



**In re Estate of Dinais Mwamburi Mwawasi alias Dinaise Mwamburi Mwawasi
alias Dinais M. Mwamburi (Deceased) (Miscellaneous Succession Application
E001 of 2021) [2024] KEHC 1658 (KLR) (14 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1658 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS SUCCESSION APPLICATION E001 OF 2021
GMA DULU, J
FEBRUARY 14, 2024
IN THE MATTER OF THE ESTATE OF DINAIS MWAMBURI
MWAWASI ALIAS DINAISE MWAMBURI MWAWASI ALIAS DINAIS M.
MWAMBURI (DECEASED)**

BETWEEN

ALPHONSE MWANDIGHI KIRIGHA APPLICANT

AND

GETRUDE MKANYIKA MWAMBURI RESPONDENT

RULING

1. Before me is a summons for revocation of grant dated 29th August 2021 filed by Alphonse Mwandighi Kirigha under Section 76 of the [Law of Succession Act](#) (Cap.160) and Rules 44(1) and 73 of the [Probation and Administration Rules](#).
2. The reliefs sought in the application are as follows:-
 1. (Spent).
 2. The grant of Letters of Administration Intestate issued by the Resident Magistrate Wundanyi Law Court to Getrude Mkanyika Mwamburi and confirmed on 24th October 2019 based on her petition in Wundanyi *Succession Cause No. 32 of 2018* be revoked and all subsequent orders including resultant title number Taita Mwachobo Scheme/295 be revoked.
 3. Costs of this application be provided for.
3. The application has grounds on the face of the Summons that the Letters of Administration were obtained fraudulently on false statements and concealment of material facts from the court, and that



- the respondent failed to disclose that the applicant had purchaser's interest in the estate of a portion of 12 ½ acres excised from title number Taita Taveta/Mwachobo Scheme/295.
4. The application was filed with a supporting affidavit sworn by the applicant on 27th August 2021 which amplifies the grounds of the application and annexes several documents, including a caution filed in the Lands Registry, and copies of handwritten sale of land documents.
 5. The applicant also filed a supplementary affidavit which he swore on 12th June 2023 deponing inter alia that the respondent filed proceeding, that is *Voi ELC 35 of 2021* and obtained orders therein. The applicant also filed a supplementary affidavit sworn by Prudence Chao Nyange on 12th June 2023, as well as another supplementary affidavit sworn on 12th June 2023 by Vitalis Mwakio, in support of his contentions.
 6. The application is opposed through a replying affidavit sworn on 14th October 2021 by Getrude Mkanyika the respondent in which it was deponed that the applicant is not a dependant of the deceased, that there was no valid sale agreement, and that the application was filed too late in the day and was an afterthought.
 7. The respondent also filed a further affidavit she swore on 17th March 2023 deponing that the dispute herein had already been determined in *Voi Magistrate's ELC No. 35 of 2021* and annexed the judgment of the ELC Court delivered on 21st July 2023.
 8. The application was canvassed through written submissions. In this regard, the applicant filed submissions in person which I have perused and considered. I note that he is now from 23rd September 2023 represented by counsel Kishagha Katema Advocates. On the other hand, the respondent did not file any written submissions, though she was at one point represented by Mwinzi & Associates Advocates. Thus I have to consider only the written submissions filed by the applicant.
 9. This court has jurisdiction to revoke letters of administration, even if the same have been confirmed, such powers having been conferred upon the court under Section 76 of the *Law of Succession Act* (Cap.160). Fraud, or concealment or misrepresentation of material facts to the succession court are statutory grounds on which a grant of letters of administration can be revoked.
 10. In the present case, or application for revocation of grant, this court is called upon to deal with an issue that revolves around an interest arising out of a purported sale of land to the applicant. I have to state here that since promulgation of the 2010 *Constitution*, issues to do with land are primarily to be determined in the ELCourt, and not this court. In addition to the above constitutional imperative, under the *Law of Succession Act* (Cap.160), the succession court's jurisdiction does not extend to determining substantive issues on rights or obligations of a party to an agreement, as that is for the civil or commercial court.
 11. I note that applicant has filed documents on the purported sale of the land, but I do not see anything specific relating to any particular piece or parcel of land, though in the application the applicant specifically claims a portion of Taita Taveta Mwachobo Scheme Phase/295. On that account of the sale documents not specifying the land in question, no court can be sure which land is referred to in those sale documents to enable the court make a decision on the same.
 12. More importantly, a court case involving the same parties, which is *Voi ELC No. 35 of 2021* between Getrude Mkanyika Mwamburi and Alphonse Mwarigha Kirigha determined and concluded a dispute involving the same land in contest herein, and concluded as follows:-

“I hereby enter judgment as follows –



- a. The defendant is hereby directed to withdraw the caution on the plaintiff's land No. Taita Taveta Mwachambo Scheme Phase 1/295 within the next fourteen (14) days failing which the Land Registrar Taita Taveta County shall remove it.
 - b. The County Survey/Land Registrar Taita Taveta County shall cause the suit plot to be subdivided to reflect the defendant's portion being 0.3068 acres and title be issued accordingly in his name.
 - c. In the alternative, the plaintiff shall refund the defendant the sum of Kshs. 82,000/= and the defendant shall relinquish his claim to the said portion of land.
 - d. The defendant is hereby permanently restrained by himself, servants or agents, from trespassing into or interfering with the plaintiffs portion of the suit plot.
 - e. Each party shall bear their own costs of the suit.”
13. It being crystal clear that the parties in the above ELC case, are the same parties herein, and in view of the above orders of the ELC Court, the application herein for revocation of grant of letters of administration was overtaken by events and probably should have been withdrawn by the applicant, since there is no indication that the applicant appealed the decision of the ELC Court above.
14. Now that the applicant has prosecuted the application, I will have to dismiss the same with no order as to costs. I thus dismiss the application with no orders as to costs. The only direction this court can issue is that the orders of the ELC Court above be complied with as directed by the trial court. It is so ordered

DATED, SIGNED AND DELIVERED THIS 14TH DAY OF FEBRUARY 2024 AT VOI IN OPEN COURT.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistant

Applicant in person

