. Based on the availed petitioning documentations, it is clear that at the time the late Masili Sisungu began the succession proceedings of the estate of the deceased, the sole asset of the deceased was listed as land parcel no. Kimilili/Kamukuywa/723 as per form P&A 5 and that the availed official search certificate dated 7<sup>th</sup> December 1994 indicated the sole registered owner of the parcel as Sisungu Soita, the deceased herein. This simply means that the contested parcel no. Kimilili/Kamukuywa/723 forms part of the estate of the deceased. It is apparent that the deceased administrator had the entire parcel registered in his name to the exclusion of the other beneficiaries. Had the said administrator intended to hold the title in trust for himself and the beneficiaries, nothing could have prevented him from stating so vide his affidavit in support of the confirmation of grant. There is no such evidence and this lends credence that he wanted the land to himself. This might explain the surreptitious manner of instituting the succession proceedings without the knowledge of the other beneficiaries. To that extent, the Objectors application for revocation of grant must succeed.
20. In light of the above, i invoke the inherent powers of this Court granted under Article 159 of the *Constitution* and Section 76 of the *Law of Succession Act* and make the order revoking the letters of grant of administration issued to the Administrator, Masili Sisungu, and subsequent confirmation as it was obtained fraudulently by the making of false statement or by the concealment from Court of something material and that the said grant has become inoperative and useless with the demise of the sole Administrator of the estate of the deceased herein, Masili Sisungu. This thus necessitates this court to issue the following orders namely:
  - a. The Grant of Letters of Administration issued to the late Administrator, Masili Sisungu, herein on 13<sup>th</sup> October 1995 are hereby revoked.
  - b. The certificate of confirmation of grant issued on 4<sup>th</sup> January 1996 is hereby cancelled.
  - c. The registration of land reference number kimilili/Kamukuywa/723 in the name of Masili Sisungu be and is hereby revoked and that the land should revert back in the name of the deceased Sisungu Soita and to be distributed to the beneficiaries.
  - d. The Registrar of Lands, Bungoma County is hereby directed to cancel the transfer of land parcel no. Kimilili/Kamukuywa/723 to the name of Masili Sisungu and the same to revert to the name of Sisungu Soita (deceased).



- e. A fresh grant be and is hereby issued in the names of Wafula Simiyu and Simiyu Sisungu Soita who are hereby granted sixty (60) days to file fresh summons for confirmation of the fresh grant and involve all the beneficiaries of the estate of the deceased.
- f. Mention on 7<sup>th</sup> November 2024 to confirm compliance.

It is ordered

**DATED AND DELIVERED AT BUNGOMA THIS 23<sup>RD</sup> DAY OF AUGUST 2024.**

**D. KEMEI**

**JUDGE**

In the presence of :

Simiyu Sisungo Applicant

Olonyi for Kituyi for 1<sup>st</sup> Respondent

Benard Wafula 2<sup>nd</sup> Respondent

Florence Nanjala 3<sup>rd</sup> Respondent

Lenah Wafula 4<sup>th</sup> Respondent

Kizito Court Assistant

