



REPUBLIC OF KENYA



In re Estate of the Late Simeon Wakaba Murigii (Deceased) (Succession Cause 4 of 2017) [2022] KEHC 16816 (KLR) (20 December 2022) (Judgment)

Neutral citation: [2022] KEHC 16816 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 4 OF 2017
RB NGETICH, J
DECEMBER 20, 2022**

**IN THE MATTER OF THE ESTATE OF THE LATE SIMEON WAKABA MURIGII ALIAS
SIMON WAKABA MURIGI ALIASSIMEON WAKABA JOHN MURIGI (DECEASED)**

BETWEEN

**WILIAM KIUNA GACHUHI 1ST APPLICANT
JULIA WANGARI NG'ANG'A 2ND APPLICANT
RACHAEL MUMBI NGETH 3RD APPLICANT
MARTHA NJERI MWANGI 4TH APPLICANT**

AND

**TABITHAH WANJIRU KABUI KIMANI 1ST RESPONDENT
MARY MUTHONI WAKABA 2ND RESPONDENT**

JUDGMENT

1. The applicants herein filed summons for revocation of grant dated January 30, 2019 seeking the following orders: -
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That the grant of letters of administration issued to Tabitha Wanjiru Kabui Kimani and Mary Muthoni Wakaba be revoked /annulled.



- e. That this honourable court be pleased to issue an order that the applicants herein be enjoined in this cause as creditors to the estate of the deceased in relation to the property known as LR No Dundori/ Miroreni Block 2/10XX (Ndimu) forming part of the estate herein.
 - f. That the costs of this summons application be provided for.
2. The application is premised on the grounds that the grant was obtained fraudulently through concealment of material facts; that property LR No Dundori/ Miroreni block 2/10XX (Ndimu) is subject to legal proceedings on ownership before the Nakuru ELC No 163 of 2013; that the respondents obtained the grant on April 6, 2018 despite the pendency of the determination of the issue of ownership on the suit property and the applicants stand to suffer irreparable loss if the grant is not revoked as the applicants have been in open possession of the property since the year 1995.
 3. The application is supported by the annexed affidavit of Julia Wangari Ng'ang'a who reiterated the grounds of the application.
 4. In response, the respondents jointly filed a replying affidavit sworn on June 18, 2019 in which they deponed they are the administrators of the estate of their deceased father and there was no concealment of material facts as the deceased was the owner of the suit property; that the suit filed in Nakuru ELC No 163 of 2013 seeking adverse possession abated in the year 2016.
 5. The respondents further argued that the allegation that Naomi Wangui Wakaba wife to the deceased was served with the citation is unfounded as she predeceased the deceased in the year 2013. The respondents were not tasked with the responsibility of substituting the deceased being the deceased had no claim in the suit.
 6. The respondent further contends the deceased estate comprised of vast properties and thus revoking the grant will prejudice the respondents. The respondents argued that the applicants have no claim on the property as the same is based on adverse possession.
 7. Respondents further argued that this court lacks the jurisdiction to determine the issue of ownership of the property.
 8. The applicants filed a further affidavit sworn on March 29, 2021, in which she stated that the abated suit Nakuru ELC No 163 of 2013 was revived on March 18, 2021 by Justice Mutungi and urged this court to partially revoke the grant relating LR No Dundori/ Miroreni Block 2/10XX (Ndimu) due to the pendency of the suit.
 9. On February 4, 2021, directions were taken to canvass the application by way of written submissions after attempts to resolve the matter through negotiations failed.

Applicant's Submissions

10. The applicants filed submissions dated May 11, 2021 and submitted that when the respondents applied for a grant of the estate of Simeon Wakaba Murigi, they failed to notify the court of the existence of Nakuru ELC No 163 of 2013 whose dispute involve ownership of the property and therefore concealed material facts.
11. The applicants further submitted that the suit has been revived and the administrators have the full knowledge of the existence of the suit; and further submitted that the applicants are not related to the deceased but are entitled to LR No Dundori/Miroreni Block 2/10XX (Ndimu) by virtue of section 66 of the *Law of Succession Act*. The applicants claim to be creditors of the estate of the deceased and urged the court to allow the application and issue costs to the applicants.



Respondents Submissions

12. Counsel for the respondents filed submissions dated March 30, 2022 and submitted that the applicants lack the *locus standi* to bring this application as they have no relationship with the deceased Simeon Wakaba; that their claim on the disputed parcel lies in adverse possession despite appreciating the fact that the property is registered in the name of deceased Simeon.
13. Counsel further submitted that the applicants do not qualify as interested parties to the estate and are not creditors to the estate and cannot therefore apply for the revocation of the grant; and cited the case of *in estate of Michael Baraza Oscar (deceased)* [2020] eKLR the court held as follows: -

“As the applicant was neither a member of the family of the deceased nor a person that could be properly said to be a creditor of the estate, I do not find any basis upon which he could validly mount an application for revocation of grant. He holds no decree against the estate of the deceased, he has not provided any proof that he had entered into any contractual arrangements with the deceased that would have constituted him a creditor, warranting being listed in the liability schedule of the petition, and being provided from the estate. there cannot have been any obligation on the part of the administrator to involve him in the process of obtaining the grant or confirming it.”
14. The respondent further submitted that the applicants have failed to prove their relationship with the accused and that the deceased was the registered owner of the property in dispute.
15. Further that the grant was issued after the ELC 163 of 2013 was abated and the applicants had not sought substitution; that there was no concealment of material facts and this court lacks the jurisdiction to adjudicate on the issue of the validity of the enforceability of the title and urged this to dismiss the application.

Analysis and Determination

16. I have considered the grounds of the application, averments in the affidavit, and submissions filed by parties herein and wish to consider whether the application meets the threshold for the revocation of the grant.
17. The applicants argued that prior to the grant of letters of administration, the respondents failed to disclose the existence of ELC 163 of 2013 which relate to ownership of the property known as LR No Dundori/Miroreni Block 2/10XX (Ndimu).
18. The circumstances under which a grant of representation may be revoked are provided for under section 76 (a) - (e) of the *Law of Succession Act* and include;
 - a) Were the proceedings to obtain the grant were defective in substance;
 - b) Where 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) Where 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) Where 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) Where the grant has become useless and inoperative through subsequent circumstances.
19. The wording of section 76 of Succession Act is clear on the grounds upon which a grant can be revoked. It is incumbent upon any party making an application for revocation or annulment of a grant to demonstrate the existence of any, some, or all of the grounds set out under the Act.
 20. The applicants seek the revocation of the grant on the ground that there was concealment of material facts as captured in paragraph 17 above.
 21. Record show that the applicants are not heirs to the deceased and their interest is based on adverse possession. They claim they have been in the possession of the property since 1995. They aver their interest is that of creditors of the estate of the deceased.
 22. A creditor is a person to whom a debt is owing by another person, called the “debtor.” It means one who has a legal right to demand and recover from another a sum of money on any account whatever.
 23. From the record the property known as LR No Dundori/Miroreni Block 2/10XX (Ndimu) is registered in the name of the deceased Simeon and the title was issued on December 30, 1996. The applicants have not adduced evidence on how they acquired the suit property. They have no claim over who sold them the property.
 24. The primary duty of the probate court is to distribute the estate of the deceased to the rightful beneficiaries and which jurisdiction is over the net estate of the deceased being that which he was free to deal with during his lifetime.
 25. The Environment and Land Court deals with matters touching on the title to, and occupation of land. The issue of adverse possession falls squarely under the jurisdiction of the said court.
 26. The applicants contend they filed a suit for adverse possession which suit abated but has been reinstated. They now seek to revoke the grant with respect to the property in dispute. They claim they will be prejudiced if the revocation is not granted. Section 76 of the law of Succession Act gives a threshold upon which a grant may be revoked. In my view, the applicants have failed to meet the threshold for revocation of the grant. There was no concealment of material facts by the respondents. Record show that the grant was issued on September 18, 2017 to the respondents and confirmed on April 6, 2018.
 27. The applicants have asserted they have been in occupation of the suit land since 1995 and developed the property. No independent evidence has been adduced to confirm that.
 28. From the foregoing, I find the applicants have failed to advance sufficient reason to revoke grant; they have failed to establish their interest in the estate of the deceased and therefore lack the *locus standi* to seek the revocation of the grant. The applicants’ application lacks merit; the same is hereby dismissed.



29. Final Orders: -

- 1) Application dated January 30, 2019 is hereby dismissed
- 2) Costs to the respondents.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY

THIS 20TH DAY OF DECEMBER 2022

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RACHEL NGETICH

JUDGE

In the presence of:

Martin - Court Assistant

Ms. Karanja for the Applicants

Gatu Magana for Respondent

