



**In re Estate of Magondu Mureke (Deceased) (Succession Cause  
532 of 2013) [2023] KEHC 17565 (KLR) (16 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17565 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
SUCCESSION CAUSE 532 OF 2013  
RM MWONGO, J  
MAY 16, 2023**

**IN THE MATTER OF THE ESTATE OF MAGONDU MUREKE (DECEASED)**

**BETWEEN**

**PHYLIS WAMBURA DUNCAN ..... 1<sup>ST</sup> APPLICANT**

**MARGARET WAWIRA TITAS ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JAMES NJIRU MAGONDU ..... 1<sup>ST</sup> RESPONDENT**

**PATRICK GICHOBI MAGONDU ..... 2<sup>ND</sup> RESPONDENT**

**JOHNSON MUCHIRA MAGONDU ..... 3<sup>RD</sup> RESPONDENT**

**JULIUS MURIITHI MAGONDU ..... 4<sup>TH</sup> RESPONDENT**

**PATRICK MUTHIKE KIONGO ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The deceased, Magondu Mureke, died on 1<sup>st</sup> January, 2010. The death certificate indicates his age at the time of death as 88 years. According to the 1<sup>st</sup> applicant, he had been seriously sick for about three weeks before he died. His death certificate states the cause of death as “sudden death”.
2. Patrick Muthike Kiongo, the 5<sup>th</sup> Respondent, applied for probate of the Will of the deceased on 2<sup>nd</sup> May, 2013 in this Succession Cause No 532 of 2013. He annexed the Will of the deceased, in which he is named as the executor, as a friend of the deceased. The Will is dated 11<sup>th</sup> January, 2008. It is indicated, in hand writing, as drawn by Magondu Mureke and his signature is indicated by his left thumb print. It is signed by two witnesses. Only the deceased’s sons are identified as beneficiaries in the Will.
3. A grant of Letters of Administration Intestate dated 17<sup>th</sup> February, 2014, and issued on 18<sup>th</sup> February, 2014, was nevertheless given to Patrick Muthike Kiongo, by this court. On 19<sup>th</sup> February, 2015, a



confirmed grant was issued by the court to Patrick Muthike Kiongo. The certificate of confirmation is dated 24<sup>th</sup> February, 2015.

4. The distribution in the confirmed grant follows that contained in the Will, except that the Will identifies a plot No Kirinyaga/Gathigirir...bequeathed to Julius Muriithi Magondu.
5. In the meantime, it appears that the deceased's wife, Joyce Wangeci Magondu, had previously also filed Succession Cause No 9 of 2012. On 4<sup>th</sup> July 2014, she was issued with a grant of letters of administration intestate. She died on 28/7/2014.
6. The applicants filed this Summons for revocation of grant dated 19<sup>th</sup> August, 2015, pursuant to Section 76 of Succession Act Cap 160 of the Laws of Kenya and Rules 44 of the Probate and Administration Rules. The application was heard on 20/9/2015, and the following orders were given:

“The application dated 19/8/15 is certified urgent and interim orders inhibiting any registration of Parcel No LR Baragwe/Kariru/459 and Baragwe/ Nyangati/600 and Plot No 46 Kimbimbi are hereby issued pending hearing of the application inter partes...”

7. The Title indicated as No Baragwe/Nyangati/600 was amended in court as a typographical error on 19/11/2018 to read Kabare/ Nyangati/600
8. In the application for revocation, the applicants seek the following orders:
  1. Spent.
  2. Spent
  3. That the Honourable court be pleased to issue an inhibition against any registration of land parcel number L.R Baragwe/Kariru/459, L.R. Kabare/Nyangati/600 and Plot No. 46 Kimbimbi pending the hearing and determination of prayers 4 and 5 here below.
  4. That the Honourable court be pleased to Revoke and/or Annul the certificate of confirmation of grant issued on 24<sup>th</sup> February, 2015 on grounds that it was obtained fraudulently.
9. The application is premised on the following grounds:
  - i. That the respondents herein obtained Certificate of confirmation of grant on 24<sup>th</sup> February, 2015 fraudulently, and by concealment of material facts.
  - ii. That the Applicants are daughters of the deceased and they were not catered for during distribution of the estate.
  - iii. That the mother (deceased) to both the applicants and the respondents had filed Kerugoya Succession Cause No. 9 of 2012 for the estate of her late husband which matter is still pending in court.
  - iv. That before the filing of the above mentioned matter all the beneficiaries participated in signing the required form for the petition for letters of administration.
  - v. That it was after the Kerugoya Succession Cause No. 9 of 2012 was filed that the respondents without the knowledge of the applicants petitioned for letters of administration and obtained a certificate of confirmation of grant in this matter.
  - vi. That as the beneficiaries of the estate of the deceased the applicants ought to have been given a share of his estate.



10. In addition to the grounds, the applicants have deponed to a 21 paragraph supporting affidavit, of which the following are the major averments:
  1. That we are the daughters of the late Magondu Mareke who died on 1st January, 2010.
  2. That the deceased left the following children;
    - a. Phylis Wambura Duncan
    - b. Janet Muthoni Gichobi
    - c. Julius Muriithi Magondu
    - d. Jane Wamarua Mwangi
    - e. Margaret Wawira Titus
    - f. Faith Wanjira Muthike
    - g. Johnson Muchira Magondu
    - h. Patrick Gicobi Magondu
    - i. James Njiru Magondu
  3. That the deceased had the following properties;
    - i. Baragwe/Kariru/459 measuring approximately 5.3 acres.
    - ii. Kabare/Nyangati/600 measuring approximately 15 acres.
    - iii. Plot No. 46 Kimbimbi.
  4. That after the death of our father, our late mother filed Kerugoya Succession Cause 76 of 2012 currently Kerugoya Succession Cause No. 9 of 2012 and letters of Administration were issued on 4th July, 2014.
  5. That during the pendency of the succession matter our mother passed on and we made an application for letters of administration Ad Litem vide Kerugoya Succession Cause No. 80 of 2015 and the letters were issued to us on 12<sup>th</sup> May 2015.
  6. That our mother Joyce Wangeci Magondu died on 28<sup>th</sup> July, 2014 aged 92 years.
  7. That before the death of our father he had communicated his wish to our late mother of how his estate would be distributed in his absence.
  8. That without the knowledge of our mother and even our knowledge the respondent's went ahead and filed Kerugoya Succession Cause No. 532 of 2013 and a certificate of confirmation of grant was issued on 24<sup>th</sup> February, 2015.
  9. That when Kerugoya Succession Cause No. 9 of 2012 was filed all the beneficiaries were mentioned in the letter of the chief and they all signed the consent to the said letters being issued to our late mother.
  10. That our fathers wish was that his sons would share equally Land Parcel No. Kabare/Nyangati/600, the daughters to share Baragwe/Kariru/459 And Plot No. 46 Kimbimbi was to be divided into two portions, one for the sons and the other portion for the daughters.



11. That as a family we appointed James Njiru Magondu to be following up on Kerugoya Succession Cause No. 9 of 2012 since he was the one who was also entrusted to be in custody of the title documents to the properties above mentioned.
12. That to our surprise we later came to learnt that our brother through the 5th respondent had filed Kerugoya Succession Cause No. 532 of 2013 and a certificate of confirmation of grant was issued.
13. That we decided to follow up on our own and discovered that the respondents had gone to court and fraudulently obtained the grant on allegations that our late father had written a will.
14. That our father never did a will in his lifetime and the will dated 11th January, 2008 is a forgery for the following reasons;
  - a. That one Patrick Muthike Kiongo never disclosed to our mother that a will had been written by her late husband before Kerugoya succession cause No.9 of 2012 could be filed.
  - b. That our late father did not have the capacity to write a will due to his old age.
  - c. That our late father was always in and out of hospital.
  - d. That if indeed if our late father left a will the respondents could not have conceded to the filing of the Kerugoya Succession Cause No. 9 of 2012.
15. That Julius Muriithi had already been given 5 acres of land by our father.
11. The Respondents deposed to an 11 paragraphs Replying Affidavit of which the following are the major averments.
  1. It is deposed by the 5<sup>th</sup> Respondent for himself and the other 4 Respondents.
  2. That he was appointed as the executor of the estate of the deceased herein and I did carry out that duty as provided for by law.
  3. That he wishes to state that the Confirmation of Grant was not done fraudulently and or by concealment of material facts.
  4. That he has been advised by my advocate on record which advice I verily believe to be true that the Court did confirm that the will and the beneficiaries to the will were present hence proceeded to confirm the grant.
  5. That the orders sought by the applicants are not available to them for the reason that the application for Dependants was never made before confirmation of the grant.
  6. That he has perused the documents in Succession Cause No. 76 of 2012 and noted with a lot of concern that the signatures appearing in forms P&A 11, P&A 57 and the consent are not his; that it is a straight forgery hence it cannot be said that he was aware of the above succession cause, having noted that he called the sons of the deceased herein to confirm if they consented to the filing of the above cause and they were shocked that their signatures were also forgeries.
  7. That he wishes to state that as an executor of the will of the deceased, he did not conceal any facts in Court as demonstrated in Form 9 but listed all the persons that survived the deceased and the cause was gazetted for all and sundry to see.
  8. That he wishes to state that Joyce Wangeci Magondu was also present during the execution of the will by the deceased.



12. The application was dispensed through an oral hearing before Gitari, J. The testimony that emerged was as follows.
13. PW1 Phyllis Wambura Duncan, is the first born daughter of the deceased with Joyce Wangeci Magondu. She testified that her siblings are: Margaret Wawira, James Njiru Magondu, Johnson, Patrick and Julius. She said she did not know Muthike Kiongo. She confirmed that the deceased owned two parcels of land Baragwe/ Kabiru/ 459 and Kabare /Nyangati/ 600.
14. She testified that her mother filed a succession cause without their knowledge, and when she died, she, Phyllis and her sister Margaret Wanjira substituted her. They had all gone to the Chief, who gave them a letter. However, the brothers filed a succession matter in court without their knowledge, and obtained title deeds. No one had spoken of a will when they went to the chief. She realized
15. Further, she testified that they did not give the brothers the responsibility of filing succession; that the deceased was never in a position to write a will as he was very old; that her father would not have appointed Muthike as administrator; that
16. In her view the land at Kariru should be shared between the five daughters; the other land should be shared between the sons; whilst the Kimbimbi plot should be shared equally by all beneficiaries.
17. In cross examination, Phyllis said that her mother is the one who gave them land; including that Kimbimbi was given to the sons and the Baragwi land to the daughters. She admitted that her mother did not have land in her name; that the Chief at Kimbimbi never produced the will to them; and that all nine family members signed at the Chief's; that she didn't know why there was a consent in Succ Cause No 76/2012; that her mother was never present at the alleged signing of the will; that she is married at Kabiriku in Karoti which is not very far from Kimbimbi; that she doesn't know where she was on 11-1-2008, when the Will was written; that her father was sick and paralysed; that Njiru was the one who was meant to file succession; and that she had never disagreed with her father.
18. In re-examination by counsel she stated that she did not know who the two witnesses to the Will were.
19. DW 1 Patrick Muthike Kiongo, a contractor, testified as executor of the estate. He said he was a friend of the deceased, and knew Margaret Wawira Titus, the deceased's wife, and their children in particular James Njeru, Patrick Gichobi, Johnson Muchira and Julius Muriuki. He stated that he was sent for by the deceased who was his friend and they went to the same school.
20. He further testified that the deceased had written a will and wanted him to read it and asked if he would be the administrator. He agreed. Also present in the room were two others, Danson Muchira and Simon Nguru, the witnesses to the Will. He asserted that the deceased died in 2011, and that he was not aware that the deceased had been sick before he died. He prayed that the court should dismiss the application.
21. In cross examination, he stated that he knew the deceased's family very well. He reconfirmed that the deceased died in 2011, not 2010, and that he was the one who filed the succession matter. He did not see the handwritten will, but recollected that it had been thumb printed when they were all there. The witnesses, he said, had thumb printed. The witnesses were still alive, and could be availed to confirm.

### **Applicants' submissions**

22. In their submissions the applicants argue that the alleged will is a forgery orchestrated by the joint efforts of the respondent to deny the daughters of the deceased an inheritance.



23. The proceedings of Succession No. 9 of 2012 were properly done and in accordance to the law. The fifth respondent cannot allege forgery since the signatures in the current session are equally different from the application forms as well as the replying affidavit. The claim cannot stand. The only outstanding feature is that the will was a forgery and an after-thought meant to deny the deceased a portion in their fathers' estate. The executor never made any effort to inform the wife of the deceased of the will. This is a false allegation.
24. The alleged confirmation offends the provisions of the law. Section 51 (2) (g) of the [law of succession act](#) provide that every application shall include information as to: In cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased and of the children of any child of his or hers then deceased.
25. It is the Applicants case that the will is a forgery and therefore invalid. The deceased died intestate without a will; that it is a requirement in law that all the beneficiaries be listed in the Confirmation of the Grant. The Respondents deliberately left out the daughters of the deceased.
26. Section 11 (c) of the [law of Succession Act](#) provides the will be attested by two or more competent witness. The alleged witnesses were never called to testify. The law contemplated that where there is a contention on the will the witnesses are supposed to help the court confirm that the will was indeed executed by the testator. This never happened a fact that confirms that the will was a forgery.
27. Looking at the chiefs' letter the daughters of the deceased are listed as defendants as per the provisions of Section 29 (a) [law of succession act](#). They are entitled to an equal share of the estate of the deceased.
28. The applicants relied on Article 27 and Article 159 (e) of constitution of Kenya 2010 and the case of [In The Matter Of Estate Of Elizabeth Wanjiku Munge \(Deceased\)](#) (2015) eKLR at page four that promotes equality and defies discrimination of children of the deceased. The grant was obtained fraudulently for failing to disclose all the children of the deceased by omitting the daughters of the deceased.
29. In addition, that Rule 26 of the [Probate and Administration Rules](#) prescribes that Letters of Administration shall not be granted to any Applicant without notice to every other person entitled in the name degree as or in priority to the applicant.
30. The above provision was not complied with. There was no disclosure of all surviving children of the deceased. There were no written consents from all beneficiaries of deceased's estate. Only sons were listed leaving out the daughters. Material facts were concealed to the court hence disinheriting the daughters. The above anomalies confirm that the respondents did not conform to the legal requirements of obtaining a grant and thereby the process was defective in substance.
31. Finally, the applicant relied on the case of succession cause No. 399 of 2007. [In restate of John Msambayi Katumanga \(Deceased\)](#) (2014) eKLR.

### **Respondents' Submissions**

32. The Respondents submitted that Succession Cause No. 532 Of 2013 was moved by of testate cause. There was a valid will filed in court attested by 2 competent witness as provided by the law.
33. The applicants are relying on the provision of section 29 (a) of the law of succession and the respondents submit that the same is not applicable as the deceased did not die intestate. There was a valid will on records.



34. It is submitted that the witness to the will are not called in as witnesses to this case. The applicants are the one who refused the case to be adjourned so as the witness be awaited yet still no evidence was advanced to reflect that the deceased and the witness never executed the will.
35. The respondent frowned on the applicant's reliance on the case of *In the Matter of Elizabeth Wanjiku Munge (Deceased)* [2015] eKLR wherein the court frowns on discrimination against daughters. The applicants also rely on Article 27 and 60 of the [constitution](#) on the issue of discrimination. These provisions are not applicable herein, in that the deceased died testate while Elizabeth died intestate, the law differs depending on how one dies. Further, that section 5(1) of the [Law of the Succession](#) gives a party power to dispose of his free property if he is of sound mind and not a minor by will. It therefore follows that if one disposes of his property as above he cannot be termed as discriminatory against those who he did not give cause the law allows him to do so hence article 27 and 60 are not applicable here.
36. The respondent submits that the applicant's reliance on the case of [In re Estate of Geofrey Mwaura Ngoima Deceased](#)) [2018]eKLR has no merit as the case is inapplicable.
37. Finally, the respondent submits that the validity of the will must satisfy the provisions of section 11 of the law of succession. The respondent confirms that the will was executed by the testator in the presence of two witnesses that the deceased was capable to dispose of his property as he did. There was no fraud and or coercion, no mistake or inducement to trace the trace the will of the deceased and that deceased was of sound mind and physically healthy.

### Issues for Determination

38. The issues arising for determination in this matter are as follows
- a. Whether the grant issued in this matter was properly obtained or fraudulently obtained
  - b. Whether the Will was valid

### Whether the grant was properly issued

39. The application for revocation is made under Section 76 of the [Law of Succession Act](#), and Rule 44 of the [P&A Rules](#). The grounds for revocation under that section were well elaborated by Musyoka, J. [In re Estate of Agwang Wasiro \(Deceased\)](#)[2020]eKLR 2020 as follows:

“Under Section 76 of the [Act](#), a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining it was attended by glaring difficulties, such as where the same was defective, say because the person who obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant. The second general ground is where the grant is obtained procedurally, but the administrator subsequently runs into difficulties during the process of administration of the estate. Such difficulties include his failure or omission to apply for confirmation of his grant within the period allowed in law, or where he fails to exercise diligence in administration of the estate, such as where he omits to collect or get in an asset, or where he fails to render accounts as and when he is required to do so by the law. The third general ground is where the grant has become inoperative or useless on account of subsequent circumstances, such as where the sole administrator died or loses the soundness of his mind or is adjudged bankrupt.”



40. It was argued by the applicants that the grant issued to the respondents was improperly obtained because it omitted all reference to the deceased's wife and the applicants. The argument is further that that the respondents went ahead to apply for probate in 2013 whilst the applicants had applied for probate of the same estate in 2012 in Succession Cause No 76 of 2012 (currently No 76 of 2012) Kerugoya. The applicants annexed a Grant of Letters of administration intestate issued in that cause on 4<sup>th</sup> July 2014 to the widow Joyce Wangechi Magundu.
41. On the other hand the grant sought to be revoked is that issued to Patrick Muthike Kiongo in this Cause filed in 2013. The Grant was issued on 18<sup>th</sup> February, 2014, and is also indicated as a "Grant of Letters of Administration Intestate" vide Form P&A 41. That grant was subsequently confirmed on 24<sup>th</sup> February, 2015
42. An estate cannot have two grants, one intestate and the other testate, unless a deceased person died leaving a written Will that covered only some of his property, and omitted other property from the Will. Accordingly, in this case, whilst it is necessary to inquire into the validity of both grants that were exhibited, it is particularly critical to inquire into the grant issued to the 5<sup>th</sup> Respondent, as the application for revocation concerns that grant. The 5<sup>th</sup> Respondent admitted in his testimony that he was not related to the deceased, but was a friend who was appointed in the deceased's Will as executor.
43. I have perused the petition filed by the 5<sup>th</sup> Respondent. It was filed using Form 78 which is for grant of probate with a written will annexed. He annexed a Will, which I have also perused and is the subject of further analysis herein.
44. Also attached is Form P&A 3 being an Affidavit in support of Petition for probate with written will annexed. So far so good. This was in compliance with Rule 7 P&A Rules.
45. However, the grant issued to the 5<sup>th</sup> respondent is under Form P&A 41 for Grant of letters of administration intestate. A Will having been attached, the proper grant ought to have been issued under Form 43: Grant of Letters of Administration with Written Will Annexed. To that grant would have been annexed the Will of the deceased which would show that the 5<sup>th</sup> respondent was appointed in the will as the executor thereof. This was a substantial error by the court and the executor who ought to have corrected the situation. That grant is irregular and is voidable. It cannot stand if the Will is deemed valid.
46. This was irregular since, under Section 25, it is mandatory for every grant to be in the appropriate form, that is one of the forms 41 to 45.
47. The 5<sup>th</sup> respondent compounded the irregularity when he decided to seek confirmation of the grant, which had been issued for intestate succession. He filed a Summons for confirmation of grant using the regular Form 108, but in which he added the following:
- "That the grant of probate for letters of administration intestate made to the said applications (sic) in this matter on 17<sup>th</sup> February 2014 be confirmed"
48. The summons was supported by an affidavit in Form 9 which is an "Affidavit in support of summons for confirmation of grant of administration intestate". In this way he was, unwittingly perhaps, acknowledging that the grant held by him was for an estate of a deceased who died intestate; that is without a will.
49. Under Rule 40(1) *PC&A Rules*, the 5<sup>th</sup> Respondent should have applied for confirmation using Form 8 Affidavit in support of summons for confirmation of grant of probate or letters of administration with Will Annexed". By failing to do so and using form 9 instead, he was forced to indicate, identify and



ascertain the shares of all persons beneficially entitled to the estate duly ascertained. This is required in cases of intestacy under the proviso to section 71(2) as follows:

“

“(2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may -

a)..... confirm the grant; or

b).....

c).....

d postpone confirmation of the grant).....

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares”

50. The 5<sup>th</sup> respondent also had to file the consent of the beneficiaries, which he did by annexing the signatures of the deceased’s sons only. The will was not annexed. Thus when the confirmed grant was issued, it was in a format indicating the beneficiaries, the description of property and the shares of heirs as is normal in respect of a confirmed intestate grant.
51. In light of all the errors pointed out above, the grant and confirmed grant wrongly reflect that the deceased’s estate is an intestate estate, that is without a will, yet the executor was not a person appointed by the survivors of the deceased. For all the stated reasons, the grant is clearly defective, and therefore cannot stand.
52. This naturally leads to the question whether the Will of the deceased is valid and acknowledged in the circumstances, given that the grant and confirmed grant relate to an intestate estate.

### **Whether the Deceased’s Will is valid**

53. The evidence that was adduced by the applicants clearly states that the deceased died intestate, and that the will is a forgery. On the other hand, the evidence of the 5<sup>th</sup> respondent is that the deceased wrote a will; that he called the 5<sup>th</sup> respondent to read it and that there were two witnesses present.
54. The applicants questioned the Will produced in probate. In essence, they allege that the deceased did not write a will; that the document produced as the deceased’s will is a forgery; and that the beneficiaries of the deceased ought to have been given a share of the estate.
55. Section 11 of the [Law of Succession Act](#) provides, in detail, for the formalities of the validity of a written will as follows:

“No written will shall be valid unless-

- a. the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
- b. the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;



- c. the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

56. No will can be deemed to be valid unless it is made in compliance with section 11 afore-stated. Accordingly, I have perused the will which is attached to the petition for grant and considered it in light of the law and the testimony adduced as to its validity.

57. DW1, the 5<sup>th</sup> respondent, testified that he was called by the deceased to his home. There, he was given the Will which the deceased had written. The deceased asked him if he would be the administrator, and DW 1 accepted. He read the will. He further testified:

“He was not alone when he gave me the Will. Danson Muchira and Simon Nguru were also present.....He gave me the Will”

58. In cross examination, DW1 stated that the Will had been typed when the deceased called, and he did not see the handwritten will. Further that:

“The deceased had signed-thumb print. The witnesses had thumb printed. We were all there Simon and Danson are still alive. They can come and confirm.”

59. The sole witness did not go into the details of how precisely the execution was done. He did not explain, for example, why the deceased thumb-printed his mark, yet he is indicated as the author of the Will.

60. However, DW1 is clear that the witnesses thumb printed the will. I have perused the original Will and note that the two witnesses have in fact signed the Will and not thumb-printed their marks on it.

61. It is also not clear whether the witnesses actually saw the deceased affix his mark to the Will, and whether they each signed – or thumb marked their signatures - in the presence of the testator. The instrument itself does not help, because there is no indication in it that the testator signed in the presence of the witnesses and they signed in his presence.

62. From the evidence availed, the basic statutory requirements for validity of the Will were not met.

63. In addition, it is indicated on the original Will – in handwriting – that it was drawn by the deceased. This is hand-written over a wite-out patch that obscures the typescript beneath it. On flipping over that page and holding it against the light, the name that appears obscured by the wite out under the title “Drawn By” is that of:

P.M.Mutiso

Solomon Mugo & Co Advocates,

Kiorugari House,

1<sup>st</sup> Flr Rm 2

249 (10303)



Wanguru”

64. In light of all the foregoing, am not convinced that the Will was written by the deceased. At the time in 2008, he would have been 86 years old, having died in 2010 at the age of 88 years. It is unreasonable to believe, and inexplicable to hold, that he would write the Will himself, and then for some reason thumb print it.

### **Conclusion and Disposition**

65. For the above reasons, I find that the Will was not valid and that the grants to the respondent were irregularly issued.
66. Accordingly, the grant and confirmed grant issued to the 5<sup>th</sup> respondent are hereby revoked forthwith.
67. In addition, the Court, hereby issues an inhibition against any registration in respect of LR No Baragwe/ Kariru 459; LR No Kabare/ Nyangati/ 600 and Plot No 46 Kimbimbi.
68. This being a family matter, I make no order as to costs
69. Orders accordingly.

**DATED AT KERUGOYA THIS 16<sup>TH</sup> DAY OF MAY, 2023**

.....

**R. MWONGO**

**JUDGE**

**In the presence of:**

1. Mr Maringa h/b for Munene for the Respondent.
2. Ms Ndung’u for the Applicant
3. Mr Murage, Court Assistant

