



**Gichangi & another v Murage & 4 others (Succession Cause  
352 of 2013) [2024] KEHC 4424 (KLR) (4 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4424 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
SUCCESSION CAUSE 352 OF 2013**

**LW GITARI, J**

**APRIL 4, 2024**

**BETWEEN**

**PETERSON WANJOHI GICHANGI ..... 1<sup>ST</sup> APPLICANT**

**JEPHITHAH KINYUA GICHANGI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JULIANA WANGITHI MURAGE ..... 1<sup>ST</sup> RESPONDENT**

**PETER MURIITHI MURAGE ..... 2<sup>ND</sup> RESPONDENT**

**JAMES MUTHII MURAGE ..... 3<sup>RD</sup> RESPONDENT**

**REUBEN KIMANI MURAGE ..... 4<sup>TH</sup> RESPONDENT**

**ELIUD MAINA MURAGE ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. This succession cause relates to the estate of the late Kithiru Kamaika alias Githiru Kamaika (deceased) who died intestate on 1<sup>st</sup> September, 1974.
2. A grant of letters of administration in respect of the estate of the deceased was made to the 1<sup>st</sup> Respondent herein on 2<sup>nd</sup> March, 2011. The said grant was subsequently confirmed on 7<sup>th</sup> June, 2012.
3. Presently before this Court is the Applicants' application dated 21<sup>st</sup> January, 2013 seeking the revocation or annulment of the aforementioned grant on the following grounds:
  - a. That the proceedings to obtain the grant herein were defective in substance.
  - b. That the grant was obtained fraudulently by making of false statement by concealment from court something material to the case.



- c. That the grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.
  - d. That the persons to whom the grant was made has failed to proceed diligently with the administration of the estate.
4. The said application is supported by the affidavit sworn jointly by the applicants herein on the 21<sup>st</sup> January, 2013.
5. The Applicants deposes that they are the grandsons of the deceased herein. That the deceased had the following children:
  - a. Kamakia Kithiru
  - b. Wangigi Kithiru
  - c. Gichangi Kithiru
  - d. Mugo Kithiru
  - e. Murage Kithiru
6. The Applicants further deposes that all the aforementioned children of the deceased are dead and that the deceased left behind land parcel no. Mutira/Kirunda/273 (the “suit land”) as comprising his estate.
7. In addition, it has been deposed by the Applicants that they are the children of the late Gichangi Kithiru whereas the 1<sup>st</sup> Respondent is a wife to the late Murage Kithiru and the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents are the children of the 1<sup>st</sup> Respondent. Further, that the families of the late Gichangi Kithiru and the late Murage Kithiru are in possession of the suit land and have fully developed the same.
8. It is the Applicants’ contention that the grant issued and confirmed to the 1<sup>st</sup> Respondent should be annulled as the same was obtained without disclosing all the beneficiaries of the subject estate.
9. In response to the Application for Revocation of Grant, the 1<sup>st</sup> Respondent swore an affidavit on 6<sup>th</sup> March, 2013 on her own behalf and on behalf of her co-respondents. She deposed that the deceased was their grandfather and that her late husband, Murage Kithiru, was the last born of the deceased person herein and that he was not given any land during the demarcation hence he was entitled to the entire estate of the deceased.
10. The Respondents further contend that the family of Gichangi Kithiru, who is the father to the Applicants herein, owns land parcel no. Mutira/Kaguyu/819 which according to her is the land that the Applicants should claim a share from.
11. The Respondents thus maintain that the grant herein was issued and confirmed to the 1<sup>st</sup> Respondent having disclosed all the beneficiaries to the estate of the deceased and that 1<sup>st</sup> Respondent is ready to proceed with the administration of the estate of the deceased in accordance to the law and render a just and true account thereof.
12. In a brief rejoinder, the Applicants swore a joint supplementary affidavit on 26<sup>th</sup> January, 2015. They deposed that the land parcel number Mutira/Kaguyu/819 did not form part of the estate of the deceased herein as the same was registered in the names of Antony Wacira Ndumbi and Richard Mugo Gichangi as per the court orders in High Court Civil Case No. 93 of 2007 Nyeri (O.S.).
13. The Application was canvassed by way of viva voce evidence.



14. The 2<sup>nd</sup> Applicant, Jephitha Kinyua, testified as PW1. It was PW1's testimony that the 1<sup>st</sup> Applicant is his brother. It was further his testimony that they live on the suit land which was owned by the deceased herein. That the 1<sup>st</sup> Respondent filed the succession cause in Embu Court without involving them. He thus prayed for the suit land to revert back to the estate of the deceased for it to be distributed afresh.
15. On cross-examination, PW1 testified that the deceased had five children: Gichangi Githiru, Murage Kithiru, Kamaki Kithiru, Kamaki and Mugo. That his father was Gichangi Githiru who owned land parcel number Mutira/Kaguyu/819 but which land parcel had a dispute in Nyeri. That the said land was transferred to Antony Wachira and PW1's brother, Richard Mugo. Further, that the land dispute over Mutira/Kaguyu/819 was instituted against Antony Wachira as he allegedly wants to take the land from Richard Mugo by force.
16. DW1 was Juliana Wangithi Murage, the 1<sup>st</sup> Respondent herein. She testified that the 2<sup>nd</sup> – 5<sup>th</sup> Respondents are her children and that her husband was Murage Githiru. She maintained that the suit land herein was left to her late husband. That her husband was entitled to the suit land as he had no land whereas his brothers had all been given land. It was thus her contention that she never involved the Applications in the filing of this succession cause because they had their own land in which they have been living in todate.
17. DW2 was Reverend Wilson Murimi Kamakia. It was his testimony that that the deceased in this case is his grandfather and that his (DW2's) father was the first born of his grandfather's house. Gichangi Githiru Kamakia is a step brother of his father and is the father of the Applicants. That the 1<sup>st</sup> Respondent is the wife to his uncle Murage Githiru Kamakia and that the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents are his cousins.
18. According to DW2, the deceased had four sons and two daughters. That DW2's father got 5 ½ acres during land demarcation whereas Gichagi got 5.9 acres in a different place during the land demarcation near the forest, Mutira Kaguyu. It was further DW2's testimony that his uncle Mugo got 4.8 Acres but Murage Githiru never got any land during the demarcation although their brother bequeathed him 3.9 Acres. That not all sons of the deceased got land during the demarcation because the land was not enough.
19. DW3 was Jacinta Muthoni Mugo. She stated that Githiru Kamakia was her father-in-law as he was the father to her husband, Mugo Githiru. According to her, her husband had his land the same being Mutira/Kaguyu/818 while their neighbour Gichangi Githiru was given land parcel number Mutira/Kaguyu/819. It was his testimony that the children of Gichangi Githiru had no land on the estate of the deceased and that the families of all the four sons of the deceased were given land except Murage.
20. DW4 was Gideon Munene Karuri. He identified the document produced as P.Exhibit 1 stating that the same relates to a land parcel where Gichangi Githiru and Murage Githiru were occupying. Further, that DW4's name appears in the said the document as he had been invited to the meeting as a clan elder and sub-area. That on 10<sup>th</sup> February, 1992, the clan elders agreed that when the land of Gichangi was traced, the family of Gichangi would move there because the land left to Murage was not allocated land. According to DW4, Gichangi's land was eventually traced but they did not vacate the land of Murage.

## Analysis

21. The circumstances under which a grant of representation may be revoked are provided for under Section 76 (a)-(e) of the [Law of Succession Act](#) and include;
  - a. Where the proceedings to obtain the grant were defective in substance;



- b. Where 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. Where 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;
22. The grant issued to the 1<sup>st</sup> Respondent in respect of the subject estate was confirmed on 7<sup>th</sup> June, 2012 in the following terms:

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- a. Juliana Wangithi Murage
  - b. Peter Muriithi Murage
  - c. James Muthii Murage Equal Shares
  - d. Eliud Maina Murage
  - e. Reuben Karimi Murage
23. It is not in dispute that the suit land comprised the estate of the deceased. What the parties are disputing herein is whether the suit land was left for the benefit of both the families of Gichangi Githiru and Murage Kithiru or whether it was left for the sole benefit of Murage Kithiru.
24. From the testimony of the Respondents, the family of Gichangi Githiru was given land parcel no. Mutira/Kaguyu/819 and were allowed to live on the suit land as their father had a case over land parcel no. Mutira/Kaguyu/819 that was yet to be resolved. On cross examination, PW2 actually conceded that the land parcel No. Mutira/Kaguyu/819 showed that it belonged to Gichangi Githiru. He further confirmed that the said land parcel land parcel no. Mutira/Kaguyu/819 was transferred to his brother Richard Mugo and one Anthony Wachira Ndumbi who they had a case against. In my view, it is not farfetched that the share of the inheritance of the family of Gichangi Githiru lies in land parcel no. Mutira/Kaguyu/819 and not in the suit land in this case. The Applicants have therefore failed to prove their claim in the subject suit land. The applicants are grand-children of the deceased. Under Section 29 of the *Law of Succession Act* (Cap 160 Laws of Kenya), though grant can inherit from the estate of the deceased, they are not direct dependants and are required to prove dependency.

Section 29 (b) on the meaning of dependant provides that:-

“Such of the deceased parents, step-parents, grand-parents, grand-children, step-children, children whom the deceased had taken into his family as his own, brothers and sisters and half-brothers and half-sisters and half-brothers as were being maintained by the deceased immediately prior to his death.”

The court has discretion in making provision for a dependant as provided under Section 27 of the *Act*.

However, there is a limitation to making such provision for a dependant who claims dependency. Section 30 of the *Law of Succession Act* provides for limitation of time and provides:

“No application under this part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided by Section 71.”



The claim for defendant by the applicants is time barred as it is brought after the grant was confirmed.

The claim by grandchildren does not rank in priority to that of the children. *In Re Estate of Veronica Njoki Wakagoto (deceased)* (2013) eKLR, Justice Musyoka stated:

“...grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grand-parents is when the grandchildren’s own parents are deceased. The grandchildren step in the shoes of their parents and take directly the share that ought to have gone to the said parents.”

In this case, satisfactory evidence has been adduced to the effect that their father had no claim to the estate of the deceased as he had been given his own land.

The applicants have not persuaded this court that they are entitled to the estate of the deceased. Though they had occupied the estate, they were not entitled to a share. The document dated 10/2/1992 shows that they were supposed to remain on the land until the case that was in court was finalized. It shows they had their own land but the case was pending in court.

The applicant has not proved any of the grounds to warrant the revocation of the grant. The grant was not obtained fraudulently or through the concealment of material facts. The respondent obtained a chief’s letter and filed the succession. The cause was gazette and the grant issued to the respondent was issued procedurally and later confirmed. The applicants have not proved any fraud. They were not entitled to Land Parcel No. Mutira/Kirunda/273. They were only supposed to live on the land as a temporary measure as they waited for the Land Dispute over their father’s land was resolved. The dispute has already been settled.

## **Conclusion**

25. From the foregoing analysis, it is therefore my view that the grant issued and confirmed to the 1<sup>st</sup> Respondent in this cause is not ripe for revocation. In other words, the present application lacks merits. The application is dismissed.

Each party to bear its own costs.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 4<sup>TH</sup> DAY OF APRIL 2024.**

**L.W. GITARI**

**JUDGE**

