



In re Estate of M'ndegwa alias M'ndegwa M'inoti (Deceased) (Succession Cause 166 of 2000) [2024] KEHC 15100 (KLR) (28 November 2024) (Ruling)

Neutral citation: [2024] KEHC 15100 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 166 OF 2000
HM NYAGA, J
NOVEMBER 28, 2024
IN THE MATTER OF THE ESTATE OF THE M'NDEGWA ALIAS
M'NDEGWA M'INOTI (DECEASED)**

BETWEEN

FREDRICK MARANGU NDEGWA 1ST PETITIONER

PURITY NKIROTE NDEGWA 2ND PETITIONER

AND

SARAH KAWIRA NDEGWA 1ST OBJECTOR

CAROLINE KATHOMI NDEGWA 2ND OBJECTOR

RULING

1. The Application before me is dated 30th September, 2024 and it seeks the following prayers:-
 - a. Spent.
 - b. That the Honourable Court be pleased revoke the grant of letters of administration grant and the confirmed grant issued Fredrick Marangu Ndegwa & Purity Nkirote Ndegwa on the 25th day of September, 2009.
 - c. That the Honourable Court be pleased to issue an order cancelling the entries in respect to the land register for L.R. No. Igoji/Kinoro/503 and order the subject parcel of land to revert in the name of the deceased herein.
 - d. That the Honourable Court be pleased to issue an order of injunction barring the Petitioner/ Respondent evicting or disturbing the Objectors/Applicants from utilizing the portion they are currently occupying and utilizing on L.R. No. Igoji/Kinoro/503 pending hearing and determination of this application inter-partes.



- e. That the Honourable Court be pleased to issue an order of inhibition, inhibiting any dealings in respect to L.R. No. Igoji/Kinoro/503 and any subsequent subdivisions if any pending hearing and determination of this application inter-partes.
 - f. That the Honourable Court be pleased to grant any other order as shall meet the ends of justice.
 - g. That costs of the application be borne by the Petitioner/Respondent.
2. The Application is propped on the grounds set out on its face and is supported by the joint affidavit of the Applicants.
 3. In a nutshell, the Applicants state that they are beneficiaries as children of the deceased as confirmed by the Judgment of this court delivered on 29/10/2008. That the Respondents were appointed as joint administrators by the court vide the same judgment.
 4. The applicants further aver that at the time of confirmation of the grant, the Respondents distributed the only asset belonging to the deceased, being LR No. Igoji/Kinoro/503 to themselves, leaving out the 2 Applicants. That the purported signatures on the consent in support of the summons for confirmation are not theirs and they did not attend the hearing of the summons for confirmation in court.
 5. The Applicants state that due to the fraud perpetrated by the Respondents they stand to lose their rights to the estate.
 6. The Application was served personally on the two Respondents as evidenced by the Affidavit of Service unloaded on the C.T.S on 25/11/2024. They have not filed any response and they did not attend court.
 7. Although the application is unopposed, the court has a duty to examine it and find if it is merited or not .
 8. A perusal of the court record shows that initially, the grant herein was issued to one Mugambi Mukiira, who described himself as a brother to the deceased. A grant was duly issued to him.
 9. Subsequently, the two Respondents moved the court to have the grant revoked, on the ground that the said Mugambi Mukiira had presented false information to the court.
 10. The grant was subsequently revoked and the two Respondents were appointed as joint administrators in their summons for revocation of the grant. They acknowledged that the two Applicants were their siblings and amongst the beneficiaries to the estate.
 11. The Applicant's claim is that at the time of confirmation of the grant, they were not aware of the same and that they did not consent to the said confirmation.
 12. Now, the court record shows that, contrary to their averments, on 25/09/2009 the summons for confirmation of grant came up for hearing before my sister Lady Justice M. Kasango. The court record for that day clearly shows that the Judge addressed the two Applicants directly as follows;

“Do you understand by your consent you are giving up your entitlement to the estate?”

To which the Applicants are then recorded as stating;

“Yes we do.”
 13. The court then confirmed the grant as prayed in the summons dated 15/07/2009.



14. From the court record, it is clear that the Applicants were indeed in court. They were duly warned by the court that their execution of the consent was tantamount to their giving up their entitlement. This was interpreted to them in court in Kimeru Language. So they cannot say that they did not understand the proceedings of that day.
15. That being the case, I find that the Applicants duly consented to the confirmed grant as issued. It is well settled law that an order of the court issued by consent can only be set aside under certain conditions, conditions which were set out in the case of *Flora Wasike Vs Destimo Wamboto (1982-1988) 1KAR 625* as follows;

“There is ample authority that a decree passed by a court with the consent of the parties may in appropriate circumstances be challenged on grounds that it was obtained by fraud or mistake or misrepresentation or on any other reason which would persuade a court to vary or set aside the consent decree”
16. The applicants are not saying that there was misrepresentation or fraud and even then, that argument would not pass because the court spoke to them directly and cautioned them on the consent they had executed. Their application is thus meant to mislead the court.
17. I find that this application is lacking in honesty and merits and I dismiss it with no orders as to costs.

H.M. NYAGA

JUDGE

SIGNED, DATED AND DELIVERED AT MERU THIS 28TH DAY OF NOVEMBER 2024.

H. M. NYAGA

JUDGE

In the presence of :-

