



REPUBLIC OF KENYA



Im re Estate of M'thambura M'mwitari (Deceased) (Succession Cause 45 of 1994) [2025] KEHC 8666 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8666 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 45 OF 1994**

SM GITHINJI, J

JUNE 19, 2025

IN THE MATTER OF THE ESTATE OF M'THAMBURA M'MWITARI (DECEASED)

BETWEEN

**LUCY KAMAMI KIRIANKI (ADMINISTRATOR OF THE ESTATE OF
GEOFFREY W.K ARUYARU - DECEASED) RESPONDENT**

AND

DOUGLAS M'ITHIKA INTERESTED PARTY

RULING

1. For determination is the Summons dated 19/2/2024 brought under sections 47 & 76 (b) (c) and (e) of the Law of Succession Act, Rules 44 & 73 of the Probate and Administration Rules and other enabling provisions of the law, seeking orders that:
 1. Spent
 2. This honorable court be pleased to revoke the grant of representation issued to the petitioner on 13th March 1995 and confirmed on 13th March 1995 and a fresh grant of representation be issued to the interested party/applicant since the petitioner is not related to the deceased and he is not a beneficiary of the deceased's estate.
 3. Costs incidental to this application be borne by the respondent.
2. The application is premised on the grounds that the petitioner (now deceased) was not related to the deceased and thus lacked capacity to institute these proceedings. The deceased petitioner obtained the grant herein through fraud and concealment of material facts because the consent of the rightful heirs to the estate was not sought. The petitioner died on 3/5/2022 and the grant issued to him is inoperative by dint of the operation of the law. The interested party/applicant is a grandson to the deceased and thus the right person to administer the estate of the deceased. In his supporting



affidavit, the applicant averred that his grandfather, the deceased herein had only 2 children namely Gerald Kirungi M’Thambura, whose whereabouts are unknown, and his mother Zipporah Kiunga M’Thambura (deceased). Although the grant was confirmed on 13/3/1995, the petitioner had not implemented it by the time of his death on 3/5/2022, and unless the orders sought are granted, the applicant and other rightful beneficiaries will be disinherited.

3. The respondent swore a replying affidavit on 25/6/2024 in opposition to the summons for revocation of the grant. She refuted the contention that this cause was filed in secrecy by a petitioner who lacked locus standi. The petitioner acquired LR No. Kiirua/Naari/270 for valuable consideration pursuant to a sale agreement dated 5/6/1991. On 18/7/1991, the deceased herein executed a will bequeathing the said parcel of land to the petitioner. In the meeting held on 21/2/1993, the deceased expressly informed the clan elders that he had left his estate to his son, the petitioner herein as his 1st son, but the petitioner was required to provide for the other son of the deceased namely Kirungi, in the unlikely event that he came back. Subsequent to the confirmation of the grant, the petitioner established his homestead on the said land and made several developments thereon including water and electricity connections. In an attempt to defeat the petitioner’s interests in the estate, the applicant secretly filed Meru Chief Magistrate’s Court Succession Cause No. 198 ‘B’/2017, which was struck out.
4. The application was canvassed by way of written submissions which were filed by counsel for both parties.

Disposition

5. I have considered the application, the replying affidavit, the submissions by counsel and the authorities relied on.
6. The singular issue for determination is whether the grant issued to the petitioner on 13/3/1995 ought to be revoked.
7. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant 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 on 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.”

8. Those provisions were exhaustively discussed by the court (W. Musyoka J) *in re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR, as follows;

“8. 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 persons 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.”

9. In order to fully internalize the gravamen herein, it is imperative to briefly set out the facts in this case. The petitioner (now deceased) petitioned for a grant of letters of administration with a will annexed on 8/2/1994, listing himself as the sole beneficiary of the estate of the deceased, comprising of LR No. Kiirua/Naari/Maitai/270 measuring approximately 3 acres. Unbeknownst to the petitioner, M'Mungania Mburugu had previously sued the deceased herein vide Meru HC Civil Appeal No. 14/1991, which appeal was compromised on 25/3/1991 as follows;

“By consent the Respondent Thambura Mwitari to transfer 2 acres out of Land No. Kiirua/Naari/270 to the Appellant. In default of both parties failing to sign the necessary documents the Executive Officer is empowered to sign all the documents relevant to effect the transfer.”

Unsurprisingly, the deceased herein defaulted in executing the transfer documents, warranting intervention by the Executive Officer. There is on record an affidavit by the deceased herein dated 21/2/1983 acknowledging the sale of 2 acres to M'Mungania M'Mburugua. I note that consequent



to the subdivision of LR No. Kiirua/Naari/270 into LR No. Kiirua/Naari/585 and LR No. Kiirua/Naari/586, the original number ceased to exist.

10. In his introductory letter, the chief of Kiirua Location, Geoffrey K. M'Ikiugu listed Gerald Kirungi N'Thambura (son) and Kiunga M'Thambura (daughter) as the only beneficiaries of the deceased. The deceased herein intimated his intention to sell 2 acres of the said land to Francis Kiambi M'Rinkania and a letter of consent to so transfer was duly issued. Subsequent to the referral of the matter to arbitration, the parties were given up to 12/10/2001 to raise any objections to the resultant arbitral award. The arbitral award read in part that;
 - “ 1. M'Mungania M'Mburugu to get two (2) acres No. 585. 2. Francis Kiambi to get one and half (1½) acre of 586. 3. The balance from 586 should be equally divided between Geoffrey Kirianki and son of the Thambura (deceased) Mr. Kirugi.”
11. On 15/7/2015, the matter was marked as closed for want of prosecution.
12. It is against that background that the applicant seeks that the grant issued to the petitioner be revoked on the grounds that it has not only become inoperative through the operation of the law, but was also obtained through concealment of material facts.
13. It is contended that the deceased petitioner purchased the land from the deceased vide an agreement for sale dated 5/6/1991. The deceased then bequeathed the said land to the deceased petitioner vide the will executed on 18/7/1991 and witnessed by Margaret Karuki, Francis M. Nyaga and David M. Rimita, Advocate. After the confirmation of the grant on 13/3/1995, it became apparent that the deceased had during his lifetime sold portions of the said land to M'Mungania M'Mburugu and Francis Kiambi M'Rinkanya, and the implementation of the grant became rather problematic. The deceased/petitioner filed an application dated 4/10/2001 seeking the setting aside of the arbitral award, but that application was not meaningfully pursued until the matter was closed on 15/7/2015 for want of prosecution. Essentially, the arbitral award remains valid as it was never set aside on review or appeal.
14. I find that the applicant has failed to discharge the onus of proving that the signatures allegedly appended by the deceased on the sale agreement and the will dated 5/6/1991 and 18/7/1991 respectively were forged.
15. The Court (W. Musyoka J) *in Re estate of Julius Mimano (Deceased)* (2019) eKLR observed as follows:
 - “It is the applicant’s contention that the signatures on the Will were forged and did not belong to the deceased. He did not call a document examiner to give expert opinion on the said signatures. The applicant did not express himself to be a qualified document examiner, or handwriting expert, whose word on the matter could be given weight (See Section 109 of the *Evidence Act*). That places the burden of proof on him.”
16. I find that the death of the petitioner herein on 3/5/2022 rendered the grant issued to him on 13/3/1995 useless and inoperative by dint of section 76 (e) of the *Law of Succession Act*, and it is therefore prudent that a fresh grant is issued to the respondent herein. Consequently, a certificate of confirmation of grant “*de bonis non administratis*” shall issue to the respondent in terms of the arbitral award.

DATED AND DELIVERED AT MERU THIS 19TH JUNE, 2025

S.M. GITHINJI



JUDGE

Appearances:-

Miss Atieno holding Brief for Mr. Gichunge for the Interested Party.

Mr. Kaumbi is for the Respondents (absent).

