



REPUBLIC OF KENYA



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**In re Estate of Gitau Githehu (Deceased) (Succession Cause 2574 of 2013)
[2025] KEHC 10001 (KLR) (Family) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10001 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2574 OF 2013
PM NYAUNDI, J
JULY 10, 2025**

BETWEEN

**JANE WANGUI KINGORI 1ST APPLICANT
MWAURA GITAU 2ND APPLICANT
ABEDI MWANZIA 3RD APPLICANT
ROSE WANJIKU KARIUKI 4TH APPLICANT**

AND

PAUL MUROKI GITAU RESPONDENT

(IN THE MATTER OF THE ESTATE OF GITAU GITHEHU(DECEASED))

JUDGMENT

1. Before this Court is for summons dated 6th March 2023 in which the Applicants sought the following orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That the Grant of Letters Administration granted to Paul Muroki Gitau on 3rd September 2012 and confirmed on 14th November 2022 be revoked or annulled.



- e. That in the alternative to prayer 4, this Honourable court be pleased to re-distribute the Estate property namely Ndeiya/Makutano/611 or any of its consequent subdivisions thereof amongst all the beneficiaries of the deceased herein.
 - f. That this Honourable Court be pleased to grant any other or further order as it may deem fit and expedient in the circumstances.
 - g. That the costs of this application be costs in the cause.
2. The summons premised upon Section 76 of the Law of Succession Act Chapter 160 and Rules 44(1) Rules 49,59 and 73 of the Probate & Administration Rules and all other enabling provisions of the law and was supported by the Affidavit of even date sworn by the Applicants.
 3. The Respondent opposed the summons through her Replying Affidavit sworn on 7th February 2024.
 4. The summons was canvassed by way of viva voce evidence.

Background

5. This succession cause relates to the Estate of Gitau Gathehu (hereinafter the deceased) who died intestate on 10th April 1983. Paul Muroki Gitau petitioned for letters of administration intestate in Limuru Senior Principal Magistrate's Court Succession No. 134 of 2010 which was issued to him on 3rd September 2012. This matter was then transferred to this court. Subsequently, the grant was confirmed on 14th November 2022 and certificate of confirmation of grant issued.
6. The deceased is said to be survived by the following beneficiaries;
 - i. Njoki Gitau 1st widow.
 - ii. Monica Kamene Gitau2nd widow.
 - iii. Joseph Njogu Gitauson.
 - iv. Paul Muroki Gitauson.
 - v. Esther Wairimu Gitau daughter.
 - vi. Earnest Njunge Gitau Son.
 - vii. Wairimu Gitau Daughter.
 - viii. Mungai Gitau son.
 - ix. Kanyori Gitau son.
 - x. Wangui Gitau daughter.
 - xi. Margaret Wanjiku Njogu Daughter in law.
 - xii. Njogu Waweru Njambi Grandson.
7. The deceased had one asset known as Ndeiya/Makutano/611 measuring 49 acres.
8. The applicants argue that the grant and confirmation of grant were obtained fraudulently through making false statements, concealment from court of material information about the estate, and through presentation of fake signatures of some beneficiaries. They argue that Mwaura Gitau's thumb print signature in the petition for confirmation of grant is fake; that he is a resident of Narok town and



at no point did he present himself for thumb printing. The applicants aver that Jane Wangui King'ori, Lucy Wairimu and Margaret Njambi have been excluded.

9. They argued that the Respondent allocated himself the largest portion which is contravention of Section 40 of the Law of Succession Act. Also that the respondent included third parties in the certificate of grant and has gone ahead to distribute the estate to third parties. They argued that the respondent has entered into sale agreements with third parties to sell part of the estate including land allocated to some of the beneficiaries, they accused the Respondent of taking out a second death certificate which had different information from the original one issued in Narok. They argue that the initial letter from the chief did not disclose all the deceased's beneficiaries. They urged the court to allow the summons for revocation as prayed.
10. The Respondent avers that the deceased had two houses. Before the deceased died, he shared Ndeiya/Makutano/611 into two portions. Each house took possession of their share and there has been no dispute for over 30 years until recently when the members of the 1st house filed summons for revocation of grant. he denied allocating himself a bigger portion of the estate. He argues that there are four beneficiaries from the second house. His mother consented that her share be shared amongst her children. Joseph Njogu Gitau is deceased and did not have any children and therefore, the share belonging to the second house was shared between him and his sister, Esther Wairimu Gitau.
11. He averred that some of the beneficiaries from the 1st house are deceased. He approached the grandchildren of the deceased whose parents are deceased. The beneficiaries sought letters from the chief to determine the true and genuine grandchildren of the deceased. He used the letters to list the beneficiaries of the 1st house and the mode of distribution proposed by the members of the 1st house. He averred that he served Jane Wangui King'ori (the 1st applicant) but she refused to sign court documents. She indicated that she is not interested in getting a share from the deceased's estate.
12. Mwaura Gitau (2nd applicant) is the deceased's son, he participated in the confirmation process and was given his share which he has since sold. The 3rd applicant is the son of Margaret Njambi (deceased). Him and his brother, Francis Waweru represented their house and participated in this succession process. Rose Wanjiku Kariuki is the daughter of the late Lucy Wairimu Kariuki. Agnes Catherine Wangui Kariuki was allocated the share belonging to their late mother.
13. He argued that he has distributed the deceased's estate according to the wishes of the deceased and to the best of his ability. That some of the beneficiaries faced financial challenges and opted to sell out their respective shares. He urged the court to strike out the applicants' application.
14. The summons was canvassed by way of viva voce evidence.

Summary Of Evidence

15. RW1, Mwaura Gitau, he is a son of the deceased. He adopted the joint affidavit sworn on 6th March 2023 as his evidence in chief. He stated that he is the son of the deceased. He stated that he was given a portion of land but it is not commensurate to his entitlement. He denied signing any consent form.
16. During cross- examination, he stated that the Respondent is not known to him. He was not aware when the estate was being sub-divided. He has already sold the portion he was allocated.
17. In re-examination, he confirmed that he sold the parcel of land allocated to him so as to secure the court fees.
18. RW2, Rose Wanjiku Kariuki stated that she is the grand - daughter of the deceased. Her mother is the late Lucy Wairimu from the 1st house. They are seven children in their house. They were not involved in



- the petition for administration. Catherine Wangui is the only one who got a share from the deceased's estate. She did not sign the consent form. The Respondent was young when the deceased died and it is not true that the deceased shared out his land before he died. The Respondent settled on the deceased's land after he had died. She denied the allegation that the family agreed to sell part of the land to cover court fees. That she was entitled to the share that Catherine Wangui was allocated. She stated that Jane Wangui Kingori, her aunt, was also not allocated a portion of the deceased's estate.
19. During cross-examination, she stated that she does not know Paul Muroki Gitau.
 20. In re-examination, she stated that the deceased's land was not distributed equally.
 21. RW3, Abdi Mwanzia stated that he is the grand-son of the deceased and the son of the late Margaret Njambi. He asked the court to adopt the affidavit sworn on 6/3/2023 as his evidence in chief. His evidence is that they are 5 siblings from their house. His brother, Francis Waweru was allocated a portion of the deceased's property. He stated that they were not involved in the succession proceedings. He stated that the Respondent got a bigger share than anyone else. He asked the court that they all be included as beneficiaries of the estate of the deceased.
 22. During cross examination, he stated that he does not know the Respondent. He stated that the deceased was not polygamous.
 23. In re-examination, he stated that the deceased did not sub-divide his land before he died.
 24. Paul Muroki Gitau testified as PW1. He stated that he is the deceased's son. He asked the court to adopt his replying affidavit sworn on 7/2/2024 as his evidence in chief. He stated that the deceased was polygamous. He stated that Mwaura Gitau is his step brother whereas Rose Wanjiku is the daughter of his sister. His evidence was that the deceased's estate was divided equally into two portions. Mwaura Gitau was allocated 3/8 of an acre which he has since sold. All the applicants were aware of the succession proceedings. Agnes Catherine Wangui Kariuki sold the portion allocated to her. Abdi and Francis are the sons of Njambi. Francis was allocated a share of their late mother. According to him, all the deceased's children were allocated a piece of land. He consulted all the family members and they agreed on how the deceased's estate would be shared.
 25. During cross-examination, he stated that at the time of the deceased's death, he was 15 years old. The land was shared into two equal portions between the 2 houses of the deceased. The 1st applicant was not present in the meeting; she had indicated that she was not interested in getting a portion of the deceased's estate. He denied that his grandfather had subdivided the land and everyone was living on their portion. During distribution of the property, he did not speak with Rose; he spoke to Agnes. He was already living at the deceased's property when the deceased died. He constructed his home in the year 2000.
 26. Referring to the proposed sub-division before court, he stated that portion D was to be shared between Lucy Wambui Wairimu, Mary Njeri Kamau and Beatrice Njeri Njunge who are the children of the Late Ernest Njunge Gitau. Portion C was to be allocated to Boniface Gitau Wairimu and Lucy Wambui Wairimu. Portion G was allocated to Ephantus Njogu Mungai, Serah Njeri Mungai and Loise Wangui Mungai. Mwaura Gitau was allocated 0.09 Ha. The children of Francis Waweru Gitau were allocated portion J. Ibrahim Gitau Waweru was not provided for. He followed the proposal given by his family. He was informed that a title cannot have more than three members. Abdi does not appear on the Certificate of Confirmation of Grant.
 27. He stated that John Ng'ang'a Ngugi, Peter Waweru Mwangi, Peter Gachanja Ndegwa, Solomon Njenga Murugi are all purchasers. Francis sold his parcel of land to John Nganga Ngugi, Peter Waweru Mwangi



and Solomon Njenga Murugi. The family of Francis got an additional parcel of land because they were footing the bill. The family of Mwaura Gitau sold their portion to Peter Gachanja Ndegwa.

28. The share allocated to him (1/2) was shared between him, his late mother, his late brother Joseph Njogu. He agreed with his mother that he retains his late brothers share. His sister, Wairimu sold her share. The deceased shared the land into two before he died. The deceased is buried on the parcel of land. According to him, the farm should be divided between the two homes.
29. In re-examination, he stated that his mother and sister consented to the mode of distribution in their house. The members of the 1st house gave him the proposal of how they wanted their portion to be subdivided. They even signed the consent form.

Applicant's Submissions.

30. They framed the following as issues for determination;
 - i. Whether the Grant of Letters of Administration issued to Paul Muroki Gitau on 3rd September, 2012 and confirmed on 14th November, 2022 be revoked / annulled.
 - ii. Whether the purported distribution of deceased assets between the beneficiaries was just and according to law, and if not, whether the Court should re-distribute the Estate property namely Ndeiya/Makutano/611, or any of its consequent subdivisions thereof amongst all the beneficiaries of the deceased herein.
31. On the first issue, the applicants submit that the proceedings to obtain the grant were defective in substance. They argued that the Respondent indicated to the court that the deceased left an oral will on how the estate should be distributed. That no such will was presented in court. They argued that the Respondent handpicked the grand children of the deceased whose parents had died instead of involving them all in the succession proceedings. Also, that the 1st applicant was not involved in the succession process.
32. The applicants submitted that 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. They accused the Respondent of taking out a different death certificate and presenting before court a chief's letter which did not have all the beneficiaries. They also accused the Respondent of allowing third parties to sign the consent form. It was their submission that Mwaura Gitau denied signing the consent form.
33. The applicants further submitted that that the person to whom the grant was made has failed, after due notice and without reasonable cause to proceed diligently with the administration of the estate. They accused the Respondent of not distributing the estate as per the confirmed grant. They contest the actual acreage received by the beneficiaries from what is indicated in the confirmed grant.
34. On the second issue, the applicants cited Article 27 of *the Constitution* of Kenya which provides for equality of all persons. That the confirmed grant is discriminatory because some beneficiaries were left out of the distribution. They argued that since the deceased was polygamous, the estate should be distributed according to Section 40 of the Law of the Succession Act. They sought to rely on the decisions of *Rono v Rono & Another* [2005]1EA363 and the matter of the Estate of Nelson Kimotho Mbiti, HCSCC NO. 169 OF 2000.

Respondent's Submissions .

35. The Respondent argued that the only issue for determination whether the applicants have presented sufficient evidence to warrant revocation or annulment of the grant.



36. The Respondent has relied on Section 76 of the *Law of Succession Act* and In the Matter of the Estate of L.A.K. (Deceased) [2014] eKLR.
37. The Respondent submitted that the applicants were at all times aware of the succession proceedings and actively participated in the proceedings.
38. The Respondent submitted that the deceased during his life time subdivided the property and members from the two houses had settled on their respective portions. None of the parties ever contested the distribution by the deceased. That this position was confirmed in the ruling of this court delivered on 25th November 2015.
39. He submitted that the allegation that some of the beneficiaries were excluded or misled is not supported by facts. Each Applicant was either directly involved or represented in the process. He argued that the 2nd Applicant, Mwaura Gitau, received his share measuring 0.9 hectares and went further to sell part of it on 31st January, 2023 before they filed the current application. The 4th applicant who is the daughter of the late Lucy Wairimu Gitau received their mother's share through Agnes Catherine Wangui Kariuki. Rose swore an affidavit dated 13th January 2023 confirming that she did not have an objection to her sister taking their late mother's share. Abedi Mwanzia who is the son of the late Margaret Njambi received the share due to their house through his brother Francis Waweru who actively participated in the succession proceedings before this court. He argued that the 1st applicant was listed as a beneficiary and was invited to participate in the succession proceedings including signing of the consent form.
40. He further submitted that the fact that the applicants are dissatisfied with the mode of distribution is not a ground for revocation of grant. served with the court documents. He submitted that the properties were sold by the beneficiaries of the estate who entered into sale agreements with third parties. That no evidence has been produced to show that he obtained another death certificate; he has all along used the death certificate obtained when the deceased died.
41. The Respondent submitted that the allegation that he is not the deceased's son was not raised during the succession proceedings. He has always been recognised as the deceased's son.
42. Lastly, relying on the decision of Paul Orima Oniala & 3 others v Simon Jakoyo Midhune [2010] eKLR, he submitted that once a grant has been confirmed and some of the beneficiaries have sold their share, bringing an application for revocation is incompetent, malicious and opportunistic and the same should not be allowed.

Analysis And Determination

43. I have carefully considered the oral evidence and submissions by both parties.
44. Section 76 of the *Law of Succession Act* gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It states that:-

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 has ordered or allowed; 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
 - iv. The grant has become useless and inoperative through subsequent circumstances.
45. The circumstances in which a grant can be revoked were discussed in the case of *In the Matter of the Estate of L.A.K. (Deceased)* [2014] eKLR :-
- “Revocation of grants is governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”
46. Notably, the power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the persuasive decision in *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000* where Mwita J stated:-
- “Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
47. The applicants argued that the grant should be revoked on the ground that they were not involved in the succession proceedings.
48. The 1st applicant and 2nd applicants are the deceased’s children while the 3rd and 4th Respondents are the grand children of the deceased. The 1st applicant did not testify or give evidence that she was not involved in the succession process and did not get a share of the estate. Her claim against the estate or grievances cannot be articulated through the evidence of the other applicants.
49. The 2nd applicant on the other hand argues that he did not sign the consent form. He denied putting his thumb print on the consent form. Other than stating that he did not sign any documentation, the



2nd applicants did not provide proof that the thumb print appearing in the consent is not his or it was forged. He who alleges must prove. See Section 109 of the Evidence Act which states that:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

50. I therefore, do not find that it has been established that the 2nd applicant did not sign the consent form. He confirmed that he received a share of the deceased’s estate and has even sold his share. He cannot claim not to have been provided for in the deceased’s estate.

51. The 3rd and 4th applicants are the grandchildren of the deceased. Their parents died before the estate could be distributed. They claim that the consent of family members was not sought when the application for Grant was made. The Respondent was not obligated to seek the consent of the Applicants or of any other person. Reason being that Rule 26(1) and (2) of the Probate and Administration Rules provide:

“26.

(1) Letters of Administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.

(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by affidavit...”

52. The Applicants herein being a grandchildren of the deceased are not entitled in the same degree or in priority with the Respondent, a son of the deceased, to apply for the grant. Consequently, the claim that consent was not obtained from them does not hold water. The Respondent was not obligated to obtain the consent of a person entitled to a grant in a lesser degree than himself.

53. I am therefore not persuaded by the applicants’ arguments that the respondent concealed material facts and thus the grant was obtained fraudulently. I find that pursuant to Section 76 of the Law of Succession Act, the applicants have not satisfied the court or made a case to warrant the revocation of the grant. In this regard, the application dated 6th March 2023 must fail.

54. I also observed that whereas in their evidence they stated that the administrator was not known to them, in their affidavit sworn on 6th March 2023 they stated that he was a son of the deceased.

55. It is evident to me that the estate was divided amongst the children of the deceased and where the child was deceased, the estate transmitted to the surviving grandchild to represent that home. If the applicants are aggrieved their avenue of redress is the family representative who received the share on their behalf. The Certificate of Confirmation of grant having issued and parcels of land having been transmitted to the respective beneficiaries this court is functus officio

56. The Application is therefore dismissed with no order as to costs

57. Parties at liberty to exercise their right of appeal within 30 days

It is so ordered.



SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 10th DAY OF JULY, 2025.

P. M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Ms. Ng'ang'a for Applicant

Ms. Kinyanjui for Administrator

Fardosa Court Assistant

