



**In re Estate of Macharia Mwangi (Deceased) (Family Appeal
E001 of 2020) [2023] KEHC 19896 (KLR) (5 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19896 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
FAMILY APPEAL E001 OF 2020
GL NZIOKA, J
JULY 5, 2023
IN THE MATTER OF THE ESTATE OF MACHARIA MWANGI (DECEASED)**

BETWEEN

JAMES MWANGI MACHARIA APPELLANT

AND

GABRIEL STEPHEN MWANGI MACHARIA RESPONDENT

RULING

1. By a notice of motion application dated June 11, 2021 brought under the provisions of Order 51 rules 1, 3 and 4, Order 21 rule 2 (1), rule 3 (1), (2) and (3) and 42 rule 27 (1) (a) and (b) of the [Civil Procedure Rules 2010](#), section 35 (1) and (2) of the [High Court \(Organization and Administration\) Act](#) No. 27 of 2015, sections 345, 347, 348 and 353 of the Penal Code (Cap 63) Laws of Kenya, and all other enabling provisions of law the applicant is seeking for orders that: -
 - a. This Honourable court be pleased to expunge a false document entitled “Ruling” purported to have been delivered by; Hon P Gesora (C M) on October 17, 2016 upon this matter.
 - b. This Honourable court be pleased to find that the said document is an illegal document, making of which is intended to defraud me of any right to probate and therefore a forgery.
2. The application is supported by the grounds thereto and the affidavit of the even date sworn by the appellant wherein he avers that on October 17, 2016, Hon Gesora was in session and at no time did he deliver a ruling as purported herein but gave direction in chambers that, the appellant, “straighten grey areas” observed in the file specifically the misspelt name of the testator. Further, that the court assistant was directed to keep the file under lock and key to prevent extraction and/or addition of documents to the file.



3. That in compliance with the direction of the learned trial Magistrate, he took his documents to court on October 31, 2016 which were then delivered to the learned trial Magistrate by Patricia Kilele, the In-Charge Civil Registry. That, the learned trial Magistrate went through the document and admitted the documents for filing on November 7, 2016, and ordered that he pays the requisite fees which he did.
4. That in the course of gazettment of the grant, issuance thereof several irregularities were note and corrected, and the missing documents supplied to the court. That the appellant's learned Counsel, Mr G Kimani, advocate for the respondent uttered the false document before the court on two different occasions on; November 23, 2017, and April 25, 2018 and informed the court that Hon Gesora had settled the matter vide a ruling dated October 17, 2016.
5. That the impugned ruling delivered on October 17, 2016, is an illegal document and a forgery seeking to undo the proceeding by Hon. Gesora after he proceeded on transfer.
6. The application was served but the respondents informed the court that they were not going to respond to the same and left the court to deal with the matter.
7. Having considered the application, and I note that although the indicates that the alleged document was uttered by the respondent's learned counsel. Mr Kimani, it is noteworthy that Mr Kimani is not a party to these proceedings and therefore he has not been given an opportunity to respond to the alleged forged documents.
8. Further, forgery is a criminal offence which requires to be proved by evidence beyond reasonable doubt and therefore there is need for a document examiner's report to confirm beyond reasonable doubt that the alleged document is forged.
9. Furthermore, the Hon Learned Magistrate P N Gesora who authored (if at all) the alleged ruling has not been given an opportunity to inform the court whether the impugned ruling is genuine or forged.
10. Finally, the subject ruling forms part of the record of the court and without concrete evidence, it cannot just be expunged from the record.
11. The upshot of the aforesaid is that, the application is dismissed.
12. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 5TH DAY OF JULY 2023.

GRACE L NZIOKA

JUDGE

In the presence of:

Appellant in person.

Mr Kimani for the respondent

Ms Ogutu: Court Assistant

