



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of M'njeri Njega alias Nyaga Munanjau (Deceased) (Civil Appeal E059 of 2022) [2023] KEHC 19888 (KLR) (12 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19888 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL APPEAL E059 OF 2022  
LM NJUGUNA, J  
JULY 12, 2023  
(IN THE MATTER OF THE ESTATE OF M'NJERI NJEGA ALIAS  
NYAGA MUNANJAU (DECEASED))**

**BETWEEN**

**JOE KISHA NJERU ..... 1<sup>ST</sup> APPELLANT**

**ROBERT MURIITHI NJIRU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**PETER NDWIGA NJAGI ..... RESPONDENT**

*(Appeal arising from the judgment dated 25 October 2022 of the Senior Principal Magistrate court at Runyenjes in Succession Cause Number 120 of 2018)*

**JUDGMENT**

1. This is an appeal arising from the judgment dated 25 October 2022 of the Senior Principal Magistrate court at Runyenjes in Succession Cause Number 120 of 2018 whose subject was summons for revocation/ annulment of the grant.
2. The orders sought on appeal are as follows:
  - i. Spent;
  - ii. That the judgment of the Honourable J.W. Gichimu Senior Principal Magistrate dated 25 October 2022 in succession cause no. 120 of 2018 in the Principal Magistrate's court at Runyenjes be quashed and/or set aside;
  - iii. That the said judgment be substituted with an order allowing the appellants' prayers in the application dated 16 June 2020 in the Principal Magistrate's court at Runyenjes and the estate be ordered to be distributed again;



- iv. That the appellants be awarded costs of this appeal and in succession cause no. 120 of 2018 in the Principal Magistrate's court at Runyenjes.
3. The grant in question was issued on 07 February 2019 and confirmed on 07 May 2019. The respondent who was the Administrator Respondent per the said summons had already given effect to the said grant.
4. In summary, the summons for revocation of grant sought 2 orders; that the grant be revoked/ set aside and the certificate of confirmation cancelled and stay of all dealings on the properties in the estate pending hearing and determination of the issue of revocation of the grant. The appeal is premised on the grounds on its face.
5. The court considered viva voce evidence as well as written submissions by both parties.
6. It was the appellants' case that the deceased was known as M'njeri Njega alias Nyaga Munanjau (M'njeri Njega and that Nyaga Munanjau refer to one and the same person) and that he has two parcels of land known as Kagaari/Weru/1072 and Kagaari/Weru/1728. That the respondent, when petitioning for succession, failed to include parcel number Kagaari/Weru/1072. That at some point in time, the deceased had attempted to change his names to reflect all the 4 names together but he ended up taking out his National ID in the name Nyaga Munanjau. That in 2016 the deceased noticed that the land in title number Kagaari/Weru/1072 registered in his names M'Njeri Njega had been sold to the respondent herein. That the wife of the deceased who is the 1<sup>st</sup> appellant's step mother filed for succession omitting Kagaari/Weru/1072 as part of the estate of the deceased. The appellants state that they were not included in the succession cause. They relied on [\*Jamleck Maina Njoroge v Mary Wanjiru Mwangi\* \(2015\) eKLR](#) in support of summons for revocation of grant.
7. In response, the respondent filed his list of witnesses as well as the statements by himself and step mother of the 1<sup>st</sup> respondent. Their case was that M'Njeri Njega and Nyaga Munanjau are 2 different people. That her husband was known as M'Njeri Njega who died leaving behind only parcel number Kagaari/Weru/1072.
8. The court considered the evidence submitted and dismissed the application with costs to the respondents.
9. In the present appeal, this court directed that the parties file their written submissions.
10. In their written submissions, the appellants aver that the respondent in their evidence gave contradictory statements as to the relationship between M'Njeri Njega and Nyaga Munanjau, first that they were cousins, later he stated that they were brothers. It is his case that the testimonies from the appellants did not clearly distinguish the identities of M'Njeri Njega and Nyaga Munanjau. Also that the 1<sup>st</sup> appellant's mother and the respondent's mother were both wives of the deceased hence a close relationship between the 1<sup>st</sup> appellant and the respondent. That the court failed to consider evidence to the effect that the deceased M'Njeri Njega was buried at Gikuuri on Nyaga Munanjau's land. It is the appellants' case that they have been in occupation of the suit land for the past 50 years and more, a fact that is not contested. Further, that they were rightful heirs of the suit land. That the respondent has been charged and convicted in a criminal case for the offence of forgery in a bid to register the suit land illegally. Appellants further averred that one of their witnesses confirmed that she had knowledge that the 2 names referred to one and the same person.
11. The respondent avers that the appeal is not competent per section 79G of the [\*Civil Procedure Act\*](#) and Order 42 Rule 13 of the [\*Civil Procedure Rules\* 2010](#). To make this point he relies on the cases of [\*Chege v Suleiman\* \(1988\) eKLR](#) and Kakamega Election Petition Appeal No. 3 of 2018 [\*Elvis Anyimbo\*](#)



*Shichenga v ODM & others* (2016) eKLR in asking the court to dismiss the appeal as the record does not include a certified copy of the decree from the trial court. It was also his case that M’Njeri Njega and Nyaga Munanjau are two different people. That 2 death certificates were produced showing that Nyaga Munanjau died of tuberculosis on 21 January 2015 at 87 years of age while M’Njeri Njega died a sudden death on 01 April 1974 aged 60 years. He further stated that the court took note of the contents and dates on the death certificates and was satisfied that the 2 were different people who died 41 years apart and had no aliases. The respondent further avers that the appellants did not summon the registrar of persons to verify the certificates produced by the respondent in support of his case. Further, that the trial court categorized the entry of M’Njeri Njega’s name in the green card for Kaagari/Weru/1072 as M’Njeri Njagi, as a typographical error.

12. In her testimony, the 1<sup>st</sup> applicant’s step mother stated that she did not know of any other land that the deceased owned beside the piece of land she was residing on, known as Kaagari/Weru/1072. The respondent stated that the applicants have no right to claim land parcel number Kaagari/Weru/1072 as they are not the rightful beneficiaries.

13. Section 109 of the *Evidence Act* provides for the evidentiary burden of proof and states as follows:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

To further affirm this position, I rely on *Krijger v Owiti* (Civil Case 419 of 2010) [2023] KEHC 19230 (KLR) where the honourable judge quoted the Court of Appeal in *Maria Ciabaitaru M’airanyi & others v Blue Shield Insurance Company Limited* -Civil Appeal No 101 of 2000 [2005] 1 EA 280 where it was held that:

“Whereas under section 107 of the *Evidence Act*, (which deals with the evidentiary burden of proof), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same Act recognizes that the burden of proof as to any particular fact may be cast on the person who wishes the court to believe in its existence.”

14. In my view, the main issue for determination is whether or not the trial court was right in adjudging that M’Njeri Njega and Nyaga Munanjau is one and the same person. If this is determined, then it informs the rest of the issues on appeal. It is on record that on cross-examination, the 1<sup>st</sup> respondent admitted the existence of another person named M’Njeri Njagi who was the uncle of his father. The court interpreted this to mean that he acknowledges that they are 2 different people.

15. From my perusal of the record of appeal I deduce that annexures marked as PNN2(a) and PNN2(b) are two death certificates showing that the deaths occurred 41 years apart. However, I note that both certificates are issued within a period of 2 years; M’Njeri Njega’s death certificate was issued on 10 June 2016 while Nyaga Munanjau’s death certificate was issued on 22 July 2018.

16. Reference is made to section 8 of the *Births and Deaths Registration Act* cap. 149 of the Laws of Kenya which provides that;

“A registrar shall not register a birth or death after the expiration of six months from the date of such birth or death, except upon receiving the written authority of the Principal Registrar issued in accordance with the rules, and upon payment of the prescribed fee.”



As correctly put by the trial court, the appellants did not use their opportunity at the trial court to interrogate this lapse of time between the date of death of M’Njeri Njega and the issuance of his death certificate.

17. The court relied on the evidence placed before it in order to make the decision as to whether or not the deceased had an alias. The trial court did its best to separate the issues raised by the applicant and the issues contested by the respondent. We must remember that the court must not engage itself in the case as a litigant but rather should make declarations based on the evidence put before it. In the upshot, I find that the appellants were beneficiaries of the estate of Nyaga Munanjau and not the estate of M’Njeri Njega.
18. Having considered the trial court proceedings and evidence, relevant laws and case law, I do uphold the decision of the trial court. The appeal is hereby dismissed. On the issue of costs, I order that both in this appeal and in succession cause no. 120 of 2018 in the Principal Magistrate’s court at Runyenjes, each party bears its own costs.
19. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 12<sup>TH</sup> DAY OF JULY, 2023.**

**L. NJUGUNA**

**JUDGE**

.....for the Appellants

.....for the Respondent

