



REPUBLIC OF KENYA



In re Estate of Misheck M’mboroki (Deceased) (Succession Cause 112 of 2008) [2025] KEHC 9898 (KLR) (9 July 2025) (Judgment)

Neutral citation: [2025] KEHC 9898 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 112 OF 2008
SM GITHINJI, J
JULY 9, 2025**

BETWEEN

ROBERT MUTWIRI PAULO 1ST APPLICANT

RUTH NKATHA RUKARIA 2ND APPLICANT

AND

ESTHER KATHAO MBOROKI 1ST RESPONDENT

ERRAH TIRINDI GATOBU 2ND RESPONDENT

SARAH KIENDE M’MBOROKI 3RD RESPONDENT

JACKLINE NTINYARI KAREMI 4TH RESPONDENT

EDWARD MWAKI RIUNGU 5TH RESPONDENT

JUDGMENT

1. For determination is the Summons for revocation or annulment of grant dated 15/5/2019 pursuant to section 76 of the *Law of Succession Act*, Rules 26, 44, 49 and 73 of the Probate and Administration Rules, seeking that;
 - a. Spent
 - b. The honourable court be pleased to issue an order against all the respondents restraining them from intermeddling with the estate of the deceased by either entering, occupying, taking possession, evicting the 1st respondent or in any other way interfering with the 1st respondent’s quiet occupation and use of land parcel number Abothuguchi/Igane/2155 pending hearing and determination of this cause.
 - c. The honourable court be pleased to annul/revoke the grant of letters of administration intestate issued to Esther Kathao M’mboroki on 29th January 2009.



- d. The honourable court be pleased to issue an order of rectification of the register over land parcel number Abothuguchi/Igane/2155 and Abothuguchi/Igane/2156 and cancellation of Jackline Ntinyariand Edward Mwaki Riungufrom the registers and the same revert to the deceased Misheck M'mboroki M'rajunialias Misheck M'mboroki.
 - e. The court do grant any other better relief that it deems fit.
 - f. The costs of this application be borne by the respondents.
2. The application is supported by an affidavit sworn by the 1st applicant on even date. He accused the 1st respondent of obtaining the grant herein fraudulently, secretly and omitting the 2nd applicant's name from the list of beneficiaries. The 1st respondent then transferred L.R Nos. Abothuguchi/Igane/2155 and 2156 to her daughters, the 2nd and 3rd respondents herein, who in turn sold the entire land to the 4th and 5th respondents. He has lived on a part of L.R No. Abothuguchi/Igane/2155 all his life with his wife and 6 children, as the land was given to him by the deceased herein way back in 1978. He has no other land where he can live and the 4th respondent has now threatened to evict them.
 3. The 1st respondent did not file any response to the application.
 4. The 2nd respondent swore a replying affidavit on 18/11/2019 in opposition to the application. She deponed that the 2nd applicant was not a beneficiary to the estate but a prospective buyer, who was refunded her money after the grant was confirmed through J.M Isaboke & Co. Advocates. The 1st applicant is their step brother from the 1st house and a grandson to the deceased herein. The 1st applicant's father namely Mugambi Mboroki alias Paul Mugambi was given L.R No. Abothuguchi/Igane/621 by the deceased herein, Itimitu Mboroki alias Joel Itimitu from the 2nd house was given L.R No. Abothuguchi/Igane/245 while L.R No. Abothuguchi/Igane/626 was given to the 3rd house. The 1st applicant's siblings reside on L.R No. Abothuguchi/Igane/621 while the family of Itimitu Mboroki sold their land and relocated to Isiolo. The 1st applicant forcefully lives on their land, which the 1st respondent subsequently sold to the 4th and 5th respondents after the grant was confirmed.
 5. The 3rd and 4th respondents did not file any responses to the application.
 6. The 5th respondent swore a replying affidavit on 1/11/2019 in opposition to the application. He contended that he was a bonafide purchaser and the registered proprietor of L.R No. Abothuguchi/Igane/2156. It was self-defeating for a grandson to lay a claim over the grandfather's estate whereas his father was provided for during the lifetime of his grandfather. The 2nd applicant was but a scorned purchaser whose attempt to intermeddle with the estate failed as the sale agreement she had entered into with the 1st respondent never materialized. At no time was his parcel of land ever occupied by the 1st applicant as can be deduced from the scene report by the Executive Officer.
 7. The applicants, Giati Nthii and Reginah Mutwiri filed witnesses statements dated 17/2/2020 in support of the application.
 8. The 1st, 2nd and 3rd respondents filed their witness statements on 6/9/2018.
 9. The 4th respondent filed her witness statement dated 27/2/2023 asserting that she purchased L.R No. Abothuguchi/Igane/2155 from the 2nd respondent and duly acquired title thereto on 31/1/2013, but the 1st applicant has blatantly refused to vacate the land.
 10. The 5th respondent filed his witness statement dated 28/9/2018.



Oral Evidence

11. AW1 Robert Mutwiri Paulo, the 1st applicant herein told the court that he got ½ acre from the deceased, who had adopted him as his son when he was a young child. Esther was his step-mother and he had never been to plot No. 621. He lived on the land but he did not know that Jackline Ntinyari had bought it. He gave Errah Ksh. 8,000 to process the title and bring it to him, only to be served with a letter to vacate. His father is Paul Muguoko and his step brothers and sisters namely Naftali Mwenda, Linus Koome, James Kooro and Mary Nkirote reside on his father's land. He came to the land in 1978 and his grandfather orally promised to give him the land before he died, in the presence of Esther Kathao, Cornelius Gaiti Nthie and Regina Kauria.
12. AW2 Ruth Nkatha Rukaria, stated that plot number 626 belonged to her father, although she did not have any document to that effect. She only offered to buy the land after problems arose and because she wanted to come back to her father's land. Esther Kathao is her step mother, Margaret Mukoo Gaiti, the 2nd wife to the deceased, is her mother and Robert is a son to her brother Paul Mugwika Mujuoku. Errah Tirindi is her sister and she did not receive a refund of any money. She is only interested in parcel No. 2156 which was given to her by the deceased during his lifetime but she has no claim over the land given to Errah Tirindi and sold to Jackline Ntinyari.
13. RW1 Errah Tirindi adopted her statement dated 2/9/2018 and affidavits of 18/11/2019 as her evidence in chief. She stated that she sold 2155 to Jackline, the 4th respondent, and Robert had indicated that he would vacate the land. At the time of the sale, the land was in her name and she had the right to sell it. The deceased had given his 3 wives separate parcels of land, and they only sold the land their mother was given. Robert was in occupation at the time of the sale and he has refused to vacate. Mutwiri was brought by his mother to stay at his grandfather's place, but he was to relocate once the subdivision of his father's land was done.
14. RW2 Sarah Kiende adopted her statement dated 2/9/2018 as her evidence in chief. She told the court that Robert Mutwiri is the child to M'Mugambi Mboroki, Ruth Ngatha does not belong to the family and Edward Mwaki and Jackline Ntinyari are purchasers. Robert was brought up at Ndechiri Mitunguu by his mother, but he later came to live with his grandfather. Robert built his house on the land when his grandfather was still alive, and no one objected to the sale of 2155 to Jackline by Errah. Their father ordered Robert to go back to his father's land, because the land belonged to her, Errah Tirindi and their mother. Ruth is not a daughter to the deceased and the money she paid had since been refunded to her through her advocate.
15. RW3 Jackline Ntinyari testified that when she bought the land from Erra Tirindi, Robert was aware, and she gave him 8 months to harvest his produce. When she bought the land, she knew Robert was part of the family.
16. RW4 Edward Mwaki Riungu adopted the replying affidavit sworn on 1/11/2019 together with the statement dated 24/2/2020 as his evidence in chief. He told the court that he bought parcel No. 2156 from Kiende M'Mboroki, the 3rd respondent herein. Land parcel No. 621 belonged to the father of the 1st applicant herein Robert Mutwiri. The 1st applicant, a grandson to the deceased herein, temporarily lives on parcel No. 2155 which is next to his. His possession was not being interfered with by anybody and he prayed for the sale transaction to be validated. He met with Jackline Ntinyari when she was purchasing plot No. 2155 and Ruth Rukaria has never been in possession thereof. He was aware that Robert was forcefully occupying the land despite the fact that he was given plot No. 621 by his father. He was also aware that when the sale of part of 626 between the 1st respondent and Ruth Rukaria fell off, she was duly refunded her money.



17. The application was canvassed by way of written submissions which were filed by counsel for the respective parties herein.

Analysis and Determination

18. I have considered the application, the responses thereto, the witness statements, the oral evidence and the submissions by counsel. I discern the issue for determination to be whether the threshold under section 76 of the *Law of Succession Act* has been met to warrant revocation of the grant.
19. Before addressing the substantive merits of the application, I deem it prudent to preliminarily consider whether the applicants possessed the locus standi to institute these proceedings.
20. The applicants are suing the respondents allegedly in the respective capacities as the deceased's son and daughter, and thus they have the requisite locus standi to so institute these proceedings. The question whether they are indeed what they purport to be is a different issue altogether, which I will address shortly.
21. 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 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."
22. The applicants' quest to have the grant revoked is hinged on the 1st respondent's deliberate failure to provide for them, notwithstanding the fact that they are beneficiaries of the deceased. In rejoinder, the 1st respondent contends that the 1st applicant is a grandson to the deceased, and his father was already provided for by the deceased during his lifetime, while the 2nd applicant is a disgruntled purchaser who was reimbursed her money after the negotiations culminating in the sale of a portion of L.R No. Abothuguchi/Igane/2155 collapsed.
23. In his testimony, the 1st applicant was candid that; "I got the ½ acre from the deceased. He adopted me as a child of his son when I was a young child. I live on the parcel of land. When the court visited the land, in the presence of counsel including my own counsel I was on the land. I do not know about 621. I have never been there." That testimony was corroborated by RW2 who stated that; "Robert was



- brought up at Ndechiri Mitinguu by his mother. He was brought by his mother. She brought him to the father's land. He built his house on the land when his grandfather was alive. When the grandfather was dying Mutwiri was still living on the land. Robert Mutwiri came to live with my father. He had been taken to his father and he later came to stay with the grandfather. When he came, they put up a small house for sleeping only. It was on the same where our mother was staying.”
24. RW1 affirmed that Robert Mutwiri was in occupation of the land when she was selling it to the 4th respondent. She went on to state that Mutwiri was brought by his mother to stay at his grandfather's place.
 25. The 1st applicant has irrefutably proved that he has been residing on a portion of L.R No. Abothuguchi/Igane/2155 peacefully and with the full knowledge of the respondents and the deceased herein, until recently when an eviction notice was issued. Needless to say, the 1st respondent listed the 1st applicant as one of the beneficiaries of the deceased at paragraph 4 of her affidavit in support of the petition for letters of administration intestate filed on 26/3/2008. That begs the question why the 1st respondent would duly recognize the 1st applicant as a beneficiary to the estate of the deceased yet intentionally fail to give him a share thereof.
 26. I find that the 1st applicant has proved on a balance of probabilities that the deceased herein took him in as his son, and thus he became a dependant within the meaning of section 29(b) of the Law of Succession Act, which provides; “For the purposes of this Part, “dependant” means— (b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death.”
 27. Consequently, I find that the grant issued to the 1st respondent on 3/2/2009 and confirmed on 31/5/2011 was obtained by concealment of the fact that the 1st applicant was an adopted son to the deceased, and thus it must be revoked, on that account.
 28. As for the 2nd applicant, she insisted that she was a daughter to the deceased and Margaret Mukoo Gaiti, his 2nd wife. Nonetheless, RW1, RW2 and RW4 reiterated that the 2nd applicant was merely a purchaser, devoid of any right to lay a claim to the estate of the deceased.
 29. The totality of the evidence on record irresistibly proves that the 2nd applicant is a displeased purchaser as opposed to a daughter of the deceased, and the law is clear that claims by 3rd parties fall outside the jurisdictional purview of a succession court. In *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR, the court (W. Musyoka J) held that; “The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the Civil Procedure Act and Rules, which have elaborate rules on suits by and against executors and administrators.”
 30. I find that the 5th respondent purchased L.R No. Abothuguchi/Igane/2156 after the grant had been confirmed from the 3rd respondent herein, and he thus acquired a good title thereto.
 31. In the exercise of the inherent powers of the court under section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, I allow the application dated 15/5/2019 in the following terms:



- a. The grant issued to the 1st respondent on 3/2/2009 is hereby adjusted in respect of L.R No. Abothuguchi/Igane/2155 only, and does not in any way affect the 5th respondent's ownership of L.R No. Abothuguchi/Igane/2156.
- b. All the entries in the register including the registration of Jackline Ntinyari Karemi, the 4th respondent herein, as the proprietor of L.R No. Abothuguchi/Igane/2155 are hereby cancelled, so that the same can be registered in the name of Robert Mutwiri Paulo.
- c. L.R No. Abothuguchi/Igane/2155, measuring approximately 0.50 shall continue to be in possession of the 1st applicant herein, Robert Mutwiri Paulo pending its registration in his favour.
- d. The respondents are hereby restrained from interfering with the 1st applicant's quiet occupation and use of L.R No. Abothuguchi/Igane/2155 .
- e. Matter be mentioned to confirm the said registration and closure of the file on 18/12/2025

DATED AND DELIVERED AT MERU THIS 9TH JULY, 2025.

M. GITHINJI

JUDGE

Appearances:-

Miss Gikundi for 1st to 3rd Respondents.

Mr. Mwirigi for 4th Respondent.

Miss Maina for the 5th Respondent.

Miss Mutuma for the Applicant (absent).

