



Karanja & another v Ngigi; Petmall Shelters Limited (Interested Party) (Civil Appeal 139 of 2020) [2024] KEHC 16763 (KLR) (23 September 2024) (Ruling)

Neutral citation: [2024] KEHC 16763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 139 OF 2020**

NIO ADAGI, J

SEPTEMBER 23, 2024

IN THE MATTER OF THE ESTATE OF KARANJA KIBOI (DECEASED)

BETWEEN

AGOSTINO NJOROGE KARANJA 1ST APPLICANT

ESTHER NJERI KARANJA 2ND APPLICANT

AND

MARY WANJIKU NGIGI RESPONDENT

AND

PETMALL SHELTERS LIMITED INTERESTED PARTY

*(Being an Appeal from the Ruling of Hon. T. Nyangena (SPM) in
Kiambu CMCSucc. Cause 146 of 2016 delivered on 28/10/2016)*

RULING

1. This appeal was commenced by the Appellants against the ruling and order of Hon. T. Nyangena (SPM) dated and delivered on 28th October 2020, in Kiambu CMCSucc. Cause 146 of 2016. The amended memorandum of appeal is dated 27th January 2021.
2. The grounds of appeal as contained in the amended memorandum of appeal is as follows:-
 1. The Learned Trial Magistrate erred in fact and in law by failing to invoke her powers under section 76 of the LOSA to revoke the grant fraudulently obtained by the Respondent and aiding the Respondent gather evidence to advance her own claim in a probate court.
 2. That the Learned Trial Magistrate erred in fact and in law by usurpation of the jurisdiction of the Environment and land court whose mandate is to hear disputes over land and establish the alleged claim of land purchase.



3. That the Learned Trial Magistrate erred in fact and in law in by failing to find that the Respondent ought to have proven her claim as a purchaser in the Environment and land court and after it had been authenticated by a lawful order claim to be a creditor.
4. That the Learned Trial Magistrate erred in fact and in law by making an assumption based on the chief's letter that there was a sale transaction between the Respondent to transfer the remaining portion to the rightful beneficiaries of the deceased.
5. That the Learned Trial Magistrate erred in fact and in law by placing reliance on the chief's letter and thereby making an inference that the Respondent had taken out the grant of letters of administration in the knowledge and understanding of the deceased's family after they had failed to do so themselves.
6. That the Learned Trial Magistrate erred in fact and in law by failing to find that the proceedings to obtain the grant were defective in substance as the Petition (Form P & A.80) was filed by the Respondent who was not in any way related to the deceased but purported to do so as a Purchaser of the deceased's land when she was not, in fact and in law a lawful purchaser as she claimed.
7. That the Learned Trial Magistrate erred in fact and in law by failing to find that the proceedings to obtain the grant were defective in substance as the Respondent who filed form P&A 80 in the lower court was not related to the deceased and had no right to Petition for the grant in respect of the deceased estate in priority over the deceased children within the mandatory provisions of the *Law of Succession Act*.
8. That the Learned Trial Magistrate erred in fact and in law by failing to find that the grant was obtained and later confirmed fraudulently by concealment from court of something material to the case namely that the deceased was survived by several adult children whose names were omitted from (P& A 5) and were never disclosed to Court any time thereafter resulting in the disinheritance of the said children in contravention of their right to inherit their father's estate under the law.
9. That the Learned Trial Magistrate erred in fact and in law by failing to find that the grant was obtained fraudulently by the Respondent unlawfully awarding herself self the whole share of the deceased's estate which was in fact even bigger than the portion she claimed to have purchased and disinheriting the deceased's children who were the rightful beneficiaries of the deceased entirely.
10. That the Learned Trial Magistrate erred in fact and in law in failing by failing to find that the confirmed grant was fraudulently obtained by means of untrue allegations of facts essential in point of law to justify the confirmation namely that; all entitled beneficiaries had consented on the mode of distribution vide the written consent which was a concealment from the Court of the names of the deceased's children and the Respondent falsely claiming to be a widow of the deceased in paragraphs 4 of the affidavit in support of summons for confirmation of grant of administration intestate.
11. That the learned trial magistrate erred in fact and in law in failing to find that the Respondent had no legal right even to file the proceedings which she filed in the estate of the deceased as she had no relationship with the deceased, firstly as a purchaser of his estate and secondly as a relative or as a dependant and the actions of the Respondent amounted to intermeddling with the estate of the deceased.



12. That the learned trial magistrate erred in fact and in law in failing to find that the respondent had petitioned for letters of administration to the estate of the deceased and had been gazetted as the deceased's widow.
 13. That the learned trial magistrate erred in fact and in law in failing to find that the proceedings to obtain the confirmation of grant were confirmed and filed by an unauthorised person namely the Respondent who was a stranger in as far as the deceased's estate was concerned.
 14. That the learned trial magistrate erred in fact and in law by failing to find that the Respondent had blatantly abused the court process by filing two applications for grant of letters of administration relating to the deceased herein where she fraudulently misrepresented herself as a sister to the deceased in the former and as a widow/purchaser of the deceased in the latter.
 15. That the Learned Trial Magistrate erred in fact and in law and misdirected herself by upholding the grant fraudulently obtained by the Respondent and therefore disentitling the children of the deceased of the legal capacity to pursue any interests relating to their father's estate.
 16. That the learned trial magistrate erred in fact and in law in granting orders which were not prayed for.
 17. That the Learned Magistrate erred in law and in fact in duly disregarding the judicial authorities cited by the Appellants and by instead relying on the Replying Affidavit by the Respondent which was construed to aid the Respondent advance her own claim in court.
 18. That the Learned Magistrate erred in law and misdirected herself when she failed to consider the Appellants' submissions both on points of law and fact.
 19. That the Learned Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
3. The Appellants pray for the following orders: -
1. That the ruling delivered on 28th October 2020 by Hon. Nyangena (SPM) in Kiambu Succession Cause 146 of 2016 be set aside.
 2. That the grant of fraudulently obtained by the Respondent Mary Wanjiku Ngige and confirmed on the 13th January 2017 be revoked.
 3. That Titles No. Karai/Karai/6958 and Karai/Karai/6957 issued in the name of the Respondent be cancelled.
 4. That the appeal be allowed
 5. That the costs of the appeal and that of the trial court be awarded to the Appellants.
4. The appeal was canvassed by way of written submissions and the Appellants and the Respondent complied. The Appellants' submissions are dated 6th July 2022. It was submitted in summary that the Respondent lacked the locus standi to apply for the letters of grant as a legal representative and beneficiary of her alleged the deceased husband (purchaser) as she failed to confirm that she was the administratrix of the alleged deceased purchaser. They also submitted that the Respondent did not produce any evidence of the sale of the alleged land between her alleged deceased husband Samuel Ngigi and the deceased Karanja Kiboi and that the land known as Karai/Karai/4003 did not exist in 1984 when the purported sale is said to have taken place and that the same was a subdivision that



arose upon closure of land Title No. Karai/Karai/176 which resulted into several subplots numbering from 4000-4003 on 29th January 2014, wherefore the whole process of obtaining the grant of letters of administration to the estate of Karanja Kiboi (Deceased) and the transfer of the properties was marred with fraud. The Appellants deny being aware of the proceedings in Kiambu Succession Cause 146 of 2016 and that they never consented to her taking out the grant and neither did they give the Respondent their deceased father's death certificate serial number 0103656 dated 23rd April 2014. They averred that they were still in possession of their father's original death certificate serial No. 932179 dated 12th July 2006. In regard to the Interested Party, the Appellants submit that had the Interested Party conducted due diligence, they would have established that the land they purchased is occupied by the Appellants and would not have proceeded with the alleged purchase hence they cannot be said to be bona fide purchasers for value. The Appellants urged the court to allow the appeal.

5. The Respondent filed her submissions dated 17th October 2022. The Respondent submitted that the deceased subject of this matter Karanja Kiboi and the husband to the Respondent SAMUEL NGIGI (also deceased) entered into an agreement for the sale of a 2-acre portion of the property known as Karai/Karai/4003 whereby consideration was fully paid in 1984. However, Karanja Kiboi (deceased) passed on prior to conclusion of the transfer of the property. That the two families agreed between them that the property be subdivided so that the dependents and the Respondent could each have their portions of the said property. That the Dependents of Karanja Kiboi (deceased), failed to take out grant of letters of administration over the estate prompting the Respondent to obtain the same on behalf of the dependents. After the letters of administration were issued, the Respondent proceeded to subdivide the property known as Karai/Karai/4003 into Titles No. Karai/Karai/6958 and Karai/Karai/6957 and when again the dependants failed to furnish her with the requisite documents to enable her transfer Karai/Karai/6957 to the Appellants which was their rightful share, they were not interested. The Respondent later sold land No. Karai/Karai/6958 to Petmall Shelters Ltd, the Interested Party herein. The Respondent submit that the Appellants were always aware of the succession proceedings as they were informed of the succession proceedings at every stage and any allegations to the contrary are misplaced. The respondent contended that the appellants have failed to satisfy the grounds for revocation of the grant and prayed that the appeal be dismissed.
6. There are no submissions filed by the Interested Party to the appeal.
7. This being the first appeal, the court has a duty to re-evaluate and analyse all the evidence tendered in the lower court and arrive at its own conclusions but bearing in mind that it neither saw nor heard the witnesses testify. It has to establish whether the decision of the lower court was well founded. See the decision in *Selle & Another v Associated Motor Boat Co Ltd* [1968] EA 123.
8. It is also settled that an appellate court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or on demonstrably wrong principles not supported by evidence or on wrong principles of the law. This was the finding of the Court of Appeal in *Mbugua Kiruga v Mugecha Kiruga & another* [1988] eKLR where the Court of Appeal held: - 'An appeal court cannot properly substitute its own factual finding for that of a trial court unless there is no evidence to support the finding or unless the judge can be said to be plainly wrong. An appellate court has jurisdiction to review the evidence in order to determine whether the conclusion reached upon that evidence should stand but this is a jurisdiction which should be exercised with caution.'
9. Guided by the above decisions, I have laboriously gone through, understood and considered the grounds of appeal, the record of appeal and the submissions by the Parties. I have also considered the authorities referred to by each counsel to support their legal propositions in the matter. Further, I have read and re-evaluated the record and documents annexed to the Parties' affidavits. In my opinion, the



only issue which this court is invited to decide is whether the trial court was right in declining the Appellants' application for revocation.

Determination of the issue

10. As I have already noted, the Appellants' application before the trial court was for revocation of grant. Quite valid legal and factual arguments have been presented in this application by the Parties' advocates. The Appellants argued that, the Respondent lacked the locus standi to apply for the letters of grant as a legal representative and beneficiary of the deceased purchaser as she failed to confirm that she was the administratrix of the alleged deceased purchaser. They also argue that the Respondent did not produce any evidence of the sale of the alleged land between her alleged deceased husband Samuel Ngigi and the deceased Karanja Kiboi and that the land known as Karai/Karai/4003 did not exist in 1984. The Appellants deny being aware of the proceedings in Kiambu Succession Cause 146 of 2016 and deny further that they never consented to the Respondent taking out the grant of letters of administration and neither did they give the Respondent their deceased father's death certificate serial number 0103656 dated 23rd April 2014. They argue that they were still in possession of their father's original death certificate serial No. 932179 dated 12th July 2006. In regard to the Interested Party, the Appellants submit that had the Interested Party conducted due diligence, they would have established that the land they purchased is occupied by the Appellants and would not have proceeded with the alleged purchase hence they cannot be said to be bona fide purchasers for value.
11. The Respondent posits that the deceased subject of this matter Karanja Kiboi and the husband to the Respondent Samuel Ngigi (also deceased) entered into an agreement for the sale of a 2-acre portion of the property known as Karai/Karai/4003 whereby consideration was fully paid in 1984. However, Karanja Kiboi (deceased) passed on prior to conclusion of the transfer of the property. That the two families agreed between them that the property be subdivided so that the dependents and the Respondent could each have their portions of the same. That the dependents of Karanja Kiboi (deceased), failed to take out grant of letters of administration over the Estate prompting the Respondent to obtain the same on behalf of the dependents. After the letters of administration were issued, the Respondent proceeded to subdivide the property known as Karai/Karai/4003 into Titles No. Karai/Karai/6958 and Karai/Karai/6957 and when again the dependants failed to furnish her with the requisite documents to enable her transfer Karai/Karai/6957 to the Appellants which was their rightful share, they were not interested. The Respondent later sold land No. Karai/Karai/6958 to Petmall Shelters Ltd, the Interested Party herein. The Respondent argues that the Appellants were always aware of the succession proceedings as they were informed of the succession proceedings at every stage and any allegations to the contrary are misplaced.
12. The grounds upon which the said application was premised were that the Grant was obtained fraudulently by concealment of material particulars and giving of a false information by the Respondent; that the grant was obtained by means of untrue allegations of facts essential in point of law to justify the Grant; and that the proceedings to obtain the Grant were defective in substance.
13. This court is fully aware of circumstances under which a grant can be revoked and which 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;



- d) Where 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) Where the grant has become useless and inoperative through subsequent circumstances.
13. The Learned Justice W. Musyoka in re Estate of Agwang Wasiro (Deceased) [2020] eKLR explained the above provisions and in doing so held thus: -
- “Under Section 76 of the Act, a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining it was attended by glaring difficulties, such as where the same was defective, say because the person who obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant. The second general ground is where the grant is obtained procedurally, but the administrator subsequently runs into difficulties during the process of administration of the estate. Such difficulties include his failure or omission to apply for confirmation of his grant within the period allowed in law, or where he fails to exercise diligence in administration of the estate, such as where he omits to collect or get in an asset, or where he fails to render accounts as and when he is required to do so by the law. The third general ground is where the grant has become inoperative or useless on account of subsequent circumstances, such as where the sole administrator died or loses the soundness of his mind or is adjudged bankrupt.”
14. A perusal of the trial court’s record does not reveal whether any directions were given by the trial court on the mode of hearing of the application. The application seems to have proceeded by way of written submissions.
15. Under the *Law of Succession Act* and the rules made thereunder there is a clear procedure laid down as to how proceedings leading to the revocation and annulment of a confirmed grant should be undertaken. First, once the application for the revocation and or annulment of a grant is filed, initial directions have to be obtained from the judge as to who should be served with the application and the mode of such service. Once service has been effected on those ordered to be served and they have responded in whichever manner to the application, the application is again set down for further directions before the judge as to the mode of hearing and disposal of the application. It may be by way of viva voce evidence or by affidavits. It is only after these final directions have been given that the application for the revocation or annulment of the grant can be set down for hearing and determination.
16. It would appear to me that the practice of court in giving directions for viva voce evidence to be taken in succession causes by way of Summons for revocation of Grant is based on Rules 41 and 44 of the Probate & Administration Rules.
17. The Appellants’ application seems not to have gone through those motions.



18. Perhaps I could exercise inherent power under Rule 73 of the Probate and Administration Rules, where such power is saved to meet the ends of justice or to prevent abuse of the process of court. The Appellants have not invoked Rule 73, but the power is inherent, the court can tap on it at any time when it appears that that may be necessary. I understand the Appellants to be inviting me to set aside the ruling delivered on 28th October 2020 by Hon. Nyangena (SPM) in Kiambu Succession Cause 146 of 2016.
19. I have identified very crucial matters from the appeal and the submissions filed by the Parties herein and which anchor on the estates of both Karanja Kiboi(the deceased herein) and the husband to the Respondent Samuel Ngigi (also deceased) and which call for evidence that might only be obtained through viva voce hearing on the Appellants' Summons for revocation of grant dated 2nd July 2020 , these include:-
- a. The Respondent's locus standi to claim purchaser rights on behalf of her alleged deceased husband one Samuel Ngigi.
 - b. The authenticity of the two death certificates relating to the deceased i.e. serial number 0103656 dated 23rd April 2014 and serial No. 932179 dated 12th July 2006.
 - c. Existence of title No. Karai/Karai/4003 in 1984 and proof of the alleged sale agreement.
 - d. Loss of title No. Karai/Karai/4003 as per gazette notice No. 11415.
 - e. Awareness of the succession proceedings by the deceased's children
 - f. Interrogation on the chief's letter dated 22/03/2016
 - g. Interrogation on the gazette notice No. 3072 of 2016
 - h. The interest of the Interested Party in the matter.
20. Accordingly this court makes the following orders;-
1. The ruling delivered on 28th October 2020 by Hon. Nyangena (SPM) in Kiambu Chief Magistrate Court Succession Cause 146 of 2016 be and is hereby set aside.
 2. The Kiambu Chief Magistrate Court Succession Cause 146 of 2016 shall forthwith be placed before any competent Magistrate at Kiambu Magistrates Court other than Hon. Nyangena, SPM for hearing on priority basis on the Appellants' Summons for revocation of grant application dated 2nd July 2020 through viva voce evidence.
 3. The Parties are encouraged to engage a court appointed mediator to negotiate an amicable settlement of the dispute.
 4. This being a succession cause, it is only fair that the deceased's estate is preserved until Kiambu Chief Magistrate Court Succession Cause 146 of 2016 and the Summons for revocation of Grant therein is determined. Failure to preserve the estate would lead to an injustice in the event that the Appellants succeed and the Grant is revoked.
 5. There shall be no order as to costs.

DATED, SIGNED & DELIVERED VIRTUALLY AT MACHAKOS THIS 23rd DAY OF SEPTEMBER 2024

NOEL I. ADAGI



JUDGE

