



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mugo Kabire Kubu (Deceased) (Succession Cause
46 of 2015) [2025] KEHC 8601 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8601 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 46 OF 2015
EM MURIITHI, J
JUNE 19, 2025**

BETWEEN

TERESIA NJERI MAGONDU PETITIONER

AND

PILCILA MUCERE GIKURU 1ST OBJECTOR

WAMBUI MBONI 2ND OBJECTOR

AND

GEORGE MAINA KAMONDE INTERESTED PARTY

RULING

1. The Interested Parties/applicants present a claim of bona fide purchasers for value of the parcels of land created by partition/subdivision of the suit property Kiine/Gachoro1837 which is claimed by the Petitioner in this cause as the asset of the estate of the Deceased.
2. By their application dated 8/11/2019 the interested parties seek specific relief as follows:
 - “ 1. That this Honourable Court be pleased to order stay/arrest of its intended Ruling herein pending the Hearing and determination of this application.
 2. That this Honourable Court be pleased to enjoin the interested Party/Objectors as parties to the petition herein and to file requisite replies and submissions before it.
 3. That this Honourable Court be pleased to open the proceedings in this matter and allow the interested party/Objectors an opportunity to be heard.



4. That the application for a new Grant by the Petitioner be dismissed and the old Grant reissued for confirmation.
 5. That cost of this application be in cause”
3. The application is based on grounds set out in the application and supported by an affidavit sworn by the 1st interested party on 7/11/2019 setting out the facts relied as follows:

“Supporting Affidavit

I, George Maina Kamonde of Post Office Box Number 129 Sagana within the Republic of Kenya, do solemnly make oath and state as follows:

1. That I am one of the Objectors with authority from my fellow Objectors to swear this affidavit.
2. That I bought the parcel of land L.R. No. Kiine/Gachoro1837 from the petitioner after she subdivided it following 'successful transfer by transmission to herself from her deceased father. (Annexed herewith and marked as "GMK1" is a bundle of Title Deeds for the Objectors)
3. That my fellow Objectors and I are bona fide purchasers for value notice.
4. That we stand to be adversely affected by the Orders of this Honourable Court hence our interest in the matter.
5. That we wish to be heard in this matter and to submit on the legality or otherwise of the protestors claim.
6. That the Petitioner's claim is likely to deprive us of lawfully acquired property without due process and against the key tenets and principles of *the constitution*.
7. That we verily believe that the Grant in the matter herein having been confirmed and the Estate distributed to an extent of sale to Third parties, the petitioner's recourse is an Order of account against the administrators and not the nullification of the Grant.
8. That we are informed by our advocate of record and which information we verily believe to be true that parcels sold to ourselves should not have been subject to nullification of Grant
9. That one Teresia Njeri Magoundu could not and did not lawfully apply for the nullification of Grant as a beneficiary as per the Provisions of Section 28 of the Succession Act. 10. THAT there being the surviving children of the Deceased, the said Teresia Njeri Magoundu being a Niece is too far in degrees of consanguinity and affinity from the deceased to lawfully inherit him.
11. That the allegation by Teresia Njeri Magoundu that the beneficiaries/administrator were not the biological daughters of the deceased is both farfetched and without any shred of evidence. Moreover, it is irrelevant to the issue of dependence before the Court.



12. That the application by Teresia Njeri Magondu for a new Grant should be dismissed with costs and the Old Grant reinstated or re-issued for confirmation.”
4. The petitioner opposes the application by a Replying Affidavit sworn on 20/1/2020 primarily on the ground that the interested parties are not beneficiaries of the estate of the deceased, and their claim to title of the parcels of land should be presented and determined by the Environment and Land Court (ELC) as follows:

“I, Teresia Njeri Magondu of Karitini sub-location, Kariti Location of the Kirinyaga County in the Republic of Kenya make oath and say as follows:

1. That I am an adult female of sound mind and the Petitioner named herein and hence competent to swear this affidavit.
2. That I have read the application dated 8th November and I have understood its contents, purport and meanings.
3. That in reply I wish to state that parcel of land Kiine/Gachoro1837 belongs to my late uncle Mugo Kabire Kubu.
4. That my deceased uncle never married or raised any family. My mother Mary Micere Magondu was his only surviving sister.
5. That after the death of my uncle, the 1st and 2nd objectors named herein had obtained letters of administration to his estate fraudulently through misrepresentation and concealment.
6. That the grant issued to the objectors was annulled by an order of this Honourable court dated the 27th June 2017. Attached and marked TNM 1 is a copy of the said court order.
7. That the objectors were fully aware and participated to the proceedings that led to the annulment of their grant. The grant was annulled lawfully and procedurally.
8. That upon annulment of the grant, the court ordered that the land Kiine/Gachoro 1837 reverts to its original owner Mugo Kabire Kubu (deceased)
9. That I presented the said order to the land registry for execution and the land was reverted back to the deceased's estate. Annexed hereto and marked TNM2 is a copy of the official search.
10. That the interested parties and the objectors are not beneficiaries of the estate of the deceased.
11. That the application is seeking to execute a grant that was annulled by this Honourable court.
12. That the interested parties' claim relates to sale of land parcel number Kiine/Gachoro1837 as per their respective agreements with the objectors.



13. That I am advised by my advocates on record, advice I verily believe to be true that the succession court does not have jurisdiction to determine the validity or enforceability of the said agreements.
 14. That I am further informed that claims to the use, occupation and title to land belongs to the ELC and not this Honourable Court.
 15. That the application is without merit, is incompetent and should be dismissed in its entirety with costs and the summons for the issuance of a new grant dated the 31st October 2017 allowed.”
5. The Court has considered that every person has a right to a fair hearing in terms of Article 50 (1) of *the Constitution*, which provides as follows:
- “Fair hearing.
- 50.
- (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”
6. As persons registered as owners of the parcels of land claimed as part of the estate of the deceased, the Interested Party were entitled to be heard before a decision affecting their Article 40 right to property was made. As the decision affecting their title to the land was made without hearing them, they are entitled to be joined and pursue a redress in this matter where the decision was taken.
7. The court is also aware of the provision of the *Law of Succession Act* which may protect the Interested Parties’ acquired interest in the land if the acquisition was a valid transaction within the meaning of section 93 of the law of Succession, which provides as follows:
- “93. Validity of transfer not affected by revocation of representation
- (1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act, by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.
 - (2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have not been discharged nor provided for.”
8. Of course, the section 93 of the *Law of Succession Act* would not protect a fraudulent dealing, as held by the Court of Appeal in *Musa Nyaribari Gekone & 2 others v Peter Miyienda & another* [2015] KECA 573 (KLR) where the effect of the provision is discussed at length as follows:
- “17. On the question whether the 1st respondent was beneficially interested in the estate of the deceased and whether he had the legal standing to apply for



revocation of the grant of the letters of administration, the learned judge held that under section 76 of the *Law of Succession Act* the court is empowered to revoke or annul a grant “on the application of any interested party or of its own motion” and that the expression “any interested party” is wide enough to cover a person who claims to have purchased an asset of the estate.”

37. The last issue that we need to consider is whether, by reason of section 93 of the *Law of Succession Act* the title in favour of the 3rd appellant could be revoked. The appellants’ complaint in this regard is that the learned judge erred in revoking, nullifying and cancelling the transfer and registration of the property in favour of the 3rd appellant “contrary to section 93 of the Law of Succession Act”

38. After setting out the provisions of section 93 of the *Law of Succession Act*, the learned judge stated that the object of that provision “is to protect dealings with the legal representative of the deceased who must have as personal representatives assumed deceased’s authority to deal with the estate of the deceased.” The judge then considered the report of the Commission on the Law of Succession, 1968; and held that under section 55(1) of the *Law of Succession Act*, if the disposal of immovable property is done in contravention of the confirmed grant, the same would be an invalid exercise of the powers of the legal representative and may be invalidated under section 45 of the Act. The Judge then found that:

“In transferring the suit property to himself, the 2nd respondent and one Margaret Kerubo Orina, the 1st respondent acted contrary to the provisions of the confirmed grant that he held the suit property upon trust for the family. This initial transfer being invalid, the subsequent transfer by the three to the 3rd respondent is also invalid.”

39. Section 93 of the *Law of Succession Act* has been the subject of judicial interpretation in a number of cases. In a recent persuasive decision of *Adrian Nyamu Kiugu v Elizabeth Karimi Kiugu and Anor* [2014] eKLR the High Court at Meru stated:

“Whereas the above section states that a transfer by person to whom representation has been granted shall be valid notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act, I am of the considered view that such transaction can only be relied upon where the legal representative is entitled to grant of representation but not where one is not and where one has obtained the grant fraudulently. The purchaser in this cause came from the neighborhood of the objector and it is not possible that he did not know of the objector herein. I therefore find and hold the sale to be invalid.”

40. In *Jecinta Wanja Kamau v Rosemary Wanjiru Wanyoike and Another* [2013] eKLR where the appellant therein unsuccessfully sought protection under section 93, this Court sitting in Nyeri stated:

“Before the appellant could seek protection as a purchaser under Section 93 of the Act she had first to prove that she is a purchaser. In this case, there was no prima facie evidence that she was a purchaser. In any case, and as provided



by Section 82 (b) (II) of the Act, it would have been illegal for Beatrice Njeri Magondu to sell the land before the confirmation of the grant.”

41. In *Jane Gachoki Gathecha v Priscilla Nyawira Gitungu and another* [2008] eKLR where a purchaser claimed that he was not aware of, and was not a party to, the fraudulent dealings with the title in issue and was therefore not only protected under S.93 (1) of the *Law of Succession Act* (Cap 60) but also section 143 of the Registered *Land Act*, this Court sitting in Nyeri stated this:

“We think, with respect, that there is a fallacy in invoking and applying the provisions of section 93(1) of the *Law of Succession Act* and the superior court fell into error in reliance of it. The section would only be applicable where, firstly, there is a “transfer of any interest in immovable or moveable property”. Kabitau had no interest in plot 321 or any part thereof and therefore he could not transfer any. A thief acquires no right or interest which is transferable in stolen property. The transaction would be void ab initio and the property is traceable.”

42. In *Re Estate of Christopher Jude Adela (Deceased)* [2009] eKLR, K.H. Rawal, J (as she then was) had this to say in reference to Section 93 of the *Law of Succession Act*;

“The correct reading of the said provisions will indicate that the transfer to a purchaser, if shown to be either fraudulent and/or upon other serious defects and/or irregularities can be invalidated. Reading these provisions in the manner will be commensurate with provisions of section 23 of the RTA (Cap 281) or any other provisions of law regarding proprietorship of an immovable property. It shall be a very weak or unfair system of law if it gives a Carte blanche of absolute immunity against challenges to transfer of immovable properties of estate by a personal representative, it shall be simply against all notions of fairness and justice. No court can encourage such interpretation while a personal representative will be protected even while undertaking unethical or illegal action prejudicing the interests and rights or right beneficiaries of the estate.

In short, I do not agree that section 93 of the Act prohibits the discretion of the court to invalidate a fraudulent action by a personal representative.”

43. Those decisions support the position taken by the learned judge of the High Court in this matter when he stated that while under Section 93 of the *Law of Succession Act* a revocation or variation of the grant does not invalidate a transfer by the personal representative, other considerations, such as the disposal of the property in contravention of the confirmed grant may invalidate the transfer. Having found as he did that the transfer of the property by the personal representative to himself, the 2nd respondent and one Margaret Kerubo Orina was contrary to the provisions of the grant and having found evidence of fraud with regard to the representation in the application for grant and subsequent confirmation as to the persons beneficially entitled to the deceased’s estate, the learned Judge was correct to take the view that section 93 of the *Law of Succession Act* did not afford



the 3rd appellant protection. There is therefore no merit in the complaint that the learned Judge erred in revoking, nullifying and cancelling the transfer and registration of the suit property in favour of the 3rd appellant in contravention of section 93 of the *Law of Succession Act*.”

9. The Interested parties must, however, be afforded opportunity under the fair hearing provisions of Article 50 (1) of *the Constitution* to demonstrate that the transactions for their acquisition of the suit parcels of land are protected by section 93 of the *Law of Succession Act*. There is no prejudice to the petitioner as she will have the opportunity to demonstrate to the Court to the contrary that the process for the acquisition of the land was fraudulent a, null and void.

10. On the question as to whether a purchaser of an asset in the estate property qualify to be joined as an interested party, the Court of Appeal in *Musa Gekonge*, supra, said:

“17. On the question whether the 1st respondent was beneficially interested in the estate of the deceased and whether he had the legal standing to apply for revocation of the grant of the letters of administration, the learned judge held that under section 76 of the *Law of Succession Act* the court is empowered to revoke or annul a grant “on the application of any interested party or of its own motion” and that the expression ““any interested party” is wide enough to cover a person who claims to have purchased an asset of the estate.”

18. The relevant part of section 76 of the *Law of Succession Act* provides:

“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) ...

(b) That the grant was obtained fraudulently by making of a false statement or by 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) ...

(e) ...

19. The expression “any interested party” as used in that provision, in its plain and ordinary meaning, is in our view wide enough to accommodate any person with a right or expectancy in the estate. We are not persuaded, as Mr. Oguttu urged, that that expression is limited by or should be construed against the provisions of sections 66 and 39 of the *Law of Succession Act*. Section 66 provides a general guide to the court of the order of preference of the person(s) to whom a grant of letters of administration should be made where the deceased has died intestate. Section 39 provides for the order of priority of persons to whom the net intestate estate shall devolve where the deceased left no surviving spouse or children. Those provisions do not in our view have a



bearing on the question of who may be an ‘interested party’ for purposes of an application for revocation or annulment of grant of letters of administration under section 76 of the Law of Succession Act. There is therefore no merit in the complaint that the learned judge paid undue premium or undue regard to section 76 of the Law of Succession Act when he held that the 1st respondent has the locus standi to present the application for revocation of the grant. We agree with the learned Judge that the 1st respondent’s interest as a purchaser of the property of the deceased qualifies him as an ‘interested party’ with standing to challenge the grant.”

11. These proceedings will be a dispute as to title to land per se which is the proper subject of the Environment and land Court but one for determination within the mandate of the Succession Court whether the annulment or revocation of Grant herein affects the purchasers of the property in terms of section 93 of the Law of Succession Act, or review of the annulment order as indicated in prayer no. 4 of the application dated 8/11/2019.
12. This Court has had occasion to discuss the principles for joinder of parties in and as pointed out therein, citing *Civicon Limited v Kivuwatt Limited & 2 others* [2015] eKLR, the sufficient interest required to be demonstrated for the joinder of a party to a suit does not mean an interest that must succeed at the trial.

Orders

13. Accordingly, for the reasons set out above, the Court finds that the interested application dated 8th November 2019 for joinder has merit and it is allowed in terms of prayer no. 2 thereof. The substantive prayers of the application shall be considered after hearing of the full merits of the case with regard to the prayers for the reopening of the proceedings in the matter or the reinstatement of the Grant earlier issued, now annulled, as they have prayed in prayers Nos.3 and 4 of the Summons.
14. The Interested Parties will be at liberty to move the Court for orders whether the annulment of Grant affected the transfers of the land to themselves in terms of section 93 of the Law of Succession Act, or as they may be advised by their legal advisors upon joinder as Interested Parties in this Succession cause.
15. Mention for Directions as to further hearing in the matter on 29/7/2025.

Orders accordingly.

DATED AND DELIVERED THIS 19TH DAY OF JUNE 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Mwirichia for the Applicant.

N/A for the Respondents.

