



**In re Estate of Mbogo Njeru (Deceased) (Succession Cause 35 of 2013 & 330 of 2009 (Consolidated)) [2024] KEHC 12396 (KLR) (16 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12396 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
SUCCESSION CAUSE 35 OF 2013 & 330 OF 2009 (CONSOLIDATED)  
LM NJUGUNA, J  
OCTOBER 16, 2024  
IN THE MATTER OF THE ESTATE OF MBOGO NJERU (DECEASED)**

**BETWEEN**

**NJERU M'CHINI ..... APPLICANT**

**AND**

**JANE KANYIRI KANYI ..... RESPONDENT**

**JUDGMENT**

1. The applicant moved this court vide summons general dated 07<sup>th</sup> February 2023 premised on the grounds appearing on the face of the said application and its supporting affidavit. The applicant sought the following orders:
  - a. That the grant of letters of administration herein dated 05<sup>th</sup> June 2018 and the resultant certificate of confirmation be revoked and/or annulled; and
  - b. That the costs of the application be borne by the respondent.
2. The applicant deposed that he had been issued with a grant through Embu HC Succession Cause No. 330 of 2009 and he was shocked to learn that the respondent had petitioned for another grant and the same had
3. been issued through these proceedings. That the respondent has been away from the estate since 1950's and she has returned to disinherit him. Through the application, the applicant stated the petition filed by the respondent was res judicata, the grant having already been issued through the proceedings in Embu HC Succession Cause No. 330 of 2009.
4. The respondent filed a replying affidavit in which she deposed that the application is an abuse of the court. That she rightfully obtained the grant which was already confirmed and executed but the



- applicant is continuously stopping her from taking possession of her portion of the land. That the orders sought have been overtaken by events and she urged the court to dismiss the application.
5. The court took viva voce evidence where PW1 was Felista Runji Njeru, wife of the applicant and who testified through her, owing to his ill health. The applicant's statement had been adopted as evidence and in it, he stated that he has been living on the suit land for over 30 years since the respondent moved out and went to get married in the 1950's. That when she petitioned for the grant herein, the respondent did not inform the court of the proceedings in Embu HC Succession Cause No. 330 of 2009, an indication of fraud and concealment of material fact.
  6. That he lives on the land with his wife, children and grandchildren who will suffer if the orders herein are not granted. PW1 stated that when the respondent petitioned for a grant, the applicant was not informed of the proceedings. That the respondent does not reside on that land and when she obtained the grant, she destroyed 6 houses belonging to her and the applicant. That she resides on the land with her 9 children and 5 grandchildren. She produced a list of documents as evidence in the matter.
  7. On cross-examination, she stated that she was aware of the succession proceedings in Embu HC Succession Cause No. 330 of 2009 and it was put to her that the applicant therein excluded the respondent as a beneficiary, indicating that the respondent was deceased. That she was not aware that the respondent had filed summons for revocation of the grant in Embu HC Succession Cause No. 330 of 2009.
  8. DW1 was the respondent who stated that without his knowledge, the applicant petitioned for and was issued with a grant in the estate of the deceased through Embu HC Succession Cause No.330 of 2009. That the grant was confirmed bequeathing the whole estate to the applicant. That she moved the court for cancellation of the title issued to the applicant and the court-ordered to be reverted to the name of the deceased for fresh distribution in these proceedings. That following the distribution procured by the respondent, the land was subdivided into 2 portions namely Ngandori/Kiriari/8704 and 8705 and the applicant was registered as the owner of the latter. That the respondent did not disclose to the court that he had disinherited her since he was also issued with a grant over the estate without her involvement.
  9. On cross-examination, it was her testimony that she has not used the deceased's land since about 60 years ago and when she petitioned for the grant, she informed the applicant but he refused to co-operate with her. That she met the applicant at the chief's office but he swore never to give her any land. That she served him with the court documents and updated him on the progress and both of them were represented by advocates. That during confirmation, the applicant was present in court and when she applied for revocation of the grant in Embu HC Succession Cause No. 330 of 2009, the applicant was present. She stated that she demolished the 6 houses that were standing in her portion of the land and she cut down tea bushes but she gave the applicant notice before doing so. That the distribution is fair and should be left as it is.
  10. In his written submissions, the applicant relied on the case of *Re Estate of Charles Boi (Deceased)* (2020) eKLR and urged that the respondent's failure to include him in the succession proceedings goes against the principles of natural justice. That instead of seeking a proper legal recourse, the respondent chose to file a fresh petition for grant. He denied having been informed of the proceedings and argued that the respondent ought to have produced proof that he was indeed served with the court processes. He urged the court to revoke the grant since it was obtained through concealment of material fact.
  11. The respondent submitted that the court herein was fair in distributing the property between her and the applicant since they are both children of the deceased. That the grant issued in Embu HC Succession Cause No. 330 of 2009 was revoked and the court had ordered that the process begin



afresh to include the respondent. She referred to the decision by Hon. Judge F. Muchemi delivered on 24<sup>th</sup> May 2018 in this matter, which decision has since been reported as *In re Estate of Mbogo Njeru (Deceased)* [2018] KEHC 6811 (KLR) through which the estate of the deceased was distributed equally between the parties herein on the strength of Article 27 of the *Constitution*. It was her argument that PW1 did not prove any concealment in light of section 76 of the *Law of Succession Act* and from her evidence, the applicant was a party to the proceedings herein. She relied on the case of *Albert Imbuga Kisigwa v. Recho Kawai Kisigwa* (2016) eKLR and urged the court to dismiss the application.

12. From the foregoing, the issue for determination is whether or not the application has merit.
13. The applicant seeks revocation of the grant issued to the respondent herein on the grounds that the same was obtained without his involvement, a fact that was concealed to the court when the respondent petitioned. This argument was countered by the respondent, who testified that the grant issued in Embu HC Succession Cause No. 330 of 2009 was revoked in 2012 and the court ordered that the process begins afresh. The proceedings in the 2 files were consolidated. From a perusal of the court's record in Embu HC Succession Cause No. 330 of 2009, the court noted that there were 2 grants in the same estate and went on to order that the grant issued in Embu HC Succession Cause No. 330 of 2009 to the applicant herein be revoked and it was rendered without effect.
14. The court further ordered that the process begins afresh and the beneficiaries to be notified. This order was made on 04<sup>th</sup> December 2012. Through a citation dated 07<sup>th</sup> February 2013, the respondent herein cited the applicant to petition for a grant in the estate of the deceased and the citation was duly served upon the applicant and the process server named Wilfred Njeru Kigoro filed an affidavit of service. The respondent then petitioned for the grant and the same was issued to her on 23<sup>rd</sup> May 2013 and she filed summons dated 12<sup>th</sup> August 2013, for confirmation of the grant.
15. There is, on record, an affidavit of service sworn on 27<sup>th</sup> November 2013 by Wilfred Njeru Kigoro indicating that the summons for confirmation were served upon the applicant and he accepted service by signing on a copy of the summons at the back. The applicant filed a protest against the mode of distribution, stating that the respondent does not deserve any part of the deceased's estate because she did not participate in taking care of the deceased when he was ill. The court determined the protest through its ruling now reported as *In re Estate of Mbogo Njeru (Deceased)* [2018] KEHC 6811 (KLR). In it, the estate was distributed to the parties herein equally.
16. From the preceding history of events, it is clear that the applicant was made aware of the proceedings herein and he participated, including by filing a protest. It is also evident that he was made aware of the proceedings after he was cited when the court revoked the grant in Embu HC Succession Cause No. 330 of 2009 and ordered that the process begins afresh. In my view, the element of res judicata is very distant from the scenario herein because the order of the court in Embu HC Succession Cause No. 330 of 2009 was set aside when the grant therein was revoked. Section 76 of the *Law of Succession Act* provides for instances when a grant may be revoked. From the evidence herein and perusal of the court's record, the grant in these proceedings was obtained procedurally and with the full knowledge of the applicant.
17. Therefore, I find that the summons for revocation lacks merit and the same is hereby dismissed. There shall be no order as to costs.
18. It is so ordered

**DELIVERED, DATED AND SIGNED AT EMBU THIS 16<sup>TH</sup> DAY OF OCTOBER, 2024.**

**L. NJUGUNA**



**JUDGE**

.....for the Applicant

.....for the Respondent

