



REPUBLIC OF KENYA



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**In re Estate of Ngare Munene Gakuya (Deceased) (Miscellaneous Succession Cause 86 of 2013) [2025] KEHC 4574 (KLR) (8 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4574 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
MISCELLANEOUS SUCCESSION CAUSE 86 OF 2013**

**RM MWONGO, J**

**APRIL 8, 2025**

**IN THE MATTER OF THE ESTATE OF NGARE MUNENE GAKUYA (DECEASED)**

**BETWEEN**

**FAITH WAMWEA MBOGO ..... APPLICANT**

**AND**

**JANEFER NJERI NGARE ..... RESPONDENT**

**JUDGMENT**

1. The deceased died in 1985. A grant was issued to Jennifer Njeri Ngari the respondent herein, in SRM Succ No. 64 of 2004, Kerugoya. The grant was confirmed on 13th May 2005. The only property of the estate was indicated as Baragwe/Guama/52.
2. The applicant filed summons for revocation of grant dated 16<sup>th</sup> September 2006 seeking that the grant issued to the respondent in the estate of the deceased revoked. The application is premised on grounds that:
  1. The proceedings to obtain the grant were defective in substance;
  2. That the grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case;
  3. The grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
  4. In any event, the person to whom the grant was issued was not entitled to it as she is not a legal dependent and/or beneficiary of the estate and even the deceased was not entitled to the parcel of land in dispute; and
  5. The grant had become useless and inoperative through subsequent circumstances.



3. The summons is supported by an affidavit sworn by the applicant in which she stated that land parcel number Baragwe/Guama/52 was registered in the name of her brother-in-law, the late Ileri Mbogo. Through Kerugoya Principal Magistrate's Court Succession Cause No.64 of 2004, the land was transferred to the deceased herein and in March 1993, she filed another suit being Kerugoya Principal Magistrate's Court Succession Cause No.76 of 1993 seeking to have the land reverted back to the name of the late Ileri Mbogo, its original owner.
4. The respondent's counsel objected to the suit on grounds of the applicant's capacity to sue. The respondent's objection was dismissed and the respondent appealed at the Court of Appeal where the appeal was dismissed. It became paramount that for her suit to be determined, the file Kerugoya Principal Magistrate's Court Succession Cause No.64 of 2004 would need to be presented before the court in Kerugoya Principal Magistrate's Court Succession Cause No. 76 of 1993, and she planned for this to be done.
5. During the pendency of the determination of Kerugoya Principal Magistrate's Court Succession Cause No.76 of 1993, the respondent petitioned for a grant through Kerugoya Principal Magistrate's Court Succession Cause No.64 of 2004 without notifying any relatives or family members of the original owner of the land. The grant was issued to the respondent and it was confirmed as already indicated herein.
6. The applicant deposed that the original owner of the suit land, the late Ileri Mbogo was a person of unsound mind and he died in the year 2005. According to the applicant, the late Ileri Mbogo did not have legal capacity to transfer the land owing to his mental incapacity. Regardless, the deceased herein somehow acquired the property from the late Ileri Mbogo through a transfer of land transaction with the transfer form duly executed. The deceased herein died on 17<sup>th</sup> February 1985. However, a search of the property indicates that the property was registered to the deceased herein posthumously in 1993 pursuant to a transfer instrument executed by the parties in 1991.
7. The applicant stated that neither the respondent herein, nor her husband, the deceased herein are entitled to the land since it was obtained through fraud. That at the point of issuing the grant, the respondent concealed from the court the material fact that the property does not form part of the estate of the deceased. The applicant asserts that the respondent also concealed that the land was not legally obtained. On these grounds, the applicant urged the court to revoke the grant which was obtained fraudulently without involving the family of the late Ileri Mbogo, the rightful owner of the land. That she was also left out of the proceedings as a sister-in-law of the deceased.

### **Respondents Response**

8. The respondent filed a replying affidavit dated 04<sup>th</sup> April 2011, five years after the application was filed. In it, she deposed that land parcel number Baragwe/Guama/52 initially belonged to the late Ileri Mbogo. In 1977, her husband, the deceased herein, purchased the land from the late Ileri Mbogo at a cost of Kshs.24,000/= and in 1980, the vendor and purchaser appeared before the Land Control Board for the relevant consent. In 1980, they moved into the land and they have lived on it to date, but that the deceased herein died in 1985 before completing the registration formalities for the land purchase.
9. The transfer documents had been signed by both parties at the point of purchase of the land and at the point of registration, the date was inserted as 1991, after the death of her husband. She denied that the late Ileri Mbogo was of unsound mind (or at least he did not appear to her as such) and that at the time of signing the land sale agreement and attending the land control board, he was lucid.



10. According to her, the land belongs to her husband and she helped him develop it by planting over 10,000 tea bushes. She defended her appointment as administrator of the estate of the deceased and stated that the grant was obtained legally. She stated that the applicant has no audience before this court since the application is time barred under the *Limitation of Actions Act* yet there is no leave of court sought. She urged that she has lived on the land uninterrupted for 30 years and she will suffer immense loss if the application succeeds.

### **The hearing**

11. The application was heard viva voce. PW1, the applicant, produced documentary evidence in support of her case. She stated that the respondent evicted her and her family from the land in 1993. The deceased herein allegedly bought the land from the late Ileri Mbogo who had 2 wives. The applicant is married to the late Ileri Mbogo's brother and she knows that the late Ileri Mbogo was insane, a condition that sent him in and out of hospital many times. When he died, the late Ileri Mbogo was buried on that land. She stated that the late Ileri Mbogo was given the land by the clan before he developed a mental illness. That she used to work on the land in the company of Loise, the late Ileri Mbogo's sister.
12. Further, it was her evidence that they learned that the land had allegedly been sold when the respondent evicted them from it, a move that was supported by the area Chief. She stated that she sued the respondent to return the land but the matter was transferred to Nyeri and then to Kerugoya in the process of this movement of the file, the respondent obtained the grant fraudulently.
13. In cross-examination, she stated that she used to take the late Ileri Mbogo to hospital for treatment over his mental illness and she produced records from Mathari National Hospital as evidence. She was unaware of the land transaction initiated by the late Ileri Mbogo, and she said she knows that mentally incapacitated people cannot sell property. She is in court on behalf of the family of the late Ileri Mbogo who have been disinherited by the respondent. She stated that Kerugoya Principal Magistrate's Court Succession Cause No.76 of 1993 was never determined but she wished to have it determined.
14. The respondent testified as RW1. She relied on the averments made in her replying affidavit. On cross-examination, she stated that she knows the late Ileri Mbogo who sold the land to her husband, the deceased herein. The deceased herein died before the late Ileri Mbogo and in 1993, she, RW1, registered the land since all the transfer documents had been signed by the parties using their thumbprint impressions.
15. Even though the transfer instrument was dated 26<sup>th</sup> November 1991, she stated that the document had been thumb printed long before that date. At the point of application for registration, she took a lawyer to the commission because she had not petitioned for a grant in the estate of the deceased purchaser. She was aware of the proceedings in Kerugoya Principal Magistrate's Court Succession Cause No. 76 of 1993 and that it was never determined on merit. She stated that at the time of petitioning for the grant in the estate of the deceased, there was no pending case in Nyeri and the petition was not objected to.
16. It was her evidence that the late Ileri Mbogo was of sound mind when he died, and was not married. That the late Ileri Mbogo is the one who approached the deceased to purchase his land. She stated on re-examination that the land sale agreement was drawn by Kibicho Advocate in 1977 and the late Ileri Mbogo died in 2005. She has been occupying the land since 1980. When she started pursuing registration of the transfer, one of the brothers of the late Ileri Mbogo had encumbered the land with a caution.



## Submissions by the Parties

17. The parties filed written submissions as directed by the Court.
18. In her submissions, the applicant asserted that she filed Kerugoya Principal Magistrate's Court Succession Cause No.76 of 1993 as the late Ireri Mbogo's next friend seeking to reverse the transfer of his land to the deceased herein. The respondent's preliminary objection to that suit was dismissed. During the pendency of the suit, the respondent petitioned for a grant without disclosing or informing the court that there was a pending suit whose subject matter was the property that purportedly made up the estate of the deceased.
19. With knowledge of the suit against her, the respondent ought to have notified the applicant about the petition for a grant in the estate of the deceased so that she could ventilate her grievances before that court. It was her submission that she had been appointed as the late Ireri Mbogo in Kerugoya Principal Magistrate's Court Succession Cause No.76 of 1993, thus her interest in the matter. She questioned the fact that the transfer instruments were dated long after they were allegedly executed. She relied on the case of *In re Estate of Julius Ndubi Javan (Deceased)* [2018] KEHC 8523 (KLR) and urged the court to revoke the grant on the grounds pleaded.
20. The respondent on her part, submitted that the applicant has no interest whatsoever in the estate of the deceased. As such, the application does not sit well before this court. She argued that the deceased followed all the legal procedures in the land purchase and that the vendor was not of unsound mind. Regarding the suit in Kerugoya Principal Magistrate's Court Succession Cause No.76 of 1993, she stated that before she decided to petition for a grant, she gave the applicant ample time to prosecute the suit but she did not hear from her. It was also her argument that this court lacks jurisdiction to determine the issues before it in the application since issues of land ownership have been raised. She relied on the cases of *In re Estate of Late Patrick Mureithi Njogu (Deceased)* [2020] KEELC 2212 (KLR) and *In re Estate of Paul Muhanda Agonya (Deceased)* [2020] KEHC 2451 (KLR).

## Issues for Determination

21. From the foregoing material, the issues for determination are as follows:
  1. Whether this court is clothed with relevant jurisdiction; and
  2. Whether the grounds for revocation of the grant have been established.

## Analysis and Determination

### Jurisdiction

22. The question of jurisdiction has arisen through the respondent's submissions. Given the importance of that matter, it takes precedence. It has been long established that a court finding itself without jurisdiction must down its tools immediately. This was underscored by the Court of Appeal in the locus classicus case of *Owners of The Motor Vessel "Lillian S v Caltex Oil (Kenya) Ltd* [1989] KECA 48 (KLR). The court in that case stated:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”



23. The summons before this court, on its face, speaks of revocation of a grant. However, a deeper look at the pleadings and evidence that should culminate into a determination of the issue of revocation, reveals an underlying disputed question of land ownership and acquisition. In other words, whilst the issue of revocation is strongly raised before this family court, its root is anchored deeply within a land dispute. In fact, the land in question is the only issue concerned in the property purportedly forming the estate of the deceased.
24. A court sitting to determine a succession cause is bound to do so using the *Law of Succession Act* to: Identify the deceased; appoint a personal representative of the deceased; identify the deceased's estate; the beneficiaries of the deceased; and then determine distribution of that defined estate amongst the rightful beneficiaries. This, in essence, is the meaning of administration of an estate. All other issues arising in succession should be limited to identification of the estate and beneficiaries, and the administration or distribution thereof.
25. Indeed, the preamble to the *Law of Succession Act* indicates that the object of the Act is to:
- “amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons; and for purposes connected therewith and incidental thereto”
26. Thus, where an issue arises concerning the acquisition of that estate, the succession court is immediately stripped of its jurisdiction as the question falls within the purview of land law under the jurisdiction of the Environment and Land Court. More importantly, the *Law of Succession Act* was designed to safeguard the administration of the estate from external issues through the provisions thereof, including Section 76 on revocation of grants.

#### **Whether grounds for revocation have been established.**

27. That being said, through this application, there is a question of revocation of grant that is ripe for consideration by this court under section 76 of the *Law of Succession Act*. That provision reads;
- “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.”

28. In the case of *In re Estate of the Late Epharus Nyambura Nduati (Deceased)* [2021] KEHC 867 (KLR) the court cited with approval, the case of *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] KEHC 6553 (KLR) where the court extensively discussed the provisions of section 76 of the [\*Law of Succession Act\*](#) as follows:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the person applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

29. The applicant filed a plaint dated 31<sup>st</sup> March 1993 in Kerugoya Principal Magistrate’s Court Succession Cause No.76 of 1993 in which she challenged the deceased’s acquisition of the land herein. She did so in her capacity as next friend to the late Ireri Mbogo who was indicated as being of unsound mind. According to the proceedings in that case, the respondent raised a preliminary objection on grounds that she was improperly sued as personal representative of the estate of the deceased yet she had not taken out a grant. The preliminary objection was dismissed and the respondent filed an appeal namely Nyeri HCCA 75 of 1993, challenging the decision of the trial court.
30. Ultimately, appeal was dismissed and the respondent was held to have been properly sued in the matter. Seemingly, the substantive suit in Kerugoya Principal Magistrate’s Court Succession Cause No.76 of 1993 was not canvassed or determined. The respondent thereafter petitioned for a grant in the estate of the deceased vide Kerugoya Principal Magistrate’s Court Succession Cause No.64 of 2004, and a grant was issued and confirmed. According to the proceedings therein, there was no objection to the petition and the only participants in the suit were the respondent and her children. There was no involvement or notification to the applicant.



31. In her testimony as RW1, the respondent acknowledged that the proceedings challenging the ownership of the suit land remained undetermined. Nevertheless, she petitioned for a grant and it was confirmed to include the suit land whose ownership was yet undetermined. All along, the respondent knew the applicant's position in challenging the ownership of that property which the respondent named as the estate of the deceased. RW1 in fact testified that she had given the applicant enough time to prosecute the case but that the applicant did not communicate any further. The fact of the matter is that the underlying non-determination of ownership of the suit land was not brought to the attention of the Succession Court.
32. In my considered view, the fact that the respondent petitioned for a grant over an estate made up of property whose ownership was challenged in a pending case, is indeed a material fact. This material fact ought properly to have been disclosed at the time of petitioning for the grant, whether or not the omission was inadvertent or made in ignorance. The legal maxim, "he who comes to equity must come with clean hands" applies here squarely. Revocation of a grant is done at the discretion of the court based on the evidence adduced. In this case, on the basis of concealment of the material fact that is pertinent to the case, the grant stands exposed and ripe for revocation.
33. Regarding the existing land dispute, part of the evidence adduced herein is evidence that should properly be considered by the ELC in order for the acquisition issue to be conclusively determined. That is the only way that the estate of the deceased can and will be defined for purposes of succession. Parcel number Baragwe/Guama/52 should be subjected to Rule 41(3) of the Probate and Administration Rules which provides:

"Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71(2) of the Act, proceed to confirm the grant."

### **Conclusions and Disposition**

34. In light of the foregoing discussion, it is clear that the grant suffered material non-disclosure that goes to the root of the identity of the deceased's estate. In the circumstances, the Court has no option but to intervene upon the grant.
35. Accordingly, the court deems that the appropriate orders are as follows:
  1. That the grant of letters of administration issued to the respondent on 20<sup>th</sup> July 2004 be and are hereby revoked and the certificate of confirmation of grant issued on 17<sup>th</sup> May 2005 is hereby set aside;
  2. That the ownership of Parcel number Baragwe/Guama/52 shall be determined before the appropriate forum according to the provisions of Rule 41(3) of the Probate and Administration Rules;
  3. That a petition for grant of letters of administration in estate regarding Parcel number Baragwe/Guama/52 shall only be filed once ownership of the land is determined; and



4. That since the prohibitive orders issued by J.N. Khaminwa, J. on 20<sup>th</sup> September 2006 were to last until this judgment, it is necessary to order that pending determination of ownership of the property Parcel Number Baragwe/Guama/52, an inhibition be registered thereon to preserve it.

36. Orders accordingly.

**DELIVERED VIRTUALLY AT KERUGOYA HIGH COURT THIS 8<sup>TH</sup> DAY OF APRIL, 2025.**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

1. Ms. Njagi holding brief for Kathungu for Applicant
2. M. N. Magee for Respondent
3. Francis Munyao - Court Assistant

