



REPUBLIC OF KENYA



**In re Estate of Mugira Chege (Deceased) (Succession Cause 867 of 2006)
[2023] KEHC 3241 (KLR) (Family) (23 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 3241 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 867 OF 2006
EKO OGOLA, J
JANUARY 23, 2023
IN THE MATTER OF THE ESTATE OF MUGIRA CHEGE (DECEASED)**

BETWEEN

GEORGE BROWN GACHIHI KARIUKI 1ST APPLICANT

NEW GIKIRIA INVESTMENT GROUP 2ND APPLICANT

AND

JOSEPH KANYURU CHEGE RESPONDENT

RULING

1. By way of Summons for Revocation of Grant, dated 28th December 2021, the Applicants seek an order for an injunction restraining the Respondent from dealing in any manner with the land parcel known as Lari/Kambaa/158 and for the revocation of the Grant of Letters of Administration issued and confirmed to Joseph Kanyuru Chege in respect of the estate of Mugira Chege (deceased).
2. The Application is premised on the grounds set out therein and the joint Supporting Affidavit of John Nguku Karanja and Christopher Karanja Mwangi the directors of the 2nd Applicant. They depose that they purchased the 1 $\frac{3}{4}$ acres of the subject land from the estate of Mugira. The said portion was purchased by Kahi Kimani (deceased) and the same was registered in the name of mugira (deceased). The deponents averred that they have been in possession and occupation of the subject land since the 1970s. They further stated that Mugira (deceased) was unable to process the transfer during his lifetime. It is their case that the Respondent wants to evict and disposes them of the land. They deposed that the proceedings to obtain the grant were defective as the parties did not disclose that the subject land had been sold by the deceased and occupied by third parties.
3. The Respondent did not file a response despite being duly served.



4. I have considered the Summons, the Affidavit in support, and the oral submissions by counsel. The key issue for the Court's determination is whether the Application meets the threshold for revocation or annulment of grant under Section 76 of the Law of Succession Act.

5. Section 76 of the Succession Act provides that;

“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.

6. It is upon any party seeking the revocation or annulment of a grant to demonstrate the existence of some or all of the grounds set out in Section 76 as outlined above.

7. The Applicants invited the Court to revoke the Grant of Probate made to the Respondent stating that the proceedings to obtain the grant were defective and were based on the concealment of material facts. It is their case, the Administrator/Respondent failed to inform the Court that the Subject land had been sold by the deceased. The Applicants have annexed to their Affidavit a handwritten sale agreement. It is in the Kikuyu language. There is a copy of the translated agreement on record. The agreement is between Kahiu Kimani as the vendor and George Brown Gachihi Kariuki as the purchaser. The agreement further reads as follows: -

“Today the 23rd February 1970 I Kahiu Kimani have sold to George Brown Gachihi Kariuki $\frac{1}{2}$ acres land which is in the portion of land I have surveyed $1\frac{3}{4}$ acres from my father's land Mugira Chege (Mukuu) Title No. 158 Kambaa Lari $\frac{1}{2}$ (Nuthu) acre. I have sold Kshs. 7,400/= Seven Thousand Four Hundred.

I have received the total amount of money.



I Kahiu Kimani have given George Brown Gachihi Kariuki this ½ acre and he is the one using the land.”

8. The Applicants further annexed a Letter of Consent from the Land Control Board of Limuru issued to Kamau Kimani, Chege Kimani, Muiro Kimani, and Kihiu Kimani. The Consent is dated 28th December 1984 and it is for the partition of the subject land. There is also a Letter of Consent from the same LCB dated 23rd January 1985. The Consent is for the transfer of the subject land from Kahiu Kimani to New Gikiria Investment Group. Lastly, there is form R.L 1 (Transfer of Land) dated 5th April 1989 confirming the transfer.
9. From the record, the grant of letters of Administration were issued to Joseph Kanyuru on 4th June 2014 and confirmed on the same date. The Respondent listed the subject land, Lari/Kambaa/158 as the only property in the estate to be distributed to the beneficiaries of the late Mugira Chege’s estate.
10. From the annexed documents that are not controverted, the Applicants in one way or another have been in possession and occupation of the subject land since the 1970s, and 1980s. The Respondent and the beneficiaries of the estate of Mugira (deceased) were not ignorant of this fact. The deceased died sometime in 1962, and his son Kahiu Kimani (deceased) sold the portion of the subject land. Unless otherwise argued, the remaining beneficiaries, sons of the deceased and brothers to Kahiu Kimani (deceased) were aware of the sale and the occupation of the said subject land. I am satisfied that had the Applicants been made aware of the application for the confirmation of grant through service, they would have brought to the fore their aforesaid interests. Further had the Respondent been forthright and candid and included the Applicants as beneficiaries of a portion of the estate of Mugira (deceased) as purchasers for value, the Court in confirming the grant would have considered their interest in the estate of the deceased.
11. As it is, therefore, the grant was obtained fraudulently by making a false statement and or concealment from Court of something material to the cause. The Respondent knew of the Applicants’ interest in the estate of the deceased, yet he chose to ignore them completely in his petition for the Letters of Administration intestate.
12. 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 to revoke the grant of Letters of Administration issued to Joseph Kanyuru Chege and subsequent confirmation as it was obtained fraudulently by the concealment of material fact to the cause, particularly in relation to the sale of the portion of the plot known as Lari/Kambaa/158 that has been in possession and occupation by third parties.
13. No orders as to costs.
14. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY 2023

E.K. OGOLA

JUDGE

In the presence of:

N/A for the Applicants

N/A for the Respondent

Gisiele Muthoni Court Assistant.

