



**Goko & 5 others v Goko & another (Civil Appeal E013 of 2022)
[2025] KEHC 10418 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10418 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E013 OF 2022
EM MURIITHI, J
JULY 17, 2025**

BETWEEN

**ALICE WANJA GOKO 1ST APPELLANT
PETERSON MUTUGI GOKO 2ND APPELLANT
JOSEPH MAINA GOKO 3RD APPELLANT
EDWARD WACHIRA GOKO 4TH APPELLANT
BISMARC MURIITHI GOKO 5TH APPELLANT
JOHNSON GACHARA NJAGI 6TH APPELLANT**

AND

**NANCY MUTHONI GOKO 1ST RESPONDENT
FLORENCE WAMBUI 2ND RESPONDENT**

*(Being an appeal from the Ruling of Hon. S.M Nyaga (S.R.M) in
Baricho Succession Cause No. 176 of 2018 delivered on 24/2/2022)*

JUDGMENT

1. On 29/7/2021, the Respondents, the daughters of the deceased, filed summons for revocation of the grant of letters of administration issued to Alice Wanja Goko on 26/8/2019 and confirmed on 7/10/2020. They accused the Appellants of filing the summons for confirmation of grant secretly and forging their signatures in the consent dated 26/2/2020. They urged that the proposed mode of distribution was discriminatory and unfair and they did not appear in court on 30/9/2020 for hearing of the summons for confirmation because they were not notified. They only learnt that the grant had been confirmed when they saw people erecting beacons on the suit land.



2. The Petitioner, Alice Wanja Goko swore Replying Affidavits on 16/8/2021 and 30/8/2021 in opposition to the application. She urged that the application was an afterthought as the certificate of confirmation of grant was issued with the consent of all beneficiaries including the Respondents. During partition of the estate, the 1st Respondent was involved in the procurement of a favourable surveyor.
3. Upon inter partes hearing of the application, the trial court allowed the application dated 28/7/2021 as prayed.

The Appeal

4. On appeal, the Appellants filed their memorandum of appeal on 16/3/2022 raising 7 grounds as follows:
 1. The learned magistrate erred in fact and law in allowing the summons for revocation of grant against the weight of evidence.
 2. The learned magistrate erred in fact and law in revoking the grant when there was evidence that the applicant had participated in the succession cause.
 3. The learned magistrate erred in fact and law in revoking the grant on the ground that the applicant alleged forgery of the consent form when there was no proof of forgery.
 4. The learned magistrate erred in fact and law in holding that the applicants were not informed of the succession cause when there is evidence they participated in the subdivision and registration of the succession forms and gave their pin certificates identity cards copies and passport size photographs and already obtained title deeds of the land they inherited and participated in selection of the surveyor.
 5. The learned magistrate erred in holding that the applicants were not notified of the succession cause yet they had signed the consent form and the court correctly confirmed the grant as there was no protest filed.
 6. The learned magistrate erred in fact and law in failing to consider the evidence of the appellant in making her judgment.
 7. The learned magistrate erred in allowing the application for revocation of grant.

Duty of the court

5. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle v Associated Motor Boat Co. & others* [1968] E.A. 123).

Submissions

6. The Appellants cite *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* (2000) eKLR, *R.G Patel v Lalji Makanji* (1957) 314 E.A, *Ndolo v Ndolo* (2008) 1KLR (G & F) 742, *Christopher Ndaru Kagina v Esther Mbandi Kagina & Another* (2016) eKLR, *Moses Parantai & Peris Wanjiku Mukuru suing as the legal representative of the estate of Sospeter Mukuru Mbeere (deceased) v Stephen Njoroge Macharia* (2020) eKLR, *Jane Njeri Nderi v Rachel Wangari Nderi* (2020) eKLR and *Richard Akwesera Onditi v Kenya Commercial Finance Co. Ltd* (2010) eKLR on the requirements that must be met for



the allegation of fraud to be admitted in court. They fault the trial court for erroneously finding that the Respondent's signature was forged, without any supportive evidence. They urge the court to allow the appeal, and cite *In the Matter of the Estate of Wilson Wamagata (deceased)* Nairobi High Court Succession Cause Number 261 of 1998.

7. The Respondents did not file any submissions.

Analysis and Determination

8. It is discernable from the grounds of appeal that the singular issue for determination is whether the threshold under section 76 of the *Law of Succession Act* for revocation of the grant was met.

9. The hearing of the summons for confirmation of grant was set for 30/9/2020, when all beneficiaries were directed to attend. Come that day, the beneficiaries who were in court were Alice Wanja Goko, Peterson Mutugi, Joseph Maina Goko, Edward Wachira Goko and Bismarck Antony Mwangi Goko. Peterson Mutugi told the court that;

“My mother who is before court cannot walk on her own. I request that grant be confirmed. 3 beneficiaries Rose Njoki, Johnson Gakora and Florence Wambui were unable to attend court. They have no bus fare. They signed consent.”

10. The court noted that;

“Each beneficiary in present has confirmed to court they have no objection to the proposed mode of distribution of the estate. Grant is hereby confirmed. Certificate to issue.”

11. The hearing of the summons for confirmation was initially scheduled on 8/4/2020 when all the beneficiaries were expected to be present in court. The hearing did not proceed on that day as anticipated presumably because the beneficiaries were absent, and the hearing was rescheduled to 30/9/2020. There is no affidavit of service on record to show that the Respondents were indeed ever served with the hearing notices. Without any evidence of service of the summons for confirmation of grant upon the Respondents, this court must find that they were denied an opportunity to protest to the proposed mode of distribution before the confirmation of the grant. The fact that the beneficiaries are aware of the cause does not in itself fetter the court's jurisdiction to revoke the grant if some of the beneficiaries have advertently been left out.

12. There is no explanation why the women save for the 2nd Respondent, who was completely left out, got a meager 0.25 Acres each as opposed to their male counterparts, who got a whopping 1.5 acres each, yet they were all beneficiaries of the deceased, irrespective of their gender. It has not been shown that any of the Respondents had relinquished her rights to lay a claim over the estate, and therefore they were all entitled to inherit the estate of their father.

13. In order to justify her failure to provide for the 2nd Respondent, the Petitioner, Alice Wanja Goko deponed at paragraph 7 of her Replying Affidavit sworn on 30/8/2021 that, “The 2nd Applicant herein has consented to her portion of the distribution of L.R No. Kiine/Gachoro/5057 being held by me on her behalf and L.R No. Mwerua/Kabiriri/5914 also being held by me and her brother on behalf of her.” The court is however unable to verify the veracity of those averments because there is no evidence to ascertain whether the said parcels of land are registered in the name of Alice Wanja Goko in trust for the 2nd Respondent and her alleged brother, whose identity has not even been disclosed.

14. The court finds that the Respondents, being daughters of the deceased were discriminated against on the basis of their gender, which form of discrimination the *Constitution* frowns upon.



15. This court finds that the proceedings leading to the confirmation of the grant herein were defective in substance, and the trial court properly exercised its discretion in revoking the grant.

ORDERS

16. Accordingly, for the reasons set out above, the Court finds that the appeal is without merit and it is dismissed.

17. The appellant shall pay the costs of the appeal to the respondent.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF JULY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances

Ms. A. Thungu for the Appellant.

Ms. Ndwiga for the Respondent.

