



**In re Estate of Kamotho Njoro (Deceased) (Civil Appeal
E36 of 2020) [2024] KEHC 9608 (KLR) (7 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 9608 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E36 OF 2020
DO CHEPKWONY, J
JUNE 7, 2024**

IN THE MATTER OF THE ESTATE OF KAMOTHO NJORO- DECEASED

BETWEEN

**MARY NGENDO GITAU 1ST APPELLANT
ESTHER WANGARI KARIUKI 2ND APPELLANT
MARY NGEND'O KARIUKI 3RD APPELLANT**

AND

**PETER GATONYE MUNGAI 1ST RESPONDENT
MARY WANGARI MBURU 2ND RESPONDENT
JANE NJAMBI KABUCHO 3RD RESPONDENT**

JUDGMENT

1. By way of background and so as to provide context, Kamotho Njoro “hereinafter the deceased” died on 8th August 1973. Mungai Kamotho and Samuel Mburu Kamotho as his sons petitioned for Letters of Administration Intestate on 4th December, 2008. As listed in the Letter from Chief dated 26th November, 2008 the children of the deceased are Mungai Kamotho, Samuel Mburu Kamotho, Rahab Wanjiku Kamotho, Mary Ngendo Gitau and Jeremiah Kariuki Kamotho.
2. That one of the Administrators Mungai Kamotho died on 19th November, 2009 and his son Peter Gatonye Mungai then filed an application dated 28th November 2011 seeking to be substituted as an administrator which application was allowed and Grant of Letters of Administration dated 18th January, 2013 and was reissued to Peter Gatonye Mungai And Samuel Mburu Kamotho.
3. On 15th July, 2014, the Administrators filed Summons for Confirmation of Grant and it listed the following dependents: Peter Gatonye Mungai, Samuel Mburu Kamotho, Rahab Wanjiku Kamotho,



Mary Ngendo Gitau and Jeremiah Kariuki Kamotho. The Summons for Confirmation was in respect to distribution of two properties being Muguga/Muguga/140 and Muguga/Muguga/305, amongst the said Dependants.

4. The trial court allowed the Summons for Confirmation of Grant and issued the Certificate of Confirmation of Grant on 19th March, 2019.
5. That the 2nd Administrator Samuel Mburu Kamotho also died on 3rd January, 2019 and his lawful daughter, Mary Wangari Mburu applied to be substituted as an Administratrix and Grant of Letters of Administration was issued to Peter Gatonye Mungai And Mary Wangari Mburu on 9th April, 2019.
6. On 12th November, 2019, the Appellants herein filed Summons for Revocation of Grant and/or annulment of Grant which was supported by the Affidavit of Mary Ng'endo Gitau sworn on 11th November, 2019 on her own behalf and on behalf of the Appellants.
7. The 1st Appellant filed the Summons for Revocation as the wife to the late son to the deceased being the late Simon Gitau Kamotho, the 2nd Appellant as the child of the late Rahab Wanjiku Kamotho, daughter to the deceased and the 3rd Appellant as the wife to the late son of the deceased being Kariuki Kamotho. According to them, they were excluded in the succession process and in the distribution of the deceased's Estate. They denied signing or affixing their thumbprints on the consent and contend that the identity card numbers listed in the consent do not belong to them. They also contend that the late Rahab Wanjiku Kamotho died on 19th February, 2017 and could not have signed the consent dated March, 2019.
8. The Appellants have argued that they were neither served with any summons and neither did they attend any court sessions for this matter. They dispute the inclusion of Jane Njambi Kabucho as a beneficiary of the deceased's Estate on the ground that she is a stranger after disinheriting the rightful heirs. They state that the fraudulent dealings were reported to the DCI and that investigations were underway. Their argument is that since the Grant and Certificate of Confirmation of Grant were obtained fraudulently and by concealment of material facts, the same should be revoked and annulled.
9. The Summons of Revocation was heard and disposed by way of written submissions and thereafter the trial court delivered its Ruling on 17th December, 2020 wherein it was established that the children of the deceased are as follows:
 - a. 'Mungai Kamotho- deceased had 7 children. That their house is represented by Peter Gatonye Mungai who is an Administrator.
 - b. Samuel Mburu Kamotho who is also deceased had 7 children. Their house is represented by Mary Wangari Mburu. Rahab Wanjiku Kamotho, also deceased, had one child and her house is represented by Esther Wangari Kariuki also an applicant.
 - c. Mary Ngendo Gitau is alive and also an applicant, Jeremiah Kariuki, also deceased and had 5 children with his house represented by wife Mary Ngendo Kariuki.
10. The trial court also noted that during the hearing, the said Jane Njambi Kabucho during hearing raised her hand and told the court that she had purchased a portion of the deceased's land which money was used to facilitate the filing of the Petition for Grant of Letters of Administration which was confirmed by one of the Administrators Peter Gatonye Mungai.
11. The trial court then proceeded to hold that the Appellants' fears were well founded since they have been left out in the distribution of the Estate because the administrators did not disclose the beneficiaries of the Estate who are deceased so that their shares could go to their children who are alive.



12. In the end, on 17th December, 2020, the trial court made the following orders:-
 - a. that the property to be distributed in an equitable manner by removing the names of the deceased original beneficiaries and inserting thereof the names of the applicants and or those of their siblings but the same to be held in trust for the other siblings and
 - b. That the order to apply to the administrators and their siblings.
 - c. That the purchaser Jane Njambi Kabucho to be given a share as she had contributed to the facilitation of the filing of the succession proceeding by purchasing a portion of the land.
 - d. That the beneficiaries to set aside land for the grass and access road.
 - e. that the parcel of land Muguga/Muguga/305 said to be a quarter and could not be subdivided amongst all the beneficiaries, be sold and the money shared equitably amongst each beneficiary-house to ensure no one is left out of the deal.
 - f. That a new Confirmation of Grant be issued.
 - g. To avoid further complications in the even of any eventuality, the order be complied with in the next sixty(60) days.

13. The Amended Memorandum of Appeal dated 3rd May 2021 is based on the following grounds:
 - a. That the Honorable Magistrate erred in Law and Fact in failing to address the issues raised in the Summons for Revocation of Grant dated 11th November 2019.
 - b. That the Honorable Magistrate erred in Law and Fact in introducing and considering extraneous matters and therefore arrived at a wrong conclusion.
 - c. That the Honorable Magistrate erred in Law and Fact in failing to find that the proceedings to obtain the Grant and the Confirmation thereof were defective in substance.
 - d. That the Honorable Magistrate erred in Law and Fact in failing to find that the Grant and Confirmation thereof were obtained fraudulently by making of a false statement and by concealment from Court of something material to the cause.
 - e. That the Honorable Magistrate erred in Law and Fact in failing to find that the Grant and Confirmation thereof were obtained by means of an untrue allegation of facts essential in point of law to justify the Grant.
 - f. That the Honorable Magistrate erred in Law and Fact in failing to find that the 1st Respondent had intermeddled in the estate of the deceased.
 - g. That the Honorable Magistrate showed open bias against the Appellants by failing to consider and determine the issues raised in the Summons for Revocation of Grant thus arriving at a wrong conclusion.
 - h. That the Honorable Magistrate erred in Law and Fact by redistributing the estate of the deceased on his own thus causing the Appellant endure hardship and grave injustice.

14. The Appellant is seeking for the following orders:-
 - a. That the Appeal be allowed with costs.



- b. That the Summons for Revocation dated 11th November 2019 be allowed and the matter be submitted for fresh proceedings in relation to confirmation of grant with the new Administrators before another Magistrate.
15. The Appeal was admitted for hearing on 14th January, 2022 and on 13th February, 2023, the parties were directed to dispose the appeal by way of written submissions, which the court has noted for consideration in its determination. The Appellants Submissions were filed on 21st June, 2023 while the Respondent's Submissions dated 27th September 2023.

Analysis and Determination

16. It is trite that as a first appellant court, this court is required to revisit, reanalyse and re-evaluate the pleadings, evidence and ruling of the trial court so as to arrive to its own independent conclusion in the matter. (see case of *Mwanasuthan v Kenya Bus Service Ltd* [1982-1988] 1KAR 278).
17. Having analysed and re-evaluated the pleadings and evidence which were tendered before the trial court alongside the respective submissions filed by the parties therein with due regard to the grounds of appeal raised herein, I find the main issue for determination being whether the Appellants raised sufficient grounds to warrant the revocation or annulment of the grant issued on 19th March, 2019.
18. I have read through the record of proceedings before the trial court alongside the ruling delivered on 17th December, 2020 and confirm that the Appellants sought for revocation on grounds that the proceedings that led to the Grant and Confirmation thereof were defective in substance, that the Grant was obtained fraudulently on false statement and concealment of material facts and upon personal impersonating the bonafide beneficiaries. That it evidently came to the trial court's attention that it had not ascertained all the beneficiaries of the Estate of the Deceased. The trial court was then prompted to call for all the beneficiaries of the said Estate and it established the true position/status of the children of the deceased, the late Kamotho Nyoro
19. In its ruling, the trial court confirmed that the Appellants fears were well founded in that they had been left out in the distribution of the property of the deceased. The trial court also established that the administrators had not disclosed to court that some of the original beneficiaries were deceased and it was paramount that the parcels go to their children.
20. In response, the Respondents were of contrary and submitted that the elements for revocation of Grant had not been met and that the provisions of the Law of Succession had been duly observed in the summons for substitution dated 28th November, 2011 and summons for rectification of Grant and substitution dated 29th March, 2019. The Respondents then urged that court to be guided by the provisions of Article 109 (2) of the *Constitution* and dispense substantive justice as opposed to undue regard to procedural technicalities and dismiss the appeal and allow for the process which has taken ten (10) years to proceed.
21. Having considered the arguments by the respective parties, this court finds that indeed, there was concealment of material facts because the trial court did not ascertain all the beneficiaries of the Estate of the deceased when they were summoned to attend court during the hearing. The then reason that the Grant and certificate of Confirmation of Grant were obtained fraudulently and upon concealment of material facts.
22. In reliance to the provisions of Section 70 of the *Law of Succession* and case of *J. Maina Njoroge v Mary Wanjiru Mwangi* (2019)eKLR, it is common ground that before confirmation of Grant, the assets



of the deceased and the beneficiaries must be ascertained. (See the case of *Re Pius Tembete Kwayiya (deceased)* 2020 eKLR).

23. The law on revocation of a grant is provided for under Section 76 of the *Law of Succession Act* which 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.”

24. The said provision sets out the circumstances under which a grant can be revoked and or annulled and they were outlines in the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* (2015) eKLR where the court observed:

“ 11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by



concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

25. In the case of *Re Pius Tembete Kwayiya (deceased)* 2020 eKLR, the court stated as follows:-

“The principal purpose of confirmation is distribution of the assets. The proviso to subsection (2) of section 71 is that the court be satisfied as to whether the administrator had properly ascertained all the persons beneficially entitled to a share in the estate and properly identified the shares due to them. The proviso is emphatic that the grant should not be confirmed before the court is satisfied on that account. The court, should, therefore, not proceed to address the matters that fall under section 71(2), if what is envisaged in the proviso has not been done. The provisions in the proviso have been reproduced in the *Probate and Administration Rules* at Rule 40(4) as follows:

“Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all person entitled to the estate have been ascertained and determined.”

26. Having found that the Grant and Confirmation of Grant were obtained fraudulently and upon concealment of material facts, the only remaining available is to order for fresh hearing of all the parties, more so the beneficiaries of the Estate of the deceased so that all issues and the said beneficiaries can be factored in the distribution of assets.

27. The upshot is that the appeal is found meritable and allowed with the following orders issuing:-

- a. The Grant of Letters of Administration and Certificate of Confirmation of Grant be and are hereby revoked.
- b. The suit be and is hereby reverted back to the Chief Magistrate with competent jurisdiction to hear and determine the same afresh.
- c. Being a family matter, each party to bear its own costs.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 7TH DAY OF JUNE, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Muthomi holding brief for M/S Kangethe counsel for Appellant

M/S Moriri holding brief for Mr. Wainaina counsel for 1st Respondent

Mr. Kihara counsel for 2nd and 3rd Respondents.

Court Assistant - Marin

