



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Mwobobia Mungiria (Deceased) (Succession Cause  
1 of 2020) [2023] KEHC 3525 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3525 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 1 OF 2020**

**EM MURIITHI, J**

**APRIL 27, 2023**

**IN THE MATTER OF THE ESTATE OF MWOBOBIA MUNGIRIA (DECEASED)**

**BETWEEN**

**KARIMI MWOBOBIA ..... PETITIONER**

**AND**

**BEATRICE KATHUNI MWOBOBIA ..... APPLICANT**

**AND**

**IRENE GATABI ..... INTERESTED PARTY**

**LUCY KIENDE MARANGU ..... INTERESTED PARTY**

**MARTIN MUTEMBEI NDEREBA ..... INTERESTED PARTY**

**DAVID MWIRIGI MWOBOBIA ..... INTERESTED PARTY**

**JOSPHAT MWIRIGI M. MUNENE ..... INTERESTED PARTY**

**NICHOLAS MURIUNGI KIHARA ..... INTERESTED PARTY**

**GILBERT B. NJERU ..... INTERESTED PARTY**

**RULING**

1. By amended summons for revocation of grant dated October 25, 2021 brought under sections 47 & 76 of the *Law of Succession Act*, section 68 (1) of the *Land Registration Act*, rules 44 (1) and 73 of the *Probate and Administration Rules*, the applicant seeks that:

1. Pending the interpartes hearing of the application, an order of inhibition be and is hereby issued restricting any kind of dealings with LR Nos Nkuene/Uruku/286 & 832, 1834, 1835, 2338, 2339, 2340 & 2341.



2. Pending the hearing and determination of this cause, an order of inhibition be and is hereby issued restricting any kind of dealings with LR Nos Nkuene/Uruku/286 & 832, 1834, 1835, 2338, 2339, 2340 & 2341.
  3. An order be issued cancelling title to LR Nos Nkuene/Uruku/286 & 832, 1834, 1835, 2338, 2339, 2340 & 2341 and revert the said land to the original number Nkuene/Uruku/804.
  4. An order do issue revoking the grant issued to the petitioner herein on April 18, 1995 and confirmed on March 18, 1996 and a fresh grant be issued to the applicant.
  5. The costs of this application be in the cause.
2. The application is premised on the grounds on the face of it and supporting affidavit of Beatrice Kathuni Mwobobia, the applicant herein, sworn on even date. She avers that the deceased herein, who was her father was survived by herself, Karimi Mwobobia - wife (deceased), Marangu Mwobobia - son, Chaku Mwobobia and David Mwirigi Mwobobia. This cause was filed at Nairobi without the knowledge of her elder sister and the children of Marangu Mwobobia (deceased) and she did not consent to the confirmation of the grant because she was unaware of it. Irene Gatabi and Lucy Kiende, the children of Marangu Mwobobia were completely disinherited. She did not agree to the skewed mode of distribution of her father's estate whereby she got parcel No Nkuene/Uruku/286 which is 3 acres while her younger brother got a lion's share of the estate, to wit 7 acres. She believes that the sharing of the deceased estate was contrary to the law and out rightly unprocedural. She prays for the grant to be revoked and both properties do revert to the name of the deceased to enable her demonstrate to the court that the same ought to be shared in an equitable manner. She is worried that some stranger was included in the registration of LR No Nkuene/Uruku/804 and as such, there is fear that the stranger may make moves behind the scenes and dispose of the land to 3<sup>rd</sup> parties. She has discovered LR No Nkuene/Uruku/804 was subdivided into Nos 1831-1835 and parcel No 1831 subdivided into Nos 2340-2341. She wonders how Martin Mutembei Ndereba and Josphat Mwirigi M'Minenge's got a share of parcel No Nkuene/Uruku/804 yet they are not beneficiaries of the estate. She urges the court to revoke the grant because it was issued illegally and unprocedurally.
  3. The application was opposed by the replying affidavit of Irene Gatabi, the 1<sup>st</sup> interested party herein, sworn on March 2, 2022. She avers that they were all provided for despite the fact that they were never involved or consulted. Although the widow of the deceased was also provided for, she did not know what happened to her share. The children of Marangu Mwobobia only got land parcel No Nkuene/Uruku/1831 measuring 1.80 acres and even after the court ordered that they be given 1 acre of land parcel No Nkuene/Uruku/286 by the applicant, they have never gotten it to date. She prays for issuance of a fresh grant jointly to herself and the applicant, as the grant herein has become inoperative by dint of the application of the law.
  4. The 3<sup>rd</sup> interested party swore a replying affidavit on July 23, 2022 averring that he is the registered owner of parcel No. Nkuene/Uruku/1832 having purchased it from Jaela Chaku Jackson, a daughter of the deceased herein.
  5. The 5<sup>th</sup> interested party swore a replying affidavit on December 21, 2022 averring that he is the registered owner of parcel No Nkuene/Uruku/1835 having purchased it from the 4<sup>th</sup> interested party.



6. The 6<sup>th</sup> interested party swore a replying affidavit on December 21, 2022 averring that he is the registered owner of parcel No Nkuene/Uruku/2338 having purchased it from the 1<sup>st</sup> interested party, who is a grand daughter of the deceased.
7. The 7<sup>th</sup> interested party swore a replying affidavit on July 22, 2022 averring that he was the sole and absolute proprietor of land parcel No Nkuene/Uruku/2340 measuring approximately 0.30 ha having bought it from the 4<sup>th</sup> interested party. He is a purchaser for value, without any defects or knowledge of fraud thus he is protected by the law, and he prays for the application to be dismissed as it is an afterthought meant to hoodwink the court.
8. The applicant swore a supplementary affidavit on January 24, 2023 in support of her application.

### Submissions

9. The applicant submits that the glaring irregularities and material concealment of facts and information while filing this cause at Nairobi instead of Meru and also disinheriting the true beneficiaries of the deceased, call for the revocation of the grant, and cites *Re Estate of the late Epharus Nyambura Nduatei (Deceased)* (2021) eKLR and *Re Estate of Tabitha Waittherera Kamau (Deceased)* (2019) eKLR. She urges that unless Chaku Mwobobia renounced her right to inherit the deceased estate, her consent was necessary at both the stage of filing the cause and confirmation of the grant. She urges that the sharing of the estate of the deceased was skewed, opaque, inequitable and illegal, as the 4<sup>th</sup> interested party got the lion's share, without the consent of all the beneficiaries. She urges the court to revoke the grant and distribute the estate equally among the beneficiaries of the deceased. She also relies on *Re Estate of M'Nkanata M'Ikiara (Deceased)* (2018) eKLR and *Daniel Mwongera M'Iringo v Lucy Karambu M'Ikiao* (2017) eKLR.
10. The 1<sup>st</sup> and 2<sup>nd</sup> interested parties urge that the grant has become inoperative by dint of operation of the law and the same ought to be revoked.
11. The 5<sup>th</sup> interested party urges that no material facts were concealed or evidence tendered before the court to demonstrate that the grant was obtained fraudulently, and cites *Re Estate of Prisca Ong'ayo Nande (Deceased)* (2020) eKLR. He urges that all evidence has been presented before the court to verily prove that he followed the due legal process to acquire his parcel of land and the process was sanitized in Meru CMCC No 1247 of 1997. He urges the court to dismiss the application with costs, as it is a sham aimed at wasting precious judicial time.
12. The 6<sup>th</sup> interested party urges that he bought the land after the grant had been confirmed, and therefore he is a *bonafide* purchaser for value, and cites *Katende v Haridar & Company Limited* (2008) 2 EA 173. He urges the court to stop the applicant in her attempts to disturb the peace and tranquility being enjoyed by the family and the registered owners by dismissing the application with costs.
13. The 7<sup>th</sup> interested party urges that the cause was filed with the involvement and consent of the applicant, and therefore the application is unnecessary, and it should be dismissed with costs as it does not meet the threshold for revocation of grant provided under section 76 of the *Law of Succession Act*. He cites *In the Matter of the Estate of LAK (deceased)* (2014) eKLR and *Katende v Haridah & Company Limited* (supra) to support his submissions.

### Analysis and Determination

14. Having considered the application, the responses thereto and the submissions on record, the issue for determination is whether the grant should be revoked.



15. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant as follows:- “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.”
16. The applicant accuses the petitioner of leaving out some beneficiaries of the deceased and inequitably distributing the estate. The 1<sup>st</sup> and 2<sup>nd</sup> interested parties acknowledge that although they were not involved and/or their consent sought, they got a share of the estate, but they still want the grant revoked on the basis that it has become inoperative due to the death of the petitioner.
17. The 3<sup>rd</sup> to 7<sup>th</sup> interested parties are vehemently opposed to the grant being revoked as they are purchasers for value without notice.
18. According to the introductory letter of Augustino M. M’Mbui, the chief of Nkuene Location, dated February 21, 1996, the deceased was survived by Marangu Mwobobia (deceased), Mwobobia - widow (now deceased), Chaku Mwobobia, Beatrice Kathuni Mwobobia and David Mwirigi Mwobobia.
19. According to the certificate of confirmation of grant dated March 18, 1996, the petitioner got 1 acre of Nkuene/Uruku/804 while David Mwirigi Mwobobia got 7 acres thereof. Beatrice Kathuni Mwobobia, the applicant herein got 3.03 acres of Nkuene/Uruku/286.
20. The 1<sup>st</sup> interested party has admitted in her replying affidavit that she and her sister the 2<sup>nd</sup> interested party were duly provided for. She however wants the grant revoked because according to her, it has become inoperative following the death of the petitioner. It is not lost to this court that the grant herein was confirmed on March 18, 1996, more than 26 years ago and it is expected that the petitioner had since completed the administration herein before her demise. If the beneficiaries herein have all received their respective shares some of which have subsequently been transferred to 3<sup>rd</sup> parties, how can the grant be said to have become inoperative? The said transfers happened after the grant had been confirmed and therefore they were lawful.
21. The applicant also acknowledges that she got a small share of the estate, and that is why she wants the grant revoked. The law is trite that equitable sharing of the deceased estate does not necessarily constitute equality in terms of acreage. The applicant further accuses the petitioner of distributing the



estate to strangers. That accusation is manifestly unfounded as the certificate of confirmation of grant is clear that the estate was only distributed to the beneficiaries of the estate.

22. Once a beneficiary has received their rightful entitlement to the estate upon confirmation of the grant, they are at liberty to deal with it whatsoever they please.
23. The inevitable conclusion is that the applicant has failed to meet the threshold set out under section 76 of the *Law of Succession Act* to warrant the revocation of the grant. Besides, the application has been brought with inordinate delay and it would be a travesty of justice to disturb the mode of distribution as ordered by the court 25 years ago on March 18, 1996 solely at the behest of a single beneficiary.

#### **Orders**

24. Accordingly, for the reasons set out above, the application dated October 25, 2021 is without merit and it is dismissed.
25. There shall be no order as to costs
26. Orders accordingly.

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF APRIL, 2023**

**EDWARD M. MURIITHI**

**JUDGE**

APPEARANCES:

Mr. Karanja for Applicant.

Mr. Gichunge for 1<sup>st</sup> & 2<sup>nd</sup> Interested party.

Mr. Nyaga for 7<sup>th</sup> Interested Party.

