



**In re Estate of the Late Machira Munyiri (Deceased) (Succession Cause  
149 of 2001) [2023] KEHC 833 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 833 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 149 OF 2001  
FN MUCHEMI, J  
FEBRUARY 9, 2023**

**BETWEEN**

**JOHN WANJAU MACHIRA ..... 1<sup>ST</sup> APPLICANT**

**PETER MIANO MACHIRA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JAMES MUHINDI MACHIRA ..... 1<sup>ST</sup> RESPONDENT**

**JAMES MAKIINI MACHIRA ..... 2<sup>ND</sup> RESPONDENT**

**CECILIA MUKUHI MACHIRA ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**EDWARD WAHOME KAGOIYA ..... INTERESTED PARTY**

**RULING**

1. This Summons for Revocation dated 6<sup>th</sup> August 2019 is brought under Section 45 (1), 73 and 76 (d) (ii) of the *Law of Succession Act* and Rule 44(1) of the *Probate & Administration Rules*. The applicants seek for revocation of the grant confirmed on 19<sup>th</sup> February 2019 in favour of the 1<sup>st</sup> and 3<sup>rd</sup> respondents for it is alleged that the grant was obtained fraudulently by concealing from the court facts material to the case. In support of the summons for revocation, the 2<sup>nd</sup> applicant, a son to the 3<sup>rd</sup> respondent filed an affidavit sworn on 7<sup>th</sup> January 2020; the interested party filed his affidavit sworn on 6<sup>th</sup> October 2021 and Peter Gichohi Machira a beneficiary of the estate filed his affidavit dated 15<sup>th</sup> June 2022.
2. The 1<sup>st</sup> respondent opposed the summons for revocation through a replying affidavit sworn on 26<sup>th</sup> April 2022. Mary Gathiga Warutere, one of the beneficiaries of the estate filed a replying affidavit sworn on 26<sup>th</sup> April 2022 in opposition to the application.



## The Applicants' Case

3. The 1<sup>st</sup> applicant swore the affidavit in support of the Summons for Revocation and deposed that the deceased died on 14<sup>th</sup> March 1984. The grant was issued to Munyiri Machira and the 3<sup>rd</sup> respondent who is now deceased. She died on 26/10/2014. The said grant was confirmed on 27/2/2006 and on its basis the estate of the deceased was distributed in pursuant to the grant. L.R. Magutu/Gathehu/417 was sub divided amongst three houses leaving out a fourth house. The new parcels of land borne out of land parcel Magutu/Gathehu/417 are Magutu/Gathehu/1281, 1230, 1141, 1291, 1160, 1290, 1157, 1159, 1154, 1245, 1246, 1147, 1144, 1282, 1280 and 1247. Furthermore, the 1<sup>st</sup> applicant contends that the sub divided parcels have been sold to third parties by the beneficiaries.
4. The 1<sup>st</sup> applicant states that the grant was issued to the 3<sup>rd</sup> respondent on 5/11/2001. There was a further grant issued on 7/12/2012 to the 1<sup>st</sup> and 3<sup>rd</sup> respondents. There was a Summons for Confirmation of grant dated 10/8/2004 and filed on 11/8/2014. The 1<sup>st</sup> applicant contends that the grant confirmed on 6<sup>th</sup> August 2019 was obtained fraudulently as it was not disclosed to the court that the estate had already been distributed. Further, the grant was obtained by concealing material facts that the co-administrator Cecilia Mukuhi Machira had passed on and that the deceased had four houses and that before he died, he had expressed his wishes on the distribution of his estate. The 4<sup>th</sup> house had been allocated their land during the lifetime of the deceased.
5. In support of the summons for revocation of grant, the 2<sup>nd</sup> applicant filed his affidavit dated 7<sup>th</sup> January 2020, and deposed to facts as sworn by the 1<sup>st</sup> applicant and added that he is satisfied with the distribution of the estate as per the grant confirmed on 27/2/2006 and issued in favour of the 1<sup>st</sup> Applicant and the 3<sup>rd</sup> respondent.
6. The interested party swore an affidavit on 6<sup>th</sup> October 2021 supporting the application for revocation deposing that the 1<sup>st</sup> and 3<sup>rd</sup> respondents concealed material facts as they applied for the impugned grant. Pursuant to the grant confirmed on 27/2/2006, the 1<sup>st</sup> respondent entered into a sale agreement with one Symon Ndoria Kibuchwa to purchase a portion of land parcel Magutu/Gathehu/417 at a purchase price of Kshs. 230,000/-. The resultant portion of land was borne out of a sub division of land parcel Magutu/Gathehu/417 and the resultant title was land parcel number Magutu/Gathehu/1153 registered in the name of Symon Ndoria Kibuchwa.
7. The interested party states that on 24<sup>th</sup> February 2014, he entered into a sale agreement with Symon Ndoria Kibuchwa to purchase land parcel Magutu/Gathehu/1153. He further adds that he purchased the property for a valuable consideration of Kshs. 400,000/- and the title deed was issued and registered in his name.
8. The interested party further avers that pursuant on the said confirmed grant, the 2<sup>nd</sup> respondent sold his portion of land that was to be excised from land parcel number Magutu/Gathehu/417 to one John Gichuhi Kiritu at a purchase price of Kshs. 135,000/-. The parties entered into an agreement in August 2002 and the property was eventually sub divided with the resultant parcel of land being land parcel number Magutu/Gathehu/1151 which was registered in the name of John Gichuhi Kiritu. The interested party further states that on 28<sup>th</sup> December 2016, he entered into a sale agreement with John Gichuhi Kiritu to purchase land parcel Magutu/Gathehu/1151 for a consideration of Kshs. 400,000/-. He further states that he purchased the land and the title deed issued was registered in his name.
9. On 12<sup>th</sup> April 2012, the interested party states that he entered into an agreement with nine (9) beneficiaries of the estate named in his affidavit and bought their respective parcels. On 25<sup>th</sup> April 2015, the interested party entered into an agreement with another beneficiary one Wanjiku Munyiri



and bought her portion known as Plot No. 2/A Giakaibei Trading Centre at a consideration of Kshs.1,300,000/= and another at Kshs.1,150,000/=. He further avers that the foregoing material facts were not disclosed before the court by the 1<sup>st</sup> and 3<sup>rd</sup> respondents when the subsequent grant was confirmed on 19<sup>th</sup> February 2019. All the agreements between the Interested Party and the host of beneficiaries are annexed to his affidavit.

10. The interested party deposes that he is a bonafide purchaser for valuable consideration and states that the 1<sup>st</sup> respondent was attempting to defraud the other beneficiaries of their rightful shares by applying for another certificate of confirmation of grant. Moreover, the interested party states that he was aware that the 3<sup>rd</sup> respondent had died on 19/05/2019. She had applied for another grant which was confirmed on 09/2/2019. As such, the interested party argues that the grant ought to be revoked as it was obtained fraudulently as the petitioner did not disclose that the estate of the deceased had already been distributed and that most beneficiaries had sold their shares to bona fide purchasers.
11. A beneficiary of the estate, Paul Gichohi Machira, filed an affidavit dated 15<sup>th</sup> June 2022 in support of the summons for revocation of grant and deposed to the facts as set out by the 1<sup>st</sup> applicant. Additionally, he stated that the petitioners having the grant dated 27/2/2006 revoked without involving the beneficiaries and the interested parties who benefited after the estate was distributed to the beneficiaries. The conduct of the respondent to concealment of material facts is fraudulent. His affidavit was filed together with affidavits sworn by Patrick Munyiri Machira, a beneficiary of the estate and Ann Njoki Miano, a daughter in law to the deceased and husband of the 2<sup>nd</sup> respondent who is deceased. The said affidavits support the summons for revocation of grant and the deponents reiterate the contents of the affidavit sworn by Paul Gichohi Machira.

### **The 1<sup>st</sup> Respondent's Case**

12. The 1<sup>st</sup> respondent deposed that he is one of the administrators of the estate of the deceased. He avers that the grant issued to the 3<sup>rd</sup> respondent and Munyiri Wachira dated 27/2/2006 was illegally and irregularly issued and thus he challenged the grant on the grounds that the administrators had not obtained consent from the beneficiaries to the estate to file the suit on their behalf. Furthermore, the administrators had excluded from the grant most of the assets namely Plot 2A Giakabii Shopping Centre, Plot No. 18 Giakabii and Plot No. 3 Giakabii, which were later included in the grant issued in his favour and that of the 3<sup>rd</sup> respondent. The 1<sup>st</sup> respondent further states that some of the property listed in the first grant namely land parcel number Gatarakwa/Gatarakwa Block IV did not belong to the deceased and had been sold during his lifetime.
13. The 1<sup>st</sup> respondent avers that the intentions of revoking the grant were solely to protect the purchasers who bought several land parcels out of the original land parcel number Magutu/Gathehu/417. He further avers that when the first grant was issued, the administrators and some of the beneficiaries illegally and irregularly sub divided land parcel number Magutu/Gathehu/417 without any regard to the other beneficiaries shares and therefore disinheriting beneficiaries like himself, his brother who is deceased as well as his sister.
14. The 1<sup>st</sup> respondent states that when he applied for the grant confirmed on 27/2/2006 to be revoked, some of the beneficiaries were actively involved in the succession proceedings including the 1<sup>st</sup> applicant. He further deposes that the 1<sup>st</sup> applicant had been summoned to court severally, but he never showed up in court to challenge the issuance of the grant. Furthermore, the 1<sup>st</sup> respondent states that at the time of filing the summons for revocation of grant, the 3<sup>rd</sup> respondent was alive.
15. The 1<sup>st</sup> respondent avers that if the grant is revoked, some of the assets he included in the grant confirmed on 19/2/2019 will remain unadministered. Further that some of the beneficiaries will



remain disinherited namely James Kiini Machira, the 2<sup>nd</sup> respondent, who entered into a sales agreement with one John Gichuhi Kiritu for the sale of land parcel number Magutu/Gathehu/1151 at a price of Kshs. 135,000/.

16. The 1<sup>st</sup> respondent states that the current Summons for Revocation has been brought in bad faith to protect the strangers that bought land parcels out of land parcel number Magutu/Gathehu/417 and the said purchasers are fearful that the said purchases were illegal.
17. A beneficiary to the estate of the deceased and brother to the 1<sup>st</sup> respondent, one Mary Gathigia Warutere, filed an affidavit dated 26<sup>th</sup> April 2022 opposing the Summons for Revocation and reiterates the contents of the affidavit of the 1<sup>st</sup> respondent adding that she ought to have received a share out of land parcel number Magutu/Gathehu/417 being one of the beneficiaries of the estate which their house never got.
18. Parties disposed of the application by way of written submissions.

### **The Applicants' Submissions**

19. The applicants reiterate what they deposed in their affidavits and rely on Section 76 of the [Law of Succession Act](#) and the cases of [Re Estate of Julius Ndubi \(Deceased\) \[2018\]](#) eKLR; [Re Estate of Magangi Obuki \(Deceased\) \[2020\]](#) eKLR; [In the Matter of the Estate of L. A. K. \(Deceased\) \[2014\]](#) eKLR; [Re Estate of Prisca Ong'ayo Nande \(Deceased\) \[2020\]](#) eKLR; [Re Estate of Moses Wachira Kimotho \(Deceased\) \[2009\]](#) eKLR and [Patricia Wanja Mundi vs Jacinta Gathoni Karanja & 6 Others \[2017\]](#) eKLR and submit that the grant ought to be revoked because the petitioner concealed material facts and obtained the grant fraudulently.

### **The Interested Party's Submissions**

20. The interested party reiterated what he deposed in his affidavit and submitted that the 1<sup>st</sup> respondent concealed material facts when he sought for confirmation of the grant. He failed to disclose that the estate had already been distributed and that the co-administrator had died on 26/10/2014. Additionally, the interested party contends that the 1<sup>st</sup> respondent failed to serve all the parties who owned the portions of land that previously formed the estate of the deceased. As such, the interested party relies on Section 76 of the [Law of Succession Act](#) and the case of [Re Estate of Prisca Ong'ayo Nande \(Deceased\) \(2020\)](#) eKLR and submits that the grant dated 19<sup>th</sup> February 2019 ought to be revoked.
21. The beneficiaries, Paul Gichohi Machira, Patrick Munyiri Machira and Ann Njoki Miano filed submissions and reiterated the contents of their respective affidavits.

### **The 1<sup>st</sup> Respondent's Submissions**

22. The 1<sup>st</sup> respondent submits that the applicants have not met the threshold for the revocation of grant dated 19<sup>th</sup> February 2019. The 1<sup>st</sup> respondent submits that he duly informed the applicants of the ongoing proceedings when he challenged the grant dated 27/2/2006. He further submits that all the beneficiaries were aware that he had challenged the revoked grant and some of the beneficiaries including the applicants had protested to the revocation of the first grant dated 27/2/2006. The 1<sup>st</sup> respondent argues that since the beneficiaries were aware that he was challenging the grant dated 27/2/2006, they ought to have raised all the issues at the earliest opportunity but they never did.
23. The 1<sup>st</sup> respondent further submits that the death of one administrator does not affect the grant and Section 81 of the [Law of Succession Act](#) confers powers and duties of personal representatives to vest in the surviving personal representative once one of the administrator dies. The 1<sup>st</sup> respondent further



argues that Section 81 of the Act is applicable in the current case as the 3<sup>rd</sup> respondent was not the sole administrator of the estate and not Section 76(e) of the Act.

24. The 1<sup>st</sup> respondent relies on the cases of *Benson Kesier & 2 Others vs Alex Karange & Another [2018]* eKLR and *In the Estate of Johnson Theuri Gitabi [2015]* eKLR and submits that the applicants have failed to prove that the grant ought to be revoked on the grounds of fraud and concealment of facts.
25. The 1<sup>st</sup> respondent relies on Section 45 of the *Law of Succession Act* and submits that the interested party confirmed that due procedure was not followed in the purchase of the some parcels of land and this amounts to intermeddling. As such, the interested party cannot seek redress of the court to enable his illegal acts, as he does not have locus to even support the summons for revocation of grant.

## **Analysis and Determination**

### **Whether the applicant has presented sufficient evidence to warrant revocation or annulment of the grant.**

26. 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 states that:-

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.
27. According to the applicants, there was a grant confirmed on 27/2/2006 by which the estate L.R Magutu/Gatheha/417 was distributed and subsequently subdivided amongst the three houses and later sold to third parties by the respective beneficiaries. The applicants further argued that the 1<sup>st</sup> respondent obtained the grant dated 19/2/2019 fraudulently as he did not disclose that the estate had already been distributed and part of it sold to 3<sup>rd</sup> parties as well as that his co-administrator had passed away. The 1<sup>st</sup> respondent argued that he sought for revocation of the grant issued on 27<sup>th</sup> February 2006 because it excluded most of the assets of the deceased from the grant and that some of the property in the earlier application did not belong to the deceased. He further argued that he did not obtain the grant dated 19/2/2019 fraudulently as some of the beneficiaries who are supporting the current



revocation of grant were actively involved in the succession proceedings during the issue of the fresh grant to the 1<sup>st</sup> and 3<sup>rd</sup> respondents and later confirmed.

28. I have perused the court record and noted that the initial grant was issued to the Cecilia Mukuhi Machira and Munyiri Machira and was confirmed on 27<sup>th</sup> February 2006. The court distributed land parcel Magutu/Gathehu/417 measuring 2.25Ha to the three houses of the deceased as follows:-
- a. Cecilia Mukuhi on her behalf and that of her house – 0.85 Ha
  - b. James Kiini Wachira on behalf of the house of the late Ann Nyokabi – 0.85 Ha
  - c. John Wanjau Wachira on behalf of the house of late Wacheke Machira – 0.85 Ha.
29. The 1<sup>st</sup> respondent herein filed Summons for Revocation of grant dated 10<sup>th</sup> November 2008 claiming that the grant was obtained fraudulently and by concealment of facts. The 1<sup>st</sup> respondent further told the court that he was not involved in the earlier process of the succession proceedings and that the petitioners had excluded some assets namely Plots 2, 3 and 18 in Giakaibe Market which belonged to the deceased. Further the 1<sup>st</sup> respondent contended that some properties particularly land parcel Gatarakwa/Gatarakwa Block IV and Plot No. 5 Karatina Town included in the grant had already been disposed of during the lifetime of the deceased and thus were not available for distribution. James Kiini Machira, John Wanja Machira and Cecilia Mukuhi Machira filed a response to the said application and stated that the 1<sup>st</sup> respondent herein was being dishonest as the succession proceedings were conducted with knowledge and participation of the 1<sup>st</sup> respondent. On 7/12/2012, the court revoked the grant and appointed Cecilia Mukuhi and James Muhindi Machira as the administrators.
30. The applicants contend that the 1<sup>st</sup> respondent obtained the grant fraudulently and by concealing material facts. When the summons for revocation of grant came up for hearing on 7/12/2012, the 2<sup>nd</sup> respondent James Kiini Machira was present in court. The court record also indicates that counsel for the 1<sup>st</sup> respondent herein told the court that the grant ought to be revoked because some of the properties were left out. I have perused the affidavit sworn by James Kiini, Cecilia Mukuhi and John Wanjau and annexed a sale agreement between the 1<sup>st</sup> respondent herein and one Michael Waweru Thinwa dated 7<sup>th</sup> November 2000 for the purchase of a portion of 30 feet by 100 feet of land parcel number Magutu/Gathehu/417 for a consideration of Kshs. 100,000/-. There is also an agreement dated 9<sup>th</sup> January 2006 between Ephraim Njogu Machira and John Mwaudime Muhindi for the sale of a portion of land parcel number Magutu/Gathehu/417 for a consideration of Kshs. 400,000/-. The said agreement confirms the sale and the payment of the purchase price and the agreement was witnessed by James Kiini Machira 2<sup>nd</sup> respondent, Peter Miano Machira 2<sup>nd</sup> Applicant and James Muhindi Machira the 1<sup>st</sup> respondent.
31. The interested party also annexed a sale agreement dated 20/8/2008 between the 1<sup>st</sup> respondent and Symon Ndoria Kabuchwa for the sale of a portion of 30 by 120 feet of land parcel number Magutu/Gathehu/417 for a consideration of Kshs. 230,000/- All these transactions took place before the 1<sup>st</sup> respondent herein applied for revocation of grant on 10<sup>th</sup> November 2008. Notwithstanding this facts, the 1<sup>st</sup> respondent, despite being the vendor in two sale agreements and a witness in one sale agreement went ahead to apply for revocation of the grant . The 1<sup>st</sup> respondent did not disclose to the court that some of the beneficiaries including himself had sold portions of their shares to third parties. It is therefore evident that the 1<sup>st</sup> respondent herein obtained the grant dated 19/12/2019 through fraudulent means and by concealing material facts from the court. He failed to disclose to the court that distribution of the estate had already taken place and that sale of several portions of L.R Magutu/Gathehu/417 to third parties had taken place. The beneficiaries some of whom are now deceased have



sold out part of their shares to 3<sup>rd</sup> parties as demonstrated by the agreements annexed to these summons. Some of the 3<sup>rd</sup> parties who bought land over 15 years ago have already settled on their respective parcels and carried out extensive developments.

32. The respondents raised several issues in support of their case for court to decline the application for grant. Firstly that their reason for applying for the impugned grant was because the administrators in the earlier grant had not obtained the consent of other family members. The respondent did not adduce any evidence to this effect. The evidence on record is to the effect that the respondents approached the court in bad faith with a view of depriving the purchasers of their portions. Some of which the 1<sup>st</sup> respondent had sold himself and witnessed agreements for other beneficiaries. It is also noted that most of the beneficiaries support the revocation of the grant issued on 19/02/2019 save for the 1<sup>st</sup> and 2<sup>nd</sup> respondents.
33. It was further argued that the same administrators had failed to include some assets of the deceased in the list of distribution. It is likely that the said administrators did not know of the existence of such assets as it happens in many succession cases. However, the 1<sup>st</sup> applicant deposed in his affidavit that some of the assets mentioned by the 1<sup>st</sup> respondent did not belong to the deceased. It is noted that the 1<sup>st</sup> respondent has not annexed any searches to prove ownership and existence of such assets.
34. As for Gatarakwa/Gatarakwa Block IV/13, there is no evidence that any person is claiming the said land from the estate of the deceased. If the issue were to arise in the future, the law will deal with it.
35. The 1<sup>st</sup> respondent claims that one James Kiini Machira and himself will be disinherited in the event that the grant confirmed on 19/02/2019 is revoked. I have perused the grant confirmed on 27/02/2006 and noted that these two beneficiaries belong to different houses and that they were provided for the grant. If they have gone ahead after distribution of the estate and sold their portions to 3<sup>rd</sup> parties, then they have no one to blame. The grant used to distribute the estate speaks for itself that the three houses of the deceased were provided for in equal shares.
36. The grant confirmed 27<sup>th</sup> February 2006 was issued to Cecilia Mukuhi and Munyiri Machira both of whom are now deceased. It is noted that the two administrators have already distributed most of the assets in the estate. However, later on, the 1<sup>st</sup> respondent applied for revocation of grant and the court appointed him and the 3<sup>rd</sup> respondent as the administrators in the grant confirmed on 19/02/2019. At the time of confirmation of the grant in favour of the 1<sup>st</sup> and the 3<sup>rd</sup> respondent, the 1<sup>st</sup> respondent did not disclose to the court that the 3<sup>rd</sup> respondent had passed on and that the estate had already been distributed. This, in my view, was a material non-disclosure. The status of this case is that both administrators are deceased. As such, new administrators ought to be appointed in respect of any assets excluded from initial grant.
37. This court allows the Summons for Revocation dated 6<sup>th</sup> August 2019 and makes the following orders:-
  - a. That the grant confirmed on 19/02/2019 in favour of the 1<sup>st</sup> and 3<sup>rd</sup> respondent be and is hereby revoked.
  - b. That the distribution done in adherence of the grant confirmed on 27<sup>th</sup> February 2006 is hereby upheld.
  - c. That the 1<sup>st</sup> Applicant John Wanjau Machira and Peter Gichohi Machira are hereby appointed administrators of the estate of the deceased to complete administration of the estate.



- d. That the two administrators or any of them do file an application for confirmation of grant in respect of the remaining assets within sixty(60) days in consultation with the other beneficiaries.
- e. That each party to meet their own costs.

38. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**F. MUCHEMI**

**JUDGE**

**RULING DELIVERED THROUGH VIDEOLINK THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2023.**

