



In re Estate of Mikinya Gatinu alias Mikinyo Gatinu (Deceased) (Succession Cause 2888 of 2015) [2025] KEHC 13042 (KLR) (Family) (19 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13042 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2888 OF 2015
PM NYAUNDI, J
SEPTEMBER 19, 2025
IN THE MATTER OF THE ESTATE OF MIKINYA
GATINU ALIAS MIKINYO GATINU (DECEASED)

BETWEEN

JOHN GICHIRU WANGAI 1ST APPLICANT
JOSEPH KIMANI KANYIRI 2ND APPLICANT
SERAH NJOKI KIARIE 3RD APPLICANT

AND

MIKINYA NJOROGE 1ST RESPONDENT
GATHU WAMBURA 2ND RESPONDENT
MUNGA WAMBURA 3RD RESPONDENT

JUDGMENT

1. Before this Court is for summons for revocation of grant dated 23rd November 2015 in which the Applicants sought the following orders;
 1. Spent.
 2. That the confirmed grant given to the respondents by Kiambu Senior Resident Magistrate in Succession Cause No. 71 of 2002 on 15th September 2008 be revoked or annulled.
 3. That the Honourable Court do give such other or alternative orders as it might deem fit.
2. The summons premised upon Section 76 of the *Law of Succession Act* Cap 16 Laws of Kenya and all enabling provisions of the law and was supported by the Affidavit of even date sworn by the Applicants.



3. The summons was canvassed by way of viva voce evidence.

Background

4. This succession cause relates to the Estate of Mikinya Gatinu alias Mikinyo Gatinu (the deceased) who died intestate on 11th August 1960. Mikinya Njoroge, Geoffrey Gathu Wambura and Daniel Mugai Wambura petitioned for letters of administration intestate in Kiambu Senior Principal Magistrate Succession Cause No. 71 of 2002 which was issued to them on 22nd August 2002. The grant was confirmed on 15th September 2008.
5. The applicants aver that they are the grandchildren of the deceased from the second, third and fourth house respectively. The Respondents on the other hand are great grandchildren of the deceased from the first wife's house. They contend that the deceased inherited Land Number Dagoretti/Ruthimitu/71 which was ancestral land from his late father. The deceased had four wives. The land was registered in the deceased's name to be held in trust for the family. They averred that the proceedings especially the application for confirmation was done without disclosing that there were other beneficiaries of the estate who were in possession of the deceased's estate and had filed a claim vide Nairobi HCC No. 2173 of 2007. That the Respondents have been bringing prospective buyers and threatening members of the other three houses with eviction. averred that the Objector filed summons for revocation of grant.
6. According to the supporting affidavit in support for grant of administration intestate, the deceased is said to be survived by the following beneficiaries;
 - a. Mikinya Njoroge.
 - b. Geoffrey Wambura.
 - c. Peter Mikinya Wambura.
 - d. Geoffrey Gathu Wambura.
 - e. Daniel Mungai Wambura.
 - f. David Kioi Wambura.
 - g. Muchugia Wambura.
 - h. Njoroge Wambura.
 - i. Peter Ndungu Njoroge.
 - j. James Gichuru Wambura.
7. The deceased had one property known as Dagoretti/ruthimitu/71.
8. This matter was partly heard by Honourable Lady Justice Maureen Odero who took the evidence of the applicants. The parties consented that I proceed with the matter with the evidence on record.

Evidence

9. OW1, Sarah Njoki Kiarie She stated that the deceased was her uncle; a step father to her father. Her evidence was that the deceased had four wives. Dagoretti/Ruthimitu/71 was unofficially subdivided into four portions and is occupied by the four families. Her father, mother, sister and two brothers were buried in their portion of land. There is land in Muranga bearing the names of the sons of the four



families. She is representing the house of Nyakango, one of the deceased's wives. The grant was issued to one family; the grandchildren of Njeri. She argued that her family is entitled to a share of the land which was being held in trust for all the four families. She asked the court to revoke the grant because they were not notified of the succession cause. They filed a suit in ELC No. 2173 of 2007 where the court stayed the proceedings and ordered the parties to ventilate their issues in a succession cause.

10. During cross-examination, she stated that the deceased was her father's step brother. Nyakango died in 1969. The deceased was the administrator of her estate. Her father Kiarie is the son of Nyakango. She does not have letters of administration for the estate of Kiarie. Allotment of the property was done in 1958. She has not availed evidence of the matter in the Environment Court. She has not produced a copy of the title deed of the land in Muranga. There is no evidence to show that the land was being held in trust for the other beneficiaries. The subdivision was agreed on by all the four families. Her father is a beneficiary of the deceased's estate. He was not included in the succession cause. He was not aware that the petition was gazetted. In 2001, there was a dispute regarding where one of her uncles was to be buried which was resolved by the chief. She was not aware of the ruling of the succession cause.
11. OW2, John Gichuru Wangai relied on his sworn statement dated 21st January 2020 as his evidence in chief. He stated that he was the son of Wangai Gatinu who was the son of Wathiiga Gatinu. The administrators in this cause are his cousins. Their grandmother, Njeri was the wife of their grandfather. Njeri and Wathiiga were co-wives. He was not informed or involved by the administrators when they filed the succession cause. He asked the court to revoke the grant.
12. During cross examination, he stated that the deceased is his father's step brother. He has filed the summons on behalf of his other cousins. He is not aware of an ELC case. The land in dispute belonged to his grandfather. The land was registered in the deceased's name to hold it in trust for his brothers. This was not noted in the register. The land was unofficially divided into four parts. He has been paying rates for the land. Records for payment were kept by his step brother Joseph Kimani who has since passed away. He was not aware of any gazettelement done in this succession cause. Wangai Gatinu, his father was a step brother of the deceased. He doesn't have letters of administration in respect to the estate of his late father.
13. During re-examination, he stated that he mentioned ELC No. 2173 of 2007 in his witness statement.
14. Mikinya Njoroge testified as RW1.. He told the court that the deceased is his paternal grandfather. The land in dispute belongs to his grandfather. His grandfather left it to his son, the deceased. A succession cause was filed in Kiambu. The search dated 14th December 2001 indicates that the deceased is the owner of Dagoretti/Ruthimitu/71.
15. During cross-examination, he stated that the succession cause in Kiambu was in respect to their grandfather, Mikinya Gatinu. He had four wives. Njeri Gatinu is his grandfather's mother. There is also Nyakango Gatinu and Wathiiga Gatinu. He does not know the affiliation of the applicants with the deceased's wives. He does not know his relationship with John Gichuru Wangai. They are all part of the larger Gatinu family. The applicants have buried their kin on the deceased's land. Members of the Gatinu family are cultivating on that land. The land was originally government land. It was registered in the name of Mikinya Gatinu in 1958. The land in Muranga and Dagoretti are separate. The land in Murang'a is registered in the name of Wangari Gatinu, Daniel Waithiga and Wambura Mikinya Gatinu. Wambura Mikinya Gatinu is his paternal uncle. The 3rd Respondent is the son of Wambura Mikinya Gatinu. He doesn't know if the land originally belonged to his great grandfather. The land in Dagoretti was Mikinya's not Gatinu's.
16. His father told him that the land in Dagoretti belongs to them and not the applicants. They did not raise the issue when their grandfather was alive. It is not true that the land was registered in the name



of Mikinya Gatinu to hold it in trust for the rest of the family. The other families are on the property because of his grandfather's generosity. They don't have proof of ownership. He did not inform the applicants that he filed a suit in Kiambu. Their names do not appear in the chief's letter. According to him, they are not part of the family. This court will determine whether the applicants will continue staying on the deceased's property.

17. In re-examination, he stated that the applicants are their distant relatives. His father died in 1997. The applicants started burying their kin on the deceased's land in 1995. The land has not been subdivided.
18. RW2 was Daniel Mungai Wambura. He asked the court to adopt his witness statement as his evidence in chief. He stated that the deceased was his paternal grandfather. The land in issue is registered in their grandfather's name (the deceased).
19. During cross-examination, he stated that he does not reside on the land. He cultivates on 2-3 acres of the parcel of land. Mr. Njoroge has not constructed on the parcel of land but has been cultivating it before 1997. He asked the court to evict him since he entered into the land forcefully. The chief was informed and he wrote a letter to them. They were not involved in the succession proceedings because they belong to a different family. They applicants belong to the Gatinu's family while the Respondents belong to the Mikinya family.
20. At the time of writing this judgement the parties had not filed their respective submissions.

Analysis And Determination

21. The issue for determination herein is whether the Applicant's application meets the threshold for the revocation of a grant within the meaning of Section 76 of the [Law of Succession Act](#).
22. For avoidance of doubt, Section 76 of the [Law of Succession Act](#) states as follows:

“76. Revocation or annulment of grant

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.”

23. Section 76 was clearly expounded on by the court In re Estate of Prisca Ong’ayo Nande (Deceased) [2020] eKLR where it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

24. In the application for revocation of grant, the applicants challenge the deceased’s ownership of parcel of land registered as Dagoretti/Ruthimitu/71. It is the applicants case that though the parcel of land registered as Dagoretti/Ruthimitu/71 is absolutely registered in favour of the deceased, it was ancestral land which was held by the deceased in trust for their grandparents.

25. Under section 26(1) of the *Land Registration Act* the title of a registered proprietor is prima facie evidence that the proprietor is the absolute and indefeasible owner of the land subject to any encumbrances, easements restrictions and conditions contained or endorsed in the certificate. Such title however may be challenged on the ground of fraud or misrepresentation to which the proprietor is proved to be a party and or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

26. The *Law of Succession Act*, Cap 160 gives the Succession Courts wide jurisdiction in dealing with issues of testamentary and administration of Estate of Deceased persons and other related matter as expressed by its preamble as read with Section 3(1) of the Act.



27. Section 29 of the *Law of Succession Act*, provides:
For the purposes of this Part, “dependant” means -
- (a) ...
 - (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; and
 - (c) ...
28. The Applicants have not established the relationship they have with the deceased. from their oral evidence, they seem to be very distant relatives of the deceased. they are not beneficiaries of his estate and have not proved they were dependants under the Act.
29. This then means that the issue of customary trust raised by the applicants ought to be heard and determined at another forum. The determination can only be within the purview of the Environment and Land Court to decide whether the said trust does exist by looking into the substantive claims by the applicants.
30. In the case of *Peter Moturi Ogutu v Elmelda Basweti Matonda & 3 others* [2013] eKLR, It was stated that,
- “where a claim of trust has been raised, the Plaintiff had to establish the existence of a trust on which his case could be hinged or mounted.”
31. In the Court of Appeal cases of *Muthuita v Muthuita* (1982-88) 1 KAR 42 at 44 & *Njenga Chogera v maria wanjira kimani & others* [2005] eKLR, it was held that,
- “customary law trust is proved by leading evidence on the history of the suit property and the relevant customary law on which the trust is founded.”
32. From the above does the Succession Court have jurisdiction determine the question of the existence of a customary trust? Interests in land arising from customary law trusts are now expressly recognized under the provisions of Section 28 (b) of the *Land Registration Act*, No.3 of 2012 and the same can only be determined by the Environment and Lands Court.
33. The prayer for revocation of grant therefore must fail. However, the basis of their claim is that once the existence of the customary trust is established they will be entitled to a share of Land Parcel No. Dagoretti/ Ruthimitu/71. For this reason, I will grant an order staying the execution of the orders of the Court in Kiambu in Succ Cause 71 of 2002, confirming the Grant and distributing the parcel of land to Mikinya Njoroge, Geoffrey Gathu Wambura and Daniel Mungai Wambura pending the determination ELC CASE No. 213 of 2007
34. The matter will be mentioned before the Deputy Registrar on 25th November 2025 to confirm the progress on the Environment and Land Court matter and to take further directions.
35. The application dated 23rd November 2015 only partially succeeds to the extent that there shall be a stay in the execution of the certificate of confirmation of Grant pending the finalisation of ELC Case No. 213 of 2007.
36. There shall be no order as to costs.



It is so ordered

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 19th DAY OF SEPTEMBER, 2025.

P. M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Gachingo Gitau for Petitioners

Mbigu Njuguna for Objectors

