



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Paul Kimeu Masika (Deceased) (Succession Cause
594 of 2011) [2025] KEHC 6191 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6191 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 594 OF 2011**

MW MUIGAI, J

MAY 9, 2025

BETWEEN

LILIAN NJERI MASIKA 1ST PETITIONER

KENTH MASIKA 2ND PETITIONER

AND

JOSEPH NZUKI MASIKA 1ST RESPONDENT

KIOKO KIMEU 2ND RESPONDENT

RULING

1. On 31/5/2024, this Court delivered Judgment as follows:

Disposition

1. The grant issued on 11/10/2011 is hereby revoked and under Section 66 LSA a new grant in names of Kenneth Kimei representing 2nd house and Kioko Kimeu alias Paul Kioko Kimeu representing 1st house is granted.
2. The confirmed grant of 19/9/2013 is hereby revoked
Family members of deceased Paul Kimeu Masika to mediate on distribution of the estate
3. The family Administrators Advocates may pursue Court annexed mediation by engaging DR MHC for screening and Court Annexed mediation
4. Each/any/all beneficiary, administrator, interested party
Purchaser or 3rd Party's on the suit property Plot 39B now Donyo Sabuk/Komarock Block1/254 shall remain in sifu and rights protected under Section 93 LSA pending



distribution of the estate equally/equitably amongst the beneficiaries of the deceased's estate.

5. Joseph Nzuki Masika Masika is not one of the beneficiaries of the estate of Paul Kimeu Masika, his claim is in Succession Cause 2253 of 1996
6. There shall be no demolition, ejection, blockage or hindering of access, use, occupation or cultivation as is ongoing presently, status quo shall be maintained on property Donyo Sabuk/Komarock Block1/254.
7. The Ruling and Court order of inhibition by D.K.Kemei J of 16/12/2020 remains in force
8. Parties to file Summons for Confirmation within 6 months of issuance of the new grant
9. Any aggrieved party is at liberty to file and apply to court for orders.

Summons & Affidavit In Support By Kenneth Kimeu

1. The Applicant Kenneth Kimeu applied that the Judgment delivered on 31/5/2024 where this Court revoked the grant issued on 11/10/2011 and confirmed on 19/9/2013 be reviewed and orders 1 & 2 be set aside
2. The Applicant also orders 3, 4, 7 & 8 pronounced in the judgment delivered on 31/5/2024 be reviewed with a view of setting them aside
3. The applicant based his application on grounds that there is an error on the face of the record and a mistake was inadvertently made/expressed in the judgment of 31/5/2024 and there is sufficient reason to warrant review.
4. The Applicant deposed that the Summons for Revocation filed by Joseph Masika on 4/6/2014 this Court dealt with it and found Joseph Nzuki Masika is not a beneficiary of this estate, he is brother of deceased and claim can only be made in Father's estate.
5. However, the Summons for Revocation filed by Paul Kioko Masika alias Kioko Kimeu had been abandoned and/or withdrawn the said Summons of 30/11/2017 in that on 5/2/2018 he instructed Ngolya & Co Advocates to act for him annexed is a Notice of Change of Advocates.
6. Paul Kioko Masika alias Kioko Kimeu informed the Applicant that the Summons dated 30/11/2017 was filed without his knowledge and further the signature not appended was not his. Paul Masika alias Kioko never objected or protested against the grant issued to the Applicant.
7. That from the foregoing, it is crystal clear that the Court issued the impugned orders in the mistaken belief that the purported summons for revocation dated 30/11/2017 was up for determination yet the same had been abandoned and/or withdrawn.
8. That the Applicant urged the Court to review the judgment rendered on 31/05/2024 with a view to setting aside orders 1, 2, 3, 4, 7 and 8 which the applicant feels aggrieved by. (Annexed hereto and marked "KK 5" is a copy of the Judgment

A. Replying Affidavit By Josphat Nzuki Masika

1. That I am the 1st objector herein.
2. That I have seen, read and understood Application dated 23/7/2024.



3. That the Application is intended to compromise justice, deliberate fraud with intention to disinherit rightful beneficiaries.
4. That there was no error on the fate of the record at all.
5. That it is not disputed that the Petition was not signed by all beneficiaries of the deceased.
6. That it is equally admitted that the Consent for Confirmation was not signed by all beneficiaries.
7. That it is equally true that the 2nd Objector Kioko Kimeu had filed Application for Revocation and had raised serious legal issues which were never challenged to date.
8. That moreover, it is a matter of Judicial Notice that the Land in dispute now is a subject of active case at Nairobi being Succession 2253 of 1996 at Nairobi Annexed & marked "JNMI" are copies of Applications.
9. That it is clear that the process of changing the Suit property from Paul Kimeu Masika and to the current Administrators is questionable and it was not above Board.

B. Supplementary Affidavit By Joseph Nzuki Masika

1. That currently, there are strangers occupying the land as purchasers.
2. That it is not disputed that the suit land is no longer in the names of the deceased.
3. That the suit property belonged to the estate of William Ngomo, my late father and to the deceased herein. Annexed and marked "JNMI" is a copy of grant and letter of the Chief.
4. That at the time of death of 1st Petitioner, the land had already been sold awaiting subdivision.
5. That the death of 1st Petitioner this year will stop the 2nd Petitioner to continue with the process.
6. That nothing prevents the 2nd Petitioner from dealing with the land.
7. That a preservation Order and inhibition would protect the interest of all parties, integrity of the case until ownership is determined.

(C) Supporting Affidavit By Joseph Nzuki Masika

1. That at the time the subject matter was still registered in the names of deceased herein Paul Kimeu (deceased).
2. That However, I realized recently that the Petitioners had appeared before Land Control Board with the aim of subdividing the land.
3. That upon search, I learned that the title was no longer in the names of the deceased.
4. That the title now is in the names of the Petitioners. Annexed and marked "JNM1" is a copy the search.

Objectors Submissions Dated 3/12/2024

9. That the Applicant's Application dated 23/7/2014 is mainly and previously against the order to revoke the grant, include the 2 House in administration and most importantly preservation of the property in dispute. Evasively, the Applicant has not told this Hon. Court how he has been prejudiced by the said orders and whether they were not made in the best of interest of the Estate and beneficiaries.

It is not disputed that



- i. Suit property was originally property of Wiliam Masika Ngomo.
 - ii. That Paul Kimeu Masika had two wives.
 - iii. That the Succession was commenced and is being Administered by only one House -1 House.
 - iv. Even more seriously, one of the Administrators, Lilian Njeri has passed on and has not been substituted.
 - v. That the entire Estate is now being managed by one Kenneth Kimei from the 1st House.
 - vi. That the 2nd house was not listed in the Petition nor did they sign the consent to mode of distribution
 - vii. That pursuant to that the 2 House, represented by, Kioko Kimeu filed Application for revocation and a statement clearly outlining the aforementioned issues that he is not listed in the Affidavit in support of Petition filed on 18/7/2011 and he did not sign the Consent.
10. These facts are true and the Applicant who is now a sole Administrator, has not laboured to explain under what circumstances the 2nd House was not listed in the Petition and why their the Consent was not sought during mode of distribution. What was the intention of exclusion? What is the purpose and effect of signing a Consent to mode of distribution if some beneficiaries can be left out at will and whims of the Administrators? No reasons, justification has been given why the Law was not complied with both. In the Petition and Consent, hence the same was rightly revoked, infact it was supposed to have not been confirmed in 1st place.
 11. Shockingly, the Applicant wants to compromise Justice and the Law by engineering a signing of a 2nd contradicting Affidavit purportedly from the 2nd House in order to confuse the Court two contradicting Affidavits allegedly from one person should be a matter of great concern by the Court and be a more reason to uphold the revocation. Which one is the truth? The
 12. 1st Application for revocation or the Affidavit sworn after the Judgment. At outset, the Affidavit sworn by Kioko Kimeu to retract earlier Affidavit was prepared after the Judgment can't be a basis hence of review of Judgment. It was not evidence on record at the time of Judgment.
 13. At the time of Judgement the only Affidavit evidence on record by Kioko Kimeu from 2 House, stated clearly that, they were excluded in the cause. This facts are clear at a perusal of the Petition.
 14. This Court is being invited to circumvent the Law in favour of a party who failed to comply with the Law from the beginning and even is not remorseful but purports to support the violation. Once, one becomes an Administrator, he is only holds the title in trust of other beneficiaries.
 15. Why is the Applicant, so much determined to be the sole Administrator unless it is mischievous? What will the Applicant suffer if the Estate of is represented two Houses?
 16. We pray and request that the Application is made in bad faith and should be rejected in total. Lastly, the Applicant is aggrieved by a prohibition order on the title although he has not come out clearly so. That the manner in which the Suit property changed hands from being Estate of William Masika to be registered in names of deceased herein and one Luka Masika is being questioned. That there are active proceedings in Succession No. 2253 of 1996 at Nairobi relating the same property. However, the applicant is looking for shortcuts to dispose off the property before the matter is fully interrogated and justice is served.



17. That the Applicant attempts is to avoid due process of the Law and this Court should in strongest terms possible condemn an invitation to violate law and/or assist a mischievous litigant.

We pray that the Application be disallowed.

Review

18. This Court considered the instant application pleadings filed and submissions made in court.

The issue that arises for determination is whether the review is merited.

Applicable law Rule 63 (1) of the Probate and Administration Rules, Order 45 Rule 1 of the Civil procedure Rules and section 80 of the *Civil procedure Act*.

19. In order to justify the Court in granting an application for review sought by the applicant under the provisions of Order 45 rule 1 of the Civil Procedure Rules, certain requirements must be met. The said provision states as follows:

- “(1) Any person considering himself aggrieved—
- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

20. Re Estate of Francis Mwangi Mbaria(deceased0 [2014] and the estate of Re Estate of Solomon Ngatia Kariuki (deceased)[2008] ECLR are on a review application; the applicant is expected to adduce more convincing evidence that would overturn the earlier decision rendered by the court and which the protestors had not adduced any evidence to convince the court in overturning their decision.

21. The alleged error apparent on the face of the record is 2 fold;

- a. The Summons for revocation of grant by Paul Kioko Kimeu alias Kioko Kimeu filed in Court that the said application was withdrawn and though filed it was without his knowledge and approval as he did not sign the application.
- b. The Court orders 1-9 should be set aside.

22. This Court applied its original jurisdiction in Art 165 of *the Constitution* and the mandate provided by *Law of Succession Act* to administer and distribute estates of deceased's in intestate estates and administer where valid Will is in place.

23. Secondly, A court is moved by parties' based on pleadings filed and disclose the dispute at hand for hearing & determination.



24. In *Galaxy Paints Company Limited v Falcon Guards Limited* Court of Appeal Case Number 219 OF 1998, the Court of Appeal stated that

“Issues for determination in a suit generally flow from the pleadings and unless the pleadings are amended in accordance with the Civil Procedure Rules, the trial court by dint of the aforesaid rules may only pronounce judgment on the issues arising from the pleadings or such issues as the parties have framed for the court’s determination.”

25. Thirdly, this is a court of record, all pleadings filed by parties remain part of the record until or unless expressly withdrawn legally expunged from the record or application or substantive matter dismissed. In the absence of any of the above all pleadings form part of the court record as the proceedings recorded. The instant application by Paul Kimeu alias Kimeu Kioko was/is on record and subject to hearing and determination by the Court.

26. The filed Affidavit to the application and the deposition that the application was withdrawn is not borne out by the Court record infact the Court record depicts several adjournments that hindered expeditious disposal of the matter.

27. Fourthly, this Court revoked grant and confirmed grant because it was disclosed that the deceased had 2 houses/wives, the 1st house/wife and 2nd House/wife. The administrators were mother and son of 2nd House only administering and distributing the estate of the deceased to both houses. Of concern, the 1st house some beneficiaries did not consent to making of grant and proposed distribution in the confirmation of grant. These issues are not contested instead are crystal clear from pleadings filed that members of the 1st house were not represented by anyone of them as Co Administrator as required in Section 66 LSA.

28. Section 51 & 71 LSA is instructive that all beneficiaries of the deceased’s estate shall be disclosed the Court is mandated to determine the persons beneficially entitled and shall satisfy itself of the identity of the beneficiaries and their respective shares from the estate of the deceased.

29. This Court revoked the grant as discussed in the impugned judgment of 31/5/2024 Paragraph 48-53. The process of administration and distribution of deceased’s estate was tainted by concealment of material facts ie disclosure of 1st House, there were improprieties, the 1st house members did not consent to making of grant and distribution of the estate. Moreso, the Applicant of the summons for revocation, Paul Koiko Kimeu failed to show up and testify during the hearing.

30. Re Estate of Nzolove Kisuke alias Daudi Nzolove Kisuke reaffirms the process of distribution of the estate.

My reading of the Applicant’s Summons for review leads me to the conclusion that the Applicant’s grounds are based on an application for revocation filed and not formally withdrawn and determined culminating with judgment of 31/4/2024, which is not a ground for review. The said grounds, I find, do not constitute any sufficient reason.

31. It is clear that the application for revocation of grant was determined on merit and was not determined based on any other basis but merit of the dispute/matter.

Disposition

1. The application for review is dismissed with no orders as to Costs as it is a family matter.
2. Any application to be filed in Court No 1 Machakos High Court



3. Parties/Advocates to pursue amicable resolution on distribution of deceased's estate to the beneficiaries in accordance with LSA

**RULING DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS HIGH COURT
VIRTUALLY ON 9/5/2025.**

M.W. MUIGAI

JUDGE

