



REPUBLIC OF KENYA



**In re Estate of Simon Musembi Kavila - Deceased (Succession Appeal E023 of 2023) [2025] KEHC 6445 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6445 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION APPEAL E023 OF 2023  
HM NYAGA, J  
MAY 15, 2025  
IN THE MATTER OF THE ESTATE OF  
SIMON MUSEMBI KAVILA – DECEASED**

**IN THE MATTER OF  
HENRY MUTHENGI MBUKI ..... PETITIONER**

**JUDGMENT**

**Background**

1. By a citation filed before the Senior Principal Magistrate Court at Githongo, vide Misc. Succession Cause No. E009 of 2021, the Appellant herein sought to have one Titus M. Musembi cited to accept or refuse letter of administration in respect to the Estate of Simon Musembi Kavila (Deceased).
2. On 8<sup>th</sup> December, 2021 the citation was heard and the court ordered that the appellant, who described himself as a purchaser, to proceed to file a substantive Succession Cause.
3. On 21<sup>st</sup> February, 2022, the Appellant filed a Petition for Letters of Administration of the deceased intestate. The requisite Gazette Notice was published and on 20<sup>th</sup> June, 2022 a grant of letter of Administration Intestate was issued.
4. Subsequently, the Appellant applied for confirmation of the grant and on 24<sup>th</sup> May, 2023, the Court confirmed the grant. However, when the magistrate was taxed to sign the Certificate of Confirmation, she found that the Appellant had purchased the subject parcel of land from the widow and dependants of the deceased and not the deceased himself.
5. Consequently, in her ruling delivered on 7<sup>th</sup> June, 2023, the Learned Magistrate revoked the grant on the ground that the purported sale of the land forming the estate was a case of intermeddling under Section 45 of the Laws of Succession Act.
6. It is that ruling that is the subject of the present appeal.



## Appeal

7. By a Memorandum of appeal dated 14<sup>th</sup> December, 2023 the Appellant set out the following grounds of appeal:-
  - a. That the learned magistrate grossly erred in law and in fact by revoking the grant suo motu yet the Petitioner had filed the Petition pursuant to a court order issued on 8<sup>th</sup> December, 2021 in Citation Cause No. E009 of 2021.
  - b. That the learned Magistrate erred in Law and in fact by holding that there was intermeddling of the deceased property yet despite being cited to appear in court to accept or refuse letter of administration, none of the beneficiaries was interested in the estate.
  - c. That the learned magistrate grossly erred in law and in fact by failing to appreciate that the Petitioner having petitioned the court for letter of administration pursuant to an order issued in citation proceedings, he stood as a beneficiary and not an intermeddler.
  - d. That the learned magistrate erred in law and fact by failing to appreciate that the evidence presented in court including the Chief's Letter ultimately pointed out at the Petitioner as the beneficial owner of the estate, yet as a Judicial Officer, she failed to grant redress.
  - e. That the learned magistrate erred in law and in fact by failing to appreciate the principles of equity, the spirit and purport of Article 159 of *the Constitution* of Kenya and the oxygen rules which mandates the judicial officer with inherent authority to issue such orders as may be necessary for the ends of justice.
8. The appellant thus sought the following prayers: -
  - a. That the appeal be allowed
  - b. That the suo motu ruling of Hon. E. W. Ndegwa (SRM) delivered on 7<sup>th</sup> June, 2023 be quashed and set aside.
  - c. That the Superior Court do reinstate the Grant of Letters of Administration issued on 20<sup>th</sup> June, 2022 and the certificate of Confirmation of Grant issued on 24<sup>th</sup> May, 2023 in Githongo SPM Succession Cause NO. 19 of 2022.

## Appellants Submissions

9. The appellant stated that he purchased the land in question from the deceased's wife for a valuable consideration, but she died before she could transfer the land to him. That the appellant duly filed a citation and was authorized by the court to present the Petition.
10. The appellant argues that the court erred in revoking the said grant suo motu as the citation was never objected to, and nobody appeared to either accept or refuse the same. The appellant cited the case of *Maamum Bin Rashid Bin Salim El-Ruhmy Vs. Haider Mohamed Bin Rashid El Basamy* [1963] EA 438. The appellant further submitted that he had not only bought the land for valuable consideration, but has been in occupation since 1993, meaning that no one else is interested in the estate. That this called for Judicial Office to apply the principle of overriding objective to ensure that the appellant was given justice without paying much attention to [procedural technicalities. To buttress this point, the Appellant cited the case of *Francis Atanasio Kithure Vs- County Government of Meru, Ethics & Anti-corruption Commission (interested party)* [2021] KEELRC 2228 (KLR).



11. Being a first appeal, this court's duty is to re-evaluate the matter and come to its own conclusion (see *Selle -Vs- Associated Motors Board Company Limited*).
12. It is not in dispute that:
  - i. The Property known as LR. NO. KIAMURI A/1553 was at all material times registered in the name of the deceased who is said to have died in the 1990's.
  - ii. The appellant bought the said property from the widow and the children of the deceased. This is borne out by the sale agreement and the letter from the Chief, Kiagu Location dated 31<sup>st</sup> January, 2022, which the Appellant used to apply for the Letters of administration.
  - iii. The said widow and children had not obtained letters of administration the time they purported to sell the said property.
13. It follows that the widow and the children of the deceased had no capacity to sell any property of the deceased prior to obtaining a grant of Letter of Administration and having them confirmed.
14. I am thus in agreement with the Learned Magistrate that the purported Sale amounted to intermeddling which is described under Section 45 of the *Law of Succession Act* as follows:  
 XXXxx
15. The appellant cannot rely on the overriding objective/oxygen rule to benefit from an act that he knew was illegal and cannot confer away right to a person. In *Mi.....Vs- United Africa Limited (...)*  
 It was held that “..XXXXXXXXXXXXXXXXXXXXX
16. The appellants gripe with the ruling question is that the court acted suo motu. Section 76 of the Act provides as follows:-

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-
  - (1) 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.

17. As can be seen, the court can either be moved as act or in its own motion and revoke any grant it has issued. This is one instance where the court rightly acted suo motu to stop an execution of an illegality.

18. For the foregoing reasons, I find that the appeal lacks merit and it is dismissed. Since there was no appearance by any other party, there shall be no orders as to costs.

**DATED, SIGNED & DELIVERED AT MERU THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**H.M. NYAGA**

**JUDGE**

