



In Re Estate of Peter Kimani Kariuki (Deceased) (Succession Cause 235 of 2011) [2024] KEHC 13198 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13198 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 235 OF 2011
PN GICHOHI, J
OCTOBER 30, 2024**

**N THE MATTER OF THE ESTATE OF PETER KIMANI KARIUKI
(DECEASED)**

BETWEEN

**HUSSEIN GITIRITHI WAINAINA 1ST OBJECTOR
DAVID KIHARA NJOROGE 2ND OBJECTOR
MARGARET WACHU 3RD OBJECTOR**

AND

**TERESIA WANGUI KIMANI 1ST ADMINISTRATOR
JOHN KARIUKI KIMANI 2ND ADMINISTRATOR**

RULING

1. By Summons dated 11th July, 2023, the Objectors/Applicant (herein referred to as the Applicants) moved the Court seeking Orders: -
 1. Spent
 2. Spent
 3. That the letters of administration issued to Teresia Wangui Kimani and John Kariuki Kimani on 20th September 2011 and confirmed on the 21st September 2012 be revoked.
 4. That the costs of the application be provided for.
2. The case as stated on the face of the application supported by the Affidavit by sworn by Hussein Gitirithi Wainaina on 11th July 2023 on his own behalf and on behalf of the co-Applicants is that at the



time of demise of Peter Kimani Kariuki (deceased) Peter Kimani Kariuki had sold to the Applicants parts of the land being Dundori Lanet Block 5/234 but he had not issued them with the title deeds.

3. While attaching documents, they state that they had taken possession of their respective parcels and have been living there for the last 30 years, a fact well known to the Respondents herein but the Respondents moved to the court secretly obtained the letters of Administration without including the Applicants as creditors of the Estate.
4. They further state that even with that material concealment and after intervention by various parties to have the Respondents complete the transfer of titles to the Applicants, the Respondents moved to the Environment and Land Court in Nakuru vide Nakuru ELC Case No. 201 of 2017 seeking to have the Applicants evicted from their parcels of land and the case was still pending hearing on 31st August 2023.
5. They further state that the parties were still trying to pursue reconciliation but the Respondents kept backtracking hence the delay in filing this application. They therefore urge the court to find that the grant was obtained through concealment of material facts and therefore proceed to revoke the grant.
6. The Administrators/Respondents (herein referred to as the Respondents) opposed this application on 3 grounds as per Grounds of Opposition dated 5th December 2023 that: -
 1. The Applicants are not dependants of the Deceased herein within the meaning of Section 29 as read with Section 35 of the Law of Succession Act and therefore, they are not entitled to be included in the succession proceedings.
 2. The issue raised by the Applicants for determination is an issue for determination by the Environment and Land Court and therefore, this Court lacks the requisite jurisdiction to hear and determine the issue in dispute.
 3. There is a pending Land and Environment Court Nakuru Case No. 201 of 2017 which ought to be heard and determined first before this Court can entertain the present application.

Applicants' Submissions

7. The Applicants filed theirs on 5th April July, 2024 and emphasised on the contents of their application and affidavit in support. They submitted that upon the purchase of their respective portions of land from Peter Kimani Kariuki (Deceased), the Applicants took up possession of the said parcels of land while awaiting the deceased to be issued with the title deed of the said portions of land and thereafter effect transfer to the Applicants but he died before effecting the transfer.
8. It is their submissions that they set up their household and, while the 2nd objector sold out some of the portions he had bought and settled on the remaining portions to which the objectors reside to date.
9. Further, they submit that Respondents reside in the same area and therefore aware on these facts but cunningly and with intent to defeat the Applicants' interest in the Estate, the Respondents initiated the Succession proceedings in this matter without inclusion of the objectors who were creditors of the Estate.
10. They further submit that upon confirmation of grant in the said Succession Cause and subsequent transmission of the sole Estate asset Dundori Lanet Block 5/234 to the Respondents wholly, the Respondents embarked on threatening the Applicants with eviction. That the threats were actualized by filing of Case No. Nakuru ELC Case No. 201 of 2017 where the Applicants are sued as Defendants together with other parties who bought a part of the 2nd Applicant's portion of land in the Estate.



11. They submit submissions that these facts are not controverted, and emphasise that the filing the ELC Case is clear evidence that Applicants occupation of the said parcels of land is not controverted.
12. While relying on Section 76 of the Law of Succession Act and several decisions including Kenya Ibenya Co. Ltd Vs Ruth Nyambura Chuchu & Others [2021] eKLR they further submit that the failure by the Respondents to disclose the existence of the Succession Cause to the Applicants and leaving out the Applicant as creditors of the Estate amounts to material concealment and/or material non-disclosure and hence the grant was obtained fraudulently.
13. Lastly and while appreciating that the power of the Court to revoke a grant is discretionary but one which should be exercised judiciously, they urge this court to exercise its discretion and invoke the provision of Section 76 Law of Succession Act and revoke the grant herein, annul all subsequent transactions taken and have the title revert to the deceased name for the interest of the Applicant's taken care of.

Respondents' Submissions

14. In their submissions dated 6th May 2024, the Respondents submit that two issues arise herein for determination by this Court and these are: - whether the Applicants were entitled to be included in the succession proceedings and whether court has jurisdiction to hear and determine the issue herein.
15. They submit that it is obvious that there is a court battle regarding the estate asset hence Environment & Land Court being Nakuru ELC Case No. 201 of 2017 which means that the Respondents have an unresolved issue regarding the Applicants' occupation of the Estate's asset. That as such, the Respondents could not have included the Applicants as beneficiaries of the estate and hence the issue of concealment cannot arise and that matter is still pending before that Court.
16. While citing Section 29 of the Law of Succession Act on the meaning of a dependant, the Respondents further submit that a deceased's estate devolves around the dependants and to creditors but creditors must have been properly identified.
17. As to who is the creditor of the estate or what ought to be treated as a liability of the estate, it submitted that they individuals or entities that transacted with the deceased during his lifetime. That transactions such as for sale of land by the deceased or to the deceased that he left incomplete, should be completed by the administrators.
18. Further it is submitted that debts that the deceased left unsettled are a burden that the Administrators of his estate ought to take care of and the Administrators are able to do so through the powers conferred upon them by Section 82 of the Law of Succession Act being mindful of Section 79, which vests the assets of the estate in the Administrator. That under Section 83 of the Act, Administrators have a duty to settle such debts before distributing the estate.
19. In the circumstances, it is submitted that the omission of persons who claim to be claimants from or creditors of the Estate is not a ground for revoking a grant. That such claimants and creditors have an obligation to place their claims before the Administrators, and should the administrators fail to settle the same or acknowledge them, then they should move the Environment and Land Court to prove their claims.
20. In conclusion, they submit that High Court no longer has jurisdiction to determine questions around ownership of immovable property in view of Articles 162(2) and 165(5) of the Constitution. In support, they cite decisions including the celebrated case of Owner of Motor-Vessel Lilian S-Versus-Caltex Oil Kenya Limited (1969) KLR 1.



Analysis And Determination

21. This Court has considered the application, the affidavit in support and the annexures thereto, the Grounds of Opposition, the submissions filed by both parties together with the case law cited therein.
22. The Court has also noted that indeed, this court differently constituted issued interim orders in terms of prayer 2 in the following terms: -

“That pending hearing and determination of this Application, this honourable court be and is hereby pleased to issue interim orders of injunction restraining the Administrators/ Respondents from evicting, alienating, selling and/or in any manner interfering with Applicants’ use, occupation, possession of their respective parcels excised from Dundori Lanet Block 5/234.”

23. In the circumstances, the issues that arise for determination are: -
 1. Whether this court should revoke the grant issued to the Respondents herein.
 2. Whether this Court has jurisdiction to determine whether or not the deceased had sold part of the property to the Applicants.
24. On the first issue, Section 76 of the [Law of Succession Act](#) provides the circumstances under which a grant can be revoked thus: -

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 has ordered or allowed; 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. [Emphasis added]
25. The above provision generally means that the trial court has jurisdiction to revoke a grant if the conditions under section 76 are satisfied. In this case, the Applicants rely on Section 76 (b) above and argue that the Respondents concealed material facts to the court when they applied and obtained grant of letters of Administration and proceeded to have it confirmed without including the Applicants as creditors.



26. There is no dispute that the beneficiaries of the estate of the deceased herein were the widow Teresia Wangui Kimani (1st Respondent) and four children of the deceased being John Kariuki Kimani (2nd Respondent), David Kamau Kimani and Joseph Mungai Kimani.
27. Further, there is no dispute that the property Dundori Lanet Block 5/234 was the sole property of the deceased as per the confirmed grant and that the whole share went to the 1st Respondent who was the co-administrator with the 2nd Respondent.
28. The Applicants do not feature there. They are not beneficiaries. Their interest in the estate is their claim that they are purchasers of parts of the said parcel of land and in occupation of the same for several years, a fact allegedly well known to the Respondents.
29. In the circumstances, the question that arises now is whether this Court should then revoke the grant issued 1st and 2nd Respondent on 20th September 2011 and confirmed on 21st September 2012.
30. As submitted by parties, this Court has power to revoke a Grant but the power should be exercised judiciously to ensure interest of justice are met in regard to all parties- (See [*Albert Imbuga Kisigwa v Recho Kawai Kisigwa*](#), Succession Cause No.158 OF 2000).
31. In this case, the Applicants deponed: -

“That however, while still waiting for the transfer of our respective portions to us, the respondents resulted to compelling me and my co-applicants with an intent to defeat interest in of our respective portions to accept a lesser portion which has resulted to various intervention by the local Administrators in an attempt to have the issue resolved but to no avail....However the court clothed with requisite jurisdiction to deal with the matter is in issue is this court since the Respondents capacity to file aforementioned suit stems from their appointment as administrators and subsequent devolving of the suit land to the 1st Respondent.”

32. It is necessary for this court to emphasise that the appointment of the Respondents as Administrators herein was in accordance with the law and failure to include the Applicants in that process cannot be a ground for revocation of grant. The duty of an administrator is well cut out under Section 83 of the [*Law of Succession Act*](#) to settle all liabilities and debts before distribution the estate.
33. What is disclosed here is that there is a dispute in regard to the sole asset herein and that dispute is between the Respondents and Applicants. That dispute touches ownership and occupation of the land which is an asset of the estate herein.
34. The jurisdiction of the court to handle that dispute is not by virtue of havening issued and confirmed the grant. Indeed, the Supreme Court in [*Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others*](#) [2012] eKLR addressed the issue as follows:

“(68) A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, *In the Matter of the Interim Independent*



Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution...”

35. It is fact that the dispute is live before Environment and land Court at Nakuru. That is the Court with the requisite jurisdiction conferred to it under Article 162 (2) (b) of the *Constitution* on the issues regarding environment and the use and occupation of, and title to, land. Flowing from the *Constitution*, the *Environment and Land Court Act* was enacted and under Section 13 of the Act to the effect that: -

1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
2. In exercise of its jurisdiction under Article 162 (2) (b) of the *Constitution*, the Court shall have power to hear and determine disputes—
 - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - b. relating to compulsory acquisition of land;
 - c. relating to land administration and management;
 - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - e. any other dispute relating to environment and land.”

35. In the circumstances, this court lacks jurisdiction to determine the dispute between the parties in regard to the land. Parties should endeavour to take deliberate steps towards expeditious disposal of Nakuru ELC Case No. 201 of 2017.

36. In conclusion, this Court makes the following orders: -

1. The application dated July 11, 2023 be and is hereby struck out in its entirety.
2. Each party to bear his own costs of this application.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF OCTOBER, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Mukira for Githui for Objectors /Applicants

Ms Mwaniki for Ms Njeri Njagua for Administrators /Respondents

Ruto - Court Assistant

