



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Muindi Ndolo (Deceased) (Succession Cause  
160 of 2007) [2021] KEHC 342 (KLR) (16 December 2021) (Ruling)**

Neutral citation: [2021] KEHC 342 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 160 OF 2007  
MW MUIGAI, J  
DECEMBER 16, 2021**

**RULING**

Background

1. The deceased died on 5<sup>th</sup> January 2000.
2. The family through Ngondu Muindi & John Munyao filed Petition for grant of letters of administration on 10<sup>th</sup> April 2000 and listed beneficiaries as follows;
  - a) Ngondu Muindi – widow of the deceased
  - b) John Munyao – son of the deceased
  - c) Veronica Ndinda Mutunga- daughter of the deceased-married
3. The assets that comprised the estate of the deceased were/are;
  - a) Kangundo/Musiani /709
  - b. Kangundo /Isinga/828
  - c. 454/block 5 -Athi River
4. The Grant of Letters of Administration in relation to the estate of Muindi Ndolo, the deceased herein was granted jointly to the Respondent and Ngondu Muindi on 10<sup>th</sup> July, 2007.
5. The said grant was confirmed vide Summons for Confirmation of 29<sup>th</sup> July, 2008, with all the properties to be registered in the name of the son of the deceased; John Munyao Muindi. No written consents were obtained from the widow of the deceased and the daughter of the deceased.



6. The Applicants/Objectors lodged Summons for Revocation of the said grant on 28<sup>th</sup> October 2020. The Applicants sought the following orders:-

1. That this application be certified urgent and be heard *ex parte* in the first instance
2. That pending the hearing and determination of this application *inter partes* and order of preservation of the assets of the estate be and is hereby issued forbidding any further transaction whatsoever and/ or registration, finalization, transfer, charge, lease or making of any further entry on land parcel known as Kangundo/Muisuni/709, Kangundo/Isinga/828 and Athi River Block 5/454 other than entry of this order.
3. That the Confirmation of Grant of letters of administration *intestate* and the Certificate of Confirmation of Grant issued on 29<sup>th</sup> day of July,2008 be and is hereby annulled and revoked and in its place a fresh Grant of Letters of Administration do issue to Mumbua Muindi and Angelina Mbula Muindi.
4. That the transaction and the transfers effected on the strength of the confirmed Grant issued on the 29.7.2008 in this matter and the resultant new titles be and are hereby cancelled.
5. That all the assets do revert back to the estate for fresh distribution.
6. That the costs of this application be in the cause

2. The Summons ARE based on general grounds that the grant was obtained by making false statements and in absolute secrecy. According to the Applicants, they are children of the deceased but were not mentioned in the Petition and were disinherited by the administrators. The Respondents failure to involve objectors and 4 households was aimed at disinheriting them. The Applicants stated that the deceased had four wives namely:

First Wife-Ndila Muindi (deceased)

Mwatu Muindi-son

Grace Muthike-daughter

Nzyoka Muindi-Son

Mutua Muindi-son

Mbula Muindi-daughter

Kivuva Muindi-son

Muthama Muindi-son

Second Wife-Ngondou Muindi (deceased)

Munyao Muindi-son

Veronica Ndinda-daughter

Third Wife-Mwikali Muindi (deceased)

Serah Ngondou-daughter

Munyiva Philip-son



Mary Muindi-daughter  
Esther Maria Muindi-daughter (deceased)  
Jane Muthio Muindi-daughter (deceased)  
Mumbua Muindi-daughter  
Mutindi Muindi-daughter (deceased)  
Fourth Wife-Katunge Muindi (deceased)  
Monicah Mulee-daughter (deceased)  
Onesmus Ndolo Muindi-son (deceased)  
Makau Muindi-son  
Dorothy Syombua-daughter.

3. The Applicants have stated that they were not requested to give their consents to lodge the Petition, mode of distribution or the appointment of the Respondent as the administrator. According to the Applicants, they only discovered about the existence of the Petition when the Petitioner was selling the assets of the deceased. The Applicants have asserted that the Respondent did falsify documents as his appointment was done in secrecy, in bad faith and without the consents of all the Applicant's household. According to the Applicants, the failure to comply with mandatory provisions of the law makes the process defective and the concealment of an entire households distorts the picture presented to court and amounts to misrepresentation.
4. The application is supported by the affidavit of Mumbua Muindi and Angelina Mbula Muindi. According to the deponents, the deceased left behind properties namely Kangundo/muisuni/709, Kangundo/isinga/828 and ATHI River Block 5/454. The deponents averred that they have learnt that the Respondent fraudulently has sold and/or transferred the properties to the detriment of the actual beneficiaries. According to the deponents, the Respondent got the capacity to transact on the properties through the grant they obtained. The deponents deposed that it is fair and just that the grant issued to the Respondents be revoked and a fresh issued to facilitate fair distribution of the assets of the estate.

#### Replying Affidavit

5. In opposition, the Respondent swore a Replying Affidavit on 25<sup>th</sup> November, 2020. The Respondent deposed that he was the sole surviving administrator of the estate of Muindi Ndolo since his mother Ngondu Muindi who was a co-administrator passed on in the year 2009 after the Certificate of Confirmation of Grant.
6. According to the deponent, his late father, Muindi Ndolo (deceased) had four wives. He deposed that the first wife Ndila Muindi had her matrimonial home in King'oti Sub-Location, Matungulu Sub County in an area called Kinyua. According to the deponent, Ndila Muindi had been given land namely Matungulu/King'oti 2990 measuring more than 20 acres which is in the name of the Muindi Ndolo but 4 acres were sold by her sons Mwatu and Muthama last year. He deposed that Muindi Ndolo had inherited the said land from their grandfather.
7. He deposed that his mother Ngondu Muindi, deceased second wife passed on in 2009 but had been settled in Kangundo on a land measuring 10 acres. According to the deponent, his father sold and transferred the said land to him to raise treatment money. He deposed that he paid the purchase price in installments and lived on the land.



8. According to the deponent, the third wife, Mwikali Muindi had been settled in Kayata Sub Location in Ngunga Farm where she had been given more than 9 acres. He deposed that Mwikali Muindi daughter Mumbua Muindi and one of the Applicants herein sold the land leaving about one and a half acre. According to the deponent, Mwikali Muindi is alive but the daughter depones that she is dead.
9. As regards the fourth wife, the deponent deposed that she was bought an 8 acre parcel of land in Muka Mukuu Farm and added two which was later sold by her late son Onesmus Ndolo after the deceased death.
10. According to the deponent, all the above parcels of land are in his late father's name and were not in the confirmed grant. He deposed that families had been given plots by his father.
11. He deposed that his father sold Kangundo/isinga/828 to Kimeu Wa Ngwatu and his children who took possession but he has not yet transferred the parcel of land into their names.
12. As regards Block 5/454 Athi River, the Respondent deposed that he sold the parcel of land together with his mother when his mother fell sick but 1 acre had been sold by their father before death and the rest was left to his mother. He deposed that Muisuni land belongs to another person and not his father.
13. According to the deponent, his sister Veronich Ndinda was aware when the Athi River land was sold as she was given some money by his mother, she had signed some documents in Machakos High Court and had always been present during the Succession cause.
14. He deposed that their late father instructed all his wives to deal with their properties given to them hence a reason why him and his mother sought distribution and confirmation of the property given to his mother. According to the deponent, the clan was present when their father said so hence he could not include the names of other family members in the succession proceedings. He deposed that his mother also advised that they seek only distribution of their property.
15. According to the Respondent they instituted the succession proceedings in good faith believing that they were not prejudicing anyone hence the Applicants application is brought in bad faith as the Applicants have themselves sold land before distribution and confirmation of grant. The Respondent has requested the Applicants to bring all properties left out for confirmation and the grant be amended to include them as opposed to revoking the grant. Further by consent the letters of appointment could be amended to include more administrators
16. According to the Respondent, the proposal to amend the grant would cure the anomalies. He objected to the revocation of the grant.

#### Applicant's Submissions

17. On behalf of the Applicant, it is submitted that no other properties in the name of the Applicant exist other than those in the confirmed certificate of grant. It is submitted that no documentary evidence was tendered in court to show that each of the house/wife of the deceased was settled on a particular parcel of land. Similarly the Respondent has not shown any proof of sale of the properties. It is submitted that it is false that parcel of land namely Athi River Block 5/454 was given to the Respondent's mother since the property at the time of confirmation of the grant was the deceased's property.
18. According to the Applicants that Respondent acted illegally and unlawfully in the entire process leading to the confirmation of grant. The Respondent is guilty of material non-disclosure with the aim of disinheriting the Respondent hence the grant should be revoked pursuant to Section 76 of the [Law of Succession Act](#). Reliance was placed [In the matter of the Estate of LAK – \(Deceased\) \[2014\] eKLR](#) and in [Re Estate of Julius Ndubi Javan \(Deceased\) \[2018\] eKLR](#).



19. It is submitted that deliberate failure by the Applicant to involve all beneficiaries at the time of filing these proceedings and failing to list them among the beneficiaries or seek their consent or renunciation was in bad faith and amounts to concealment of material facts. Reliance was placed *In the matter of Estate of Gatumo Njimuko (Deceased) [2019]eKLR* where Rule 26 of the Probate and Administration Rules requiring all beneficiaries be given notice by the Petitioner seeking to be issued with letters of administration. In the case it was also stated that Rule 26 was ably discussed in the case of *Al-Amin Abdulrehman Hatimy vs. Mohamed Abdulrehman Mohamed & Another [2013] eKLR*.
20. The Applicants are opposed to the grant being amended. Reliance was placed on the case of In Re Estate of Gatumo Njimuko (Deceased) (supra) as no circumstances detailed in the case existed in this case. According to the Applicants, the grant should be revoked and the orders sought be granted.

#### Respondent's Submissions

21. On behalf of the Respondent, it is submitted that none of his averments have been denied by the Applicants. According to the Respondent, the Applicants have not adduced any evidence to show that the Respondent and his mother deliberately concealed material facts from this court in order to obtain the grant.
22. It is submitted that the Applicants have not denied that they have sold the deceased's properties. According to the Respondent, the Applicants have also not denied that their homes are built on deceased's properties. It is submitted that the Applicants have also not disclosed the existence of the other properties hence the Applicants have approached the court with unclean hands. According to the Respondent, the buyers of the properties after the grant was confirmed need to be heard before cancellation of the titles.

#### Determination

23. I have considered the Chamber Summons, affidavit in support and in opposition as well as the written submissions.
24. The application for determination is premised on section 76(a) (b) and (c) of the *Law of Succession Act*. The said provision states as follows:

“

“76. Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that 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;

I that 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) that 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) that the grant has become useless and inoperative through subsequent circumstances.”

25. In the case of *Albert Imbuga Kisigwa vs. Recho Kawai Kisigwa, Succession Cause No.158 OF 2000*, Mwita J. stated:

“(13) Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

26. I am fortified by the decision of Khamoni, J. *in Re Estate of Gitau (Deceased) [2002] 2 KLR 430* where he expressed himself as hereunder:

“Distribution of the estate comes during the proceedings to confirm the relevant grant and a party dissatisfied with the distribution may not necessarily be dissatisfied with the grant of letters of administration and vice versa. That being the position, it becomes unreasonable for a person dissatisfied with the distribution of the estate only to proceed to ask for the revocation or annulment of the grant, which has nothing wrong. While section 76 of the *Law of Succession Act* should therefore be relied upon to revoke or annul a grant it is not proper to use the same section where the objector is challenging the distribution only. There are relevant provisions to be used for that purpose and section 76 is not one of them.” See *Mary Wangari Kibika vs. John Gichuhi Kinuthia & 2 Others [2015] eKLR*

Whether to revoke the grant of letters administration issued on 29<sup>th</sup> July, 2008

27. In *Re The Estate of the Late Suleman Kusundwa [1965] EA 247*, the court stated that:

“The court is...not obliged to revoke the existing grant, and should only exercise its discretion to do so if useful purpose would be thereby achieved or any right of the applicant safeguarded which could not otherwise be safeguarded. In the present case such rights of inheritance as the applicant possesses, outside the will, are sufficiently safeguarded by the assurance given by the Administrator-General. Therefore I decline to revoke the existing grant, a revocation which would entail needless expense; but it is qualified by declaring that the provisions of the annexed will, in which he purported to leave the whole of his property to his nephew, the second respondent, shall be given effect to only in respect of such portion of the deceased’s property as he was entitled to dispose of by will under the applicable law of inheritance.”



28. If follows therefore that the court is not under any obligation to revoke the grant, the court will only do so if revocation would serve useful which is achieved or any right of the applicant is safeguarded which could not otherwise be safeguarded.
29. The Applicants contends that the Respondent did falsify documents as his appointment was done in secrecy, in bad faith and without the consent of all the Applicant's household. According to the Applicants, the failure to comply with mandatory provisions of the law makes the process defective.
30. It is now not in dispute that Muindi Ndolo had four wives namely the first wife Ndila Muindi, second wife Ngondu Muindi, third wife Mwikali Muindi and fourth wife Katunge Muindi. The Respondent has confirmed Muindi Ndolo wives in his replying affidavit.
31. *In re Estate of Wabome Mwenje Ngonoro Deceased [2016] eKLR*, Mativo J. stated that:  
“My conclusion is that the proceedings leading to the issuance of the grant are defective in substance and that material information was not disclosed to the court in that had the court been made aware that there were other beneficiaries who were interested in the deceased's estate, the court would have hesitated to issue the grant...The duty of a litigant is to make a full and fair disclosure of the material facts. The material facts are those which it is material for the judge to know in dealing with the issues before the court. The duty of disclosure therefore applied not only to material facts known to him but also to any additional facts which he would have known if he had made inquiries. The question that inevitably follows is whether the non-disclosure was innocent, in the sense that the fact was not known to the Respondent or that its relevance was not perceived.”
32. Gikonyo J. put it aptly *In re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR*.  
“.....of relevance in these proceedings is that such material facts were never disclosed to this court during confirmation of the grant so as to enable the court make an informed decision on distribution of the estate. Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (*uberimae fidei*) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law.
33. According to the Chief's letter, Muindi Ndolo was only survived by the second wife Ngondu Muindi (Deceased) who was a co- administrator to the Respondent herein. Ngondu Muindi (deceased) was the mother of the Respondent and Veronicah Ndinda Mutunga. The consent to the making of the Grant dated 28<sup>th</sup> June, 2007 and filed in court on 10<sup>th</sup> September, 2007 establish that the consent was only obtained from Veronicah Ndinda Mutunga.
34. It is clear under Section 51 (2) (g) of the *Law of Succession Act* provides that:-  
“In cases of total or impartial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased.”



35. Similarly, under Part VI Rule 26(1) of the *Probate and Administration Rules*:

“Letters of administration shall not be granted to any applicant without notice of every other person entitled in the same degree as or in priority to the applicant.”

36. The said consent was only obtained from the second wife house and the others were left out contrary to the above legal provisions. This amounts to concealment of material facts noting that the Respondent admits that the deceased had four wives. See in *Al-Amin Abdulrehman Hatimy vs. Mohamed Abdulrehman Mohamed & another* [2013] eKLR on the proposition that by virtue of Rule 26 consent must be signed by all persons entitled to estate.

37. The court finds that no evidence has been tendered in court as to the existence of other properties in the name of the Applicant other than those listed in the Summons for confirmation of Grant. The Applicants have asserted that those are the only properties they know.

38. According to the Respondent all houses/wives had been settled on particular parcels of land but no minutes or any other documentary evidence was tendered in court to prove the settlement. The court finds that no evidence was tendered in court by either the Applicants or the Respondent of the sale of the properties.

39. I am however not satisfied that the Grant was obtained fraudulently. I agree with the holding *In the Matter of the Estate of P. W. M – Deceased* [2013] eKLR that:

“It should be noted that allegations of fraud border on an accusation of commission of a criminal offence. In civil matters, allegations of fraud are treated as more serious than other allegations. Pleadings on fraud are stricter. The allegations should be supported by sufficient particulars. It is said here that the grant was obtained fraudulently; consequently the pleadings on the point ought to be to a higher standard. I note that the particulars of fraud are bare, totally insufficient to support an allegation of fraud.”

40. From the forgoing, it is clear that the Respondent did not comply with the provisions of the *Law of Succession Act*. The failure to do so clearly renders the proceedings leading to the grant of letters herein defective in substance.

41. The Respondent well aware that the deceased had four houses/wives omitted to include some beneficiaries, the Respondent did not make a full disclosure of the facts relating to the beneficiaries of the estate.

42. It is clear that the grant herein was obtained by means of concealment of material facts that warrants the court to invoke Section 76 of the *Law of Succession Act*.

#### Disposition

- a. In the premises, the summons for revocation of grant succeeds.
- b. The grant issued to Ngondu Muindi (deceased) and John Munyao Muindi and confirmed on 29<sup>th</sup> July, 2008 is hereby revoked.
- c. That all the assets that comprise of the deceased’s estate shall be preserved and no further subdivision, sale, transfer, eviction, interference or in any other way by the family members and/or purchasers under Section 45 of *Law of Succession Act*. Status quo shall be maintained until the grant is confirmed including all assets of the deceased and all beneficiaries of the deceased’s estate.



- d. The Respondent to file an application for confirmation of grant taking into account all the rightful beneficiaries from the four houses within 45 days.
- e. This being a succession cause and considering all the circumstances, I direct each party meet their own costs.

It is so ordered

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 16<sup>TH</sup>  
DAY OF DECEMBER, 2021.**

**M.W MUIGAI**

**JUDGE**

