



REPUBLIC OF KENYA



**In re Estate of the Late Dedan Kariuki (Deceased) (Succession Cause 145 of 1999) [2024] KEHC 10490 (KLR) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10490 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 145 OF 1999  
SM MOHOCHI, J  
AUGUST 15, 2024  
IN THE MATTER OF THE LATE DEDAN KARIUKI (DECEASED)**

**BETWEEN**

**MARY WARINGA KARIUKI ..... 1<sup>ST</sup> APPLICANT  
ANNE WANJIRU KARIUKI ..... 2<sup>ND</sup> APPLICANT  
RUTH WAIRIMU KARIUKI ..... 3<sup>RD</sup> APPLICANT  
GRACE WATERE KARIUKI ..... 4<sup>TH</sup> APPLICANT**

**AND**

**PETER MUTURI KARIUKI ..... 1<sup>ST</sup> PETITIONER  
LEAH NJERI KARIUKI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**DR DOUGLAS KAMAU NGOTHO ..... INTERESTED PARTY**

**RULING**

**Background of facts**

1. The parties herein are siblings, and the beneficiaries of the estate of the late Dedan Kariuki (deceased), their father.
2. The Respondents herein petitioned and were issued with letters of administration which was confirmed on 26<sup>th</sup> March 2001.
3. After a lengthy litigation in the matter, the grant of letters was revoked vide this Honorable court's ruling delivered 26<sup>th</sup> May 2022.



4. Minnie Wanjiku Kariuki (deceased) one of the objectors, and the wife to DEdan Kariuki Kamau (deceased) and the mother to the parties herein, died along the way.
5. The Respondents and the interested party were represented by the firm of Githui & Co. advocates at trial, and vide the proceedings of 1/11/2021, after the petitioner testified, it was indicated that the Interested Party did not wish to present any evidence and the case was closed.
6. The subject parcel of land that is the subject of the succession cause herein is Bahatikabatini Block 1/2685, which was registered in the deceased's name.
7. Upon acquiring the letters of administration and upon confirmation at stated above the Respondents sub-divided the subject parcel of land and sold it to interest parties.
8. The interested party herein was the agent contracted by the respondents herein to subdivide and sale the subject parcels of land. A fact that can be confirmed from the Judgement of Hon. Kagendo annexed to the interested parties replying affidavit.
9. By the time the grant was revoked as on 26<sup>th</sup> May 2022, the subject parcel of land had already been subdivided and sold to 3<sup>rd</sup> parties.
10. Before me is a Notice of Motion Application dated 20<sup>th</sup> June 2022 filed pursuant to section 45 of the Law of Succession Act CAP 160 laws of Kenya, Rule 44 of the probate and Administration Rules and Section 80 of the Land Registration Act. The Application is supported by the Sworn Affidavit of Mary Waringa Kariuki evenly dated seeking the following reliefs; -
  - i. Spent
  - ii. Spent.
  - iii. That, this honourable court be pleased to appoint Francis Kamau Kariuki as a co-administrator alongside Mary Waringa Kariuki and Peter Muturi Kariuki.
  - iv. That, this Honourable Court be pleased to issue an order of temporary and permanent injunction, restraining the respondents by themselves, agents and/or servants and all those persons in the current occupation of the parcel of land who may have purchased the parcels resulting from the revoke grant, from further developing, constructing on, subdividing, selling, charging and interfering with parcel of land referred to as Bahati/Kabatini block 1/2685.
  - v. That, this Honourable Court be pleased to issue an order of mandatory injunction directing the land registrar Nakuru to cancel all those title deeds emanating from and/or resulting from the subdivision of all that parcel of land referred to Bahati/Kabatini block 1/2685 which title deeds were issued pursuant to the grant issued on 26<sup>th</sup> February 2001, to Peter Muturi Kariuki and Leah Nje Kariuki and revert the same to the original title/owner being Bahati/Kabatini bl 1/2685 measuring 11½ acre and be registered in the name of Dedan Kari Kamau (deceased). being the original number prior to the grant of letter administration issued dated 26<sup>th</sup> February 2001.
11. The application is opposed by the interested party replying affidavit sworn by the interested party.
12. The Respondents did not file any response to the application but were duly represented by their advocate on record.
13. Parties had been directed to file written submissions on the 7<sup>th</sup> March 2024 and on the 14<sup>th</sup> may 2024 the Applicant's confirmed having complied and filed written submissions. The Petitioners did not Reply to



the Application or file written submissions despite Muchiri Gathecha & Co. Advocates filing a Notice of Change of Advocates dated 19<sup>th</sup> June 2024 seeking to replace Ms. Githui & Co. Advocates. The Interested Party on his part did not also file written submissions.

### **The Applicant's Case and Submissions.**

14. The Applicants deponed in evidence that, the grant issued to the Respondents herein was revoked vide the court ruling delivered on 12<sup>th</sup> May 2022.
15. That, initially and upon filing the summons for revocation of grant, the court on its own motion revoked the grant pending the distribution of the estate.
16. That, during the pendency of this case as directed by the above-mentioned order. the subject parcel of land was sub-divided and sold to third parties by the holders of that grant who are Peter Muturi Kariuki and Leah Njeri Kariuki.
17. The Respondents sub-divided the parcel of land into 12 plots and sold the said plots to third parties despite the grant having been revoked.
18. That, the said parties took possession and commenced developments thereon despite the existence of a court order issued on 14<sup>th</sup> July 2016 in this case.
19. That, at the time of filing the Application for Revocation of grant, the deceased wife was alive and was one of the objectors, but she died during the pendency of this matter.
20. That, the beneficiaries existing in this case are children of the deceased only namely:
  - i. Grace Watere Kariuki
  - ii. Ruth Wairimu Kariuki
  - iii. Mary Waringa Kariuki
  - iv. Anne Wanjiru Kariuki
  - v. Leah Njeri Kariuk
  - vi. John Ndirangu Kariuki
  - vii. Peter Muturi Kariuki
  - viii. Francis Kamau Kariuki
21. The Applicants in their written submissions by Mongeri Advocate contend that, the application basically seeks the reinstatement of the estate to the deceased name after the grant was revoked, by cancellation of the title deeds resulting from the revoked grant and for the 3<sup>rd</sup> parties to give vacant possession of the subject parcels of land.
22. That from the 1<sup>st</sup> Respondent's replying affidavit sworn on 27<sup>th</sup> June 2016, in response to the summons for revocation of grant, at paragraph 5, he confirms that, after he obtained the grant... "I embarked on the process of subdividing the land and, sold the same to third parties..."
23. That, there is no doubt that mother title to the subject parcel of land was Bahati/Kabatini Block 1/2685, which was subdivided into plots and title deeds issued for the subdivisions.
24. That, while the interested party cries foul and aver that he is an Innocent purchaser having purchased two plots namely Bahati/Kabatini Block 1/7385 & Bahati/Kabatini Block 1/7384, he shows no proof



- of the said purchase, to the contrary, in his annexures, from the judgement annexed to his replying affidavit, it is clear that the interested party herein funded the process of subdivision and transfer and was compensated with two plots, above mentioned.
25. That, in that matter, (CMCC 250/2022, annexed to the interested parties replying affidavit) he was awarded judgement for a sum of Ksh 262,000/ being the balance of what was owed to him after he was given the two plots
  26. The interested party was duly compensated and cannot turn around and allege to have been an innocent purchaser for value, yet he never purchased the subject plots.
  27. That the objectors herein too are entitled to the estate in equal capacity as the Respondents herein, but have not benefited anything.
  28. That, Section 68 of the Law of Succession Act it provides that;  

“ when a deceased has died intestate, the court shall, save, as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of reference-

    - 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;”
  29. That, this court has a wide discretion in dealing with succession matters including the cancellation of a title deed that belong to the deceased.
  30. That, Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules grants a succession court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process. Such powers include cancellation of title deeds obtained through fraud or where there has been an abuse of the process of the court.
  31. That, the Applicants have sought orders for cancellation of titles that were obtained fraudulently from a revoked grant. The court’s power to do so was discussed in the case of Santuzza Bilioti allas Mel Santuzza (Deceased) vs Giancarlo Falasconi (2014) eKLR where the court held that;  

“ ...the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession court can order a cancellation of a title deed If a deceased's property is being fraudulently taken away by non- beneficiaries' such as where the property is being sold before a grant is confirmed.”
  32. The Applicants urges this court to revert the title deed to the deceased herein by cancelling all those title deeds resulting from the subdivision of Bahati Kabatini Block 1/2685.

### **The Interested Party’s case.**

33. The Interested Party depones that, he is the registered owner and/or lawful owner of 2 plots measuring 50ft by 100ft comprised in the subdivisions of parcel No. Bahati/Kabatini Block 1/2685 i.e. Bahati/Kabatini Block 1/7379 & Bahati/Kabatini Block 1/7386.



34. That, as the interested party he is an innocent purchaser for value of subdivisions of parcel title Bahati/Kabatini Block 1/2685 having bought them from the 1<sup>st</sup> Respondent.
35. That, there has been litigation between the 2<sup>nd</sup> Respondent and 1<sup>st</sup> Respondent over the parcel of land known as Bahat/Kabatini Block 1/7384 & Bahat/Kabatini Block 1/7385 which also emanate from Bahat/Kabatini Block 1/2685 which he knows were sold via public auction to Alice Wangari Kamau.
36. The Interested Party would want the court to consider holding his titles in abeyance as the distribution is being done he be considered as a creditor or he be given what the two Respondent ought to receive.
37. That, even when the grant was being revoked the Respondent made disclosure to court that they had sold land third parties him being one of them and I doubt the other purchasers are aware yet they have lived and developed the parcels sold to them.
38. That, they were misled by the Respondents that having obtained the letters of Administration that they had the capacity to sell the land to third parties.
39. That, he did due diligence and the Respondents who were administrators had the Kenya Gazette, letters of administration and the confirmed grant which showed that the subject land was to be subdivided equally between them as the only beneficiaries.
40. That, in Nakuru CMCC No. 250 of 2002 the parcels known as Bahati Kabatini Block 1/7384 & Bahati Kabatini Block 1/7385 were sold via public auction to one Alice Wangari Kamau but the transfer has never been effected since the 1<sup>st</sup> Respondent sold the parcels to other third parties despite the courts order and in fact there is a restriction of any dealings to the said land.
41. That, the Respondents have nothing to lose as they sold the whole land and most of the purchasers have developed the land and yet the purchasers believe to have valid titles since the succession has been long distributed.
42. That, in cancelling my title deeds and other purchasers title deeds the court will have denied me a natural right to be heard yet the land was legally purchased.
43. That, direct consequence of the orders being sought is that I am a trespasser on the subject land which will amount to eviction and cancellation of legitimate titles.
44. That, he has made substantial developments hence he ought to be given a chance to defend his title deeds.
45. That, he came to learn that the Application for revocation had been allowed although he was enjoined in the proceedings he did not participate on the said application as his advocate on record at that time didn't inform him of any proceedings but now he prays that he be given a chance to defend his title deeds.
46. That, it really bothers the Interested Party that a matter of such magnitude proceeded without involving him as the registered owner of his plots and it is obvious that, there as this, could occasion miscarriage of justice since before a title can be cancelled the registered owner ought to be granted audience.
47. That, whereas the said plot is a subdivision of parcel title No. Bahati Kabatini Block 1/2685 the court ought to note that the said land was procedurally and legally subdivided and consequently I innocently purchased the subdivisions.



## Analysis and Determination

48. For all intents and purpose, the Application is unchallenged. What I gather from the interested party is that he holds a title and has made substantial investments thereon and should the same be cancelled then he shall be exposed as the estate might be distributed to his disadvantage. He urges the court to be heard whereas he had clearly not presented his evidence and case when he had the opportunity before judgment was entered.
49. The current proceedings is intended to breath life into the judgment dated 26<sup>th</sup> May 2022, the said decision was never challenged on Appeal or the Petitioners never sought for its review.
50. Upon Considering the Application and pleadings filed in support and opposition thereto I find merit and I am inclined to allow the Application for the following reasons;
- a. The Subdivision and sale of the deceased parcel title No. Bahati/Kabatini Block 1/2685 was in disregard of and contrary to a court order issued on 14<sup>th</sup> July 2016. As such the interested party cannot assert proprietorship and the most that he can agitate for is to recovery of his investment from the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.
51. In the absence of the judgment herein having been Appealed against, the opposition mounted by the Interested party becomes a belated attempt at regurgitating a determined case.
52. Consequently, this court find merit in the Notice of Motion Application dated 20<sup>th</sup> June 2022 and issues the following resultant Orders;
- a. This Court appoints Francis Kamau Kariuki, Mary Waringa Kariuki and Peter Muturi Kariuki as Personal Representative and Administrators of the estate of the deceased.
  - b. An Order of temporary injunction is hereby issued, restraining the Respondents by themselves, agents and/or servants and all those persons in the current occupation of the parcel of land who may have purchased the parcels resulting from the revoked grant, from further developing, constructing on, subdividing, selling, charging and interfering with parcel of land referred to as Bahati/Kabatini block 1/2685.
  - c. An Order of mandatory injunction is hereby issued, directing the Land Registrar Nakuru to forthwith cancel all those title deeds emanating from and/or resulting from the sub-division of all that parcel of land referred to Bahati/Kabatini block 1/2685 which title deeds were issued pursuant to the grant issued on 26<sup>th</sup> February 2001, to Peter Muturi Kariuki and Leah Nje Kariuki and revert the same to the original title/owner being Bahati/Kabatini Block1/2685 measuring 11½ acre and be registered in the name of Dedan Kari Kamau (deceased). being the original number prior to the grant of letter administration issued dated 26<sup>th</sup> February 2001.
53. The Administrators appointed as such shall be expected to present a summons for confirmation of grant after 6 months from today.
54. There shall be no order as to costs this being a family matter.

It is so Ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 15<sup>TH</sup> DAY AUGUST, 2024.**

.....

**S. Mohochi**



**JUDGE**

