



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**SUCCESSION CAUSE NO. 284 OF 2012**

**IN THE MATTER OF THE ESTATE OF JAMES GAKUO RIMBI (DECEASED)**

**JOSEPHAT KIBANYA NGOBIA.....1<sup>ST</sup> APPLICANT**  
**CEASER GATIMU NGOBIA.....2<sup>ND</sup> APPLICANT**  
**FRANCIS K. MUNYORI.....3<sup>RD</sup> APPLICANT**  
**JAMES MUNYI MUNYORI.....4<sup>TH</sup> APPLICANT**

**AND**

**ALICE KAGUYU GAKUU.....1<sup>ST</sup> RESPONDENT**  
**HELLEN KARETI GAKUU.....2<sup>ND</sup> RESPONDENT**  
**ELIUD NJOGU KINYUA.....3<sup>RD</sup> RESPONDENT**  
**PHILLIS MWAI.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. **JOSPHAT KIBANYA NGOBIA, CEASER GATIMU NGOBIA, FRANCIS L. K. MUNYORI** and **JAMES MUNYI MUNYORI**, the applicants herein took out Summons for Revocation of Grant dated 28<sup>th</sup> February, 2012 to revoke a grant that was issued to **Alice Gakuyu Gakuu** and **Hellen Kariti Gakuu**, the respondents herein on the 24<sup>th</sup> February, 1993 vide **Kerugoya Senior Resident Magistrate's Court Succession Cause No. 72 of 1990** in respect to the estate of **JAMES GAKUU RIMBI** the deceased herein.
2. The applicants also sought the following orders:
  - ii. *That the applicants herein be enjoined as co-administrators of the estate of the deceased James Gakuu Rimbi in respect of land titles No. INOI/THAITA/763, 764, 765, 766, 767 and 768.*
  - iii. *That this hon. Court issues an order directed to the District Lands Registrar, Kerugoya to rectify the register and cancel land titles No. INOI/THAITA/763, 764, 765, 766, 767 and 768 formerly registered in the name of the deceased and the same be restored to the original proprietor namely James Gakuu Rimbi as title No. INOI/THAITA/412 and/or that the same be re-distributed in the name of the applicants and the respondents equally.*

- iv. *That this hon. Court issue order directed to the respondents prohibiting them from selling, transferring and or disposing off the subject land namely titles No. INOI/THAITA/763, 764, 765, 766, 767 and 768 until the determination of this application.*
  - v. *That costs of this application be borne by the respondents.*
3. The grounds upon which the summons were made were listed as follows:
- a. *That the proceedings to obtain the grant of letters of administration were flawed and defective in substance.*
  - b. *That the applicants are sons to the brothers of the deceased namely Ngobia Rimbi and Munyori Rimbi.*
  - c. *That the deceased herein, James Gakuu Rimbi held the estate as a trustee of his brothers and that the applicants are therefore bonafide beneficiaries to the estate of the deceased namely titles No. INOI/THAITA/763, 764, 765, 766, 767 and 768.*
  - d. *That the respondents who are widows to the deceased did not disclose material facts to the hon. Court, that the brothers to the deceased namely Ngobia Rimbi and Munyori had legal claims over the said estate in question as it was a family land held in trust and that the grant was therefore irregularly and illegally obtained.*
4. The applicants through the supporting affidavit sworn on 28<sup>th</sup> February, 2012 by Francis L. K. Munyori deposed that the properties forming the estate herein originally belonged to their grandfather the late Rimbi Numba before demarcation in 1957 and that the deceased herein was registered as a trustee of the property on behalf of Ngobia Rimbi and Munyori Rimbi – his brothers.
5. It further deposed that the deceased brothers namely Ngobia Rimbi and Munyori Rimbi migrated to Subukia – Nakuru and left the deceased to take charge of the property. The Applicants allege that the deceased fraudulently sub-divided the property into several portions namely **INOI/THAITA/763, 764, 765, 766, 767 and 768** and registered them into his own name dispossessing the brothers in the process.
6. The Applicants have further claimed that the respondents applied for letters of administration in respect to the estate of James Gakuu Rimbi vide **Kerugoya Senior Resident Magistrate’s Court No. 72 of 1990** without their knowledge and that they failed to disclose that the applicants had legal interests on the estate. They further deposed that the respondents have since obtaining a grant confirmed on 24<sup>th</sup> February, 1993 sold two and a half acres leaving a total of 4.5 acres.
7. The applicants have pointed out a land case which was filed by their fathers in the now defunct Land Disputes Tribunal in 1999 whose decision was later quashed by this court sitting in Embu vide **Judicial Review Miscellaneous Application No. 21 of 2011** as a demonstration that they had a legitimate claim over the estate of the deceased herein. They alleged that the delay in challenging the succession cause herein was due to the distance and being away from the estate in this cause and the fact that they were not well versed with court processes.
8. The Respondents have opposed the application for revocation of grant herein. On their part, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have sworn a replying affidavit sworn on 9<sup>th</sup> October, 2012 in response to the application and averments made by the applicants. While acknowledging the relationship between the deceased and the applicants’ respective fathers, the 1<sup>st</sup> and 2<sup>nd</sup> respondent denied that the estate of the deceased herein ever belonged to the late Rimbi Numba, father to James Gakuu Rimbi (deceased). They also responded that the late Rimbi Numba was a brother to Munyori Rimbi and Ngobia Rimbi the applicants’ fathers.
9. According to the 1<sup>st</sup> and 2<sup>nd</sup> respondents who are wives to the deceased herein, the clan members allocated land parcel No. **INOI/THAITA/412** to the deceased and that he could not have been given land to hold in trust as he was younger to the said applicants’ fathers. They have also deposed that the deceased sub-divided his parcel of land into six portions and regularly sold one portion – **INOI/THAITA/768** to a third party one Douglas Mwai who they claim purchased it in

good faith and for value.

10. The respondents have defended the process of succession vide **Kerugoya Senior Resident Magistrate's Court Succession Cause No. 72 of 1990** stating that all the family members of the late James Gakuu Rimbi were involved and that distribution was done properly to the 3 houses representing the number of wives to the deceased and that the estate was distributed as follows:

- a. ***INOI/THAITA/766 went to the children of first house namely Elizabeth Muthoni Munene, Josephine Njeri Muriuki and Lucy Njoki Kiragu who shared it equally but later agreed to dispose it to a third party one Eliud Njogu Kinyua (later joined in this proceedings as the 3<sup>rd</sup> respondent).***
- b. ***INOI/THAITA/765 & 764 went to Alice Kaguyu Gakuu – the 1<sup>st</sup> respondent. (2<sup>nd</sup> house)***
- c. ***INOI/THAITA/766 & 767 went to Hellen Kareti Gakuu the 2<sup>nd</sup> respondent herein. (3<sup>rd</sup> house)***

11. The Respondents have argued that the prayers sought by the Applicants are untenable and that the land comprising the estate cannot revert back to the deceased as some parcels have now changed hands and are in the hands of 3<sup>rd</sup> parties who purchased them innocently and for value.

12. On the date scheduled for hearing of this cause, the applicants were absent and no explanation was given for their absence despite service being effected upon their counsel. The Respondents were as such allowed to proceed in their opposition to the summons for revocation of grant which they did as per their replying affidavit as aforesaid above. The Respondents only in addition stated that the Applicants were not children or dependants to the deceased adding that they have never lived on any of the properties forming the estate of the deceased.

13. The 3<sup>rd</sup> Respondent for his part testified orally that he purchased **INOI/THAITA/763** and produced a copy of the title as P. Exhibit 1 to demonstrate that he is the sole registered owner. He also produced a written agreement as P. Exhibit 2 detailing the transaction between him on one hand and Lucy Njoki Kiragu, Josephine Njeri Muriuki, Cicily Wakuthi Mwangi and Elizabeth Muthoni Munene on the other as vendors who agreed to sell the said property at Kshs.600,000/-. The 3<sup>rd</sup> Respondent added that he paid the full purchase price and took possession of the property and extensively developed it by planting 700 stems of coffee and 2000 tea bushes among other trees. He told this Court that he purchased the property in good faith and for value.

14. Philis Wairimu the 4<sup>th</sup> Respondent also testified saying that although her name had been misdescribed as Philis Mwai, she was known as Philis Wairimu and was coming to Court on behalf of her late husband Douglas Mwai Kigundu who had purchased **INOI/THAITA/768** from the deceased. She testified that she took letters of administration in respect to the estate of her deceased husband and got the said property through transmission. She produced a copy of the certified copy of the register (Green Card) as P. Exhibit 4 to prove her claim.

15. In their written submissions the Respondents submitted that the Applicants have not established any of the grounds as listed or set out under **Section 76** of the **Law of Succession Act (Cap. 160)** to warrant revocation of grant. They have also submitted that the purchasers enjoy protection under **Section 93** of the Act as they are innocent purchasers. It was further submitted that under Section 24 of Sales of Goods Act (Cap. 31 Laws of Kenya) the purchasers' title to the properties aforesaid cannot be revoked as they acquired good title at the time of purchase in good faith and without any notice to any challenge on the title to the said properties. They quoted the authority in the case of **P. MUKIRI –VS- A.G. 1 & 4 OTHERS [2013] eKLR** to buttress this point.

16. I have considered the application and affidavit in support for the

Summons for Revocation of Grant, the absence of the Applicants at the hearing of the application notwithstanding. I have also considered the opposition of the same by the Respondents.

17. I will begin with a comment made by the Respondents' learned counsel in the submissions concerning the authority cited. I have looked at the authority which was a case at Environment and Land Court at Nairobi delivered by Hon. Justice Mary M. Gitumbi. The Court is of equal status to this Court and I agree with *ratio decidendi* of the decision. However, the decision is not binding to this Court. The learned counsel ought to have used the authority to persuade me rather than state that the authority is guiding to this Court. This was misleading as decisions of Court of Appeal guide this Court unlike decisions from other courts of concurrent jurisdictions which can only persuade this Court or any other court of concurrent jurisdiction.
18. On the merit of the application, the Applicants are sons to the brothers of the deceased. They are not claiming beneficiary interests on the estate of the deceased as the children within the meaning given under **Section 3 (2)** of the **Law of Succession Act**. They are also not "dependants" within the meaning given under **Section 29** of the same Act.
19. The Applicants' claim is based on the alleged trust which the deceased in this case is said to have held over the properties forming the estate on behalf of his late brothers and that the properties were a family land. There is however, no evidence placed before me to show that the properties known as **INOI/THAITA/763-768** were a family property or that late James Gakuu Rimbi was registered as the trustee to the property.
20. There is also no evidence that the Applicants' fathers ever resided on the land to show that they had a claim on it. In the case of **RE ESTATE of JENIFFER WANGECHI KABUCHI (DCD) [2014] eKLR**, summons for revocation of grant was lodged on the ground that the deceased property was a family property which the deceased held in trust for the applicant and other siblings. The court made the following observations which I agree with;

*“On whether there was a trust which should have provided basis for involving the applicant and his siblings in the administration of the estate in my view is that no trust was established by the applicant. He only mentioned at paragraph 10 of his affidavit that the said property was held in trust but he adduced no evidence whatsoever to prove existence of such trust.....and since no trust existed in favour of the applicant and his siblings there was no basis for involving the applicant and the others in the administration of the estate.” (sic)*

21. The facts in the above case are almost similar to the present application. The Applicants have just deposed in the supporting affidavit that the estate in this cause was a family land and that the deceased held the property in trust but no evidence to demonstrate the same has been placed before Court to demonstrate or prove it. The existence of a trust as stated in the case of **MUMO – VS- MAKAU (2002) EA 170** is a question of fact which must be proved. The Applicants needed to lead evidence to show that the trust existed. As a general rule of evidence whoever alleges existence of certain facts is under obligation in law to prove the same. I find that the Applicants have failed to prove that the deceased held the properties forming the estate in trust.
22. This Court also finds that the Applicants have to demonstrate that they were dependants to the deceased to warrant them being involved in the administration of the estate. They have failed to establish any of the grounds cited under **Section 76** of the **Law of Succession Act** to warrant revocation of grant. In the case of **RE THE ESTATE OF NEBARD M. BIRICHI KIROMBI DCD – MERU HCC NO. 148/95** the Court held *inter alia* as follows:

*“I agree with the counsel for the petitioner that the applicants allegations are mere empty words without substance. I also concur with counsel for petitioner that the applicant's application is an after thought. Why did he wait for nearly 10 years to come to court for what he believes rightly belonged to him? The point I am making is that the applicant's application has no merit and no substance. The applicant is a mere busy*

***body whose interest in the estate is far-fetched. In my opinion therefore, it is not expedient to make a provision for the applicant who has failed to prove that he is a dependant of the deceased.”***

In the present application, the applicants have fared worse. They have come to court after almost 19 years claiming that they were ignorant of court process. Although the Law of Succession Act places no time limit to apply for revocation of grant, I find that the Applicants appear to have come to Court to merely try their luck since they have failed to even establish a remote connection between the estate herein and the estate of their respective fathers or their claim.

23. I also find that the Applicants in this case cannot claim as dependants to the deceased because the same is negated by own admission that their fathers migrated long ago away from the estate. The Applicants have not been living on the estate and cannot be dependants to warrant being included in the administration of the estate of James Gakuu Rimbi.

24. I also agree with the 3<sup>rd</sup> and 4<sup>th</sup> Respondents that their acquired interests on parts of properties forming the estate in this cause is protected by law under **Section 93** of the **Law of Succession Act**. Both Respondents have their respective titles as exhibited in the documents produced P. Exhibit 1 and P. Exhibit 4 respectively. I find the prayer by Applicants to cancel their title untenable in law for they are bona fide purchasers for value.

From the foregoing, the Summons for Revocation of Grant dated 28<sup>th</sup>

February, 2015 lacks in merit. It must fail. It is dismissed with costs to the Respondents.

***Dated and delivered at Kerugoya this 28<sup>th</sup> day of September, 2015.***

**R. K. LIMO**

**JUDGE**

28.9.2015

Before Hon. Justice R. Limo

Court Assistant Willy Mwangi

Mwangi for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

Francis Kibuchi Munyori present

Philis Wairimu present

Alice Gakuu present

**COURT:** Ruling signed dated and delivered in the open court in the presence of Mwangi for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and in the presence Alice Gakuu, Philis Wairimu and Francis Munyori.

R. LIMO

**JUDGE**

28.9.2015