



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mzee & 6 others v Matui (Probate & Administration  
6 of 2021) [2022] KEHC 591 (KLR) (30 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 591 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
PROBATE & ADMINISTRATION 6 OF 2021**

**EKO OGOLA, J**

**MAY 30, 2022**

**BETWEEN**

**VIOLA JEPKIRUI MZEE ..... 1<sup>ST</sup> APPLICANT**  
**JEREMIAH KIRWA ..... 2<sup>ND</sup> APPLICANT**  
**LILIAN JEPKORIR ..... 3<sup>RD</sup> APPLICANT**  
**FLORENCE JEPKOECH ..... 4<sup>TH</sup> APPLICANT**  
**NELLY JELIMO ..... 5<sup>TH</sup> APPLICANT**  
**GRACE JEROTICH ..... 6<sup>TH</sup> APPLICANT**  
**JOYCE JEPNG'ETICH ..... 7<sup>TH</sup> APPLICANT**

**AND**

**AMOS MATUI ..... RESPONDENT**

**RULING**

1. By way of Summons dated 3<sup>rd</sup> May 2019 the Objectors herein seek orders that the grant of letters of administration issued on 26<sup>th</sup> January 2016 be revoked. The application is based on the grounds contained therein and in the affidavit in support thereof.
2. The objectors' contention is that the confirmation was obtained fraudulently by misleading the Objectors; that the Objectors are blind and during the confirmation they did not know that the grant was being confirmed. Further, that the petitioner was fraudulently included in the certificate of confirmed grant.
3. The applicants cited section 76 of the *Law of Succession Act* and the cases of *Re Estate of Eston Nyaga Ndirangu (Deceased)* [2021] eKLR and *Matheka and another v Matheka* (2005) 2 KLR 455 which reiterated the statutory position on revocation.



4. The applicants stated that apart from the 1<sup>st</sup> to 6<sup>th</sup> Objectors the other Objectors were not present in court when the grant was confirmed. She asked the court to revoke the grant.
5. The respondent opposed the application vide a replying affidavit dated 6<sup>th</sup> June 2019 and filed written submissions dated 28<sup>th</sup> February 2022. It is the Respondent's case that the 1<sup>st</sup> applicant and her children commenced the succession proceedings and cannot purport that they were commenced secretly. The respondent purchased 8.4 acres of Land Parcel No. LR NO. NANDI/NDALAT/248 from the applicants vide the sale agreement dated 8<sup>th</sup> May 2013. He further purchased some more land from the estate vide sale agreements dated 16<sup>th</sup> June 2015 and 25<sup>th</sup> June 2015. He took possession of the properties and has been in possession since. He was also included as a beneficiary to the estate by the applicant when she filed succession proceedings. The Respondent participated in the proceedings without any objection from the applicants who were also present when the grant was confirmed on 13<sup>th</sup> February 2017. Since there was an error on the grant, he filed an application for rectification. The applicants then filed the present application.
6. The Respondent cited section 76 of the Law of Succession act and submitted that the IDs of the applicants did not show that they were totally blind. He stated that the applicants had failed to satisfy the principles to warrant revocation of the grant, and that appeal should be dismissed.
7. Upon perusing the pleadings and considering the submissions by the parties the only issue is whether or not the grant herein should be revoked.
8. Section 76 of the Law of Succession Act states: -

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.
9. The bone of contention is that the respondent obtained the consent of the objectors to the confirmation of the grant of letters of administration fraudulently. It is trite law that he who alleges must prove. Further, fraud is a serious allegation and the objectors must prove their allegation to warrant the orders sought being granted.



10. It is evident that the applicants appended their signatures in the succession documents. Further, that they were present before the court to consent to the confirmation of the grant. The applicants have not laid any evidence before this court that would lead to the conclusion that there was fraud and coercion involved in the succession proceedings. Merely claiming there was fraud is not sufficient. There is no evidence that the objectors were blind at the time of consent to the confirmation, or that the alleged blindness was a tool for coercion and fraud resulting in the confirmation of the grant of letters of administration.
11. It is my view that the application has no merits. It is hereby dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 30<sup>TH</sup> MAY 2022.**

**E. K. OGOLA**

**JUDGE**

