



REPUBLIC OF KENYA



**In re Estate of Nguna Munya (Deceased) (Succession Cause
13 of 2009) [2025] KEHC 1937 (KLR) (5 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1937 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 13 OF 2009**

MW MUIGAI, J

FEBRUARY 5, 2025

IN THE MATTER OF THE ESTATE OF THE LATE NGUNA MUNYA(DECEASED)

BETWEEN

**MUEKE MATEMU 1ST APPLICANT
BEATRICE KALONZU MUNYAO 2ND APPLICANT
FREDRICK WAMBUA NTHAKU 3RD APPLICANT
BENSON MUTISO MULEI 4TH APPLICANT
JONATHAN KITEME MULEI 5TH APPLICANT**

AND

JOSEPH MUENDO MUNYAO RESPONDENT

JUDGMENT

Summons for Revocation dated 22/03/22

1. By a Summons for Revocation or Annulment of Grant dated 22nd March 2022 the Applicants herein sought the following orders:-
 1. That the grant of letters of Administration intestate issued on 20th April 2009 and confirmed on 16th March 2010 be revoked or annulled
 2. That the asset of the deceased known as Wamunyu/Kyawango/383 does revert to the deceased for proper distribution amongst the beneficiaries of the estate of the deceased.
 3. That the Administrator/ Respondent be restrained to continue carrying out any administrative duties or disposing off the assets of the estate of the deceased namely Wamungu/



Kyawango/383 and Yathui/ Kyangulumi/17 pending the hearing and determination of these summons for revocation of grant.

4. That the cost of this application be borne by the administrator/ Respondent.
2. The Chamber Summons is based on the following grounds:-
 - a. That the Administrator/Respondent obtained the grant of letters of administration fraudulently.
 - b. That the 1st and 2nd Applicants are the daughters of the deceased while the 3rd Applicant is a stepson to the deceased and are entitled to equal shares to the estate.
 - c. That the Administrator concealed relevant material facts to this court
 - d. That the Administrator/Respondent has failed to fairly administer the estate of the deceased among the legitimate beneficiaries and has been selling and transferring the assets of the estate to strangers which has completely disinherited the rightful heirs of the estate.
 - e. If the Respondent is not restrained the estate will be exhausted and wasted when the applicants and other legitimate beneficiaries have not received their rightful share
3. The Summons is supported by the affidavit of Mueke Matemu and Beatrice Kalonzu Munyao, daughters of the deceased. According to the deponent, the deceased, Nguna Munyao died on 10th May 2001, widow of Munyao Mbengei who died in 1967 and was survived by two wives; and Wanza Munyao and Nguna Munyao both deceased. The deceased had two properties namely Wamunyu/ Kyawango/383 and Yathui/Kyangulumi/17
4. The Applicants' averred that they were not informed of the petition for grant of letters of administration for the estate of the deceased and that thumb prints allegedly belonging to PW1/ 2ND Objector /Applicant were affixed in the consent to the making of the grant and that the thumb print together with the petition was obtained fraudulently as did not affix the thumbprint.
5. The Applicant averred that the Administrator/Respondent, Joseph Muendo Munyao did not disclose all the properties of the deceased as he only disclosed Wamunyu/Kyawango/383 and failed to disclose Yathui/Kyangulumi/17 and also failed to disclose that the family of Wanza were beneficiaries to the estate of the deceased and completely disinherited them.
6. The Applicant urged the court to revoke the grant of letters of administration issued on 20th April, 2009 and Certificate of Confirmation of Grant dated 16th March 2010 because of the fraud, concealment of material facts and misrepresentation occasioned by the Respondent.
7. The Asset Wamunyu/Kyawango/383 to revert to the deceased for proper distribution amongst beneficiaries of the deceased.
8. Ndunda Munyao Mbengei filed Supporting Affidavit and deposed that he was step son of the deceased co wife with his late mother, Wanza Munyao and they were 5 children, all are deceased save for him surviving.
9. At the time of his late father, Munyao Mbengei who died in 1967, the Wamunyu/ Kyawango/383Yathui/Kyangulumi/17 had not been demarcated, later they were demarcated and registered in the deceased's names.



10. In 1967, he bought land in Lungalunga Kwale and moved his mother, Wanza Munyao and established a home for her and she lived upto her death. He there fore seeks share of the property of the deceased as beneficiary of the estate.
11. Fredrick Wambua Nthaku, 3rd Objector/Applicant on his own behalf and of 4th & 5th Applicants/Objectors are all Purchasers for value of part of property Wamunyu/Kyawango/383.
12. The proof sale by deceased to Musau Mulinge, Nthuku Ngullah, Peter Ndambuki Nzikali & Joseph Mutisya Muthama is through Agreement for Sale of 15th April 1978 attached written in Kikamba and translated in English annexed 'FWN 4 5 & 6'
13. Subsequently, in 1993, Fredrick Wambua Nthaku approached Joseph Mutisya Muthama who sold him his portion of the property bought from deceased. Copy of Agreement for Sale dated 1/5/1993 in Kikamba and translated to English both versions annexed as FWN7, FWN 8 & FWN9.
14. The Purchasers have developed portions of the property purchased from deceased been in possession since then to date. The Respondent Administrator sent Kilutu Katulu to sell the plots to the Purchasers again. The buyer brought construction material and they reported the incident to Masii Police Station vide OB 4/7/2021.

Replying Affidavit Sworn on 24/5/2022

15. The Respondent/Administrator, Joseph Muendo Munyao, swore Replying Affidavit on 24th May 2022 and deposed that the Applicants were not beneficiaries and that only the 1st two were his sisters and were married by the time their mother died.
16. It was deposed that his sisters were well provided for in their late father's estate which devolved to his wives. That his stepmother was given her land at Wamunyu Kyawango and Kyangulumi Yathui which they sold before they moved to Makueni, Shimba Hills and Kwale.
17. It was thus deposed that the lands referred as Wamunyu/Kyawango/383 and Yathui Kyangulumi/17 belonged to his mother and at no point did she hold in trust for her co wife Wanza and her children.
18. The Respondent deposed that his sisters were provided for before their mother passed and are no longer beneficiaries to her estate and that it was not true that his sisters did not affix their thumbprint and that the Chief who assisted him in obtaining the grant must have made his sisters to consent to the grant.
19. He deposed that during the burial of his mother he asked that anyone who had a claim against his mother's estate to avail any evidence and nobody came forth. That he does not know of any stepbrother and hence Jameson Kasyoki Muendo is a stranger to his mother's estate.
20. According to the Respondent, the court should dismiss the summons for revocation of grant with costs as the same lacks merit and evidence

Hearing

21. PW1 Beatrice Kalonzo Munyao testified that she was in court in regard to property that their father left. She did not sign the succession documents. Joseph Munyao is her brother.
22. According to her Witness Statement that she relied on, The deceased herein was her late mother, they were 5 children 3 girls and 2 boys. One girl died and left her children. Her mother had 2 properties Wamunyu/Kyawango/383 and Yathui Kyangulumi/17.



23. The Respondent/Administrator did not inform her that he had petitioned for letters of administration for the estate of their mother. She did not sign the consent to apply for grant of administration and the Certificate of Confirmation of Grant. She was not given land by her mother during her life time or be her late father.
24. She was aware of the Purchasers/Objectors that they purchased part of the Wamunyu/Kyawango/383 and have been in exclusive use, possession and ownership of their respective portions.
25. On cross examination she stated that she was born in 1942 and married in July 1960. She was married and lived in Masii then moved to Shimba Hills. PW1 learnt of the matter in 2021 and she came to Court where the Administrator showed her the thumbprint she placed on the documents, She denied / refused that she placed thumbprint on the document either before the Chief or Advocate.
26. PW1 confirmed sale of land by deceased to Purchasers/ Objectors. Her younger brother Christopher never got portion of the land and he was also one of the Objectors. PW1 wanted the grant revoked to enable beneficiaries get fair share of property of deceased.
27. PW2 Jameson Kasyoki Muendo, testified that the deceased is his grandmother and Mueke Matemu & Beatrice Kalonzo Munyao are his Aunts. The Administrator/Respondent Joseph Munyao is his father and he relied on his Witness Statement of 3/10/2022.
28. He stated his grandmother, the deceased herein had 4 children his Aunts, father and Christopher Muema Munyao. The Summons for Confirmation of Grant were granted and the Certificate issued that the Administrator, Joseph Muendo Munyao who owns /holds Wamunyu/Kyawango/383. The Administrator has been taking letters/ orders from the Police to evict them from the property or graze cattle yet they have been on the land over the years as his grandmother left him land to graze and/or build a home.
29. In cross examination he stated that he is 1st born of the Administrator, Joseph Muendo Munyao. PW2 was aged 64 years old and he produced his ID which shows the date of birth was in 1959. He stated he lived with his grandmother, the deceased herein since 1968 until she died in 2001. He stated his mother Njakwa was married under 'iweto' as his grandmother and grandfather could not have children.
30. This Court looked at both the witness PW2 & the Administrator Respondent & the Respondent looked younger than PW2. The ID cards of both read as follows; for Administrator & PW2
 1. Joseph Muendo Munyao-born 1952
 2. Jameson Kasyoki Muendo-born 1959
31. PW2 was in Mombasa for 35 years after he left school and came back in 2012. He objected to the Confirmation of grant giving the Administrator whole Wamunyu/Kyawango/383
32. PW3, Fredrick Wambua Nzaku, Purchaser of part of property, Wamunyu/Kyawango/383 knew the deceased in 1992 and was registered owner of the property. In 1993 he approached one of the Purchasers of the portion, Joseph Mutisya Muthama to sell me 40ft by 100ft for Ksh 60,000/- and produced documents to confirm the Sale. The Agreements for Sale of land was /is in Kikamba translated to English and both are annexed to the Application for revocation of grant.
33. PW3 took possession of the land since 1993 and the deceased died in 2001. In 2003-2004 he put up 2 shops & 18 residential rooms rented them out. The Administrator was aware of the fact. After burial of deceased, the Administrator stated that anyone with a claim from the deceased was to contact him. He was away. In 2021, the Administrator sold the land adjacent to his land during survey he thought



- they would encroach on to his land. PW2 & Administrator approached PW3 to pay Ksh 100,000/- for his title. He was suspicious of the fraud/forgery and he held onto the land. He prayed the Court revoke the grant, the land reverts to deceased's name and he gets title for his land where he has taken possession and developed over the years.
34. In cross examination PW3 stated that he knew Respondent as son of deceased and not as Administrator, he did not know Respondent's sisters. He supports revocation of grant as he bought the plot and used his money, developed it and to date he has no title document.
 35. PW4 Benson Mutiso Mulei, 4th Objector/Purchaser, he knew the deceased as they are from the same village. In 1998 he bought 40ft by 100ft for Ksh 100,000/-which he paid to Musau Mulinge in 2 instalments and drew Sale Agreement with Witnesses who signed. The Sale Agreement was/is in Kikamba and also translated in English and are attached to the application revocation.
 36. PW4 has been on the land since 1998 to date, he learnt of the case in 2021. The Administrator approached him that his land in Wamunyu was being sold. His father who was a witness died. The Administrator demanded money in order to get title. He approached the family of the deceased and realized the Administrator was selling sold by deceased again. He reported the matter at the Masii Police Station OB 417/2021 when he was told that someone deposited building material on the Plot. He sought grant and confirmed grant be revoked and property to revert to deceased's name.
 37. In cross examination PW4 stated 1st report was that the Administrator trespassed his land. He stated he bought land in 1998 from Musau Mulinge who bought from the deceased and died in 2001. He had the Sale Agreement and he did not pursue title during deceased's life as the 1st Purchaser was pursuing the same.
 38. He was involved with the family for purposes of getting title and he wants the grant to be revoked to involve all purchasers and family of deceased get their share of the land and he gets title to the land.
 39. The Respondent Administrator, DW1, Joseph Muendo Munyao stated he was appointed administrator and now his siblings; sisters and Purchasers were seeking revocation of grant. When his mother died, deceased herein, he held meeting with Christopher, Mueke Muendo and they went to the Chief in 2007-2008 and they went to Samuel Kivuitu Advocate and finger prints were taken and he left for Kisumu where he worked. During the meeting all siblings met and agreed that as eldest son of deceased he was to be the Administrator and his sisters were married. The siblings ganged up together against him refused stopped talking to him and filed the case in 2022.
 40. The Respondent/Administrator was categorical that PW2 was/is not his son. His mother helped deceased to sell 'muratina' and he came to live with them since he was 5 years old. The deceased had told him to sell some land and give PW2 land to build. Before he could do so PW2 sold 2 portions of 50 ft by 100 ft and later brought him to Court.
 41. The Administrator stated that his late Father, had 2 wives that ½ of 2 properties; Wamunyu/Kyawango/383 & Yathui Kyangulumi/17 was held by his late mother; the deceased in trust for both houses was not true. His father divided the properties equally, the deceased refused to farm part of Yathui Kyangulumi/17 and the deceased's husband his father gave Mueke, Kalondu & Nduku to share, this was in 1967 & 1968 he was there and he is now 71 years old. His sisters were married at the time, eldest sister is now 100 years old.
 42. With regard to the Purchasers, he told them to take to him written Agreements and they did not do so. When his mother sold land, he was always there and she involved them so he does not know of the Agreements. He opposed the Application to revoke the grant.



Applicant's Submissions

43. On behalf of the Applicant, it is submitted that the issues for determination were whether the grant of letters of administration issued to the respondent on 20th April 2009 should be revoked and whether the assets of the deceased should revert to the deceased for proper distribution among the beneficiaries of the Estate of the deceased.
44. Reliance was placed on Section 76 of the Law Succession which provides the grounds for revocation.
45. It is submitted that the respondent fraudulently obtained the grant issued by this court and that he did not distribute the estate amongst the rightful beneficiaries of the deceased, there was material non-disclosure on the part of the respondent in that he did not disclose the full assets and liabilities of the deceased.
46. Reliance was placed in the case of re Estate of Gathuku Gathuna(deceased) [2020] e KLR and the Re Estate of Solomon Ngatia Kariuki (deceased) (2008) eKLR, Agnes Mutitu Mwauru & 2 others v Jane Njoki Gachoki [2015] e KLR, re Estate of Anderes M'ikingu (deceased) [2018] e KLR and the Matter of the Estate of Muiruri Muchoro(deceased) [2014] e KLR
47. It is submitted that the objectors deserve compensation in the form of costs incurred and that the summon is merited and should be allowed as prayed.

Respondent's Submissions

48. On behalf of the Respondents, it was submitted that the application for revocation of the grant is ill tainted since the only two objectors who would have been justified to file the same, if they had good reason to, were admittedly influenced to do it 11 years after its confirmation and that they were long married before the death of their mother and had nothing to do with the estate of their mother since they were given a share of their father's estate before he died in 1967.
49. The Respondents submitted that the land Yathui Kyangulumi/17 had not been included because it had dispute by the time they applied for the grant. It was their final issue that the application for revocation of the grant was an afterthought and if granted would prejudice several parties who have lawfully obtained titles to their respective pieces of land. They prayed that the same be dismissed with cost to the respondents.

Determination

50. The Court considered the pleadings and submissions filed by parties through learned Counsel and the issue that emerge for determination is;

a. Whether the grant issued on 20th April 2009 and confirmed on 16th March 2010 should be revoked or not?

51. On the issue of whether the Grant issued on 20/4/2009 and confirmed on 16/3/2010 should be revoked:

“The Summons is premised on Section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya provides;

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;
- (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.”

52. That section provides that a grant of representation 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.

53. In deciding whether or not to revoke grants, In re Estate of Mukhobi Namonya (Deceased) [2020] eKLR that;

“under section 76 of the Act, a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining the grant was attended by glaring difficulties, such as where the same was defective, say because the person who obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant. The second general ground is where the grant is obtained procedurally, but the administrator subsequently runs into difficulties during the process of administration of the estate. Such difficulties include his failure or omission to apply for confirmation of his grant within the period allowed in law, or where he fails to exercise diligence in administration of the estate, such as where he omits to collect or get in an asset, or where he fails to render accounts as and when he is required to do so by the law. The third general



ground is where the grant has become inoperative or useless on account of subsequent circumstances, such as where the sole administrator died or loses the soundness of his mind or is adjudged bankrupt.

Beneficiaries

54. The deceased herein, Nguna Munyao, 2nd wife/ widow of Munyao Mbengei who died in 1967.1st wife/widow of Munyao Mbengei was Wanza Munyao and had 5 children, Ngolya Munyao, Ndunda Munyao, Mutua Munyao, Mbithe Munyao & Mutewa Munyao all said to be deceased. The Beneficiaries of the deceased herein according to Assistant Chief Wamunyu are Beatrice Kalondu Munyao (PW1), Joseph Muendo Munyao (Administrator) Christopher Muema Munyao & Mueke Matemu.
55. In the Petition for letters of administration intestate filed on 9/1/2009. the beneficiaries are as listed above and the only property for distribution was/is Wamunyu/Kyawango/383 but Yathui Kyangulumi/17 was not listed or included. The Grant was issued to Administrator Respondent on 20/4/2009 and was confirmed on 3rd March 2010 and whole of Wamunyu/Kyawango/383 was distributed to the Administrator Respondent solely.
56. The applicants averred that the administrator obtained the grant of letters of administration intestate fraudulently by affixing forged thumbprints alongside the name of the 1st and 2nd applicants in the consent for making grant and consent to confirmation of grant and that the respondent also concealed relevant material facts by not disclosing that Yathui Kyangulumi/17 property is part of the estate of the deceased.
57. Beneficiaries of the deceased's estate are spelt out under Section 51 & 66 of the LSA. PW 2 Jameson Kasyoki Muendo is not beneficiary of deceased's estate. In his convoluted testimony, he did not establish being child of deceased. He gave 2 contradictory versions; one that he was/is son of the Administrator but could not prove it, the Court saw both of them in Court it did not seem possible. Their Identity Cards show the Administrator was born in 1952 and alleged son 1959, the Administrator could not possibly sire a child at 7 years old.
58. Secondly, he alleged that he was son to deceased through iweto as the deceased and her husband could not get children. From the above list of deceased's children, it is clear that it is not true. Thirdly, the pleadings filed disclose the Applicants /Objectors, the sisters of Administrators & Purchasers. PW2 is a beneficiary of deceased's estate. The deceased told Administrator to get him land to graze or build, PW2 sold 2 Plots, that is it, no more land.

Distribution

59. With regard to the sisters claim, PW1 testified, Mueke Munyao did not, be that as it may, the Petition was filed in 2009 before advent of Constitution 2010 whose Article 27 clearly made all persons, children of deceased equal protection and benefit of the law.
60. The Administrator disclosed all siblings but upon confirmation of grant distributed Wamunyu/Kyawango/383, to himself to the exclusion of other siblings, even if at the time his sisters were not included for distribution, he did not distribute any portion to his only brother Christopher Muema Munyao.
61. With regard to the Purchasers claims, PW3, Fredrick Wambua Nthaku & PW4 Benson Mutiso Mulei testified and relied on detailed Witness Statements and annexed written Agreements in both Kikamba & translated in English. PW3 swore Affidavit and attached Written sale Agreements of Jonathan Mulei



and testified on his behalf. It is not contested that each of the Purchasers have been of the respective parts of Wamunyu/Kyawango/383, in quiet possession, acquired and developed these portions and have not been evicted nor reported and charged as trespassers. They purchased from purchasers who purchased from the deceased.

62. The Administrator is alleged to have sold portions sold again, attempted eviction bringing buyers who have poured building materials and asked purchasers to pay money Ksh 100,000/-Ksh 150,000/- each for titles.
63. The Purchasers claim s can legally be heard and determined in the Environment & Land Court as provided by Article 162 (2) (b) of the Constitution & Section 13 of Environment & Land Act.

Disposition

1. The grant of 20/4/2009 confirmed on 16/3/2010 is revoked as thumbprints are contested, the other property Yathui Kyangulumi/17 or 2nd House portion was left out in filing Petition, the distribution of Wamunyu/Kyawango/383 was solely to Administrator to exclusion of Christopher Muema Munyao.
2. The property Wamunyu/Kyawango/383 shall revert to deceased's name Nguna Munyao for beneficiaries to agree and consent to distribution of the property considering that each party who has legally built developed on the property is not evicted or structure demolished.
3. The Purchasers Applicant/Objectors who have been in possession who acquired and developed the portion allegedly bought shall remain in situ and Sale dispute referred to ELC Court Machakos until hearing and determination of the dispute.
4. The daughters of deceased, only PW1 testified, I find that in 2009 Constitution of Kenya was not in force and Article 27 had not kicked in, save for Law of Succession Act 1981. Therefore, the sisters as beneficiaries maybe considered and allotted a portion.

JUDGMENT DELIVERED DATED & SIGNED IN OPEN COURT IN MACHAKOS HIGH COURT ON 5/2/2025 THROUGH VIRTUAL/PHYSICAL CONFERENCE.

M.W. MUIGAI

JUDGE

