



REPUBLIC OF KENYA



KENYA LAW
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**Kiarie v Muniu (Family Appeal E005 of 2023)
[2025] KEHC 9755 (KLR) (Family) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 9755 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

FAMILY APPEAL E005 OF 2023

GL NZIOKA, J

APRIL 24, 2025

BETWEEN

SIMON NJENGA KIARIE APPELLANT

AND

KINGITHA MUNIU RESPONDENT

(Being an appeal from the decision of Honourable Wilson Rading Principal Magistrate delivered on 21st September 2023 vide Naivasha Succession Cause No. 80 of 2020)

JUDGMENT

1. By a memorandum of appeal dated 6th October 2023 the appellant appeals against the aforesaid decision on the following grounds verbatim reproduced: -
 - a. That the learned Magistrate erred in fact and law by making a finding that the appellant was sufficiently provided for yet the certificate of confirmation of grant on record doesn't demonstrate the same. That the learned Magistrate erred in law and fact by failing to consider that the name of the appellant herein or that of his deceased father did not feature anywhere in the certificate of confirmation of grant.
 - b. That the learned trial Magistrate erred in law and fact by failing to appreciate that the appellant being a beneficiary of the estate is entitled to an ascertainable share of the estate and therefore arriving at an erroneous decision.
 - c. That the learned trial Magistrate erred in law and fact by making a finding that the appellant didn't provide an alternative mode of distribution yet there was an agreement attached to the supporting affidavit which provided an alternative mode of distribution.



- d. That the learned Magistrate erred in law and fact by finding that the appellant failed to prove any of the grounds under which a grant can be revoked despite overwhelming evidence on record in support of revocation of the grant.
 - e. That the learned Magistrate erred in law and fact by taking into consideration extraneous factors and placing unnecessary burden of proof upon the appellant herein.
 - f. That the ruling was against the weight of evidence and the applicable laws.
2. As a result thereof the appellant prays for the following orders: -
- a. This appeal be allowed and the ruling of the Honourable Wilson Rading delivered on 21st September 2023 be set aside in entirety.
 - b. That this Honourable court be pleased to make such orders as it deems fit in the interest of justice.
 - c. The cost of this appeal be awarded to the appellant.
3. The background facts of the matter are that, the appellant filed summons for revocation of grant dated 7th March 2023 for orders that, there be a stay of execution of the certificate of grant issued on 16th June 2021 pending the hearing and determination of the subject application and that the said certificate be revoked. Further the costs of the application be in the cause.
4. The application was based on the grounds thereto and the supporting affidavit sworn by the applicant. He averred that his deceased father, Kiarie Muniu, was the third-born son of the deceased herein. Thus the applicant and his four (4) are grandchildren of the deceased herein. Consequently dependents and beneficiaries of the Estate.
5. That, the respondent in the application for grant of letters of administration (intestate) concealed material facts from the court to with; that the deceased's all children who had died left families, some of whom were living on the suit property, and that there was a family agreement dated 3rd August 2019, where all surviving children of the deceased agreed on a fair and equitable mode of distribution of the deceased's estate
6. Further, the respondent filed summons for confirmation of grant where he proposed a mode of distribution of the deceased estate between himself and Mary Wanjiru Muniu. That the proposed mode of distribution excluded of the rest of the beneficiaries and is contrary to aforementioned family agreement.
7. The appellant averred that the Administrator has begun the process of subdivision and sale of the deceased's property and that the court has a duty to protect all the dependents of the deceased.
8. However, the respondent opposed the application vide his replying affidavit sworn on 23rd March 2023. He avers that the appellant was fully aware of the succession cause from the start, as he was present at the chief's office. Further, all family members were aware of the same and it is curious that the appellant did not enjoined them nor obtain their consent when filing the present application.
9. He denied that he had allocated the suit property to himself and Mary Wanjiku Muniu, and that he was in the process of subdividing and selling it. He further denied excluding any immediate beneficiaries. That it was agreed he be the Administrator and transfer the respective portions to the grandchildren once the grandchildren paid transfer expenses.



10. Further, that the appellant had been allocated two (2) properties being Naivasha/Maraigushu/Block 7/877 and Naivasha/Maraigushu/Block 7/354, measuring 0.042 hectares and 0.0695 hectares respectively but he had refused to pay surveyor fees and costs of subdivision as agreed.
11. That, he does not intend to disinherit any beneficiary as the petition was filed per the wishes of the deceased in regard to the distribution of the estate. Further he has kept intact and preserved all properties forming the deceased's estate, which the beneficiaries continue to reside on and enjoy peacefully, engaging in farming activities unhindered.
12. Be that as it may, upon considering the application, the trial court directed that, the matter proceeds via viva voce evidence "due to the conflicting names of the beneficiaries". The matter then proceeded to hearing with the appellant adducing evidence to the effect that he had been disinherited as he had been left out of the list of beneficiaries entitled to inherit the property of the deceased. That, the family members did not agree on the mode of distribution before the grant was confirmed.
13. In cross-examination he stated that, the subject land belongs to his father Kiarie Muniu, and that the respondent Kingita Muniu cannot hold it in trust for him, when he is alive. The appellant further stated that he holds the title deed to Naivasha/Maraigushu Block 7/354.
14. The respondent on his part testified that, the deceased died 30 years ago before dividing the property, and he took the risk to divide the property, so that every one could get a share thereof. However, the others refused to pay the money and that he called three meetings to iron out the matter. That, they went to the Chief, Joshua Njenga Josphat Muniu, himself and Mary Wanjiru and thereafter the titles were processed except for the title to parcels No 354 and 587. In cross-examination he conceded that, the appellant is entitled to share of the land and that he is holding it in trust for him.
15. Be that, as it were the trial court ordered and the parties filed their respective submissions. Consequently, the trial court delivered its ruling dated 21st September 2023 dismissing the application for revocation which is the subject of this appeal.
16. It is noteworthy that, the trial court basically found that the appellant had not adduced adequate evidence to support the allegation that the grant and subsequent confirmation thereof was based on non-material facts and/or concealment of material facts or fraud. That further the appellant was inordinate in filing the application for annulment. Furthermore, the appellant had already been provided for only that, he was required to pay surveyors fees and related costs.
17. The appeal herein was disposed of vide filing of submissions. The appellant in submissions dated 19th February 2024, argued that he had satisfied beyond doubt that he is a beneficiary of the deceased's estate. However, his name was excluded from the certificate of confirmed grant on the ground that he refused to pay survey fees and costs of the transfer as per the respondent's testimony. That the said ground is not founded on any law and is not a valid reason to deny a genuine beneficiary an inheritance.
18. He relied on the case of; Beatrice Mbeere Njiru vs Alexander Nyaga Njiru [2022] eKLR where the High Court noted that the appellant had not been provided for in the certificate of confirmation of grant and was therefore not entitled to a share of the properties held by her mother. The court allowed the appeal and revoked the grant.
19. The respondent in response submissions dated 7th May 2024 argued that the trial court correctly held that the appellant resides on the subject property and was aware of the succession cause thus the issue of concealment does not arise.



20. He relied on the case of; James Kinronyo Njoroge vs Ruth Waithera Ngugi [2022] eKLR, where the High Court held that the respondent had stated clearly in the petition that she was the deceased's daughter-in-law and therefore had not committed fraud nor obtained the grant by untrue allegations, and proceeded to dismiss the appeal.
21. Further, in the case of, In re Estate of Dedan Kabiru Kihonge (deceased) [2021] eKLR, the High Court held that the applicant had not substantiated how the grant was obtained fraudulently and what the untrue allegations were so as to establish the grounds of revocation of grant and found that the application was incompetent and dismissed it with costs.
22. To revert back to the matter herein, I find that the main issue to determine is whether, the appellant adduced adequate evidence to revoke the confirmed grant. The provisions that relate to the revocation of grant are provided for under section 76 of the Act as follows: -

“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.”

23. The appellant anchored the application herein on the entire section 76 and Rule 44 of the Probate and Administration Rules as it is evident on the face of the application. However, I note that the trial court held the view that, the application was based on section 76(b) as stated at paragraph 26 of the impugned ruling wherein the court stated:

“Of particular relevance to the application before this honourable court is section 76(B) of the *Law of Succession Act* for reason that the applicant herein anchored his summons for annulment of grant on concealment and fraud.”



24. It is against this otherwise not correct position that the trial court arrived at the conclusion that, the grounds under section 76(b) had not been proved. This is evident as stated at paragraph 27 of the ruling as follows: -

“Although the applicant averred that the respondent obtained the grant of representation and had it confirmed by concealment of material facts, I struggle to see evidence of such concealment in the material placed before the honourable court.”

25. Pursuant to the aforesaid, the trial court did not consider whether the appellant had proved any other ground for annulment of the grant.

26. As the first appellate court, I have considered the material placed before the trial court and I note that, the appellant deposed that, the respondent concealed material facts as stated at paragraph 5(a) and (b) of the supporting affidavit. That further the proposed mode of distribution in the summons for confirmation of grant was contrary to the agreement of the family. Furthermore, the estate was distributed among the respondent and the sister to the exclusion of all the other beneficiaries.

27. To establish whether there were concealed facts or non-disclosure of material facts, the trial court had to consider what was deposed by the respondent at the time of prosecuting the summons for confirmation of grant.

28. The court has taken note of the same and established that, the summons for confirmation of grant dated 26th March 2021 was filed in court on 26th March 2021. The same is supported by an affidavit of the respondent. It is evident therefrom that, the appellant’s father one Kiarie Muniu (deceased) is not named therein as one of the beneficiaries surviving the deceased herein and neither is the appellant.

29. Further, although the respondent alleged that the appellant had been provided for in the distribution of the assets of the deceased Muniu Njuguna as deposed at paragraph 4, of the affidavit in support of the application but there is no evidence thereof as the mode of distribution at the said paragraph does not provide for the appellant’s deceased’s father share. Furthermore, although a consent for confirmation of grant was filed, there is no evidence that, the appellant and/or his siblings consented to the confirmation of grant.

30. Yet in response to the application for revocation of grant, the respondent states that: -

“That I vehemently deny the false assertions by the applicant to the effect that I have allocated the whole of the deceased’s property to myself and Mary Wanjiku Muniu. Nor I am in the process of subdividing and selling the properties that constitute the deceased properties.”

31. The respondent further states as follows: -

“That the applicant has been allocated the following properties herein:

- a. Naivasha/Maraigushu/Block 7/877 measuring 0.042 hectares
- b. Naivasha/Maraigushu/Block 7/354 measuring 0.0695 hectares

32. The court notes that, if indeed the appellant has been allocated the subject properties then it should have been indicated in the mode of distribution when the respondent filed summons for confirmation of grant. He cannot be holding the subject property on behalf of appellant, when the appellant is of adult age and the distribution is complete.



33. Furthermore, the appellant's failure to pay costs associated with distribution of the assets of the estate cannot be a ground to deny him his share. The best that the respondent would have done was to recognize the appellant's right under the appellate in the confirmed grant and withhold transfer of title pending the payment of the alleged surveyors and/or other costs.
34. Consequently, the failure to disclose the material facts that, the appellant's father was the deceased son and that the appellant and his siblings are entitled to his share amounts to non-disclosure of material facts and/or concealment thereof. The argument that, the appellant was all aware of the matter and/or failed to pay the alleged costs is neither here nor there.
35. Consequently, it is the finding of this court that, the appellant proved ground 76(b) of Succession Act.
36. As a result thereof, I set aside the ruling delivered by the trial court on 21st September 2023 and revoke the certificate of grant issued on 22nd September 2020. I direct that, due to the age of this matter, the respondent file a fresh summons for confirmation of grant within thirty (30) days of the order of this date unless an appeal is filed against this decision. If a fresh application is filed it be placed before a different judicial officer.
37. Each party to meet costs of appeal.
38. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 24TH DAY OF APRIL 2025.

GRACE L. NZIOKA

JUDGE

In the presence of:-

Mr. Wafula for the appellant

Mr. Njuguna for the respondent

Ms. Hannah: court assistant

