



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyamu & 3 others v Wairimu (Succession Appeal 1 of 2020)  
[2025] KEHC 7681 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7681 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
SUCCESSION APPEAL 1 OF 2020  
JK NG'ARNG'AR, J  
JUNE 5, 2025**

**BETWEEN**

**PETER GICHERU NYAMU ..... 1<sup>ST</sup> APPELLANT  
GABRIEL MURIITHI NYAMU ..... 2<sup>ND</sup> APPELLANT  
MARGARET MUTHONI NYAMU ..... 3<sup>RD</sup> APPELLANT  
JOHN MURAGE NYAMU ..... 4<sup>TH</sup> APPELLANT**

**AND**

**LEAH WAIRIMU ..... RESPONDENT**

*(Being an appeal from the ruling and order of the Senior Resident  
Magistrate's Court at Kerugoya (Hon. Y.M. Barasa, SRM.)  
delivered on 11th December 2019 in CMC SC NO. 517 OF 2016)*

**JUDGMENT**

1. The appellants filed Summons for Revocation of Grant dated 26<sup>th</sup> May 2017 in Kerugoya CMC SC No. 517 of 2016. They sought the following reliefs:
  1. That the letters of administration issued in Kerugoya Chief Magistrate's Court Succession Cause No. 517 of 2016 on 6/2/2017 17/9/1999 be revoked and annulled on the grounds that the proceedings to obtain the same were defective in substance and the grant was obtained fraudulently by making of false statements and concealment from the court of things material to the case of the applicant herein;
  2. That costs be provided for.
2. The application was based on the grounds on the body of it and the supporting affidavit of the 1<sup>st</sup> appellant. The appellants are the children of the late Mary Wamwitha Nyamu and siblings of the



late Reuben Mwai Nyamu. They recalled that the respondent served them with citation pleadings in Kerugoya SPMC SC No. 393B of 2016. They filed their responses informing the court that they had filed the present succession proceedings. They accused the respondent of discreetly filing papers in this cause to mislead the court that the estate belonged to a different person. That the succession cause herein belonged to the estate of his mother and not his brother.

3. They continued that they paid for gazette of this cause on 7<sup>th</sup> November 2016 but the file went into a lull. That is when their counsel fixed the matter for mention in March 2017 only to discover that the respondent filed an application for the estate of the late Reuben Mwai Nyamu. The 1<sup>st</sup> appellant complained that the assistant chief issued a letter indicating that the respondent was the wife of the late Reuben Mwai Nyamu without summoning them. In fact, he deposed that the late Reuben Mwai Nyamu was never married during his lifetime.
4. The appellants were emphatic that they saw the respondent the first time with unruly men during the burial of their brother. They deposed that the respondent claimed the land belonging to their mother out of which their late mother obtained a permanent injunction restraining her from entering land parcel no. Inoi/Kariko/529; a parcel of land forming the estate of the late Mary Wamwitha Nyamu. In their view, the respondent could not inherit from their mother's estate in light of the injunctive orders in force. After the death of their mother, the respondent filed a burial dispute claiming burial rights. That suit was dismissed.
5. The appellants urged the trial court to allow the application on the following grounds: the respondent was deceitful; the succession proceedings were conducted clandestinely; the respondent misled the court when she stated that she was the wife of the late Reuben Mwai; the respondent was granted an order to be issued with letters of administration of the estate of Reuben Mwai Nyamu and not his deceased mother; and the grant was issued fraudulently and in concealment from the court of issues material to the case.
6. The application was opposed. In her replying affidavit sworn on 3<sup>rd</sup> July 2017, the respondent deposed that limited grant of letters of administration ad litem were issued to her in respect of the estate of her late husband and not the estate of Mary Wamwitha Nyamu. She deposed that she was not a direct beneficiary of the estate of Mary Wamwitha Nyamu but claimed through her son, the late Reuben Mwai Nyamu.
7. She explained that she was obligated by law to obtain capacity to object to these proceedings as she was left out together with the deceased's child that she had sired with him. In the circumstances, she filed an application seeking a limited grant ad litem on 2<sup>nd</sup> February 2017. The application was allowed on 6<sup>th</sup> February 2017 but the grant was not signed. Thus, on 26<sup>th</sup> April 2017, counsel for all parties appeared before this court. The respondent informed the court about the anomaly and no objection was recorded. In fact, a consent order was recorded and the same has never been varied or set aside.
8. The respondent informed that though the initial grant appeared to suggest that she was issued a grant in respect of the estate of her late mother-in-law, this mistake was brought to the attention of the court. Accordingly, another limited grant bearing the correct name of the deceased was issued on 26<sup>th</sup> April 2017. For those reasons, the respondent urged the trial court to dismiss the appellants' application with costs.
9. In its ruling dated 11<sup>th</sup> December 2019, the trial court found that the application lacked merit and was dismissed but with no orders as to costs. It is those findings that have triggered the present appeal. In their joint memorandum of appeal dated 2<sup>nd</sup> January 2020, the appellants have raised nine grounds disputing the impugned ruling that are condensed as follows: the trial court erred in dismissing their



application when the evidence glaringly disclosed that the limited grant obtained by the respondent was done so through falsehood that the respondent was a wife of Reuben Mwai Nyamu; the trial court failed to take into account the injunctive orders issued in Kerugoya CMCC No. 137 of 2011 against the respondent; there grant was irregularly obtained in a succession cause belonging to the estate of their late mother; the grant was obtained surreptitiously; and the respondent obtained the death certificates of the deceased persons unprocedurally.

10. In view of the foregoing, the appellant prayed that their appeal be allowed by setting aside the ruling and order of the trial court and be substituted with an order allowing their Summons for Revocation of Grant dated 26<sup>th</sup> May 2017. They further prayed for costs of this appeal.
11. The appeal was heard on the basis of the parties' written submissions. The appellants' written submissions dated 27<sup>th</sup> July 2023 elaborately summarized the evidence and their grounds of appeal to submit that the trial court arrived at an erroneous decision. They urged this court to allow the appeal. The respondent filed written submissions dated 9<sup>th</sup> August 2023. Opposing the appeal, she submitted that the trial court's decision was lawful and rightfully dismissed the appellants' application to revoke her grant. She prayed that the appeal be dismissed with costs.
12. I have extensively considered the memorandum of appeal and the submissions of the parties, critically examined the record of appeal as well as the supplementary record of appeal and analyzed the law. My duty as a first appellate court, is to re-evaluate as well as examine afresh the evidence and to arrive at my own conclusion having regard to the fact that I have not seen or heard the witnesses. [See *Capital Fish Kenya Limited vs. The Kenya Power & Lighting Company Limited* [2016] KECA 56 (KLR)].
13. The application was heard on the basis of the viva voce evidence adduced. From the record before me, the 2<sup>nd</sup> appellant testified on behalf of the appellants. His evidence was that though the deceased Reuben Maina Nyamu was his brother, he was never married during his lifetime. He further maintained that his brother never had a child. He therefore denied knowing the respondent and her child. His evidence was that he first saw her when she forcefully signed her brother's burial permit instead of their mother. He learnt that she wanted to bury him. He recalled that she threatened his mother with death in the company of members of the mungiki sect. They did not report this incident for fear of victimization.
14. After the burial, their mother was served with an order to restrain them from interfering with the respondent's quiet enjoyment of land parcel no. Inoi/Kariko/529 pursuant to Kerugoya CMCC No. 137 of 2011. A permanent injunction would later be issued restraining the respondent from accessing that parcel of land. He maintained that his mother never recognized that she was her late brother's wife and therefore should not inherit from her estate.
15. He also recalled several criminal charges were preferred against him pursuant to her complaints out which he was acquitted. He questioned the veracity of the letter from the chief confirming that the respondent was a wife of his deceased brother. PW1 stated that the respondent tried to stop his mother's burial when she died in 2014; and did not attend the same. He added that the respondent was never recognized as a family member as per the eulogy they produced. He discovered that the respondent was using her brother's ID card unlawfully. The matter was reported at the police station. Finally, the respondent was found with another man whom he thought was her husband.
16. RW1, the respondent, testified that the late Reuben Maina Nyamu was her husband. They got married customarily on 14<sup>th</sup> February 2000. They had one child called Kennedy Munene Mwai who was 17 years old at the time of her testimony. She recalled that she lived with her husband on land parcel no Inoi/Kariko/529 before she was chased away in 2010 after he died in 2008. She testified that she signed



the burial permit without any resistance from the other family members. She denied knowing about Mungiki stating that she did not recognize the eulogy the appellants sought to rely on. She also denied that she caused mayhem during the visit to the morgue. She maintained that she is not married. She recalled that the eulogy of her late husband did reveal that she was married to the deceased.

17. RW1 continued that she did not know that one had to file separate succession causes where there are two estates. She stated that she sought a special grant to represent the estate of her deceased husband, a son to the late Mary Wamwitha Nyamu because they had been excluded. Explaining the events of their introduction ceremony, she recalled that in 2003, Waruhiu, Gicheru and Francis Kariuki, members of her deceased's husband's family visited her father Mzee Munyi together with her relatives Mzee Gathaiga and Joseph Gatheru. She testified that she obtained the letter from the chief correctly revealing that she was the deceased's widow. She learned that that Chief Wamutira did not disclose that she was the deceased's wife. She confirmed that she was evicted by her mother-in-law pursuant to a court order from the suit land. She confirmed that she did not attend her mother in law's burial.
18. The respondent also called Peter Mubiri Kabugi, RW2, a village elder or Karaini village, to the stand. His evidence was that he knew RW1 as the wife of the late Reuben Mwai Nyamu who lived together from 2000 as husband and wife on Mary Wamwitha Nyamu's land parcel. During the deceased's lifetime, he would occasionally see them picking tea together. After the death of Reuben Mwai Nyamu in 2008, RW1 was chased away from her matrimonial home by her mother-in-law and children. The respondent reported the incident tot RW2 who advised her to report to the area chief. He recalled that she was issued with a burial permit but he did not attend the funeral.
19. Section 76 of the *Law of Succession Act* provides 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.”



20. The power to revoke a grant is discretionary. Therefore, in exercising that power, a court is urged to do so judiciously and not through whims, caprice or sympathy. It is not gainsaid that the respondent obtained a limited grant of letters of administration ad litem on behalf of the estate of the late Reuben Mwai Nyamu. The letters of administration were limited to determining the objection in the substantive succession proceedings.
21. The appellants were unhappy with the issuance of that grant. Their application was hinged on the provisions of 76 (b) and (c) of the Act, accusing the respondent of obtaining the grant by means of fraud, concealment of material facts and making untrue statements. They accused her of stealthily obtaining the grant without informing them. The kernel of their dissatisfaction was their vehement denial that the respondent was the wife of their deceased brother.
22. From the record, the grant ad litem was obtained for purposes of filing an objection on behalf of the estate of the deceased. It is instructive to note that when the proceedings took place on 26<sup>th</sup> April 2017, the appellants were represented by their respective counsel. That counsel did not object to the issuance of those letters of administration limited to objection proceedings. The appellants cannot therefore be heard to accuse the respondent of obtaining the grant to their exclusion. It is apparent that they were present and made their position known to the trial court. That fact cannot be reprobed.
23. Regarding whether the respondent is a wife of the late Reuben Nyamu Mwai, I find that this is an issue that can be properly canvassed during the succession proceedings. In any event, it is in the interest of justice that the parties are called to stage at that juncture to either prove or disprove that allegation. If I were to lock out the participation of the respondent at this juncture, on grounds of the fact that her legitimacy as a wife is disputed, I would be driving the respondent away from the seat of justice. Whether she is a wife and sired a child with the deceased is an issue that should be substantively addressed during the objection proceedings and not at such an interlocutory stage. I find that it is not a ground that can revoke a limited grant.
24. The upshot of the above findings is that the present appeal lacks merit. The trial court properly exercised its jurisdiction and I see no grounds to interfere with its findings. However, since it is a family dispute, the same is dismissed with each party bearing its own costs of the appeal.

It is so ordered.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF JUNE 2025  
IN THE PRESENCE OF;**

No appearance for the Appellants

Mwagiru for the Respondents

Siele /Mark (Court Assistants)

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**J. NG'ARNG'AR**

**JUDGE**

