



REPUBLIC OF KENYA



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**In re Estate of Moses Mutua Mwanzilu (Deceased) (Succession Cause
241 of 2002) [2023] KEHC 3225 (KLR) (17 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3225 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 241 OF 2002**

MW MUIGAI, J

APRIL 17, 2023

BETWEEN

JONATHAN MAINGI KYOMBOYO OBJECTOR

AND

JOHNSON MBAMBA MUTUA 1ST PETITIONER

LESA KALEKYE MUTUA 2ND PETITIONER

JUDGMENT

Background

1. The matter herein relates to the estate of Moses Mutua Mwanzilu, who died intestate on February 6, 1995 as shown by death certificate serial number xxxx
2. Johnson Mbamba Mutua and Paul Mutuku Mutua petitioned for letters of administration intestate and annexed the following documents:
 - a. The death certificate of xxxx Moses Mutua Mwanzilu.
 - b. The Kathiani chief's letter dated March 13, 2002 confirming the 1st respondent as a beneficiary who listed other beneficiaries left behind by the deceased as follows:
 - 1st Hse
 1. Lesa Kalekye Mutua – wife
 2. Johnson Mbamba Mutua – son
 3. Aaron Wambua Mutua - son
 4. Jonathan Mutiso Mutua – son



5. Charles Kyalo Mutua – son
 6. Annah Mutinda Mutua – daughter
 7. Muia Mbali - son – (dcd)
 8. Margaret Mbali – daughter
 9. Mueni Mbali – son
 10. Flora Mbali – daughter
 11. Nduku Mbali – daughter (dcd)
- 2nd Hse
1. Esther Ngii Mutua – wife
 2. Paul Mutuku Mutua – son
 3. Stephen Munyao Mutua –son

c. Assets and liabilities as follows;

1. Plot No 85- Mbee
2. Plot No 671/675- Mbee
3. Kiteta/Kiambwa/39
4. Plot No 597- Katelembo (2.4 acres)
5. Plot No 897- Katelembo (0.5 acres)
6. Share No 2238 Ketelembo
7. Athiriver/Athi River Block 1/1607

3. The grant of letters of administration was issued to Johnson Mbamba Mutua and Paul Mutuku Mutua on April 9, 2003.
4. The summons for confirmation application was filed on May 26, 2008 and the certificate of confirmation of grant was issued/granted on May 26, 2008 distributing the estate of the deceased to the beneficiaries of the deceased's estate.

Revocation Of Grant Application

5. The objector/applicant, Jonathan Maingi Kyomboyo, herein filed summons for revocation or annulment of grant dated January 22, 2009 filed on January 26, 2009, brought by section 76 (a) (b) & (c) *LSA* & rule 44 of *Probate & Administration Rules* seeking the following orders; -
 - i. The grant was obtained fraudulently by making of false statements and/or concealment of material facts.
 - ii. The grant was obtained by falsifying and/or forging signatures on material documents before this Hon Court.
 - iii. The proceedings used to obtain the said grant were defective in substance.



- iv. The grant was obtained by means of untrue allegations of facts essential in points of law to justify the grant notwithstanding the allegations were made in ignorance and/or inadvertently.
6. The application was/is supported by the affidavit of the applicant and on the following grounds:
- a. That on August 14, 1990, the deceased person duly sold to him the whole of the shares at Katelembo Athiani Muputi Farmers Co-operative Society Limited and in particular plot No 597 *vide* an agreement of the same date; marked JMK-1 with translation attached which the 2nd respondent witnessed.
 - b. That consequently the share member numbers 2238 was transferred to him and on surrender of the society's card No 5597 a new card being No 2238 was issued to him.
 - c. That share number 2238 of Katelembo Athiani Muputi Farmers Co-operative Ranching Society Ltd which was jointly owned by the deceased herein, Moses Mutua Mwanzuli and his brother Isaac Makau Mwanzuli was transferred to him and they surrendered society card 5597 and he was issued with card 2238. Copies of both cards were/are annexed as JMK-2.
 - d. That upon execution of the requisite transfer documents from the society, a certificate of shares was issued to him on June 19, 2006 in respect to membership number 2238 at the said society.
 - e. That both petitioners were aware of this fact at the time they petitioned for letters of administration. The said grant was eventually confirmed and the said land wrongfully transferred to the petitioners.
 - f. The transfer was pursuant to an agreement of the said Moses Mutua Mwanzuli and his brother Isaac Makau Mwanzuli and the protestor/objector/applicant of September 1, 1993 and the 2nd petitioner, the widow of the deceased herein was privy to and witnessed thereof and hereby attached, the copy of the said agreement marked JMK-3.
 - g. That to date the records at the society are clear that the said plot No 597 is his lawful property and cannot be sold/transferred without his consent.
 - h. That on execution of the requisite transfer documents from Ketelembo Athiani Farming & Ranching Cooperative Society Ltd, a certificate of shares thereof eventually was issued on June 19, 2006 to the applicant in respect of membership number 2238 and a copy annexed is marked JMK-4.
 - i. That further it is true and accurate that the said property in which a title number Athi River/ athi River Block 1/1607 of approximately area 0.8259 Ha issued is the same plot No 597 as shown by the records at Ministry of Lands.
 - j. That he believes that revocation and annulment of the grant herein by this Hon Court is the only remedy sufficient to ensure justice prevails and to prevent an abuse of the court process.
7. A preliminary objection was raised by the petitioner on March 6, 2009 and it is not clear from the record, what became of it whether it was disposed of or abandoned.

Replying Affidavit

8. The 1st respondent, Jonathan Mbama Mutua, filed a replying affidavit dated October 19, 2009 and stated;



- a. That the application is incompetent, bad in law and lacks merit. He stated that the applicant seeks revocation of the confirmed grant on unfounded grounds of fraud on the part of the administrators and on false allegations that he owns one of the properties named in the schedule of the confirmed grant.
- b. That the applicant has not claimed to be a beneficiary of the deceased's estate and has not given any reason why the confirmed grant should be revoked. He stated that the 2nd respondent is not an administrator of the deceased's estate and the applicant cannot purport to make any claim against her.
- c. That the award made by the Machakos District Officer as regards parcel No 597 in favor of the applicant was successfully set aside and the applicant has clearly concealed all the foregoing facts from this Hon Court with a view of misleading it and obtaining undeserved orders.
- d. That what the applicant is relying upon is a sale agreement which he did not show or produce in the aforementioned proceedings is a forgery since the documents of purported ownership which the applicant purports to hold were issued in the year 2006.
- e. That the deceased's parcel of land No Athi River/Athi River Block 1/1607 which the applicant purports to claim was transferred to the relevant beneficiaries under the confirmed grant was subsequently sold to a third party long before this application was filed.

2nd Revocation Of Grant Application

9. The applicant/objector, Aaron Wambua Mutua, Paul Mutuku & Jonathan Mutiso Mutua brought the application filed on May 12, 2011, under section 76 of LSA & rule 44 of Probate & Administration Rules and sought that the grant of April 4, 2003 be revoked/annulled on grounds outlined in section 76 LSA as outlined above.
10. The applicant *vide* supporting affidavit of Aron Wambua Mutua deposed that he is one of the sons/children of the deceased herein, Moses Mutua Mwanzilu who died on February 6, 1995 and the grant was issued to Johnson Mbama Mutua & Lesa Kalekye Mutua on April 9, 2003 and was confirmed on May 26, 2008.
11. The applicant that the grant was issued/granted contrary to grounds outlined under section 76 LSA on the ground that on August 14, 1990 the deceased sold to the objector Jonathan Maingi Kyomboyo the whole of Katelembu Athiani Muputi Farmers' Cooperative Society Ltd and in particular 597 *vide* an Agreement annexed to AWM-1 and translation thereof.
12. The applicant reiterated similar facts deposed as the objector's supporting affidavit outlined hereinabove.

Replying Affidavit

13. The petitioner, Johnstone Mbama Mutua deposed in opposition to the application as follows;
 - a. The proceedings dealt with the estate of the deceased herein and the beneficiaries of the deceased's estate were listed/named; the house of Lesa Kalekye Mutua & Esther Ngii Mutua and their children.
 - b. That during filing of the petition, obtaining the grant and confirmation of grant proceedings no one raised any form of objection.



- c. It is amazing that thereafter, Paul Mutuku Mutua and Aron Wambua Mutua are purported objector/applicants.
- d. The allegations of fraud and other issues raised are unfounded and the applicants are being used by Jonathan Maingi Kyomboyo.
- e. The estate has already been distributed and the applicant ought to file suit to pursue any form of interest he has in any of the properties forming or previously forming part of the deceased's estate.

Court Proceedings

- 14. This court took over this matter on October 27, 2021, where parties represented by their respective advocates on record informed the court that there were 2 applications for revocation of grant for hearing and shall be heard together. The applications for revocation filed on January 26, 2009 & May 12, 2011 respectively. Secondly, parties agreed that the matter starts *de novo*. The parties through advocates were to exchange and file witness statements and list of documents.

Hearing

- 15. On February 17, 2022, PW1 Jonathan Maingi Kyomboyo relied on pleadings filed comprised both applications for revocation of grant and stated that he bought land parcel from the deceased as shown by the sale agreement of August 14, 1990 that is Katelembo Athiani Maputi Farmers Cooperative Society plot 597. He later obtained a passbook and transfer of shares of September 1, 1993 and the share was with the public trustee Athi River/Athi RiverBlock1/1607.
- 16. He was a teacher at Kyumbi primary school and he moved to the rural home in 2001, he retired in 2003, he was not aware or involved in the proceedings herein filed in 2002.
- 17. The dispute was before registrar of cooperatives and the order was issued that the land was to be transferred to him/his name. The 1st petitioner colluded with the board of Katelembu and sold the said property to a 3rd party, Blue Merchant. The objector's advocate wrote to Katelembu Athiani Maputi Farmer's Cooperative Society and indicated that the parcel of land belonged to him.
- 18. In cross-examination by respondent/petitioner's counsel, Ms Kwamboka, the objector/applicant reiterated that they had proceedings over the same matter with Lesa Kalekye wife of the deceased and Isaac Mwanzilu brother of the deceased. He also had a case with Johnstone Mutua son of the deceased and revocation of grant against Johnstone Mutua & Paul Mutua.
- 19. The objector/plaintiff reiterated that the transfer of the subject parcel was by the widow and brother of the deceased in 2006 although the deceased died in 1995. He paid Kshs 10,000/- to Katelembu Athiani Ranching & Farming Society for the transfer and the deceased did not sign as the transfer was after the deceased's demise.
- 20. The objector averred that he paid Kshs 4,000/- then to the deceased as he wanted to pay school fees which he obtained from the Sacco and the register was opened on February 24, 1997 at Athi River of Katelembo Athiani Muputi Farming & Ranching Co-op Society.
- 21. He stated that the deceased signed documents for him the letters of 1993 and transfer form of 2006 which he produced and stated he was not aware or informed of the confirmation of grant proceedings nor the subsequent sale of the said parcel to another party.



22. On July 18, 2022, PW2 Paul Mutuku Mutua, son of the deceased, one of the administrators of the deceased's estate relied on his statement annexed to the summons for revocation of grant, in which he deposed that their late father sold plot number 597 & share number 2338 at Katelembu Athiani Muputi Coop Society to Jonathan Maingi Kyomboyo.
23. In cross examination, he admitted that he was not present when the agreement for sale was signed between his late father and the objector/applicant, but he saw the said agreement at their home between his father and the objector.
24. PW3 Aaron Wambua Mutua, also one of the deceased's sons, relied on his statement filed on November 23, 2021, where he deposed that the deceased, their father sold the objector/applicant land and there was/is an agreement.
25. In cross examination, he confirmed that he came to court and consented to confirmation of grant but did not understand at the time. He did not know that the applicant bought land from their father until he told them so.
26. On October 5, 2022, the petitioner, Johnstone Mbanu Mutua testified that his father had 2 wives and 7 children and he was his eldest son and one of the administrators of the estate. He relied on the 2 affidavits of October 19, 2009 & October 10, 2011 as evidence and the 2 witness statements filed too.
27. In cross examination by objector/applicant's counsel, Mr Mutinda, the petitioner confirmed that the deceased had/owned share 2038 at Katelembu but he did not agree that his father sold the land to the objector/applicant. He was not aware of the sale and he was not informed or shown any agreement. He alluded to the fact that the agreement referred to was/is forged. He reiterated that he had documents on how his father decided the land would be distributed. He informed the court, that the matter was heard at the cooperative tribunal and later a case was against his late mother by the objector/applicant.
28. In re-examination, the petitioner reiterated that the tribunal decision was overturned on appeal *vide* annexed document marked 'JMM6'. During the summons for confirmation of grant proceedings, the beneficiaries signed consents and everyone was involved.

Written Submissions

Objector/applicant

29. It is submitted that the only issue before this court for determination is whether the deceased sold to the objector plot No LR Athi-River/Athi-River Block 1/1607 and the same should be transferred to him, if so the grant of letters of administration issued to his estate should be revoked.
30. That the letter dated October 25, 2008 from the society confirms that the objector is the owner of plot No 597 measuring 2.04 acres. The evidence adduced by the objector and his witnesses point to the undisputed fact that the objector herein bought from the deceased plot No 597 and the said property was not available to the estate and should have been marked as a liability to the estate.
31. Counsel points us to section 76 of the [Law of Succession Act](#) cap 160 Laws of Kenya and the cases of [re Estate of the late Epharus Nyambura Nduati \(deceased\)](#) (2021) eKLR and [re Estate of Moses Wachira Kimotho \(deceased\)](#) succession cause 122 of 2002 [2009] eKLR which are hereby noted. He prayed that the court finds the summons for revocation and/or annulment be allowed.

Petitioner's Submissions

Jurisdiction of the court



32. It is submitted that the objector's claim a purchaser's interest is inviting the court to make a finding based on an agreement for sale which is not within the purview of this court. He relied on the case of *Owners of Motor Vessel Lilian S v Caltex Oil (Kenya) Ltd* [1989] KLR 1 and section 47 of the *Law of Succession Act* to buttress his argument.
33. It is further submitted that the objector herein has not met the threshold to warrant revocation of a confirmed grant. The objector is not a beneficiary of the estate of the deceased but rather claims a purchaser's interest that can only be determined by the Environment and Land Court and it is only proper that the confirmed grant as well as the schedule of distribution issued on May 26, 2008 be upheld.
34. The respondent cited the binding precedent in the case of *Republic v Karisa Chengo & 2 others* [2017] eKLR where the Supreme Court outlined the jurisdiction of the High Court & Environment & Land Court as espoused by article 165(3) & 162 (2) & (3) *CoK* 2010 & section 13 of the *Land Act* and with regard to these courts stated as follows;

(52) The 3 are different and autonomous courts and exercise different and distinct jurisdictions. As article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should by the same token, be inferred that the ELC & ELRC too cannot hear matters reserved to the jurisdiction of the High Court.

Determination

35. The court considered the pleadings, oral evidence and submissions by parties' and the issue for determination is whether the objector is entitled to plot No 597 and/or whether it forms part of the estate of the deceased.

Jurisdiction

22. This court's jurisdiction on the matter is derived from the preamble of the *Law of Succession Act* as follows;

An Act of Parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons; and for purposes connected therewith and incidental thereto.....

36. The mandate of the court in probate & succession matters is to facilitate administration and distribution of the deceased's estate to the beneficiaries of the deceased's estate.
37. As outlined above, the family of the deceased filed petition dated March 23, 2002 and amongst the assets that comprise of the deceased's estate was/is plot No 597- Katelembo/Share No 2338 Katelembo the subject of the instant application for revocation of grant.
38. The confirmed grant of May 26, 2008, indicates that the subject suit property plot 597 Katelembo Kathiani Muputi Farmers Coop Society Farmers Coop Ltd was allocated to the 1st house of the deceased.
39. In 2009, the objector/applicant lodged summons for revocation of grant claiming proprietorship of the said property as he claimed that he bought the same from the deceased during his lifetime and thus a creditor to the deceased's estate.



40. Since the subject suit property was at the time of deceased's demise in the deceased's name(s), the dispute falls within the jurisdiction of this court to administer and distribute the deceased's estate to the beneficiaries of his estate.
41. The dispute oscillates on the subject suit property plot 597 Katelembo Kathiani Muputi with competing legal interests; on the one hand a beneficiary interest transmitted from the deceased to his family, beneficiaries under *Law of Succession* and at the same time a proprietary interest claim by the objector/applicant, that he bought the same land from the deceased during his lifetime, and the parcel of land was not available for distribution as it was sold.
42. The jurisdiction of the Environment & Land Court is clearly outlined by article 162 of *CoK* 2010 and section 13 *Land Act*, the issues of sale, use, transfer, occupation of land and matters related thereto are squarely within the purview and jurisdiction of the ELC Court.
43. However, at this stage since the matter originated from the administration and distribution of the deceased's estate to beneficiaries, the question whether the said parcel of land plot 597 Katelembo Kathiani Muputi Farmers Coop Society Farmers Coop Ltd was available or not for distribution to the beneficiaries of the estate of the deceased in light of the objector/applicant's claim as creditor to the estate of the deceased and the subsequent sale of the same property to a 3rd party as it emerged from the proceedings is relevant and rightfully before the court.
44. In the case of *Johnson Muinde Ngunza v Michael Gitau Kiarie & 12 others* [2017] eKLR the court stated that;

“The *Law of Succession Act* recognizes the purchaser's rights and in support of these submissions the said (sic) the law of succession defines a “purchaser” purchaser according to the Act means a purchaser for money or money worth.”
45. From the above facts and law the matter is rightfully before this court with competent jurisdiction as regards the estate of the deceased and revocation of grant application while the sale of land in question should be determined if not agreed by ELC Court.

Purchase/sale Of Deceased's Property

46. The objector/applicant presented as evidence the following documents to fortify his claim. These are;
 - a. Letter dated August 25, 2008 from Katelembo Anthiani Farming & Cop Society – confirming membership number 2338 belongs to Jonathan Maingi Kyomboyo.
 - a. Letter dated June 19, 2006 from Katelembo Anthiani Farming & Cop Society – confirming Jonathan Maingi Kyomboyo is registered proprietor of 2 shares of Ksh 500/- each fully paid to the Society signed by chairman, secretary & treasurer of the society.
 - b. Letter dated September 1, 1993 from Moses Mutua Mwanzilu to the chairman of Katelembo Athiani & Muputi on transfer of share number 2238 & plot 597 which partly reads;

We Moses Mutua Mwanzilu ID xxxx & Isaac Makau Mwanzilu ID xxxx request you to transfer share No 2338/Plot 597 to Jonathan Maingi Kyomboyo. We have sold the plot jointly...’ signed by witnesses and assistant chief Mbee sub location Mr Zakeas M. Nziu and stamped.



- c. Copy of membership card number 2236 Jonathan Maingi Kyomboyo-2 shares.
 - d. Agreement of August 14, 1990 written in Kamba on the sale of land with names and ID numbers of buyer and sellers and again signed by assistant chief Mr Zakeas M. Nziu.
 - e. The translation to english the said agreement listed above.
 - f. Letter dated September 2, 2008 from District lands Office to DCIO Machakos indicating that Katelembo Athiani Muvuti plot 597 was indicated as belonging to Mutua Mwanzilu as per the attached list of members of Katelembu Group and
 - g. Copy of green card Athi River/Athi River parcel number 1607 on June 6, 2008 the administrators Johnstone Mbama Mutua, Paul Mutuku Muyua (administrators) Johnstone Mbama Mutua, Lesa Kalekye Mutua (administrators) and title deed was issued and next is another buyer Ezra Blue Merchandise Ltd & August 4, 2008 title deed was issued.
 - h. Transfer form of June 19, 2006 from Katelembu Athiani Muputi Farming & Ranching Cooperative Society- Mutua Mwanzilu member No 2338 of plot 597 2.04 acres hereby transfers 2.04 acres to Jonathan Maingi Kyomboyo signed by chairman, secretary & treasurer and buyer but not the seller, the deceased and/or administrators.
 - i. Proceedings before/by the district co-operative auditor of August 21, 1998 and the award in favor of objector/applicant.
47. All these documents indicate that the objector/applicant had/has a legal claim of proprietorship over the land parcel plot 597 a matter that ought to have been canvassed first to determine whether the property was/is available for distribution under the confirmation of grant proceedings or would be hived off pending hearing and determination of the legal interest of the land, if a beneficiary interest to be distributed to the beneficiaries; if a proprietary interest the land is allocated to the objector/applicant during the summons for confirmation proceedings.
48. The objector took issue with the proposed distribution of the estate of the deceased specifically with plot No 597 that was alleged to have been sold by the deceased to him before his demise. The objector/applicant presented evidence of the deceased's sons PW2 & PW3 respectively who stated they saw the agreement that their father sold the parcel to the objector/applicant. Their testimonies were subjected to cross examination by the petitioner's counsel.
49. The petitioner informed the court through oral evidence that the cooperative tribunal proceedings and award were set aside. This fact was not confirmed as the case number, forum proceedings and judgment were not filed in the court file but only referred to. The petitioner alleged the agreement of September 1, 1993 was forged but the same was not subjected to forensic investigations. Sections 107-112 [Evidence Act](#) mandates that he who alleges must prove.
50. The court notes with concern that the deceased died in 1995 and the succession proceedings commenced in 2002 and the grant was confirmed in 2008 and such material disclosures were not made before the court to be considered on merit one way or the other before distribution of the estate. Therefore, to date almost 21 years the distribution of the estate remains stillborn with regard to the subject property plot 597 in spite of subsequent distribution and sale.



51. In the case of *In Re Estate of Moses Wachira Kimotho (Deceased)* [2009] eKLR, Hon A.Makhandia JA (CA) observed;

“Section 76(c) of the Law of Succession Act and rule 44(1) of the Probate and Administration rules allow any person interested in the estate of the deceased to have a grant revoked or annulled. The grounds upon which a grant can be annulled are set out in section 76 thereof. It is also important to note that a grant of representation, whether or not confirmed may at any time be revoked..... Do the applicants have an interest in the estate of the deceased? Of course, they do. They are purchasers for value of a portion of the deceased estate comprised in the grant. There is uncontested and unchallenged evidence that before the deceased passed on he had sold various portions of land reference numbers Nyeri/Mweiga/943 and Nyeri/Mweiga/1186 to the applicants respectively. He had been fully paid the purchase price and had indeed put each one of the applicants in possession of their respective portions that they had purchased. The applicants have to date been in continuous and uninterrupted occupation of those portions and have extensively developed them. The respondent, who is the wife of the deceased was all along aware of these transactions involving her deceased husband and the applicants. The deceased pursuant to the sale agreements and as required by law made an application to Kieni West Divisional Land Control Board for the necessary consents to the subdivision of the said parcels of land and subsequent transfer to the applicants of the portions they had purchased. However, he passed on just before he could attend the board meeting. Yet the respondent knowing very well the interest of the applicants in the suit premises when she petitioned for the grant of letters of administration and later had the same confirmed completely ignored that interest of the applicants in the suit premises. Indeed, in her application for the confirmation of the grant she proposed that land parcel number Nyeri/Mweiga/ 1186 some portions whereof had been purchased by the 1st and 3rd applicants be inherited by her sons, James Ngatia Wachira and Elijah Macharia, absolutely. As for Nyeri/Mweiga/943, a portion whereof had been purchased by the 2nd applicant, she proposed that the same goes to yet her other son, David Kimotho Wachira absolutely.

52. If the evidence /claim contained in both applications for revocation of grant was presented and/or considered at the time before confirmation of grant that the deceased sold any portion of land or land parcel then the contested property/portion ought to have been hived off as it was/is not available for distribution at the time until the competing claims were heard and determined. The court record confirms material non-disclosure of the claim before and during the confirmation of grant proceedings and issuance of certificate of confirmation of grant in distribution of the deceased’s estate.
53. According to the record, there was an agreement between the applicant and the deceased for the sale of the suit land. Although, challenges to the said agreement and objection to the jurisdiction of this court to try such claims have been raised, one thing is clear- and this is alluded to by the petitioners- that there was/is an agreement between the deceased and the objector/applicant albeit unproved claims of forgery. Accordingly, at the very least, the applicant maybe a creditor of the deceased’s estate particularly the parcel in question. Thus, the objector/applicant was/is an interested party for purposes of section 76 of the *Law of Succession Act*. Therefore, he is within his right to apply for revocation of grant as he has done.



54. The power to revoke or uphold a grant is a discretionary one. This principle was pronounced in *Albert Imbuga Kisigwa v Recho Kawai 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.”

55. Of relevance in these proceedings is that such material facts were never disclosed to this court during confirmation of the grant so as to enable the court make an informed decision on distribution of the estate. Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith, from parties who take out or are subject of the court proceedings.

Disposition

1. The objector/applicant is an interested party and has *locus standi* to apply for revocation of grant under section 76 *Law of Succession Act*.
2. From the evidence on record the subject parcel of land I have considered the facts of this case, and I find that the applicant has satisfied the court that:
 - a. 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, the ownership/transmission/transfer of member No 2338 of plot 597 2.04 acres Katelembu Athiani Muputi Farming & Ranching Cooperative Society- Mutua Mwanzilu.
3. The grant of April 9, 2003 confirmed on May 26, 2008 is hereby revoked.
4. The registrar of lands is hereby directed to cancel the transfer of land parcel plot 597 / parcel number 1607 and to revert back in the names of the deceased Mutua Mwanzilu and to be preserved under section 45 *Law of Succession Act* until determination of sale & ownership of land parcel plot 597.
5. The applicant/objector and beneficiaries may pursue fresh/new grant of letters of administration hiving off plot 597 pursue partial confirmation of grant and/or,
6. The applicant/objector and beneficiaries and 3rd party may pursue proceedings in ELC on the subject of sale of the land parcel plot 597 by deceased to objector/applicant or sale by administrators of the plot 597 to the 3rd party.

**DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS ON 17th APRIL, 2023.
(VIRTUAL /PHYSICAL CONFERENCE).**

M.W. MUIGAI

JUDGE

IN THE PRESENCE OF:

Mr. Mukula H/B Musyoka Kimeu - For the Objector

Mr. B. M. Nzei - For the Petitioners



Patrick - Court Assistant

