



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of M'mugambi M'mbogori (Deceased) (Succession Cause
368 of 2005) [2022] KEHC 11194 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11194 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 368 OF 2005**

TW CHERERE, J

MAY 26, 2022

IN THE MATTER OF THE ESTATE OF M'MUGAMBI M'MBOGORI (DECEASED)

BETWEEN

ISABELLA MUKAMI MICHENI 1ST PETITIONER

GEOFFERY MWORIA M'MUGAMBI 2ND PETITIONER

AND

JULIA KANANA M'MBOGORI INTERESTED PARTY

RULING

Introduction

1. Deceased's died sometimes on May 25, 2003. Letters of Administration were issued to both petitioners on 04th May, 2008. The estate was subsequently distributed as demonstrated by the certificate of confirmation of grant dated May 12, 2008.
2. Deceased's estate comprised of various assets including but not limited to LR. No. Ex. Lewa Settlement Scheme/441 that is the subject of this ruling. The said asset was distributed wholly to Geoffery Mworia M'mugambi (2nd petitioner/respondent) who is one of the children of the deceased.

Interested Party/Applicant's case

3. By summons for revocation dated July 18, 2014, applicant seeks orders for revocation of the grant issued to the respondents on October 4, 2006 and confirmed on May 12, 2008. Her case is contained in the application and on her supporting affidavit sworn July 18, 2014 and is based mainly on the ground that deceased had gifted her LR. No. Ex. Lewa Settlement Scheme/441 and having settled thereon is entitled to the same.



4. Contrary to her pleadings that the disputed asset was gifted to her by the deceased, applicant in her evidence stated that deceased bought the said asset and she refunded to him the purchase price and the asset ought to have been distributed to her. The applicant called Isabella Mukami Micheni (1st petitioner) who was deceased's wife as her witness. It was her case that the deceased bought the disputed asset and sold it to the applicant and has been in occupation for long. According to Charles Gikundi Mugamba another of deceased's children, stated that Applicant did not buy the disputed asset and that the deceased had in a family meeting held on March 21, 1990 expressed his wish to have applicant occupy and use the said asset for life.

2nd Petitioner/Respondent's Case

5. Geoffery Mworira M'Mugambi (2nd petitioner/respondent) acknowledges that the applicant has been in occupation of the disputed asset for long. He stated that it was the deceased's wishes as expressed in a family meeting held on March 21, 1990 that applicant use the disputed asset for her life and that he committed to fulfil deceased's wishes. His witness Lucy Kagwiria, a daughter of the deceased confirmed that applicant was in occupation of the disputed asset.

Analysis and determination

6. I have considered the application in the light of the affidavits and oral evidence and also on the submissions filed on behalf of the Applicant and I have deduced the issue for determination as hereunder:
 1. Whether LR. No. Ex. Lewa Settlement Scheme/441 belonged to deceased or to the Applicant
 2. Whether deceased gifted LR. No. Ex. Lewa Settlement Scheme/441 to the applicant
 3. Whether a case has been made for revocation of the grant.

1) Whether LR. NO. Ex. Lewa Settlement Scheme/441 belonged to deceased or to the Applicant

7. The certificate of search and extract of title for LR. No. Ex. Lewa Settlement Scheme/441 discloses that it was registered in the name of deceased on 29th April, 1987.
8. Applicant has not demonstrated that she either bought the disputed asset or refunded the purchase price to deceased. Consequently, I find that LR. No. Ex. Lewa Settlement Scheme/441 formed part of deceased's intestate estate.

2) Whether deceased gifted LR. NO. EX. LEWA SETTLEMENT SCHEME/441 to the Applicant

9. In law, gifts are of two types. There are the gifts made between living persons (gifts inter vivos), and gifts made in contemplation of death (gifts mortis causa).
10. Gifts inter vivos must be established by evidence. *In re Estate of The Late Gedion Mantbi Nzioka (Deceased)* [2015] eKLR, it was held that:

For gifts inter vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trusts or the presumption of. Gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be complete for the same to be valid. In this regard it is not necessary for the donee to give express acceptance, and acceptance of a gift is presumed until



or unless dissent or disclaimer is signified by the donee. (Emphasis added). See in this regard Halsburys Laws of England 4th Edition Volume 20(1).”

11. There is evidence that on 2 March 1, 1990, deceased called a family meeting and expressed his wish, in writing, that applicant occupies and uses the said asset for life.
12. A life interest confers a limited right over the intestate estate and does not confer absolute ownership over the property. From the foregoing, I find that applicant does not have a right of absolute ownership over LR. No. Ex. Lewa Settlement Scheme/441 but she has a legitimate expectation to have her life interest over the said asset protected.

3) Whether Applicant has been made a case for revocation of the grant.

13. The court in *Jamleck Maina Njoroje v Mary Wanjiru Mwangi* [2015] Eklr stated that;

“The circumstances that can lead to the revocation of grant have been set out in section 76 Law of Succession. For a grant to be revoked either on the application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”
14. Both petitioners have conceded that they were aware that it was the intention of the deceased that applicant enjoy a life interest over the disputed asset. None of them has explained why this vital information was concealed from the court at the time of distribution of deceased’s estate.
15. The concealment only affects one asset and I find that it would not be in the interest to revoke the grant for to do so will no doubt not only increase costs for the parties but would be inconsistent with the overriding objective of the court to facilitate the just, expeditious, proportionate and affordable resolution of cases. I find that an amendment to the certificate of confirmation of grant will suffice to ensure that the applicant’s right is protected.
16. In the end, the orders which commends to me and which I hereby issue are that:
 1. Applicant has not made out a case for revocation of the grant issued on October 4, 2006 and confirmed on 1 May 2, 2008.
 2. The certificate of confirmation of grant dated 12th may, 2008 shall be amended to include applicant’s life interest on LR. No. Ex. Lewa Settlement Scheme/441 that was distributed to Geoffery Mworira M’Mugambi
 3. Mention on June 20, 2022 to confirm compliance with order (2) and to that end, the 2nd petitioner/respondent shall be required to file a certificate of official search
 4. Each party shall bear its own costs of this application

DATED AT MERU THIS 26TH DAY OF MAY 2022

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti



For I. Party/Applicant - Ms. Kimotho for Gichunge Muthuri & Co. Advocates

1st Petitioner - In person

For 2nd Petitioner/Respondent - Mr. Kariuki for M/s. Mithega & Kariuki Advocates

