



**In re Estate of Nahashon Kabagara (Deceased) (Succession Cause 1867 of 2011)  
[2022] KEHC 13345 (KLR) (Family) (30 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13345 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1867 OF 2011  
MA ODERO, J  
SEPTEMBER 30, 2022**

**BETWEEN**

**ESTON MAINA JOSPHAT ..... 1<sup>ST</sup> APPLICANT**

**HELLEN WANGUI MWANGI ..... 2<sup>ND</sup> APPLICANT**

**(SUING IN HER CAPACITY AS THE LEGAL REPRESENTATIVE OF THE  
STEPHEN MWANGI NEENE - DECEASED)**

**AND**

**MARY WAMBUI MWANGI ..... ADMINISTRATOR**

**JUDGMENT**

1. Before this court for determination is the summons for revocation of grant dated August 9, 2021. The objectors, Eston Maina Josphat and Hellen Wangui Mwangi (suing as the legal representatives of the estate of Stephen Mwangi Neene) pray that the grant issued to the respondent Mary Wambui Mwangi in respect of the estate of the late Nahashon Kamau Kabagara be revoked/annulled. The summons was supported by the affidavit of even date sworn by the both objectors.
2. The respondent herein was properly served with the summons personally *vide* the affidavit of service dated May 9, 2022 sworn by Simon G Kamau a licensed court process server. She did not enter appearance in the matter and did not file any reply to the summons. The matter then proceeded as an undefended cause.
3. The matter was canvassed by way of written submissions. The objector filed written submission which were not dated.



## Analysis and Determination

4. This succession cause relates to the estate of Nahashon Kamau Kabagara (hereinafter ‘the deceased’) who died intestate on August 5, 1989. A copy of the Death Certificate Serial Number 381703 is annexed to the petition for grant of letters of administration intestate filed by the respondent.
5. The deceased was survived by the following persons:-
  - (i) Rahab Nyambura – widow (deceased)
  - (ii) Riwel Mwangi Kiguthi- son (deceased)
  - (iii) Laban Maina Kamau – son
  - (iv) Esbon Macharia Kamau – (deceased)
  - (v) Mary Wambui Mwangi – daughter-in-law
6. The estate of the deceased was said to comprise of the following properties/assets.
  - “(a) Loc [particulars withheld]
  - (b) Loc [particulars withheld]
  - (c) Loc [particulars withheld]
  - (d) Plot No [particulars withheld]”
7. Following the demise of the deceased the respondent who was his daughter-in-law filed a petition dated August 17, 2011 seeking to be issued with grant of letters of administration intestate in respect of the estate of the deceased. The grant was duly issued to the respondent on December 2, 2011. Thereafter a certificate of confirmed grant dated October 1, 2012 was issued to the respondent. The confirmed grant indicated that the estate of the deceased was to devolve entirely to the respondent.
8. The objectors seek to have the confirmed grant issued to the respondent revoked on grounds that the same was obtained fraudulently by concealment of material facts to wit that the property known as Loc [particulars withheld] (herein after the “suit land’) did not belong entirely to the deceased. The objectors claim that the suit property was registered jointly in the names of -
  - Nahashon Kamau Kaibagara (deceased)
  - Stephen Mwangi
  - Eston Maina
9. The objectors state that the 1<sup>st</sup> objector who is still alive claims a one-third share of the suit land. That Stephen Mwangi, who also held a one-third share of the suit land passed away on December 8, 2016 but is represented in these proceedings by his widow Hellen Wangui Mwangi (the 2<sup>nd</sup> objector). The objectors annexed to their supporting affidavit a copy of a grant ad litem issued to the 2<sup>nd</sup> objector authorizing her to represent the estate of her late husband. The objectors allege that the respondent fraudulently obtained the grant in her name by failing to disclose to the court that the suit land was infact registered in the names of three persons.
10. In support of their claim to a one-third share each of the suit land the objectors have annexed a copy of a letter dated March 17, 2021 written on the letter head of Muranga County Government indicating



that the suit land was registered in the names of Nahashon Kamau, Stephen Mwangi and Eston Maina (annexure EJN '3')

11. The document which the objectors seek to rely on to prove their claim is merely a letter from the Sub County Planner Muranga County. It is not written by the Registrar of Lands Muranga. The objectors have not annexed a copy of search against the suit land, nor have they annexed a certificate of title for the said parcel of land. In short, no documents have been annexed to prove the objectors claim to the suit land.
12. The objectors also seek to rely on the chiefs letter dated January 10, 2011 in which the Chief of Yego Location Kangema District stated that the land left by the deceased was owned jointly with other partners. This letter is of no evidential value for the following reasons. Firstly, it is not specified in the letter which parcels of land the deceased owned with other partners. Secondly, the names of the alleged partners are not mentioned in the letter. Thirdly, the chief is not the custodian of titles in Murang'a and has no authority to state who the owners of any parcel of land in Murang'a County are.
13. From their pleadings it is manifest that the objectors are infact claiming 'ownership' of one of the parcels of land alleged to belong to the estate of the deceased. Therefore the dispute in this matter involves the question of 'ownership' of the suit land. The respondent claims that the suit land is the property of the estate of the deceased and is available for distribution, whilst the objectors asserts that the deceased held the suit land in trust for his partners.
14. Matters relating to the ownership use and occupation of land have now under article 162 of the [Constitution of Kenya](#) 2010 been mandated to be determined by a specialized court being the Environment and Land Court ('ELC').
15. Section 13 of the [Environment and Land Court Act](#) provides for the jurisdiction of that court as follows:-
  13. Jurisdiction of the court
    - (1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
    - (2) In exercise of its jurisdiction under article 162(2)(b) of the Constitution, the court shall have power to hear and determine disputes——
      - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
      - (b) relating to compulsory acquisition of land;
      - (c) relating to land administration and management;
      - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
      - (e) any other dispute relating to environment and land. [Rev 2012] No 19 of 2011 Environment and Land Court 9 [issue 1]



16. Therefore, the correct and proper forum before which the objectors ought to ventilate their claim to the suit land is the ELC. The Environment and Land Court is the only court exclusively mandated by law to determine the question of ‘ownership’ of the suit land.
17. In *Re Estate Of Stone Kathubi Muinde (Deceased)* [2016] eKLR Hon Justice William Musyoka held that:-

“Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the Civil Procedure Act and the Civil Procedure Rules. This could mean filing suit at the magistrates’ courts, or at the civil or commercial divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.” (own emphasis)
18. If the objectors obtain judgment in their favor in the Environment and Land Court then they are at liberty to file the decree in this cause for implementation by this probate court.
19. Finally, I find that the objectors have failed to prove their claim to the suit land and have failed to prove that the grant issued to the respondent was obtained fraudulently. I find no merit in this summons for revocation of grant and the same is dismissed in its entirety.
20. Costs to be met by the objectors.

**DATED IN NAIROBI THIS 30TH DAY OF SEPTEMBER, 2022.**

.....

**MAUREEN A. ODERO**

**JUDGE**

