



REPUBLIC OF KENYA



In re the Estate of the Late Kache Mukone Muranga (Deceased) (Succession Cause E002 of 2021) [2024] KEHC 9722 (KLR) (2 August 2024) (Judgment)

Neutral citation: [2024] KEHC 9722 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
SUCCESSION CAUSE E002 OF 2021
SM GITHINJI, J
AUGUST 2, 2024**

BETWEEN

KATANA MUKONE NDORO APPLICANT

AND

SAMMY KAZUNGU KAINGU RESPONDENT

JUDGMENT

1. For determination are Summons for Revocation of grant dated 5/8/2021 for orders: -
 1. That the grant of letters of administration intestate made by this court on 27th April 2021 jointly to Francis Muranga Mukonde, Katana Mukone Ndoro and Sammy Kazungu Kaingu be revoked.
 2. That a fresh grant be made jointly to Francis Muranga Mukone and Katana Mukone Ndoro.
 3. That the costs of this application be borne out of the estate.
2. The basis of the summons is found on the grounds set out on its face and in the affidavit in support sworn by the Applicant. The Applicant stated that the grant was obtained by untrue allegation of facts that the said Sammy Kazungu Kaingu is a grandson of the deceased; and that every person having an equal right to a grant of representation had consented to the grant being issued. The Applicant also pleaded that the grant was made by concealment of a material fact that the said Sammy Kazungu Kaingu was not entitled to participate in and or inherit the estate of the deceased.
3. In opposition to the application, the Respondent filed a replying affidavit dated 6/10/2021 in which he denied the allegations raised in the Applicant's affidavit. He stated that their grandfather, one Mukone Muranga (deceased) was married to two wives, Nzingo Mukone and Kache Mukone, both also deceased. That the 1st wife Nzingo Mukone was the biological mother of Kaingu Mukone the



Respondent's father; while the 2nd wife, the deceased herein, the biological mother to the applicant herein and Kazungu Mukone.

4. The Respondent stated that before his demise, the said Mukone Muranga was the legal owner of land parcel number Kilifi/Jimba/36 which property was registered in the name of the 2nd wife, the deceased herein. For this reason, so he deposed, he was entitled to his father's share of the land. He added that the Applicant was invited to give his consent to petition for letters of administration but declined to honor the invite.
5. The Summons were heard by way of viva voce evidence based on the affidavits filed by the parties.

Applicant's Case

6. The Applicant testified and called three witnesses. PW1, Katana Mukone Ngoro, adopted his written statements dated 8/8/2021 and 15/10/2021 as his evidence in chief. On cross-examination by Mr. Nyameta, the Applicant testified that the first wife, Nzingo Mukone had only one issue, Kaingu Mukone while the 2nd wife Kache Mukone had two issues, the Applicant and one Francis Muranga Mukone. He explained that his father, had two parcels of land which he gave each to the wives. That the parcel given to the first wife measured 12 acres, which she sold. He, however could not recall the year the said parcel was allegedly sold. The Applicant told the court that by the time his father died, his mother was in occupation of the disputed land but had no title in her favor. That he lives on the suit land together with his brother and one Misoro, the Respondent's son.
7. The Applicant acknowledged in re-examination that there was a meeting to sub-divide the suit property into two and that he was made to sign the records of the said meeting without the same being read to him.
8. Francis Muranga, PW2, equally adopted his affidavits dated 5/8/2021 and 30/8/2022 as his evidence in chief. He told the court in cross-examination that the disputed land belongs to the 2nd wife since the 1st wife sold her share. PW2 could not recall the parcel numbers owned by their late father. He however stated that the 1st wife's parcel of land was sold by her only son, who is the Respondent's father. The witness added that he was forced to sign a certain letter back in 1996 before the area chief, which indicated that his mother, the 2nd wife and deceased herein, was to sub-divide the suit property.
9. PW3, Shilingi Taura Nzala, told the court that he is a neighbor of the family before court, and was present when the deceased, Kache, was given the land in dispute. He relied on his statement dated 4/10/2022 as his evidence in chief. He reiterated that the said Mukone Muranga during his lifetime got two parcels of land for each of his two wives and that during registration in 1979, the plot number 36 was registered to the 2nd wife, the deceased herein. The witness confirmed that he did not have any documents to support those allegations.
10. Similarly, Charo Katana Tanka, PW4, adopted his written statement dated 30/8/2022 as his evidence in chief. On cross-examination, PW4 told the court that the said Mukone Muranga was his uncle and that he was present when he gave the two parcels of land to his two wives in 1969. He added that the 1st wife sold her land to their in-law named Kudza Ndamonahi.

The Respondent's Case

11. The Respondent testified and called three witnesses. The Respondent, DW1, adopted his replying affidavit as part of his evidence in chief. He also produced as exhibit 1-4 documents in the list documents filed on 19/9/2022.



12. He told the court on cross-examination that before moving to a different village, he lived on an adjacent land owned by his father, Kaingu Mukone. That his father sold the said land forcing them to move. According to the Respondent, the land that was sold, belonged to his father and not his grandfather. He narrated that the suit property was registered in favour of the 2nd wife, the deceased herein, as a trustee for the family in 1978 and as at that time, the 1st wife was still alive.
13. DW2, Ngala Sirya, stated that he is the area chief at Watamu. He adopted as his evidence in chief, a statement dated 15/9/2023. Similarly, DW3, Michael Kudza Ndamonani, adopted his statement. He told the court on cross-examination that his father bought a certain land from the Respondent's father, Kaingu Mukone for Kshs. 5,000/-. He was however not aware whether or not there was a sale agreement. Jimmy Mtawali Kaingu, DW4 told the court that he is a son of Kaingu Mukone Muranga, and that he moved into the suit property in the year 2005.
14. Only the Applicant filed written submissions. After a careful analysis of the pleadings, evidence and submissions presented, I conclude that the main issue for determination is whether the Applicant has presented sufficient evidence to warrant revocation or annulment of the grant.

Analysis and Determination

15. Section 76 of the *Law of Succession Act* gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It reads: -

“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 has ordered or allowed; 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
 - iv. The grant has become useless and inoperative through subsequent circumstances.



16. The relevant portion in this case being section 76 b) and c). In Albert Imbuga Kisigwa =versus= Recho Kavai Kisigwa Succession Cause No. 158 of 2000 where Mwita J stated: -

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

17. In this case, the Respondent and one Francis Muranga Mukone petitioned this court on 5/2/2021 for grant of letters of administration intestate in the estate of Kache Mukone Muranga who died on 22/7/2009 domiciled in Kenya. Though the Applicant was named therein as one of the proposed administrators, it is clear that he did not sign the affidavit in support of the Petition. The deceased’s estate as established in the said Petition comprised of land identified as Kilifi/Jimba/36 (the suit property). On 27/4/2021, this court issued a grant of letters of administration intestate to the Applicant, Respondent and one Francis Muranga Mukonde, whom I have established is the Applicant’s brother. The Respondent was named therein as the deceased’s grandson.
18. On 21/6/2021, the Applicant placed a caveat against the estate of the deceased and filed the present summons for revocation of grant on 9/8/2021. His contention being that the Respondent is not entitled to a share of the deceased’s estate, therefore, he should not be an administrator. To him, the grant was thus obtained by means of untrue allegation of fact and concealment from the court of material facts.
19. Established in the evidence, and was not disputed, was the parties’ family tree and relationship between the parties herein. The patriarch was one Mukone Muranga, whom during his lifetime married two wives, Nzingo and Kache. Nzingo bore the Respondent’s father and other three female children; while Kache had the Applicant, Francis and other two female children.
20. The dispute however, is that the suit property belonged solely to the second house (the deceased herein), since the first house opted to dispose their portion. According to the Applicant, their patriarch had two parcels of land which he gave each to each wife or house. As such, the Respondent being a grandchild in the first house was not entitled to inherit the suit property. To him, and what I understand his case to be, is that had the court been informed of these facts, it would not have issued the grant as it did.
21. On his part, the Respondent contested that he was entitled to a portion of the suit property, since the same was family land held in trust by the second wife.
22. The question that follows therefore is whether the grant was obtained by untrue allegation of facts and or concealment from the court of material facts.
23. Before I answer the above question, it is pertinent to note that the issue of ownership of the suit property, that is whether or not the same was registered in the name of the deceased to hold in trust for the family, is not an issue within the purview of this court but the Environment and Land Court. I will therefore not make any finding on it, for the reasons that this court lacks the requisite jurisdiction to do so. The issue that concerns this court is who the rightful heirs of the deceased are, and that is all I shall discuss.
24. It is not disputed that the Respondent is a step-grandson of the deceased. He ranks very low in priority to the children of the deceased. The suit property is registered in the name of the Applicant’s mother,



the deceased herein, and it is her children who should be first in line of succession. I have perused the petition for grant of letters administration and supporting documents thereto, it is evident that the court was not informed that the Respondent was a step grand-son. The pleadings indicate that he is a grandson, which is clearly not the true position.

25. In the circumstances, I find that the grant was obtained by untrue allegation of facts and or concealment from the court of material facts, and should therefore be revoked.
26. The outcome is that the summons for revocation of grant is hereby allowed in the following terms: -
 - a. The grant of letters of administration intestate made by this court on 27th April 2021 jointly to Francis Muranga Mukonde, Katana Mukone Ngoro and Sammy Kazungu Kaingu is hereby revoked.
 - b. A fresh grant is hereby made jointly to Francis Muranga Mukone and Katana Mukone Ngoro.
 - c. The property known as Kilifi/Jimba/36 registered in the name of the deceased shall be distributed in equal shares to Francis Muranga Mukone and Katana Mukone Ngoro.
 - d. Each party shall bear its own costs.

JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 2ND DAY OF AUGUST, 2024.

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S.M. GITHINJI

JUDGE

In the Absence of; -

Mr Shujaa for the Applicant

Mr Nyameta for the Respondent

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S.M. GITHINJI

JUDGE

2/8/2024

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