



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Geoffrey Githigi Kanyigi (Deceased) (Civil Appeal
E019 of 2023) [2025] KEHC 3388 (KLR) (18 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3388 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CIVIL APPEAL E019 OF 2023**

JR KARANJA, J

MARCH 18, 2025

IN THE MATTER OF THE ESTATE OF GEOFFREY GITHIGI KANYIGI:::DECEASED

BETWEEN

SUSAN NJERI GATHEGI APPELLANT

AND

**JANE ALEMENYA ALUMASI [SUED AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF JAMES MACHARIA - DECEASED] RESPONDENT**

JUDGMENT

1. This appeal arises from the ruling of the Chief Magistrate delivered on 10th July 2023 in Kapsabet Succession Cause No. 24 of 1985, involving the estate of the Late Geoffrey Kathigi Kanyigi [deceased] for which a grant of letter of administration Intestate was issued to Mwangi Kathege and James Macharia [Petitioners] on the 19th June 1986 and confirmed belatedly on the 11th April 1995.
2. The estate property comprised a parcel of land described as Nandi/Kamobo/302 which was distributed to the two Petitioners in equal share of 0.35 acres and to a third party, John Gichuki Mundia, who was allocated 0.5 acres of the property.

However, twenty seven [27] or so years after the confirmation of the grant, the Applicant Appellant, Susan Njeri Gathegi, applied for revocation of the grant vide the summons for revocation of grant dated 19th April 2022 alleging that she was the biological daughter of the deceased, but was omitted as a beneficiary in the succession proceedings.

3. The application was essentially made against Jane Alemenya Alumasi, the widow of the Second Petitioner, the Late James Macharia and legal representative of his estate. The grounds for the application included that the proceedings to obtain the grant were defective in substance as the Applicant was unaware of them and was excluded as a beneficiary to the estate of the deceased. That, the grant was obtained fraudulently by concealment of material facts such that the Applicant was



disinherited after the character of the estate property was altered by the issuance of new title documents to the Petitioners [herein, the Respondents].

4. The trial court heard the application ‘viva-voce’ and thereafter dismissed it with costs in the ruling delivered on 10th July 2023, in which the trial court remarked: -

“I have fully considered the evidence tendered herein. The Applicant appears to have been aware of what was happening. She confirmed that part of the land initially belonging to her late father was sold.

As she seeks for the revocation of the grant, it appears that she is only interested in the land which the late husband to the Respondent was occupying. She hasn’t demonstrated who are the other beneficiaries and what ought to be the mode of distribution.

It is evident herein that some land was sold out before the succession process was conducted which the Applicant is seeking to change the status thereof. The conduct of the Applicant especially chasing the Respondent out of the land in the name of her late husband and learning that the Respondent was out to succeed the estate of her husband applied for the revocation of the grant herein.

The application by the Applicant is an afterthought and lacks merit, it is hereby dismissed with costs to the Respondent.” [See paragraph 14, 15, 16 and 17 of the Ruling].

5. Being aggrieved with the trial court’s ruling, the appellant or Objector or Applicant preferred the present appeal against the two Respondents, Jane Alemenya Alumasi and Mwangi Kathege. The Memorandum of Appeal dated 26th July 2023 sets out the twelve grounds of appeal which were canvassed by written submissions filed herein on behalf of the Appellant by Cheruiyot Melly and Associate Advocates.

Ultimately, the Appellate prays that the impugned ruling of the trial court be set aside and/or quashed and be substituted for an order revoking the grant with the Appellant being appointed the sole administrator of the estate.

The Appellant also prays for costs of the appeal.

6. The Respondents, in particular the First Respondent [Jane] opposed the appeal and filed her written submission in that regard through Duncan Tallam & Company Advocates.

Having considered the appeal on the basis of the supporting grounds and the submissions by both sides, the duty of this court was to re-visit the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

7. In that regard, the evidence adduced by the Appellant/ Plaintiff [PW1] and her witness, John Irungu Maina [PW2] orally and in writing was considered and so was the evidence of the first respondent [DW1] and her two witness, Wilson Thiong’o [DW2] and Paul Macharia Mwangi [DW3].

In this court’s opinion, the issues arising for determination were Firstly, whether the application for revocation of grant was proper and competent before the court having been made approximately twenty seven [27] years after the grant was confirmed and Secondly, whether any of the conditions specified in Section 76 of the *Law of Succession Act* for revocation of grant were duly established and proved by the evidence availed by the Applicant.

8. As regard the first issue, it was a glaring fact when the application was presented in court by the Appellant, but none of the parties; more so the Respondents, addressed it. Even in this appeal the issue was not addressed, but this court being a first appellate court would have the power to raise and



determine the issue at this appeal stage which is essentially a re-trial as was indicated in the case of *Selle Vs. Associated Motor Boat Company Limited and Others* [1968] EA123, where it was stated as follows: -

“This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of trial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

9. The impugned grant having been confirmed on 11th April 1995 became spent with the distribution of the estate to the specified beneficiaries and the discharge of the administrators from their lawful obligation. The process of administration of the estate came to an end as the estate property was no longer available for administration and eventual distribution to the beneficiaries by the appointed administrator.

Therefore, as at the time of filing of the impugned application for revocation of grant, there was no valid grant in existence to be revoked.

10. It could therefore be stated that the impugned application was defective, improper and incompetent before the court.

With regard to the time of filing the application, the *Law of Succession Act* does not prescribe a limit, but such an application ought to be made within reasonable time in terms of Section 58 of the *Interpretation and General Provisions Act* [Cap 2 Laws of Kenya], which provides that: -

“where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.”

11. There can be no doubt the delay of twenty seven [27] years in bringing this application was grossly unreasonable, unconscionable, intolerable and inequitable more so, in the absence of a satisfactory explanation or excuse from the Applicant. The impugned application was for this reason improper and incompetent before court.
12. Be that as it may, on whether the conditions for revocation of the grant were fulfilled by the Appellant the evidence on her side navigates towards Section 76 [a] and [b] of the Succession Act which provides that a grant of representation may be revoked at any time if, [a] the proceedings to obtain the grant were defective in substance and [b] the grant was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the case.
13. The original record created on the 22nd April 1985 clearly shows that the grant and the certificate of confirmation of grant were both obtained regularly. There was nothing to suggest that the proceedings to obtain the grant were defective in substance. The usual pre-requisites were completed satisfactorily in as much as the court acted on them to confirm that there was no objection to making of the grant in favour of the two Petitioners who were later confirmed to be the true beneficiaries of the estate which was therefore transmitted to them with a part thereof being transmitted to a “bona-fide” purchaser when the grant was effectively confirmed.
14. There was also nothing to suggest that the Appellant was also a beneficiary of the estate and if she was, there was nothing to suggest that she was not aware of the succession cause in so far as it related to the then material estate being Land Parcel No. Nandi/Kamobo/302. The suggestion from the Appellant



that there were other additional beneficiaries apart from her and the Petitioners was never established and remained a mere allegation.

The aforementioned parcel of land was the only property identified as being available for distribution. So, if there was any other property, then it was not made available for distribution in this cause and was therefore not part of the cause.

15. It would therefore follow that the Appellant did not provide credible and sufficient evidence to prove that the impugned grant and the certificate of confirmation of grant were obtained fraudulently by false statement and/or by concealment of material facts. In the circumstances, this court is in agreement with the conclusion arrived at by the trial court in dismissing the Appellant's impugned application for revocation of grant respecting the estate of the deceased which has since been spent.
16. It is without doubt that considering the passage of time from the time the grant was issued and confirmed to the time the application for revocation of the grant was made, the application was not made in good faith and was indeed an afterthought. The delay defeated any equitable remedy that may otherwise have been available to the Appellant.

In sum, this appeal is without merit and is hereby dismissed with costs to the Respondent.

DELIVERED AND DATED THIS 18TH DAY OF MARCH 2025

HON. J. R. KARANJAH,

JUDGE

