



**Kago v Githumbi (Succession Cause 324 of 2009)
[2022] KEHC 13099 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 324 OF 2009
FN MUCHEMI, J
SEPTEMBER 22, 2022**

**N THE MATTER OF THE ESTATE OF JOSEPH TITUS WANDUKA
(DECEASED**

BETWEEN

MERCY WAMBUI KAGO APPLICANT

AND

JANE WAMBUI GITHUMBI RESPONDENT

RULING

1. The deceased in this cause died on July 9, 2006 and the applicant herein filed an application dated April 7, 2009 to restrain the administrators/respondents from collecting, transferring or doing any other act in the estate of the deceased. A second application dated April 7, 2009 was filed together with the first one seeking revocation of grant obtained by the respondents in regard to the deceased's estate on grounds that the same was obtained fraudulently and non-disclosure of facts material to the cause.
2. The record shows that orders to restrain respondent from intermeddling transferring assets were granted on April 27, 2007 by Kasango J However, information obtained by the applicant later revealed that the only asset of the deceased LR Mwerua/Kagio/297 had been subdivided into two portions by the 1st respondent and transferred to two different people. LR Mwerua/Kagio/3883 was registered in the name of Millicent Wanjiru Mutugi and LR Mwerua/Kagio/3884 to Paul Gathura Gachau.
3. This file does not have any evidence of any restriction orders having been obtained by the applicant to preserve the estate of the deceased which had transited to 3rd parties through the 1st respondent. Even with that knowledge the applicant proceeded with the hearing of the summons for revocation. At first she was represented by Ongegu & associated. The firm of Macharia Gakaria & Company took over the cause to represent the applicant. Currently Ms Wachira of Kituo Cha Sheria is on record for the applicant.



4. The main application which sought for revocation of grant was later dismissed for non-attendance during a hearing by the order of the court dated May 12, 2009. However, the application was later reinstated and a hearing date fixed.
5. During the pendency of the matter, the 1st respondent Grace Wangeci Gathumbi died and was never substituted despite the counsel on record for the respondents being accorded time to do so. Messrs Magee & Magee advocates for the 1st respondents successfully applied to cease from acting for her on May 3, 2021.
6. Thereafter, the summons for revocation was fixed for hearing and the 2nd respondent Jane Wambui was served in person and failed to attend court. The court having confirmed service proceeded with the hearing of the summons and *viva voce* evidence of the applicant was taken.
7. As the court set to prepare for the ruling, the following observations were made
 - a. That the grant sought to be revoked was issued and confirmed in Murang'a Senior Principal Magistrate Succession Cause No 68 of 2007 as per copy of grant attached to the applicant's application dated April 7, 2009.
 - b. That the attached copy shows the grant was issued on November 2, 2007 and confirmed the same day in favour of Grace Wambui Gathumbi the 1st respondent, now deceased.
 - c. That the applicant in her supporting affidavit states that she learnt that the letters of administration intestate in the Murang'a case was issued on November 2, 2007.
 - d. That although this cause was registered as Nyeri succession Cause No 324 of 2009, it is not a succession cause but just a summons for revocation of grant and that the Murang'a file was never forwarded to Nyeri to facilitate the hearing and determination of the summons.
8. The position in this case is clearly explained in my observations. It is not known why the applicant filed the matter in Nyeri while the original file remained in Murang'a. The applicant was represented by an advocate who ought to have advised the applicant that she files the summons at Murang'a or alternatively seek for orders to call for the file from Murang'a.
9. The Magistrate Court at Murang'a has jurisdiction under section 76 of the [Succession Act](#) and rule 44 of the [Probate and Administration Rules](#) to revoke a grant made by the same court. As such, the filing of the matter in Nyeri has not been explained.
10. It is my considered view that this court cannot proceed to determine this summons for revocation without the main file. Furthermore, the court that issued the grant and confirmed it is best suited to deal with the summons herein.
11. For the above reasons, I hereby invoke the powers of this court granted under section 18 of the [Civil Procedure Act](#) to make the following orders:-
 - a. That this file be and is hereby transferred for disposal to the Chief Magistrate Murang'a.
 - b. That the Deputy Registrar sends this file to Murang'a to be joined with Murang'a Succession Cause No 08 of 2007.
12. It is hereby so ordered.

DATED AND SIGNED AT NYERI THIS 22ND DAY OF SEPTEMBER, 2022.

F. MUCHEMI



JUDGE

RULING DELIVERED THROUGH VIDEO LINK THIS 22ND DAY OF SEPTEMBER 2022

