



REPUBLIC OF KENYA



**In re Estate of Benjamin Wambua (Deceased) (Succession Cause
977 of 2009) [2024] KEHC 11601 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11601 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 977 OF 2009**

FR OLEL, J

SEPTEMBER 30, 2024

IN THE MATTER OF THE ESTATE OF BENJAMIN WAMBUA (DECEASED)

BETWEEN

JOSEPHINE NDUNGE WAMBUA 1ST PETITIONER

ALEX MAINGI WAMBUA 2ND PETITIONER

AND

JUSTUS MUSAU WAMBUA 1ST OBJECTOR

BENARD MUTISYA WAMBUA 2ND OBJECTOR

**SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF WAMBUA NDOLO
- DECEASED**

RULING

A. Introduction

1. Before court, is the Summons for revocation and/or annulment of grant dated 5th August 2021, brought pursuant to Section 76 of the *Law of Succession*, Cap 160 & Rule 44(1) and 73 of the *Probate and Administration Rules*, the applicants herein sought for orders inter alia that:
 1. Spent.
 2. The grant of letters administration issued to Josephine Ndunge Wambua and Alex Maingi Wambua and confirmed on 18.01.2015 be revoked and/or annulled.
 3. That any title(s) that may have been transferred pursuant to the certificate of confirmation of grant dated 18.03.2015 be cancelled and do revert back in the name of Auric Benjamin Wambua, John Kitau Wambua and Ndunge Wambua and further then to Wambua Ndolo (Deceased herein)



4. That the cost of this application be provided for

B. The Pleadings

2. This application is supported by the grounds made on the face of the said Application and the averment made in the joint supporting affidavit of the Applicants, where they deponed that they were sons of the late Wambua Ndolo and the petitioners/respondents herein, were the wife and son of their late brother one Auric Benjamin Wambua (deceased) and therefore all parties herein amongst others were beneficiaries of the estate of their late father Wambua Ndolo. The respondents had secretly caused one of the estate property known as Plot 323 Lukenya Ranching and cooperative Society to be secretly transferred and by deceit be registered as parcel/plot Mavoko Town Block 3/2199 (hereinafter referred to as the suit property) under the names of Auric Benjamin Wambua, John Kitau Wambua and Josephine Ndunge Wambua and this had been done without following the right legal procedure for petitioning for grant of letters of administration of the estate of Wambua Ndolo. By this illegal action, the respondent had unlawfully disinherited them and other beneficiaries of the said estate.
3. Upon discovering the fraud perpetrated by the petitioners, the respondents file Machakos CMCC No 98 of 2013 and vide a judgment delivered by the said court on 24th September 2014, a declaration was issued that the transfer of the said suit property to Auric Benjamin Wambua, John Kitau Wambua and Josephine Ndunge Wambua was illegal null and void for want of letters of administration and a reversionary order was issued to have the said parcel of land revert back to the deceased name Wambua Ndolo. Unknown to the applicants as they were perusing the civil suit, the respondents herein had filed this cause and obtained certificate of confirmation of grant, which fact they did not declare to the trial magistrate and/or in their pleadings.
4. Further, the respondents using this illegally obtained grant had started to sell portions of the suit parcel of land to the detriment of the real beneficiaries of the estate in contention herein. There was no doubt that the said grant had been obtained by deceit, lack of material disclosure, fraudulently and by making a false statement. The applicants therefore urged the court to find that valid grounds had been made to have the said grant be revoked, to ensure that the interest of all the beneficiaries of the said estate were catered for.
5. It is finally deposed that it is in the interest of justice that the orders sought be granted, all transfers made pursuant to the certificate of confirmation of grant dated 18.03.2015 be cancelled and the estate property does revert back to the name of the deceased herein Wambua Ndolo.
6. The petitioners/respondents did not file any response to this application, nor did they participate in these proceedings dispute being served.

C. Analysis and Determination

7. I have carefully considered the Application, the issues raised therein and the subsequent submissions filed by the applicants. The facts relating to the issues that arise herein are self-evident, and the decree dated 23rd October 2014 issued in Machakos CMCC No 98 of 2013 conclusively confirm that the petitioners/respondents unlawfully and irregularly acquired the suit property without following due process. This was also done without involving the applicants and other beneficiaries and it resulted in them being unlawfully dispossessed of their share of the estate, despite being direct beneficiaries thereof.
8. Section 76(a), (b) and (c) of the [Law of Succession Act](#) provides 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)

9. The above referred to section of the succession Act, provides that a grant of representation may at any time be revoked or annulled as long as the court is satisfied that the facts contemplated under the said section are proved. It is therefore clear that there is no limitation in so far as matters revocation or annulment of grant are concerned. However, it is not in every situation where transgressions are alleged that the grant must be revoked

10. This position was adopted in the case of *Albert Imbuga Kisigwa v Recho Kavai Kisigwa* [2016] eKLR Succession Cause No.158 of 2000, Mwitia where it was held that;-

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a 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.”

11. Similarly, in *Re The Estate of the Late Suleman Kusundwa* [1965] EA 247, it was held that:

“The court is...not obliged to revoke the existing grant, and should only exercise its discretion to do so if useful purpose would be thereby achieved or any right of the applicant safeguarded which could not otherwise be safeguarded. In the present case such rights of inheritance as the applicant possesses, outside the will, are sufficiently safeguarded by the assurance given by the Administrator-General. Therefore I decline to revoke the existing grant, a revocation which would entail needless expense; but it is qualified by declaring that the provisions of the annexed will, in which he purported to leave the whole of his property to his nephew, the second respondent, shall be given effect to only in respect of such portion of the deceased’s property as he was entitled to dispose of by will under the applicable law of inheritance.”

12. The applicants have indeed proved that the grant of letters of administration intestate herein were obtained without material disclosure, failure to enjoin all beneficiaries of the estate and by means of making false statements and therefore without doubt the whole process of obtaining grant was defective in substance and has to be cancelled *ex debito justicie*.

Disposition

13. The upshot, is that the summons for revocation of grant and/or annulment of grant dated 5th August 2021 has merit and the same is allowed as follows;



- i. The grant of letters of administration issued to Josephine Ndunge Wambua and Alex Maingi Wambua and confirmed on 18.01.2015 be and is hereby revoked.
- ii. Registration of Plot No 323 Lukenya ranching and cooperative society, subsequently registered as Mavoko Town Block 3/2199, under the names of Auric Benjamin Wambua, John Kitau Wambua and Josephine Ndunge Wambua and any sub division arising therefrom be and are hereby cancelled and the said parcel of land be reverted back in the name of the deceased Benjamin Wambua.
- iii. Pursuant to provisions of Section 47 of the *law of succession Act*, and Rule 73 of the *probate and administration rules*, I do direct that fresh grant of letters of administration intestate be issued to Justus Musau Wambua, Bernard Mutisya Ndolo & Josephine Ndunge Wambua.
- iv. The appointed administrators to file fresh chief's letter containing the names of all beneficiaries to the estate of Benjamin Wambua and fresh affidavits detailing the estate properties and liabilities.
- v. The costs of this application is awarded to the applicants and is assessed at Kshs.40,000/= all inclusive.
- vi. Parties at liberty to Apply.

14. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 30TH DAY OF SEPTEMBER, 2024.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 30TH DAY OF SEPTEMBER, 2024.

In the presence of;

Mr. Kamolo for Applicant

No appearance for Respondent

Susan/Sam Court Assistant

