



REPUBLIC OF KENYA



**In re Estate of Micai M’Riungu (Deceased) (Succession Cause
78 of 2014) [2025] KEHC 1827 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1827 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 78 OF 2014**

TW CHERERE, J

FEBRUARY 6, 2025

IN THE MATTER OF THE ESTATE OF THE LATE MICAI M’RIUNGU- DECEASED

BETWEEN

DOREEN KAIMENYI 1ST APPLICANT

CAROLINE MAKENA KINOTI 2ND APPLICANT

AND

JANE GACHERI MICHAÏ RESPONDENT

RULING

Introduction

1. The estate of Micai M’Riungu (Deceased) comprised of the following land parcels:
 - a. Nkuene/Nkumari/1247
 - b. Nkuene/Nkumari/1359
 - c. Nkuene/Ngonyi/1307
2. The deceased, was survived by the following children:
 - a. Julius Kinoti Muchai (deceased) – father of the applicants.
 - b. Lucy Karuru
 - c. Jane Gacheri (Respondent)
 - d. Mark Muriungi Michai
 - e. Rachael Gaichugi



- f. Mwirigi Zachary Patrick
 - g. Duncan Gatobu
 - h. Faith Kanana
 - i. Moses Mwendia Michai
3. This court is seized of a Summons for Revocation of Grant dated 5th October 2021, brought by the applicants, Doreen Kaimenyi and Caroline Makena Kinoti, under Section 76 of the [Law of Succession Act](#) (Cap. 160). The applicants seek revocation of the Grant of Letters of Administration issued to Jane Gacheri Kinoti, the Respondent, on 22nd March 2016 and amended on 31st July 2019.
4. The applicants further seek orders that the estate of the deceased comprised of land parcels LR. Nkuene/Nkumari/ Nkuene/Nkumari/1359 and Nkuene/Ngonyi/1307 be restored to the estate for equitable distribution.

Grounds for Revocation

5. The applicants' case is premised on the following grounds that:
- i. They are the only children of Julius Kinoti Muchai (deceased), who was the son of Micai M'Riungu (deceased).
 - ii. The respondent fraudulently concealed their existence during the succession process despite them being rightful heirs.
 - iii. The estate was subdivided and transferred to some third parties, who are non-family members.
 - iv. The respondent's fraudulent actions warrant revocation of the grant.

Respondent's Response

6. The respondent, opposes the application, arguing that:
- i. The applicants were not known to the family at the time of the succession.
 - ii. The deceased's estate was already distributed, with some portions sold to third parties.
 - iii. The applicants' claim is aimed at frustrating the beneficiaries who received their lawful shares.

Oral Testimony

Applicants' Testimony

7. 2nd Applicant testified that she and her sister were excluded from their father's share of the estate. The witness tendered evidence in the form of search certificates to the effect that the estate had been portioned as follows:
- a. Nkuene/Nkumari/1247 was subdivided into two portions namely Nkuene/Nkumari/3721 & 3722 and respectively registered under the names of Alice Kagendo Mwaria and Moses Kimathi Mutunga who are not family members
 - b. Nkuene/Nkumari/1359 was subdivided into three portions namely Nkuene/Nkumari/3730, 3731 & 3733 and was respectively registered in the names of Sabella Kagendo Thurania,



Francis Muchiri Nyaga, and Julia Naomi K. Mutunga (jointly), Francis Muchiri Nyaga who are not family members and Jane Gacheri Muchai (Respondent).

- c. Nkuene/Ngonyi/1307 was subdivided into three portions namely Nkuene/Ngonyi/1906, 1907 & 1908 and respectively allocated to Moses Mwendia Michai, (deceased's son), Duncan Gatobu (deceased's son) and Lucy Karuru, Jane Gacheri, Faith Kanene, and Racheal Gaichugi (the deceased's daughters)
8. Applicant proposed that land parcels Nkuene/Ngonyi/1359 be shared out amongst the sons of deceased in equal shares and their father's shares be registered in the joint names of herself and her sister, and Nkuene/Nkumari/1307 be allocated to her and her sister. She additionally proposed that Moses Mwendia Michai, Duncan Gatobu (deceased's sons), herself and her sister jointly get 0.332 Ha each of Nkuene/Ngonyi/1307 and the balance be shared equally by the daughters of deceased Lucy Karuru, Jane Gacheri, Faith Kanene, and Racheal Gaichugi. Finally, the 2nd Applicant in her supplementary affidavit sworn on 26th February, 2024 laid no claim to Nkuene/Nkumari/1247.

Respondent's Testimony

9. Contrary to her pleadings, Respondent acknowledged that the applicants Doreen Kaimenyi and Caroline Makena Kinoti are her late brother's children. She equally conceded that she failed to disclose them in succession proceedings but stated that she was willing to allocate them 0.332 Ha from Nkuene/Ngonyi/1307.
10. Respondent additionally confirmed that upon obtaining the grant, she distributed the Deceased's estate as stated by the Applicants and as supported by the search certificates and that some of the beneficiaries were not family.
11. It was also her evidence that of the nine children of the deceased, Mwirigi Zachary Patrick and Mark Muriungi Michai were given other parcels of land by the deceased during his lifetime.
12. Mark Muriungi (son of the deceased) stated that he was unaware of the applicants until 2020. He proposes they receive 0.332 Ha of Nkuene/Ngonyi/1307.
13. Agnes Kethetu Kinoti (sister of the deceased) supported the applicants' case and proposed that they get equal shares with the other siblings.
14. Rachael Gaichugi (daughter of the deceased) acknowledged the applicants but claimed they came forward after the estate had been distributed.

Legal Analysis

15. Under Section 76 of the *Law of Succession Act*, a grant may be revoked if: a) If the grant was obtained fraudulently by making a false statement or concealing material facts
(b) If the grant was obtained through defective proceedings c) If the administrator has failed to distribute the estate fairly.

Court Findings

16. Upon reviewing the evidence, the court makes the following findings:

i. Omission of Applicants was Fraudulent

17. The respondent failed to disclose material facts in her succession application. Section 76 of the *Law of Succession Act* allows revocation of a grant where it was obtained by fraudulent means. In *Matheka &*



Another v Matheka [2005] 2 KLR 455, the Court of Appeal held that concealment of material facts in a succession cause renders the grant liable to revocation.

ii. The right of third-party purchasers

18. The purchasers failed to appear in court despite having been being summoned. The principle of bona fide purchaser for value without notice requires that a purchaser must prove:
 - a. They acquired the property legally.
 - b. They had no notice of irregularities in the transaction.
19. In *Katende v Haridar & Company Ltd* [2008] 2 EA 173, the court held that a bona fide purchaser must prove that the transaction was lawful and without fraud for the reason that fraudulent sales do not confer valid title (see *Macharia Mwangi Maina & 87 Others v Davidson Mwangi Kagiri* [2014] eKLR).
20. Since the purchases arose from an illegitimate succession process, the court finds that the transactions are null and void.

iii. Redistribution of the Estate is Justified

21. Under Kenyan law, grandchildren can inherit directly from their grandparents' estate in specific circumstances, particularly when their own parent (the child of the deceased grandparent) is deceased. In such cases, the grandchildren step into the shoes of their deceased parent and are entitled to the share that their parent would have received.
22. The *Law of Succession Act* (Cap. 160) contemplates situations where a child of the deceased has predeceased them. In such scenarios, the Act allows for the deceased child's offspring (the grandchildren) to inherit their parent's share.
23. There are numerous cases that underscore the principle that grandchildren inherit directly from their grandparents' estate only if their own parents, who would have been the direct heirs, are deceased. (See *In re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR, *In re Estate of John Musambayi Katumanga (Deceased)* [2014] eKLR, and *In re Estate of M'Ngarithi M'Miriri (Deceased)* [2017] eKLR).
24. From the foregoing, it follows that the applicants, being direct grandchildren of the deceased, are entitled to a share of the estate under Section 38 of the *Law of Succession Act*. The failure to include them violates their right to inheritance.

Orders

25. In light of the above findings, the court issues the following orders:
 1. The Grant of Letters of Administration issued to Jane Gacheri Kinoti is revoked.
 2. Grant of Letters of Administration shall issue jointly to Jane Gacheri Kinoti and Caroline Makena Kinoti
 3. The grant issued to Jane Gacheri Kinoti on 22nd March 2016 and amended on 31st July 2019 is hereby revoked
 4. Certificate of Confirmation of Grant shall issue jointly to Jane Gacheri Kinoti and Caroline Makena Kinoti



5. The Land Registrar Meru is directed to cancel all titles emanating from subdivision of Nkuene/ Ngonyi/1307 and Nkuene/Nkumari/1359 and revert the land parcels to the name of the deceased
6. Since the Applicants have no claim over Nkuene/Nkumari/ the same shall remain as distributed
7. Nkuene/Nkumari/1359 which was distributed to four sons of the deceased leaving out the father of the Applicants shall be portioned into five equal parts with one part being in favour of the Applicants Doreen Kaimenyi and Caroline Makena Kinoti, jointly
 - d. Nkuene/ Ngonyi/1307 which was distributed to two sons and daughters of the Deceased shall be portioned as proposed by the parties with Moses Mwendia Michai, Duncan Gatobu (deceased's sons) and Applicants Doreen Kaimenyi and Caroline Makena Kinoti jointly getting 0.332 Ha of each and the balance be for the benefit of Lucy Karuru, Jane Gacheri, Faith Kanene, and Racheal Gaichugi (the deceased's daughters) jointly.
 - e. Since this is a family matter, each party shall bear its costs as well as the costs associated with the subdivision and the issuance of the title deeds.
 - f. This cause shall be mentioned after 90 days to confirm compliance with the foregoing orders

DATED THIS 03RD DAY OF FEBRUARY 2025.

WAMAE.T. W. CHERERE

JUDGE

DELIVERED AT MERU THIS 6TH DAY OF FEBRUARY 2025

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H.M. NYAGA

JUDGE

This ruling is delivered under the provisions of Order 21, Rule 2 of the Civil Procedure Rules

Apology for delay

The Court acknowledges that there has been a delay in the delivery of this ruling due to an unfortunate accident involving the Judge who initially presided over the matter. The Court sincerely regrets the inconvenience this has caused to the parties involved. The Judiciary remains committed to the timely dispensation of justice, and every effort has been made to ensure that this matter is concluded appropriately.

