



REPUBLIC OF KENYA



**In re Estate of Jane Munjagi Mukai (Deceased) (Succession Cause 1227 of 1999)  
[2023] KEHC 729 (KLR) (Family) (3 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 729 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1227 OF 1999  
MA ODERO, J  
FEBRUARY 3, 2023  
IN THE MATTER OF THE ESTATE OF JANE MUNJAGI  
MUKAI ALIAS MUNJAGI MUKAI (DECEASED)**

**BETWEEN**

**WANJIKU KAMAU ..... 1<sup>ST</sup> OBJECTOR**

**WAKONYO MUKAI ..... 2<sup>ND</sup> OBJECTOR**

**AND**

**WAMBUI MUKAI ..... 1<sup>ST</sup> RESPONDENT**

**MUTAHI SUO ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Before this court is the Summons for Revocation/Annulment of Grant dated 17<sup>th</sup> March 2022 by which the Objectors Wanjiku Kamau And Wakonyo Mukai seek the following orders:-

- “1. Spent
2. Spent
3. Spent
4. That the decision of the Honourable Lady Justice Kalpana Rawal given at Nairobi on the 10<sup>th</sup> day of February 2009 be set aside.
5. That the certificate of Confirmation of Grant and the Grant of Letters of Administration with the terms of the oral will annexed issued herein to Mutahi Suo in years 2000 and 1999 respectively over the Estate of Jane Munjagi



Mukai alias Munjangi Mukai also Alias Jane Wanjagi Ngugi (Deceased) be annulled/revoked on grounds of fraud.

6. That the distribution of the Estate intestate herein should take into account the intermeddling by the 1<sup>st</sup> Respondent wherein she has already illegally obtained and sold half acre belonging to the state being property Land Reference Number 7785/732 (original number 7785/399/17) and is in that much disentitled to obtain any further property from the estate.
  7. That three quarter acre of property Land Reference Number 7785/424 (original number 7785/8/57) be shared equally amongst the three remaining daughters of the deceased such that the title deed shall be rectified and each shall obtain a quarter acre of the property to the exclusion of the 1<sup>st</sup> Respondent herein.
  8. That the proceeds of the sale of a three quarter acre property Land Reference Number 7785/433 of which the estate is entitled to one share amongst nine shareholders/vendors be equally distributed to the three remaining daughters of the deceased to the exclusion of the 1<sup>st</sup> Respondent herein.
  9. That Kshs 170,000/- and Kshs 56,000 that the 1<sup>st</sup> Respondent obtained from the deceased sometime in May 1990 be declared a debt owed to the estate and be accounted for in the final distribution and settlement of this estate.
  10. That the 1<sup>st</sup> Respondent herein together with their descendants, agents, employees and any person claiming through her or under her authority be removed from and prevented from building, demolishing, destroying any structure on, collecting any monies in lieu of rent, licence or lease, charging, selling, remaining on/in/around, threatening, levying distress, trespassing, planting, harvesting, interfering in property Land Reference Number 7785/424 (original number 7785/8/57)
  11. The County Commissioner and County Police Commander, Nairobi County do ensure compliance and that peace prevails.
  12. That costs be awarded to the Applicants and this matter be certified as complex.
  13. Further orders as the court deems just and expedient as set out in the grounds hereunder and the supporting affidavit of the Applicants.
2. The summons was premised upon Section 45, 52, 76, 83, 94 and 95 (1) *Law of Succession Act*, Cap 160 Rules 44, 49, 63 and 64 Probate and Administration Rules, 1980 Section 3A, 63 (e) and 80 of the *Civil Procedure Act* Cap 21, Order 45 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law and was supported by the Affidavit of even date sworn by the Objectors [herein] and Maria Wanjiku Kimani, Wanjiku Kamau, Wakonyo Mukami, Steven Maukai Kamau and Miringu Kimani.
  3. The 1<sup>st</sup> Respondent Wambui Mukai opposed the application through her Replying Affidavit dated 16<sup>th</sup> September 2019 and the Further Replying Affidavit dated 1<sup>st</sup> November 2019.
  4. The matter was heard by way of viva voce evidence in open court.



## Background

5. This Succession Cause relates to the estate of the late Jane Wanjagi Ngugi Alias Munjangi Mukai who died on 17<sup>th</sup> April 1994. A copy of the Death Certificate Serial No. 423402 is annexed to the Petition for Grant of Probate dated 8<sup>th</sup> June 1999. According to the chiefs letter dated 11<sup>th</sup> June 1998 the Deceased was survived by four (4) daughters as follows:-
  - (i) Maria Wanjiru Kimani
  - (ii) Wanjiku Kamau
  - (iii) Wakonyo Mukai
  - (v) Wambui Mukai
6. The husband of the Deceased Mukai Thuo who died in the year 1994 predeceased his wife.
7. The estate of the deceased comprised of the following assets-
  - (a) Title Number LR 7785/424 (original number 7785/8/57)
  - (b) Kshs 15,000/- from Muringa Company Ltd.

The total value of the estate of the Deceased was estimated to be Kshs 515,000/-.
8. Following the demise of the Deceased one Mutahi Suo filed a petition for Grant of Probate on grounds that the Deceased had left an oral will. Grant of Probate was issued to the said 2<sup>nd</sup> Respondent on 5<sup>th</sup> August 1999 which Grant was duly confirmed on 5<sup>th</sup> May 2000.
9. On 27<sup>th</sup> September 2007 the two Objectors herein filed in the High Court a summons for revocation of Grant. That summons was heard by Hon Lady Kalpana Rawal (as she then was) who in a judgment delivered on 10<sup>th</sup> February 2009 dismissed the summons for revocation of Grant.
10. Thereafter the cause continued to wind its way in the courts with several applications being filed in the matter. An intention to appeal against the judgment delivered by Hon Justice Rawal (as she then was) did not materialize and a Notice of withdrawal of Notice of Appeal was filed in court on 18<sup>th</sup> March 2020.
11. On 6<sup>th</sup> February 2020 Hon Lady Justice Ali-Aroni (as she then was) issued an injunction preventing the Respondents, their descendants, agents, accomplices, or successors in title from evicting the Applicants [the objectors herein], charging, selling, transferring, constructing and/or in any way interfering with LR No. 7785/424 (Original Number 7785/8/57) pending action to be taken by the Objectors in view of new evidence produced by the Objectors.
12. The Objectors then filed this summons dated 17<sup>th</sup> March 2020 seeking the revocation of the Grant issued to the Respondents on grounds that the same was obtained fraudulently through non-disclosure of material facts.
13. As stated earlier the summons for revocation of Grant was opposed by the Respondents.

## The Evidence

14. The Objectors witnesses namely Wanjiku Kamau (PW1), Wakonyo Mukai (PW2), Stephen Mukai Kamau (PW3) and Muringu Kimani (PW4) all relied on their Supporting Affidavit dated 17<sup>th</sup> March 2020. PW1 and PW2 are the biological daughters of the Deceased and sisters to the 1<sup>st</sup> Respondent.



- PW3 was grandson to the Deceased being the son of PW1 whilst PW4 was also a grandson to the Deceased being the son to one Maria Wanjiru a daughter of the Deceased.
15. The four (4) witnesses confirm that the Deceased passed away on 17<sup>th</sup> April 1994. They state that they are all dependants of the Deceased and therefore have locus standi in this matter
  16. The witnesses further confirmed that the Deceased left one asset being LR No. 7785/424 (Original Number 7785/8/57) which property had on it ten (10) rental houses.
  17. The witnesses additionally state that the Deceased was a bona fide shareholder on Muringa Company Ltd (hereinafter ‘the Company’) which was a land buying Company and in that capacity the Deceased was entitled to a half acre share L.R. No. 7785/732 (original No. 7785/399/17) and a one-ninth share of LR No. 7785/433 which properties were registered in the name of the Company.
  18. The Objectors aver that following the demise of their mother they approached the 1<sup>st</sup> Respondent with a view to jointly filing a Succession Cause. However, the 1<sup>st</sup> Respondent refused to co-operate with them and remained adamant despite their involvement of the local chief and the District Officer in the dispute. The Objectors contend that as biological daughters of the Deceased they are entitled to a share of the estate of the Deceased as is the 1<sup>st</sup> Respondent.
  19. The Objectors allege that the 1<sup>st</sup> Respondent misrepresented to the Directors of Muringa Company Ltd, that she was the sole beneficiary of the entitlement due to the Deceased. In this manner, the 1<sup>st</sup> Respondents managed to obtain in 1996 the half acre of L.R. No. 7785/732 (Original No. 7785/399/17).
  20. That the Respondent then proceeded to sell the said half-acre property without the knowledge and/or consent of the other beneficiaries to the estate. They now request that the 1<sup>st</sup> Respondent be ordered to account to the estate for the proceeds of this sale.
  21. The Objectors went on to state that another piece of land belonging to the Company being LR No. 7785/433 was registered in the name of nine (9) shareholders (who included the Deceased). That when the said property was being sold the Objectors disagreed with the 1<sup>st</sup> Respondent on how to share the proceeds of sale. They approached the court vide the summons dated 4<sup>th</sup> November 2015 and obtained an injunction preventing the distribution of the sale proceeds.
  22. The Objectors aver that sometime in May 1990 the 1<sup>st</sup> Respondent received from the company two payments of Kshs 170,000 and Kshs 56,000 due to the Deceased whilst an amount of Kshs 15,000 was paid to the Public Trustee.
  23. The Objectors admit that they filed a Succession Cause No. 2484 of 2002 in respect of the same estate and obtained Grant of letters of Administration Intestate issued in the name of the 1<sup>st</sup> and 2<sup>nd</sup> Objector on 10<sup>th</sup> February 2003. That Grant has however never been confirmed.
  24. The Objectors state that now several years after having sworn that the Deceased narrated to him her wishes by way of an oral will dated 1<sup>st</sup> February 1994 the 2<sup>nd</sup> Respondent Mutahi Suo has now recanted that evidence. That the 2<sup>nd</sup> Respondent (who is now of advanced age) called a meeting of the Objectors and their families and in the presence of the sub chief asked their forgiveness for having sworn a false Affidavit claiming that the Deceased had left an oral will.
  25. The Objectors now contend that their protestation that the Deceased had actually died intestate has now been proved to be correct. They aver that their late father had divided the family land prior to his demise and their late mother (the Deceased herein) was in agreement with the actions of her husband.



26. The Objectors claim the 1<sup>st</sup> Respondent perpetrated this fraud in order to deny her three (3) sisters of their rightful inheritance. They now urge this court to review and set aside the decision of Hon Lady Justice Kalpana Rawal (as she then was) contained in the Ruling dated 10<sup>th</sup> February 2009. They pray that the remainder of the estate be distributed afresh taking into account what the 1<sup>st</sup> Respondent has already obtained through unjust enrichment. The Objectors urge that any re-distribution of the estate should exclude the 1<sup>st</sup> Respondent who has already benefited immensely from the estate of the Deceased.
27. The 2<sup>nd</sup> Respondent Mutahi Suo testified as DW1 in the matter. He told the court that the husband of the Deceased Mukai Thuo was his stepbrother. Although the 2<sup>nd</sup> Respondent had all along earlier claimed that the Deceased had on 1<sup>st</sup> February 1994 made an oral will in his presence in his evidence before this court the 2<sup>nd</sup> Respondent vehemently denied having been present and denied ever having heard Deceased make any statement regarding how she wished her property to be divided after her death. The 2<sup>nd</sup> Respondent states that he was at his rural home in Loitokitok when the Deceased died and states that he did not even attend her burial.
28. The 2<sup>nd</sup> Respondent proceeds to deny the earlier statement he had in which he averred that the Deceased made an oral will. He states that he is unable to identify his signature on that document. The 2<sup>nd</sup> Respondent states that the 1<sup>st</sup> Respondent tricked him by taking him to a lawyer where he was told to sign a paper. That he is illiterate and has no idea what the contents of the document were.
29. The 2<sup>nd</sup> Respondent confirms to court that the three (3) Objectors and the 1<sup>st</sup> Respondent are all the daughters of the Deceased. He advises them to settle their differences as a family.
30. Wambui Mukai is the 1<sup>st</sup> Respondent. She told the court that she is the last born of the four (4) daughters born to the Deceased. The 1<sup>st</sup> Respondent relied fully on her Replying Affidavit dated 16<sup>th</sup> September 2019 and her Further Replying Affidavit dated 1<sup>st</sup> November, 2019. The 1<sup>st</sup> Respondent insists that according to the oral will made by the Deceased she is the sole beneficiary of the estate of the Deceased. The 1<sup>st</sup> Respondent avers that at the time of their late father purchased LR No. 7785/424, the Objectors who were her sisters were all married and were living in their husbands homes. She asserts that a summon filed by the Objectors seeking revocation of the Grant issued to the 2<sup>nd</sup> Respondent was dismissed by Hon Lady Justice Rawal (as she then was) on 10<sup>th</sup> February 2007. That the present summons amounts to an abuse of court process as the same issues have already been litigated and determined through the Ruling of 10<sup>th</sup> February 2007.
31. The 1<sup>st</sup> Respondent avers that the undated Replying Affidavit sworn by the 2<sup>nd</sup> Respondent in which he recants the averments in his Replying Affidavit dated 16<sup>th</sup> October 2019 was defective as the same did not comply with the Oaths and Statutory Declaration Act, Cap 15 Laws of Kenya. She seeks to have the same expunged from the court record. The 1<sup>st</sup> Respondent denies that the share in Muringa Company Limited originally belonged to her late father before they were transferred to the Deceased. The 1<sup>st</sup> Respondent claims that she was a genuine shareholder in the company and that she paid Kshs 4000 to the company but that since she did not have an identity card the receipts were issued in the name of her late father. She suggests that the 2<sup>nd</sup> Respondent has been manipulated into changing her position due to old age. The 1<sup>st</sup> Respondent urges the court to dismiss this summons in its entirety.
32. DW2 Joseph Kinuthia Ngururu is a Director of Muringa Company Ltd and Secretary to the Board of Directors. He told the court that the company was a land buying company which was formed in the year 1964 and was registered in 1967.



33. DW2 told the court that the late Mukai Thuo [husband of the Deceased] was one of the original members of the company having joined them in the year 1965. That membership in the company was only open to adults and that both men and women were welcome to be members.
34. DW2 told the court that by the time titles to land were being issued Mukai Thuo had already passed on therefore Title in LR No. 7785/424 was issued in the name of the Deceased Jane Munjangi who was the widow. That in 1990 the Deceased as the wife of Mukai Thuo was issued with two (2) more Titles. DW2 confirms that vide a letter dated 27<sup>th</sup> June 1984 the Public Trustee transferred the shares of Mukai Thuo in Muringa Company Ltd to his widow (the Deceased herein). That upon instructions from Mukai Thuo the company also transferred a quarter (¼) in of L.R. No. 7785/732 to the Deceased.
35. DW2 went on to testify that dividends due to Mukai Thuo were paid to the Deceased and the 1<sup>st</sup> Respondent. DW2 stated that he was a Kikuyu elder conversant with Kikuyu Culture and told the court that when a woman dies her property is to be shared equally amongst all her children and that Kikuyu customs do not allow for disinheriting any child.
36. DW3 Chief Inspector Beneutyachus Wanjohi is an officer attached to Forensics Department at the DCI Headquarters. The witness told the court that he had been assigned to investigate a land fraud case. That during the course of investigations on 6<sup>th</sup> August 2020 he travelled to Mucatha in Kiambu County and recorded by way of audio video recording the statement of one Mutahi Suo (the 2<sup>nd</sup> Respondent herein). DW3 produces in court a CD of the said recording which was in Kikuyu Language.
37. At the close of oral evidence parties were invited to file and exchange their written submissions. The Objectors filed the written submissions dated 20<sup>th</sup> July 2022 whilst the Respondents relied upon their submissions dated 14<sup>th</sup> September 2022

### **Analysis and Determination**

38. I have carefully considered this summon for revocation of Grant, the Replies filed by the Respondents, the evidence on record, as well as the written submissions filed by both parties.
39. The following are the issues which arise for determination.
  - (i) Whether the orders made in the Ruling delivered on 10<sup>th</sup> February 2009 ought to be reviewed.
  - (ii) Whether the confirmed Grant issued on 5<sup>th</sup> May 2000 ought to be revoked.

#### **(i) Review of Ruling delivered on 10<sup>th</sup> February 2009.**

40. The Objectors herein had previously filed a summons for Revocation of Grant dated 27<sup>th</sup> September 2007 seeking to have the Grant issued to the 2<sup>nd</sup> Respondent annulled. The matter was heard by Hon Lady Justice Rawal (now retired) who in her ruling dated 10<sup>th</sup> February 2009 dismissed the application. The Objectors now seek to have that ruling reviewed and set aside on grounds that new and compelling evidence has come into light.
41. The law on Review is to be founded on the provisions of Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules* 2010. Section 80 of the *Civil Procedure Act* provides as follows: -

“ Any person who considers himself aggrieved—



- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

42. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows:

“Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

43. In the case of *Republic v Advocates Disciplinary Tribunal Ex-parte Apollo Mboyo* (2019) eKLR, Mativo J held that:-

“A clear reading of the above provisions shows that section 80 gives the power of review while Order 45 sets out the rules. The rules restrict the grounds for review. They lay down the jurisdiction and scope of review. They limit review to the following grounds-

- a. discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;
- b. On account of some mistake or error apparent on the face of the record, or
- c. For any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.” (own emphasis)

44. In the Petition for Grant of letters of Administration with oral will attached it was alleged that the Deceased left an oral will in Kikuyu which translated read as follows:-

“The girls who are married should not come back here because all the property here belongs to Wambui and her children and Mutahi I have appointed you to be in charge of my property until it devolves to Wambui.”

45. A copy of the terms of the oral will and the English translation appears as Annexure WM10’ to the 2<sup>nd</sup> Respondents Replying Affidavit dated 16<sup>th</sup> September 2019.

46. In her Ruling delivered on 10<sup>th</sup> February 2009 Hon Justice Rawal (as she then was) held that the oral will made by the Deceased was valid and binding. In coming to this decision, the Honourable Judge



largely relied on the evidence of Mutahi Suo who in his Affidavit dated 22<sup>nd</sup> May 2008 averred that the Deceased had on 1<sup>st</sup> February 1994 communicated to him the manner in which she wanted her estate to be distributed after her death.

47. The same Mutahi Suo has now come before this court and confessed that in actual fact the Deceased did not make an oral will before him. In his undated Replying Affidavit which was filed in court on 17<sup>th</sup> October 2019 the 1<sup>st</sup> Respondent avers as follows:-

- “ 4. That for the past over 20 years, I have been troubled by the estate of the deceased in that my lies have caused a fight amongst the descendant of the deceased.
5. That upon service of the documents on me and discussing the matter with the Applicants and my daughter and I both called the Applicants sons to our home to attempt reconciliation.
6. That on 11/10/2019 we had a gathering with my family and the Applicants sons Steven Mukai Kamau and the great-grandson Thomas Kimani Miringu.
7. That at the meeting, I confessed that the deceased did not leave behind any oral will. It was the deceased’s husband Mukai Thuo (my stepbrother) who had spoken to me about Wambui (the 2<sup>nd</sup> Respondent herein). It was Mukai Thuo who said that Wambui should not marry and leave the land. That Mukai Thuo wanted her to be like a son and to stay with him on the land. That when sons were born to his other daughters, he summoned them to live with him on the land on portions he gave them.
8. That Mukai Thuo died having given every one of his children and grandchildren land from his properties. That it was Wambui (the 2<sup>nd</sup> Respondent herein) who coerced me to support her case here in court which is based on lies and fraud that I have asked for forgiveness from the families of the Applicants and they willingly and freely forgave me. That I am now old and look forward to a peaceful death.
9. That the ends of justice shall suffer embarrassment should the illegalities of Wambui Mukai against the applicants be allowed to stand.
10. That the facts herein deponed are known to me of my personal knowledge, information and belief save those who sources have been disclosed.” (own emphasis)

48. In this Affidavit DW1 confesses that the Deceased never spoke to him at all regarding the manner in which her estate was to be distributed. That rather it was the Deceased’s late husband Mukai Thuo who told DW1 that he wished his last born daughter ‘Wambui’ (the 2<sup>nd</sup> Respondent) would not marry but would remain on his land like a son. The wishes or utterances of Mukai Thuo to DW1 cannot be imputed to the Deceased and cannot be presumed to be the wishes of the Deceased.

49. The 2<sup>nd</sup> Respondent sought to have the Affidavit sworn by DW1 expunged from the record on grounds that being undated the same did not comply with the Oaths and Statutory Declaration Act.

50. However my view is that the failure to date the Affidavit is an inadvertent omission. Courts are exhorted by Article 159(2) (a) of *the Constitution* of Kenya 2010 to administer substantive justice “without



undue regard to technicalities”. The date of filing of the said Affidavit is clearly indicated as 17<sup>th</sup> October 2019.

51. The evidence of DWI certainly qualifies as the discovery of a new and important matter which in my view affects the trajectory of this case. The key witness has now recanted his evidence which evidence the court had relied upon in coming to the conclusion that the Deceased died testate having left an oral will.
52. Moreover in his evidence before this court the same witness reiterates that the deceased did not tell him of her wishes regarding the distribution of her property. In his evidence DW1 states-

“At no time did the deceased ever tell me what she wanted done with her property after she died. I have never testified before Judge Rawal. I have never testified Judge Kimaru. At no time did the deceased ever tell me how she wanted her property to be divided.....” [Own emphasis]
53. Further in his evidence DW1 categorically states that:-

“She [the Deceased] never left a Will.....”
54. The evidence of DW1 was corroborated by the recorded video, which was presented to the court by DW3 Chief Inspector Wanjohi. A Forensic Expert who told the court that in the course of investigating a land fraud, he went to the home of Mutahi Suo in Mucatha, Kiambu County on 6<sup>th</sup> August 2020 where he made an audio visual recording of the witnesses statement.
55. The statement though in Kikuyu was translated. A copy of the transcript appears at page 40 of the Applicants bundle of Documents dated 20<sup>th</sup> July 2022. In that recorded statement DW1 reiterates that at no time did he ever discuss the matter of inheritance with either the Deceased or her late husband.
56. The information that the key witness had sworn a false affidavit amounts to a discovery of a new and important matter. This is information that was not within the knowledge of the Objectors at the time the matter was being decided and was information that even with the exercise of diligence would not have been availed to the court at the time the ruling was being made. The court was not privy to this information at the time when it made its ruling.
57. I find that there has been shown to be critical new evidence, which the court was not aware of at the time the Ruling was made in February 2009. In the premise I am satisfied that sufficient grounds have been established to warrant the setting aside of the Ruling delivered on 10<sup>th</sup> February 2009.

**(ii) Whether the confirmed grant issued on 5<sup>th</sup> May 2000 should be revoked.**

58. The grounds upon which a grant may be revoked are set out in Section 76 of the [Law of Succession Act](#), Cap 160, Laws of Kenya which provides 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.”

59. Firstly as discussed above that Grant was clearly obtained fraudulently by the making of a false statement. DW1 has recanted his evidence that the Deceased made an oral will in his presence on 1<sup>st</sup> February 1994. Therefore, the basis upon which a Grant of probate was issued to Mutahi Suo on 15<sup>th</sup> August 1991 has been shown to have been false. On this grounds alone the Grant is for revocation
60. Secondly the so called oral will provided that all the property of the Deceased was to devolve to her daughter ‘Wambui’ (the 2<sup>nd</sup> Respondent). However, it is common ground that the Deceased was actually survived by four (4) daughters.
61. The only reason given for the exclusion of the other daughters is that they were married and had their own homes whilst the 2<sup>nd</sup> Respondent was unmarried and still lived in her parents home. The fact that the 2<sup>nd</sup> Respondent was not married does not entitle her to inherit the entire estate to the exclusion of the Deceased’s other children.
62. The *Law of Succession Act* does not discriminate between married and unmarried daughters. All have an equal entitlement to the estate of their parents. The Applicants cannot be disqualified from inheriting the estate of the Deceased on the basis of marital status alone.
63. Although DW1 Mutahi Suo was named in the alleged oral will as the Administrator of the Deceased’s estate he denied having been appointed as Administrator. It is clear that DW1 is not willing to administer the estate of the Deceased. On this ground, the Grant issued in his name ought to be revoked.
64. It is not clear how property belonging to the Deceased ended up being registered in the name of the 1<sup>st</sup> Respondent. DW3 who is the secretary of Muringa Company Ltd told the court that the Deceased’s late husband Mukai was a founder member of the company. Upon the demise of ‘Mukai’



the company transferred all assets to his widow (the Deceased herein). DW2 stated that the company never transferred any assets to the 1<sup>st</sup> Respondent.

65. The Objectors allege that the 1<sup>st</sup> Respondent has sold some of the property belonging to the Deceased. This amounts to intermeddling which if proved would attract criminal sanction.
66. Finally Section 83 (g) of The *Law of Succession Act* requires that an Administrator file full and accurate Accounts. To date no accounts have been filed in respect of the estate of the Deceased. It is clear that DW2 has not proceeded diligently with the Administration of this estate. Section 79 (d) (ii) and (iii) provides for the revocation of a Grant due to the above omissions.
67. All in all I am satisfied that sufficient grounds have been established warranting the revocation of the confirmed Grant issued to Mutahi Suo.
68. In conclusion this court makes the following orders-
  - 1) The Ruling delivered on 10<sup>th</sup> February 2009 be and is hereby set aside.
  - 2) The Grant issued to Mutahi Suo on 5<sup>th</sup> August 1999 and confirmed on 5<sup>th</sup> May 2000 is hereby revoked.
  - 3) The said Mutahi Suo to furnish this court within sixty (60) days with a full and accurate inventory and Accounts detailing the manner in which the estate of the Deceased has been administered since May 2000 to date.
  - 4) This being a family matter each side will bear its own costs.

**DATED IN NAIROBI THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2023.**

.....

**MAUREEN A. ODERO**

**JUDGE**

