



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Samuel Kiragu Itongu (Deceased) (Succession Cause  
501 of 2015) [2022] KEHC 12417 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12417 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
SUCCESSION CAUSE 501 OF 2015**

**K KIMONDO, J**

**JULY 28, 2022**

**RE ESTATE OF SAMUEL KIRAGU ITONGU (DECEASED)**

**BETWEEN**

**JECINTA WANJIRU NJUGUNA ..... APPLICANT**

**AND**

**JOHN KIBE KIRAGU ..... 1<sup>ST</sup> RESPONDENT**

**MARGARET NJERI KIRAGU ..... 2<sup>ND</sup> RESPONDENT**

**JAMES NJUGUNA KIRAGU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Samuel Kiragu Itongu (hereafter the deceased) died intestate on November 11, 2011. His widow, Anastacia Wanjiru Kiragu (who is now also deceased) and her two children (the 2<sup>nd</sup> and 3<sup>rd</sup> respondents) petitioned for a grant to the estate at the subordinate court at Thika in Succession Cause Number 154 of 2012.
2. A grant was issued to them on August 20, 2012 and confirmed by the same court on September 20, 2013.
3. I should point out that pursuant to a petition dated April 26, 2022, the High Court ordered that Anastacia Wanjiru Kiragu be substituted in these proceedings by her son John Kibe Kiragu (now the 1<sup>st</sup> respondent).
4. In the summons dated July 7, 2015, the original applicant was Wangari Korio (the widow of Korio Juma). She prayed that the grant issued by the magistrates court at Thika be revoked. Sadly, she has also died and was substituted by her daughter-in-law, Jecinta Wanjiru Njuguna, on October 26, 2021.



5. The applicant's case is that the grant was fraudulent and made in secret for a number of reasons. Firstly, that the respondents failed to disclose the existence of "proceedings in Thika CMCC no 154 of 1984, Thika CMCC no 618 of 1993 and Nairobi High Court Civil Appeal no 150 of 1998".
6. The applicant contended that net result of all those cases was that a portion measuring 4.4 acres out of Loc 4/Naaro/301 was to be transferred by the deceased to Korio Juma (now also deceased). The applicant submitted that the grant unlawfully vested the entire property to the late Anastacia Wanjiru Kiragu.
7. All those matters are detailed at length in the affidavit of Wangari Korio sworn on July 7, 2015.
8. The application is contested through a replying affidavit sworn on September 14, 2015. The objections are three-fold: firstly, that Korio Juma was not entitled to the property but the deponent implored her husband (the deceased) to give Korio's family an area to cultivate. Paraphrased, the offer was gratuitous and that accordingly, the deponent was entitled to the whole share of the land.
9. Secondly, that the area apportioned was never surveyed and is less than the 4.4 acres claimed; and, thirdly, that it is not true that Korio Juma was related to the deceased or made any consideration for the land.
10. On October 26, 2021, I directed that the matter be determined on the basis of the depositions and submissions. The applicant's submissions were filed on December 7, 2021. The respondents lodged theirs on February 17, 2022.
11. On July 13, 2022, I heard further arguments from the learned counsel for both parties.
12. I take the following view of the matter. A grant, whether or not confirmed, may be revoked either by the court *suo moto*; or, by an application made under section 76 of the [Law of Succession Act](#) (hereafter the Act).
13. I find that the grant issued and confirmed by the subordinate court at Thika is defective for four main reasons. Firstly, that prior to the death of the deceased, there were proceedings between him and the late Korio Juma before a panel of elders. In Thika CMCC 154 of 1984 the award by the Land Disputes Tribunal was adopted by the court. An order was later made in the file on December 9, 2002 authorizing the executive officer to execute the necessary transfer instruments.
14. An appeal against the ruling was lodged in Nairobi High Court Civil Appeal 150 of 1998. It was dismissed on merits. It would seem that a further appeal to the High Court in Nairobi High Court Civil Appeal 449 of 2003 was dismissed for want of prosecution.
15. The outcome of all that litigation is that Korio Juma was entitled to 4.4 acres out of Loc 4/Naaro/301.
16. Secondly, Korio Juma predeceased Samuel Kiragu Itongu. The applicant in the meantime took out letters of administration to Juma's estate in Thika Magistrates Cause 210 of 2006 confirming that 4.4 acres belonged to the estate. But before any transfer could be effected, Samuel Itongu died on November 11, 2011. Instead of honouring the decree, his widow Anastacia, clandestinely obtained the impugned grant and transferred to herself the entire Loc 4/Naaro/301.
17. Thirdly, upon the dismissal of the respondents' appeal in Nairobi High Court Civil Appeal 150 of 1998 and in the absence of any further appeal or order, the retort by the respondents that Juma Korio was not entitled to the 4.4 acres is belated and on a legal quicksand.
18. Fourthly, the submissions or objection by Mr Karuga Wandai, learned counsel for the respondents is a technical one: He opines that the applicant should seek relief under any of the three cases being Thika



CMCC 154 of 1984; Thika CMCC 618 of 1993 and Nairobi High Court Civil Appeal 150 of 1998; and, should not be accommodated in the instant proceedings.

19. In view of article 159 (2) (d) of the Constitution, rule 73 of the Probate and Administration Rules and the court's overriding objective to do justice to the parties, the submissions by Mr Wandai are feeble. See also Harit Sheth Advocate v Shamas Charania Nairobi, Court of Appeal, Civil Appeal 68 of 2008 [2010] eKLR. I thus find that the summons for revocation of the grant are properly before this court.
20. The other objection is that the original applicant and one of the respondents are dead and have not been substituted. That submission is not well founded. Anastacia Wanjiru Kiragu was substituted in these proceedings by her son John Kibe Kiragu on July 13, 2022. The original applicant in the summons for revocation of grant was also substituted by her daughter-in-law, Jecinta Wanjiru Njuguna, on October 26, 2021.
21. I have thus reached the conclusion that the grant issued to the respondents on August 20, 2012 and confirmed on September 20, 2013 in Thika Chief Magistrates Succession Cause Number 154 of 2012 was obtained fraudulently by making a false statement or by concealment from the court of something material to the case.
22. For all those reasons, I order as follows:
  - a) That the grant issued to Anastacia Wanjiru Kiragu, Margaret Njeri Kiragu and James Njuguna Kiragu on August 20, 2012 and confirmed on September 20, 2013 in Thika Chief Magistrates Succession Cause Number no 154 of 2012 be and is hereby revoked.
  - b) That any transfer of the property known as Loc 4/Naaro/301 under the above grant is hereby cancelled.
  - c) That under powers donated by rule 73 of the Probate and Administration Rules; and, to ensure that the ends of justice are not defeated, I *suo moto*, grant an injunction restraining the respondents, their agents or assigns or in any other manner whatsoever from transferring 4.4 acres out of Loc 4/Naaro/301 to any other person other than the beneficiaries of Korio Juma (now also deceased).
  - d) That there shall be no order on costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 28<sup>TH</sup> DAY OF JULY 2022.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of:**

**Mrs Njomo for the applicant instructed by Muthoni Njomo & Company Advocates.**

**Mr Kibe holding brief for Mr Wandai for the respondents instructed by Karuga Wandai & Company Advocates.**

**Ms Susan Waiganjo, Court assistant.**

