



REPUBLIC OF KENYA



**KENYA LAW**  
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**Karuku v Karitu (Civil Appeal E021 of 2021)  
[2023] KEHC 3403 (KLR) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3403 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CIVIL APPEAL E021 OF 2021**

**LW GITARI, J**

**APRIL 20, 2023**

**BETWEEN**

**MARGARET CIEBIT KARUKU ..... APPELLANT**

**AND**

**GLADYS CIARUWA KARITU ..... RESPONDENT**

**JUDGMENT**

1. This is an appeal against the ruling delivered on 25<sup>th</sup> August, 2021 in Chuka CM’s Court Succession Cause No. 231 of 2018. The ruling allowed the summons for revocation of grant dated 27<sup>th</sup> July, 2020 thereby revoking the grant that had been issued to the Appellant on 27<sup>th</sup> May, 2019.
2. As per the Memorandum of Appeal dated 15<sup>th</sup> September, 2021, the Appellant relies on the following grounds in support of this appeal:
  - i) That the learned trial magistrate erred in law and in fact when he revoked the grant issued to the Appellant whereas the Respondent did prove any of the grounds to have the grant revoked as per the provisions of Section 76 of the *Law of Succession Act*.
  - ii) That the learned trial magistrate erred in law and in fact when he revoked the grant issued to the Appellant herein whereas the Respondent did not prove at all that she was a wife of the deceased Mung’atia Mbung’u.
  - iii) That the learned trial magistrate erred in both law and in fact by failing to find that the Respondent was the 2<sup>nd</sup> wife of Karitu Mbungu who was only settled on a small portion of land belonging to the deceased.
  - iv) That the learned trial magistrate erred in both law and in fact by disregarding the Appellant’s evidence and submissions and going ahead to revoke the grant contrary to the provisions of the *Law of Succession Act*.



- v) That the learned trial magistrate erred in law and in fact by failing to find that the portion of land measuring 1 acre out of land parcel no. Karingani/Mugirirwa/300 given to the Respondent was only given to her because she occupies it not that she was in any way entitled to inherit the estate of the deceased either as a beneficiary or a dependant.
3. The appellant thus prays for this appeal to be allowed in its entirety.
  4. Despite due service of the appeal, the Respondent did not file their reply. As such, the appeal remains unopposed.
  5. Being a first appeal, the duty of this court as was stated in the case of *Selle v Associated Motor Boat Co.* [1968] EA 123 is to re-evaluate and re-assess the evidence adduced before the trial court keeping in mind that the trial court saw and heard the parties and giving allowance for that and to reach an independent conclusion as to whether to uphold the judgment.
  6. The succession cause filed in Chuka CM's Succession Cause No. 231 of 2018 relates to the estate of the late Mung'atia Mbungu alias Mungatia Muriungi (deceased) who died on 17<sup>th</sup> September, 1994.
  7. The Respondent herein moved the trial court vide the Summons for Revocation of Grant dated 27<sup>th</sup> July, 2020 seeking the revocation of the grant of letters of administration issued to the Appellant on 27<sup>th</sup> May, 2019. It was the Respondent's case that she was the second wife of the deceased pursuant to Meru Customary Law and that she conceived two (2) issues with the deceased namely Gitari Mungatia Mbungu and Ciangai Mungatia. Further that the Appellant filed the succession cause without informing her and other beneficiaries, some of whom were residing on the deceased's property. That she only came to learn later that she was allocated one (1) acre while the Appellant had allocated herself seven (7) acres to the detriment of other beneficiaries.
  8. The Appellant opposed the said application for revocation of grant stating that the deceased only had one wife called Tabitha Ciakaru, together with whom he had three (3) children including herself, the late Jane Ciambuba and the late Joyce Cianjoka. Further that the Respondent herein was the 2<sup>nd</sup> wife to the late Karitu Mbungu, who was the brother to the deceased herein and her co-wife was Kariancugu Karitu. The Appellant thus maintains that the Respondent was the sister-in-law to the deceased herein and not his wife.
  9. The Respondent did acknowledge that she was married to the late Karitu Mbungu and stated that the deceased herein inherited her after Karitu Mbungu died.

### **Issue for determination**

10. I have considered the grounds of appeal as well as the Appellant's submissions. I have also re-evaluated adduced before the lower court. The main issue that comes up for determination is whether the Respondent demonstrated that the grant issued to the Appellant should be revoked.

### **Analysis**

#### **Whether the Respondent demonstrated that the grant issued to the Appellant should be revoked**

11. Section 76 of the *Law of Succession Act* provides: -

“76. 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
  - (e) that the grant has become useless and inoperative through subsequent circumstances.”
12. It is not in dispute that the only property forming the estate of the deceased herein is land parcel no. Karingani/Mugirirwa/300. It is however in dispute on who are the beneficiaries of the estate.
  13. As per the chief’s letter dated 20<sup>th</sup> September, 2018, the Appellant is indicated to be the only beneficiary of the subject estate. It was however her testimony that the deceased had a wife called Tabitha Ciakaru with whom they had three children. The lower court faulted the chief for not disclosing this information in his introductory letter. In my view, this finding was correct. All beneficiaries should have been disclosed even if they are deceased.
  14. In this appeal, the Appellant takes issue with the finding of the lower court that the Respondent was inherited by the deceased as a wife. It was the evidence of Johnson Njagi (PW1), a nephew of the deceased, that he is an immediate neighbour of the deceased herein. That he used to see the deceased living together as husband and wife.
  15. From the evidence of the Respondent, the deceased inherited her following the death of her husband and got a child called Gitari. She denied that she was married to one Mwaniki. She produced a photograph stating that the people appearing include herself, the deceased, and Gitari holding a title deed that the deceased had been given.
  16. The Appellant on the other hand denies that his deceased father inherited the Respondent. She claims that she only allocated one (1) acre of the estate to the Respondent as a token. She further did not deny that Gitari was the son of his late father.
  17. Having considered the evidence on record and the submissions by the parties, the lower court found that the Appellant had failed to make full disclosure of material facts and information. I agree with this finding as the Appellant ought to have disclosed that the deceased had other beneficiaries other than herself. In addition, I agree that the photographic evidence produced as well as the testimonies of PW1 and PW2 in the lower court sufficiently proves that the Respondent did cohabit with the deceased on the subject parcel of land.



## **Conclusion**

18. The upshot of the foregoing in my view is that the ruling delivered on 25<sup>th</sup> August, 2021 in Chuka CM's Court Succession Cause No. 231 of 2018 was sound in law. I find no reasons to interfere with the finding of the learned trial magistrate.

In the circumstances I find that this appeal is without merits.

I order that:-

1. This appeal is dismissed
2. The appeal was not opposed. I therefore make no orders as to costs.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 20<sup>TH</sup> DAY OF APRIL 2023.**

**L.W. GITARI**

**JUDGE**

