



**In re Estate of Wangithi Mwaniki Gatumuta alias Anne Wangithi Gatumuta (Deceased)
(Succession Cause 563 of 2013) [2023] KEHC 25808 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25808 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 563 OF 2013
RM MWONGO, J
NOVEMBER 23, 2023**

**IN THE MATTER OF THE ESTATE OF WANGITHI MWANIKI
GATUMUTA ALIAS ANNE WANGITHI GATUMUTA (DECEASED)**

BETWEEN

**DOLLY WAWIRA MURIUKI 1ST APPLICANT
JAMES GITARI MWANIKI 2ND APPLICANT
ROSEMARIE MICERE MWANIKI 3RD APPLICANT
ESTHER WAMBUI MARAGWA 4TH APPLICANT
JOSEPHINE WANGECHI 5TH APPLICANT
SARAH WAKABARI MWANIKI 6TH APPLICANT**

AND

PETER KARIUKI MWANIKI RESPONDENT

AND

BENSON MUREITHI KINYUA APPLICANT

RULING

1. By a Summons (General Form) dated 7th November, 2022 the Benson Mureithi Kinyua seeks two orders. Firstly, that the Court be pleased to review and set aside this Court's order made on 21st February, 2019 and issued on 21st May, 2019. Secondly, he seeks that the Court be pleased to declare and order that the applicant's ownership of L.R Kabare/Nyangati/8118 and 8119 is protected under the provisions of Section 93 of the *Law of Succession Act*, Cap 160.
2. The application is based on the following grounds:



- i) That the Applicant was not given an opportunity to be heard before the order made on 2nd February, 2019 and issued on 21st May, 2019 was issued.
 - ii) That the Applicant is a bonafide purchaser for value without notice of a L.R Nos Kabare/Nyangati/8118 and 8119 and his proprietary interest is protected under Section 93 of the [Law of Succession Act](#), Cap 160.
3. In his supporting affidavit, the applicant avers that:
- i) That his father, Peterson Kinyua Karanja, identified some parcels of land and the applicant facilitated him financially to purchase the same.
 - ii) That on 8th March, 2016 he purchased 3 acres out of L.R.Kabare/Nyangati/1670 from Peter Kariuki Mwaniki, through an agreement dated 8th March, 2016.
 - iii) That in the said sale agreement: The vendor was Peter Kariuki Mwaniki, and the purchaser was his father, Peterson Kinyua Karanja; that the agreed consideration for the 3 acres was Kshs. 4,200,000/=; that the vendor was paid Kshs.100,000/=; and that though the vendor had possession of the land it was agreed that he would vacate on 2nd September, 2016.
 - iv) That at the time the sale agreement dated 8th March, 2016 was entered into the registered proprietor of L,R.Kabare/Nyangati/1670 was Peter Kariuki Mwaniki who also had physical possession of the same.
 - v) That he was given vacant possession of L.R Kabare/Nyangati/8118 on 2nd September, 2016 and he commenced developments thereon with the assistance of his father Peterson Kinyua Karanja who supervises workers on a day-to-day basis.
 - vi) That he was given vacant possession of L.R Kabare/Nyangati/8119 on 26th August, 2016 and developed the same holding possession to date.
 - vii) That he just become aware that there is a court order dated 21st May, 2019 in this case that is pending registration against his land L.R.Kabare/ Nyangati/8118 and 8119.
 - viii) That he became aware that the order issued on 21st May, 2019 was in relation to revocation of a grant that had been issued to Peter Kariuki Mwaniki who sold the land to him.
 - xi) That L.R.Kabare /Nyangati/1670 no. longer exists, as it is the mother title to the parcels of land he purchased and owns, namely, L.R.Kabare/ Nyangati/8118 and 8119.
4. In response the Peter Kariuki Mwaniki filed a replying affidavit with the following major averments:
- i) That I am highly prejudiced by the orders issued on 21st February, 2019 as I was not aware of the proceedings leading to the said orders as I have never been served with application for revocation filed on 21st September 2017.
 - ii) That on 22ndSeptember 2014, the grant of letters of administration issued to him on 20th March,2013 was properly confirmed as per the provisions of the law.
 - iii) That after confirmation, land parcel No. Kabare/Nyangati/1670 was transmitted to him and he subdivided the same into land parcel Nos.Kabare/ Nyangati/8118 and 8119.
 - iv) That he sold the said two portions in favour of Applicant herein through his father Peterson Kinyua Karanja, and that the applicant is the current registered owner of the said and parcel nos. Kabare/Nyangati/8118 and 8119.



- v) That he became aware of summons for confirmation of grant dated 26th February, 2021 in which the respondent applied to distribute L.R.Kabare/Nyangati/1670 to several people.
 - vi) That LR No.Kabare/Nyangati/1670 does not exist but is the mother title to the parcels Nos.Kabare/ Nyangati/8118 and 8119 owned by Applicant.
 - vii) That he became aware that Dolly Wawira Muriuki is a co-administrator, but she has neither involved him in administration of the estate nor the alleged distribution and confirmation of the joint grant.
 - viii) That the Applicants were summoned to appear in court before the grant was confirmed but they never came to raise an objection.
5. The 2nd applicant filed a replying affidavit with the following major averments:
- i) That he is highly prejudiced by the orders issued on 21st February, 2019 as he was not aware of the proceedings leading to the said orders as having never been served with application for revocation filed on 21st September 2017.
 - ii) That land parcel no.Kabare/Nyangati/1670 was given to his brother Peter Kariuki Mwaniki by their father, Mwaniki Gatumuta (deceased) and he has no claim over the same.
 - iii) That Dolly Wawira Muriuki has never informed either my brother or himself in administration of the estate of our deceased mother.
6. Parties filed written submissions as directed by the court

Applicant Benson Kinyua's submissions

Whether the applicant is entitled to the orders sought

- 7. The applicant's submissions reiterated the content of his replying affidavit. He submits that he was not informed and or involved in the proceedings relating to this matter and that any order against the parcels of land would interfere with his ownership and possession of the parcels of land.
- 8. Further, he submitted that he was not served with summons for revocation of grant.
- 9. The applicant pointed out that James Gitari Mwaniki the 2nd Applicant in the summons for revocation of grant, swore a Replying Affidavit dated 1st December, 2022.in which he indicates that he is the Assistant Chief Kamiiga Sub Location. He stated that he was not aware of the proceedings and his name was erroneously included in the summons for revocation of grant.
- 10. Further, the applicant noted that James Gitari Mwaniki confirmed that it is only the Petitioner Peter Kariuki Mwaniki who was entitled to L.R. Kabare/ Nyangati/1670 as he is the one who had possession of it.
- 11. The applicant submits that he bought Land Parcels No. L.R.Kabare/Nyangati/8118 and 8119 between March 2016 and August 2016 vide two separate sale transactions. He followed the statutory requirements and was issued with title deeds. Before the said purchases the Applicant through his father had satisfied himself that Peter Kariuki Mwaniki was the registered proprietor.
- 12. The Applicant submits that he is therefore a bona fide purchaser for value without notice and his interest is protected under Section 93 of the *Law of Succession Act*.



1st – 6th Applicants/Respondents' Submissions

Whether the applicant's prayer should be granted

13. The applicants argue that Rule 63 (1) of the Probate and Administration Rules provides that a court can review an order on discovery of a new and important matter of evidence which, after the exercise of due diligence, was not within the court's knowledge at the time when the decree was passed, on mistake or error on the face of the record, or for any sufficient reason. The Applicant contends that he was not aware of the revocation of grant proceedings hence he was denied a fair hearing
14. Notably the Applicants/Respondents filed for revocation of grant when they discovered that the Petitioner had secretly pursued the succession herein without any disclosure to all other beneficiaries. The Respondent acted in bad faith from the onset by procuring a Chiefs letter which misled this Honourable Court into believing that the Respondent was the only legal heir to the deceased. Had the Applicant been joined in the proceedings the revocation would have still been inevitable as the Respondent had disinherited all the other beneficiaries.
15. The Honourable Judge was right in revoking the said grant and a review of the order will not cure the fraudulent actions of the Respondent nor protect the Applicant's interests. The Applicant is also seeking for a declaration that his ownership of LR Kabare/ Nyangati 8119 and 8118 is protected under the provision of Section 93 of the *Law of Succession Act*.
16. The applicants rely on the case of *Monica Adhiambo v Maurice Odera Koko* [2016] eKLR Succession No.13 of 2004 where the Court dismissed a similar application and cited the case of *Estate of Christopher Jude Adela (Deceased)*(2009) wherein Rawal J held of Sections 93 (1)and (2)of the Act as follows:

“ [a proper] reading of those provisions will indicate that the transfer to a purchaser, if shown to be fraudulent and/or upon other serious defects and/or irregularities can be invalidated. It shall be a very weak and unfair system of law if it gives a carte blanche of absolute immunity against challenges to transfer of immovable properties of estate by a personal representative, it shall be against all notions of fairness and justice. In short, I do not agree that Section 93 of the Act prohibits the discretion of the court to invalidate a fraudulent action by a personal representative”
17. They submit that the Respondent was guilty of concealment and misrepresentation of material facts and clearly intended to defraud his siblings from inheritance. Upon revocation of the grant made to the Respondent no good title could be passed to the Applicant to be protected under the law. The title obtained by the Applicant was void for the reasons given and the transaction between the Applicant's father and the Respondent could not be valid due to the aforesaid reasons. A void title and invalid transaction cannot be protected under Section 93 (1) of the *Law of Succession Act*. The Applicant has nothing in law to protect because his title is void and invalid. Section 93(1) of the *Law of Succession Act* cannot be invoked in such circumstances.
18. They conclude by urging that the aggrieved purchasers can file a claim for refund of the purchase price in the appropriate forum

Respondent's Submissions

19. The respondent commences his submissions by arguing that he was not given notice of the revocation proceedings and therefore he was prejudiced by the orders issued by this court on 21st February 2019.



20. This was a surprising allegation, so I took time to the file in some detail. In the process I have seen the following: an affidavit of service sworn by Agnes Njoki and filed on 6th November 2017, indicating service of the summons for revocation on the respondent; another affidavit of service for a mention notice of 30th May 2018. On each occasion, the process server was accompanied to the home of the respondent by Dolly Wawira Muriuki the respondent's sister.
21. Thus, the allegation that the respondent was not notified is hard to accept. Further, in my view, it is a rich argument for the respondent to allege that he was not notified of the summons for revocation when he himself conducted the entire succession proceedings of the deceased's estate, transmission of the deceased's land, sub-division and transfer thereof without involving his siblings.
22. The respondent further argues that his siblings did not appear in court to object to the succession proceedings. However, the documents on file do not indicate anywhere that they were served on the respondent's siblings. Had he done the legal and moral thing and indicated the names of the survivors in the petition, or filed their consent, the court would have had occasion to summon them. His moral remonstrance now that he was not notified of the revocation proceedings therefore rings hollow.

Whether the Order given on 21st February, 2019 revoking the grant confirmed on 22nd September 2014 can be reviewed

23. Rule 63 of the Probate and Administration Rules which the applicant invoked allows the application of Order XLIV of the Civil Procedure Rules (now Order 45 of the Civil Procedure Rules 2010) in proceedings initiated under the Probate and Administration Rules.
24. It follows that an application for review of an order or decree in a succession cause is subject to the same threshold to a similar application made in the context of the civil proceedings under the *Civil Procedure Act* and Rules.
25. The applicant contends that he was not aware of the proceedings of the revocation of the grant and by the Court revoking the said agreement, he stands to be highly prejudiced by the same and has met the requirements for review.

Whether the Applicants/Respondents were aware of the succession cause for confirmation of grant

26. Section 76 of the *Law of Succession Act* provides for revocation or annulment of grant for reasons, inter alia, that the proceedings to obtain the grant were defective in substance or 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.
27. Here, the Respondent followed the due process and availed all the documents he relied upon while petitioning for the letters of administration which he has attached in his replying affidavit dated 2nd December, 2022. The Chief's letter clearly lists all the beneficiaries to the estate of Mwaniki Gatumata (Deceased) and there is a gazette notice dated 14th June 2013 to the said estate. The Honourable Court was satisfied that the Respondent herein had met all legal requirements to of grant and that the Applicant/Respondents had been duly served and had elected not to object to confirmation
28. They rely on the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa Succession Cause No.158 of 2000* where Mwita J stated:

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing 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. ”

Whether the Applicants/Respondents have a stake in this suit

29. The respondents submit that the applicant's title to the land parcels Nos.Kabare/Nyangati/8118 and 8119 are protected under Section 24, 25 and 26 of the [Land Registration Act](#) 2012.
30. Section 24 of the [Land Registration Act](#) 2012 provides that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.
31. They submit that the applicants have a stake in this suit whose subject matter is Land Parcel No.Kabare/Nyangati/8118 and 8119 which are the resulting parcels to the subdivision of Land parcel No.Kabare/Nyangati/1670.

Issues for Determination

32. The following are the issues I deem necessary for determination herein.
 - i) Whether the court order should be reviewed
 - ii) Whether the transmissions of land parcels LR Nos Kabare/ Nyangati/ 8118 and 8119 are protected under the law in favour of the purchaser

Analysis and Determination

33. The orders sought to be reviewed herein were made by this court (Gitari, J) in a ruling on 21st February 2019, and are as follows:
 - a) The grant confirmed on 23/9/2014 shall be revoked;
 - b) The petitioner to furnish an account of the estate
 - c) the applicant Dolly Wawira Muriuki is appointed a co- administrator with the petitioner
 - d) a fresh application for confirmation of grant shall be filed”

These orders were extracted and issued on 21st May, 2019.

34. The court order dated indicates that the grant confirmed on 23rd September, 2014 be revoked. The grant related to L.R.Kabare/Nyangati/1670. It is noted that the applicant purchased L.R.Kabare/Nyangati/8118 and 8119. It is not in dispute that these parcels were sub-divided from L.R.Kabare/Nyangati/1670
35. It is in respect of these subdivisions that the applicant seeks protection under the provisions of Section 93 of the [Law of Succession Act](#), Cap 160.

Revocation of grant

36. The Applicants/Respondents submit that they filed for revocation of grant when they discovered that the Petitioner had secretly pursued the succession herein without any disclosure to all other beneficiaries. The Respondent acted in bad faith from the onset by procuring a Chief's letter which misled this Honourable Court into believing that the Respondent was the only legal heir to the



deceased. Had the Applicant been joined in the proceedings the revocation would have still been inevitable as the Respondent had disinherited all the other beneficiaries.

37. The background which is on the record on the file is as follows: The deceased died on 12th November 1998. A petition was filed by his son Peter Kariuki Mwaniki, on 8th May 2013. According to the Affidavit in support of his petition the deceased died leaving only Peter Kariuki Mwaniki surviving him. A grant was issued on 20th September 2013 appointing Peter Mwaniki Kariuki the sole administrator. He then filed an application for confirmation of grant indicating the only parcel of land as LR No Kabare /Nyangati,1670 as the deceased's estate and which was to be devolved solely to Peter Kariuki Mwaniki
38. A confirmed grant was issued on 23rd September, 2014 under which the whole share of the deceased's said land was granted to Peter Mwaniki Kariuki. He went ahead to transmit the property to himself, sub-divided it and sold it to the applicant purchaser herein
39. It is the process of succession initiated by Peter Kariuki Mwaniki that was revoked by Gitari J, after the deceased's other beneficiaries sought revocation. They satisfied the court that the deceased was survived by other children who had been disinherited, The deceased children were named as:
- a. Lilian Njeri – daughter;
 - b. Esther Wambui Maragwa- daughter;
 - c. Peter Kariuki Mwaniki – son
 - d. Dolly Wawira Muriuki – daughter
 - e. James Gitari Mwaniki – son;
 - f. Rosemarie Micere Mwaniki -daughter;
 - g. Stephen Kibara- son;
 - h. Josephine Wangechi- daughter;
 - i. Sarah Wakabari Mwaniki - daughter
40. The court held in its ruling that the applicants in the revocation application
- “had established the grounds to warrant the court to order the grant to be revoked....[that] the petitioner concealed material facts from the court by failing to disclose that there were other beneficiaries who were entitled to a share of the estate of the deceased.....[and that] the proceedings were defective in substance ...”
41. In principle, there is nothing in law to prevent the court from reviewing its decisions in appropriate cases and where the justice of the matter so demands.

Protection under provisions of Section 93 of the *Law of Succession Act*

42. The applicant submitted that he bought Land Parcels No. L.R. Kabare/Nyangati/8118 and 8119 between March 2016 and August 2016 vide two separate sale transactions. He said he followed the statutory requirements and was issued with title deeds. Before the said purchases the Applicant through his father had satisfied himself that Peter Kariuki Mwaniki was the registered proprietor.
43. The Applicant urges that he is therefore a bona fide purchaser for value without notice and his interest is protected under Section 93 of the *Law of Succession Act*. And that his title cannot be interfered with.



He relies on Section 93 of the [Law of Succession Act](#) which provides for validity of transfers not affected by revocation of representation and reads as follows:

- “(1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.
- (2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have not been discharged nor provided for.”

44. In addition, it is asserted that title, once issued, is indefeasible pursuant to the provisions of Section 26 (1) of the [Land Registration Act](#) which provides as follows:

- “(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.” (Emphasis supplied)

45. The respondents submitted that upon revocation of the grant made to the applicant no good title could be passed to the Applicant capable of being protected under the law. The title obtained by the Applicant was void for the reasons given and the transaction was void.

46. In *Musa Nyaribari Gekone & 2 others v Peter Miyianda & another* [2015] eKLR, the Court of Appeal agreed with the High Court when the Judge said that Section 93 of the [Law of Succession Act](#):

“is [designed] to protect dealings with the legal representatives of the deceased who must have as personal representatives, have assumed deceased’s authority to deal with the estate of the deceased.” (Emphasis supplied)

47. The respondents submitted that the applicant (Peter Kariuki Mwaniki) acted in bad faith from the onset by procuring a Chief’s letter which misled this Honourable Court into believing that the Respondent was the only legal heir to the deceased. There was no consent filed by the respondents or alleged by the applicant to indicate that the other beneficiaries of the deceased renounced their right to inherit the deceased’s estate.



48. In *Adrian Nyamu Kiugu v Elizabeth Karimi Kiugu & another* [2014] eKLR. it was held:

“Whereas the above Section states that a transfer by a person to whom representation has been granted shall be valid notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act, I am of the considered view that since transactions can only be relied upon when the legal representative is entitled to grant of representation but not where one is not and where one has obtained the grant fraudulently. (Emphasis supplied)

Disposition

49. Ultimately, I find and hold that whilst there is nothing to prevent a court from reviewing its ruling in deserving cases, this is not one such case. Indeed, the actions of Peter Kariuki Mwaniki in obtaining grant in his sole name by misleading the court that he was the sole beneficiary, then brazenly transferring the deceased’s land, sub-dividing it and selling it can only be described as fraudulent.
50. Accordingly, all the actions he undertook under the fraudulently acquired grant were void ab initio and were inherently incapable of passing a good title to the applicant
51. In the result, this court hereby declines to review the orders issued by it revoking the grant and finds no reason to declare that the land transferred to the applicant herein is protected in the applicants’ favour under section 93 of the *Law of Succession Act*.
52. The application is therefore dismissed in its entirety with costs.
53. Orders accordingly.

DATED AT KERUGOYA THIS 23RD DAY OF NOVEMBER, 2023

R. MWONGO

JUDGE

Delivered in the presence of:

Kimata for Co-Administrator Dolly Muriuki

Wanjira holding brief for Magee for the Applicant

Omenya - for Petitioner

