



In re Estate of Gedion Muli Mwake (Deceased) (Succession Cause 30 of 2013) [2025] KEHC 1656 (KLR) (6 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1656 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 30 OF 2013**

FR OLEL, J

FEBRUARY 6, 2025

IN THE MATTER OF THE ESTATE OF GEDION MULI MWAKE (DECEASED)

BETWEEN

FLORIAN MUNIDE MWAKE APPLICANT

AND

ESTHER KAVIVE MULI RESPONDENT

RULING

A. Introduction

1. Before the court for determination is the summons for revocation and/or annulment of grant dated 9th October 2023 filed by the Applicants, pursuant to provisions of sections 76, (d), (ii); 71, and 47 of the *law of Succession Act*, and Rule 43, 44(1) & 73 of the probate and administration Rules. The applicant seeks for orders that;
 - a. Revocation of the grant of letters of Administration issued and confirmed to the respondent on the 26th of July 2013.
 - b. The respondent be directed to make reasonable provisions for the Applicants who ought to have been included in the disposition of the deceased's property.
 - c. An inhibition be registered on LR Mwala/Mwanyani/929.
 - d. Spent
 - e. That costs of the Application be provided for.
2. The said application is supported by the grounds on the face of the said Application and the supporting affidavit of the Applicant Florian Muindi Mwake dated 26th June 2024, and opposed by the respondent through her replying affidavit dated 26th January 2024.



B. Pleadings

3. The Applicant herein depone that, Gideon Muli Mwake, (the deceased herein), was his grandfather and he was the biological son of one Daniel Mwake Muli, who was the deceased son. Daniel Mwake Muli too was deceased, and he and his mother Angelina Mwake, had been appointed as the administrators to his Estate.
4. Sometime in 2009, the entire family of the deceased herein had met and agreed to appoint him as an administrator of the Estate of the deceased. He did subsequently apply for letters of administration in Machakos Succession cause No. 1029 of 2009. while the said suit was pending, the respondent, (who was his grandmother) filed a second succession cause, Machakos succession cause No. 20 of 2013, where grant was eventually confirmed in her favour on 26th July 2013.
5. The applicant faulted this subsequent process for the reason that the respondent had misled the court to erroneously issue the confirmed grant, yet all the beneficiaries to the estate had not been included in the said process. The Applicant only included herself, syokau Muli, David Muli Mwake and Paul M Muli , while omitting to include Angelina Mwake,(daughter in law), and Monica Muli, who was also a daughter to the deceased.
6. Further, the Applicant contended that the respondent had only indicated Mwala/Myanyani/929 (hereinafter referred to as the suit property) as the estate property while leaving out various other known estate properties and shares held by the deceased. The said properties included LR No Kangundo/Kitwii/216, Plot No 17 at Kitwii Market, which had a one-storied building and housed a bar, butchery, and dairy shop, Shares held at KCB Bank, shares held at National Bank of Kenya and shares held at Kenya Airways.
7. It was the applicant's further contention that, the misrepresentation made by the respondent, was deliberate as the family homestead was situated on LR No Kangundo/Kitwii/216 a fact well within the knowledge of the respondent, and therefore, she had not been transparent in her dealing with estate property open for distribution/benefit of the deceased family. Finally, the respondent had also undertaken this process without involving them as beneficiaries of this estate nor did she seek and/or obtain their consent, rendering the entire process to be null and void
8. The grant of letters of administration and confirmed grant were therefore obtained by fraud and by non-disclosure of material facts, which would justify the revocation of the same. The Applicant therefore urged the court to grant the prayers sought.
9. The petitioner/ respondent opposed this application through her Replying affidavit dated 26th January 2024. She averred that, as the only wife of the deceased, she had a right in priority to apply for letters of administration to his estate. The same was subsequently confirmed since no objection had been filed after its gazettelement.
10. She was not aware of any other succession cause having been filed concerning her husband's estate, and if indeed it was true that such a cause existed, the same was filed behind her back, without the consent of the deceased family, and therefore was, a nullity abinitio.
11. The respondent further urged the court to note that the applicant had earlier filed a similar application, to the one under consideration dated 14.11.2013, which application had been heard and determined. The present application was therefore Res judicata. Further, the applicant had also filed other applications dated 04.06.2018 and 20.05.2019, concerning the sale and use of the suit parcel Mwala/ Manyani/929, which applications had been determined in her favour. The court could therefore not issue any inhibition orders as sought, given that similar orders, earlier sought had been denied.



12. Finally, the respondent did aver that the applicant had not proved that he was the legal administrator for his father's estate and therefore lacked locus to pursue his interest in this cause. No proof too, had been availed to show that she had omitted to include other Estate properties. she therefore prayed that this Application be dismissed with costs.

C. Analysis and Determination

13. I have considered all the pleadings filed concerning the summon for revocation of grant dated 9th October 2023, the submissions made by the respective parties before this court, and primarily note that the issues for determination are;
- a. Whether this Application is Res judicata, therefore frivolous, vexatious and an abuse of the court process.
 - b. whether the grant was obtained by concealment of fact, by means of untrue allegations of a fact essential to the suit and/or if the proceedings to obtain the grant were defective in substance.

Issue I Whether this Application is Res judicata, therefore frivolous, vexatious and an abuse of the court process.

14. The respondent did contend that the applicant had earlier on filed an application dated 14th November 2013, which was similar word for word to this Application under consideration. In the said application the applicant also sought to revoke the confirmed grant, and that application had been heard and determined on merit. The said application had been dismissed.
15. The applicant herein had not appealed against the said ruling and to again file this application on similar grounds was tantamount to having this court sit on its appeal. This application was therefore Res judicata, lacked merit and she prayed that the same be dismissed.
16. The court record does indeed confirm that a similar application had been filed by the applicant, dated 14th November 2013, seeking to revoke the confirmed grant issued on 26th July 2013. Though the applicant did not file a further affidavit to rebut the averments made, the court record has no proceedings and/or ruling related to the said Application. The respondent too did not attach any ruling to her replying affidavit, to conclusively prove, if indeed the said application had been determined.
17. It can therefore be safely assumed that the said application was never heard inter parties and/or a ruling delivered in respect thereof. This application is therefore properly before the court and is not Res judicata as pleaded.

Issue II whether the grant was obtained by concealment of fact, by means of untrue allegations of a fact essential to the suit and/or if the proceedings to obtain the grant were defective in substance.

18. Section 76(a), (b), and (c) of the [Law of Succession Act](#) provides as hereunder:

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;
19. That section provides that a grant of representation/ Confirmed grant may at any time be revoked or annulled as long as the court is satisfied that the facts contemplated under the said section are proved. It is therefore clear that there is no limitation in so far as matters revocation or annulment of grant are concerned. However, it is not in every situation where transgressions are alleged that the grant must be revoked.
20. This position was adopted in the case of *Albert Imbuga Kisigwa vs. Recho Kawai Kisigwa* [2016] eKLR Succession Cause No.158 of 2000, Mwita Where it was held that;-
- “Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a 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 the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
21. In *Jamleck Maina Njoroge Vrs Mary Wanjiru Mwangi* (2015) eKLR the court too, discussed circumstances under which a grant could be revoked and stated that;
- “The circumstances that can lead to the revocation of grant have been set out in section 76 of the *Law of Succession Act*. For a grant to be revoked either on the application of an interested party or on the courts own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of fact essential in point of law.”
22. The applicant contends that not all the beneficiaries of the estate were listed and in particular, his mother Angelina Mwake, as a daughter in law and one Monica Muli, the deceased daughter had been left out of the succession process, which had been concluded without their knowledge and nor did they give the requisite consent allowing the applicant administer and distribute the estate as envisaged under Rule 26(2) of the Probate and Administration Rules.
23. The applicant also faulted the respondent for deliberately leaving out various estate properties, which he identified, and listed. He therefore urged the court to find that the grant was fraudulently obtained by making false statement and through concealment of material fact.
24. It is not denied that one Daniel Mwake Muli (Deceased), is a son of Gideon Muli Mwake (the deceased herein). The applicant is the son of the said Daniel Mwake Muli (Deceased), and he also represents his mother Angeline Mwake. The respondent on the other hand is his grandmother and/or mother in law to, Angelina Mwake. The P & A forms filed herein also confirm that the deceased had a daughter known as Monicah Muli.
25. It is a fact that the respondent did not involve the applicant and/or his mother as a representative of the Estate of the late Daniel Mwake Muli before instituting these proceedings nor has she explicitly denied that they are entitled to the late Daniel Mwake Muli’s share, within the said Estate. This confirms that the grant was obtained by untrue allegations of facts pleaded and by making of false statement which calls for this court’s intervention to avoid injustice.



26. Be that as it may, the applicant did not file any document to prove that indeed he and/or his mother had obtained letters of administrator intestate for the Estate of Daniel Mwake Muli (Deceased). Without having done so, they cannot be deemed to be the lawful administrator of the said Estate.
27. As to whether the respondent did or did not list all the estate properties, it is true that on form P & A 5, initially filed, only the suit property is listed, but the applicant did annex one dividend notice dated 23.10.1998 showing that the deceased owned 300 shares of National Bank of Kenya and also a land search for L.R Kangundo/Kitwii/216, measuring about 1.6HA, which also confirmed that the deceased owned this parcel of land.
28. The applicant's other main concern from the pleadings filed seem to recovery of the estate property known as L.R Mwala/Mwanyani/929, Which was sold by the respondent to one Tom Mutunga on 18th September 2013, after the grant had been confirmed. The said parcel of land has been subject to litigation through applications dated 28th July 2014, and 4th June 2018 and review application 20th May 2019, all filed by the applicant. All of these Applications were heard on merit and were dismissed.
29. Specifically, in the ruling dated 7th May 2019, the Honourable judge did find that the administrator herein, (the respondent) had the right to dispose of the suit property under Sections 45 and 82 of the *law of succession Act*, as the grant had been confirmed in her favour. The applicant applied for review of this decision and his subsequent application again was dismissed vide this Honourable court's ruling dated 20th January 2020.
30. The question concerning the sale and/or distribution of L.R Mwala/Mwanyani/929 has therefore been settled, and to regurgitate it again, through this application, would be a travesty of justice and an abuse of the court process.
31. Finally, Sections 92 and 93 of the law of succession, Cap 160 laws of Kenya also provides that;
 92. Protection of persons acting on representation
 1. Every person making or permitting to be made any payment or disposition in good faith under a grant of representation shall be indemnified and protected in so doing, notwithstanding any defects or circumstances whatsoever affecting the validity of the grant.
 2. Where a grant of representation is revoked or varied, payments and dispositions made in good faith to a personal representative under that grant before the revocation or variation thereof shall be a valid discharge to the person making the same, and a personal representative who has acted under the revoked or varied grant may retain and reimburse himself in respect of any other person to whom the representation is afterward granted might have properly made:

Provided that a personal representative who so acted shall account for all payments, dispositions, retentions or reimbursements made by him to the person or person to whom representation is afterwards granted.
 93. Validity of transfer not affected by revocation of representation
 - (1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act, by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.



3. A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have not been discharged nor provided for.
32. The applicant, having not preferred any appeal against the earlier ruling concerning this parcel of land, must therefore forever hold his peace as against the purchaser but can seek for accounts from the respondent herein.

Disposition

33. The upshot is that the summons for revocation of the grant dated 9th October 2023 is partially successful and the orders that commend itself herein are that;
- a. The certificate of confirmation of grant issued on 26th July 2013 and the Grant of letters of administration intestate issued on 12th April 2013, are hereby revoked and a fresh grant of letters of administration be issued jointly to Esther Kavive Muli & a Representative of the estate of Daniel Mwake Muli (Once they get letters of administration intestate).
 - b. The Area chief is directed to file a new introduction letter confirming the current beneficiaries of the late Gideon Muli Mwake.
 - c. The new administrators are granted leave to file a further Affidavit listing all the Estate properties available for distribution and also to file for confirmation of the grant after the remaining estate properties have been identified.
 - d. For the avoidance of doubt, the property known as Mwala/Myanyani/929 will not be included as part of the said estate, based on previous determinations of this court regarding its legal sale to one Tom Matungu.
 - e. Each Party will bear their own Costs of these proceedings.
34. It is so ordered.

RULING, DATED AND SIGNED AT MACHAKOS THIS 6TH DAY OF FEBRUARY 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 6TH DAY OF FEBRUARY 2025.

In the presence of;

No appearance for Applicant

No appearance for Respondent

I.Jabo Court Assistant

