



REPUBLIC OF KENYA



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**In re Estate of Kibui Njage (Deceased) (Family Miscellaneous Application  
79 of 2013) [2025] KEHC 1977 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1977 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
FAMILY MISCELLANEOUS APPLICATION 79 OF 2013**

**RM MWONGO, J**

**FEBRUARY 20, 2025**

**IN THE MATTER OF THE ESTATE OF KIBUI NJAGE (DECEASED)**

**BETWEEN**

**SABINA KAMORI KIBUI ..... 1<sup>ST</sup> APPLICANT**

**MIKIELINA WAINOI KIBUI ..... 2<sup>ND</sup> APPLICANT**

**WILLIAM MURAGE GAKUYA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**MONICA WAIRIMA SUBSTITUTING CHIOKINYUA KIBUI  
(DECEASED) ..... RESPONDENT**

**JUDGMENT**

**The Application**

1. The applicants' summons for revocation of grant dated 16<sup>th</sup> September 2008, seeks the following orders:
  1. That the grant of representation issued in the estate of the deceased to the respondent be revoked and/or annulled; and
  2. That the costs of this application be provided for.
2. The application is premised on grounds that the grant was obtained fraudulently by concealment from the court, of material facts and that the process was irregular since the consent was not signed by all the adult children of the deceased. The applicants also stated that not all the beneficiaries were informed of the proceedings which were also defective in substance. That prior to his death, the deceased had sold Plot No.88 Kibingo to the 3<sup>rd</sup> applicant, and that all the beneficiaries save for the respondent had agreed to have it transferred to him.



3. It was the applicants' case that the deceased had 4 wives all of whom had children but only one daughter of the deceased gave consent for issuance of the grant. They produced a sale agreement as proof that the deceased had sold Plot No.88 Kibingo to the 3<sup>rd</sup> applicant prior to his death, but it was yet to be transferred to him. They also produced minutes of the Kirinyaga County Council showing that all the beneficiaries, save for the respondent, gave consent to the deceased to sell the land to the 3<sup>rd</sup> applicant. They urged that land parcel number Gilgil/Gilgil/Block 1/2420 should be shared by all the beneficiaries.
4. The respondent filed a replying affidavit dated 19<sup>th</sup> December 2018 stating that through the confirmed grant, her deceased mother was given all of land Plot no. 88 Kibingo and Gilgil/Gilgil/Block 1/2420 which were acquired jointly by the deceased and the now deceased respondent. At the time, none of the other family members filed protests or objections to issuance of the grant and distribution of the estate. Prior to his death, it was averred, the deceased had given each house a place to stay and some properties as detailed in the replying affidavit.

### **The Hearing**

5. The application was heard by way of viva voce evidence.
6. PW1 was Sabina Kamori Kibui, the 1<sup>st</sup> applicant who is the 3<sup>rd</sup> wife of the deceased. She stated that she was not aware of the succession proceedings and that they were instituted in her absence and without her consent. It was her case that no objection was filed in the proceedings because she was unaware of the proceedings. Initially, they had gone to the chief to get the introductory letter but the chief advised them to look for money for succession. They went away and later learned that the proceedings had been initiated. She was aware that Plot No.88 Kibingo was under purchase but the purchaser had only paid Kshs.15,000/=.
7. She testified that the respondent's objection to the sale was dismissed by the County Council since it was brought too late. She asked the court to annul the grant since it was irregularly issued and that the distribution be done afresh. In cross-examination, she stated that the deceased lived in Mwea on a 4-acre piece of land. She said she resides on a piece of land in Bahati village in Mwea with the 2<sup>nd</sup> and 4<sup>th</sup> wives where they planted rice. She said that when she got married, she found Plot No.88 Kibingo already in the name of the deceased.
8. Finally, PW1 testified that none of the wives was claiming Plot No.88 Kibingo since the deceased had always wanted to sell it. When the succession proceedings were instituted by the respondent, none of the other wives or children were involved. On the day that the deceased sold Plot No.88 Kibingo, he returned home with Kshs.55,000/= which he said was a part payment from the land sale, and that it was money for the children. He refused to distribute the money until the balance was paid.
9. PW2 William Murage Gakuya, is the 3<sup>rd</sup> applicant. He stated that before the deceased died, he was in the process of selling to him Plot No.88 Kibingo, measuring 50×100 feet at Kshs.140,000/=. He stated that he had paid a deposit and had a balance of Kshs.58,000/= to pay. He produced documents to prove the purchase. In cross-examination, he stated that he had been living on the property for 20 years and he related well with the respondent before she moved to Mwea. That the whole family agreed that the property be sold and there is a consent to that effect. He said the plot remains in the name of the deceased, and is unoccupied and undeveloped because the transaction was not completed. At the time of signing the agreement, the deceased was the only registered owner.
10. The respondent testified as RW1. She relied on the averments made in her replying affidavit. She stated that her late mother acquired the grant and when it was confirmed, she was given the properties of



the deceased by the court. That they were not notified of the sale of Plot No.88 Kibingo and she only knew the 3<sup>rd</sup> applicant after she became aware of the sale. She said that there is a restriction on the land and the purchase was never completed. However, she is ready to refund the purchase price because the land is her home.

11. In cross-examination RW1 stated that her mother was given land by the deceased in Mwea to farm rice alongside the other wives. That the other wives and children were informed of the succession proceedings but they were not interested. According to her, the land that her mother was given was not co-owned by him and another wife. She stated that the deceased had 4 wives. That she is ready to refund the money paid by the 3<sup>rd</sup> applicant.
12. RW2 Esther Waruguru, stated that the deceased had 4 wives and each wife had several children. The 2<sup>nd</sup> wife instituted succession proceedings and the whole family knew about these proceedings. They were all notified but the 3<sup>rd</sup> and 4<sup>th</sup> houses did not go to court. The 1<sup>st</sup> and 2<sup>nd</sup> houses had no problem with the proceedings. She said she was aware that Plot No.88 Kibingo was being sold by the deceased and she opposed the sale. She urged the court to give the 1<sup>st</sup> and 2<sup>nd</sup> house Plot No.88 Kibingo, stating that they are prepared to return the money paid to the 3<sup>rd</sup> applicant. She further stated that the 1<sup>st</sup> wife was buried on Plot No.88 Kibingo while the 2<sup>nd</sup> wife was buried on a piece of land near Plot No.88 Kibingo since the 3<sup>rd</sup> applicant refused the 2<sup>nd</sup> wife to be buried on that land. That she did not know about the sale until the transaction was complete and after she learned on the sale, she blocked it.

#### **Parties' submissions**

13. The parties filed their written submissions as directed by the Court.
14. The applicants submitted that when the respondent petitioned for a grant, they were never informed and the grant was issued. The 3<sup>rd</sup> applicant claimed a purchaser's interest in the land which was not considered at the time of petitioning for the grant. It was their argument that the respondent was not entitled to the 2 properties which are Plot No.88 Kibingo and Gilgil/Gilgil/Block 1/2420 excluding the other wives and children. They placed reliance on section 76 of the [Law of Succession Act](#) and the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] eKLR.
15. The respondent submitted that they were living on before her death, their deceased mother (the 2<sup>nd</sup> wife) was living in Mwea but she also had a home in Plot no. 88 Kibingo. It was her case that she is willing to return the money paid as purchase price by the 3<sup>rd</sup> applicant since that is the only land she knows as her home. she urged the court to dismiss the summons for revocation.

#### **Issues for Determination**

16. The key issue for determination is whether the grant issued to the respondents should be revoked.
17. A grant of letters of administration was issued in the estate of the deceased to Chiokinyua Kibui (now deceased) on 19<sup>th</sup> January 2007. In the petition, she was indicated as the wife of the deceased and that she and RW2 were the only beneficiaries of the deceased's estate. The Petition indicated the estate to comprise of Plot No.88 Kibingo and Gilgil/Gilgil/Block 1/2420. The introductory letter by the Chief however indicated that the deceased had 4 wives, namely: Sabina Kamori Kibui, Mickelina Wainde, Sarah Syokinyua and Peris Karuana Kibui. A certificate of confirmation of grant was issued on 14<sup>th</sup> August 2007, giving the whole estate of the deceased to Chiokinyua Kibui (deceased).
18. A perusal of the court's record, discloses that there was no objection to issuance of the grant. The present summons for revocation dated 16<sup>th</sup> September, 2008 was filed on 17<sup>th</sup> September, 2008. A grant



may be revoked at any point in time under the circumstances provided under Section 76 of the Law of Succession Act, which provides thus:

“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;
- (c) 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.”

19. From the evidence adduced, there is no doubt that the deceased had 4 wives, thus making 4 houses for purposes of succession. PW1 testified that after the death of the deceased, all the family members went to the Chief who advised them to look for money to file succession proceedings. They then went away as they had no money at the time. At this point, no introductory letter had been issued by the Chief. PW1 further stated that she never returned to the Chief's office, but learned that a grant had been issued in the estate of the deceased. That is when she filed the summons for revocation. She also stated that the deceased died before completing the sale of Plot No.88 Kibingo to PW2. On his part, PW2 stated that he had paid a part of the purchase price and still had a balance to pay. He produced a sale agreement as proof.
20. RW1 and RW2 stated that the deceased was in the process of selling Plot No.88 Kibingo, but when they learned about the sale, they objected and even placed a restriction on the land. They are still against the disposal of the land and they have stated that they are willing to refund the amount of money already paid by PW2 towards the purchase. It was also their evidence that the applicants were fully aware of the ongoing succession proceedings but they failed to participate.
21. As already stated, there is no doubt that the deceased had four (4) wives thus four (4) houses survived him. This position was captured in the Chief's introductory letter to the court. However, at the point of petitioning for the grant, the petitioner did not state this fact, thus misleading the court. Paragraph 4 of the affidavit in support of the petition for letters of administration intestate (P&A.5)



dated 13<sup>th</sup> November 2006 indicates that the deceased was only survived by Chiokinyua Kibui and Esther Waruguru Murage. This was a false statement.

22. In order to determine the issue at hand, there must be proof that any of the circumstances described under section 76 of the *Law of Succession Act* has occurred. In this case, the applicants have alleged that the grant was obtained fraudulently through concealment of material facts to the court. A grant may be revoked upon production of evidence proving the grounds in Section 76 LSA, whereupon the court will exercise its discretion and revoke the grant. In the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] KEHC 1528 (KLR), Mwita J. made pertinent remarks on principles for the revocation of a grant as follows:

“(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.”

23. The petitioner knew that the deceased had 3 other wives and children. Nevertheless, she named herself and her daughter as the only survivors and beneficiaries of the deceased. She was also aware that there was a pending sale transaction which the deceased had commenced and that the 3<sup>rd</sup> applicant had already paid a deposit. This amounts to material non-disclosure or concealment of material facts as provided under section 76 of the *Law of Succession Act*.

24. In similar circumstances, the court in *In Re Estate of Moses Wachira Kimotho (Deceased)* [2009] KEHC 3958 (KLR), the court pointed out the importance of disclosing all material facts before a court of Law while seeking letters of administration and confirmation thereof, in the following terms:

“I am certain that had the applicants been made aware of the application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of those interests. Further had the respondent been forthright and candid and included the applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is therefore the grant was obtained fraudulently by making of a false statement and or concealment from court of something material to the cause. The respondent knew of the applicants’ interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for the confirmation of the grant.”

(see also *In re Estate of Magangi Obuki (Deceased)* [2020] KEHC 348 (KLR))

### **Conclusions and Disposition**

25. From the foregoing discussion, there can be no doubt that the grant was obtained and issued on the basis of material non-disclosures. In this case, the non-disclosure is fraudulent because the petitioner was fully aware that the deceased had four (4) wives yet indicated only herself and her daughter as the survivors.



26. The applicants were thus disenfranchised and thus rights to any claim in the deceased's estate were snuffed out through the fraudulent petition.
27. Accordingly, there is sufficient justification for the grant to be revoked and the certificate of confirmation of grant to be set aside. The said grant and confirmed grant are hereby revoked and/or set aside.
28. Given that the Petitioner/Administrator is deceased, the parties are at liberty to appoint new administrators within Forty-Five (45) days of this Judgment.
29. This being a family matter, no order is made as to costs.
30. Orders accordingly.

**DELIVERED VIRTUALLY AT KERUGOYA HIGH COURT THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2025**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Nyaga for Applicants

Kahiga for Respondent

Francis Munyao - Court Assistant

