



**In re Estate of Njagi Thiaka (Deceased) (Succession Cause  
545 of 2002) [2023] KEHC 23842 (KLR) (17 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23842 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
SUCCESSION CAUSE 545 OF 2002  
LM NJUGUNA, J  
OCTOBER 17, 2023**

**BETWEEN**

**FELISTER MUTHONI LAZAROUS ..... ADMINISTRATOR**

**AND**

**JACINTA WAIRIMU RUGATIA ..... APPLICANT**

**RULING**

1. Before this court is summons (General) dated 10<sup>th</sup> May 2022 challenging the jurisdiction of the court in applying itself to the issues raised in summons dated 20<sup>th</sup> July 2018 for revocation of grant. The grounds upon which the application is premised are as stated on the face of the summons and in the supporting affidavit sworn by the applicant.
2. The administrator/respondent is the wife and substitute of Lazarous Warui Frengi (deceased), administrator of the estate of the deceased herein, vide limited grant ad litem issued on 06<sup>th</sup> September 2016 in the Chief Magistrate's Court in Kerugoya Succession Cause no. 527 of 2016.
3. The applicant is the wife and administrator of the estate of Eliud Rugaita W. Murango (deceased) who was named as a beneficiary of the estate of the deceased herein, vide High Court in Nairobi Succession Cause no. 2660 of 2005.
4. Brief facts of the matter are that the respondent herein filed summons for revocation/ annulment of grant dated 26<sup>th</sup> July 2018, seeking orders:
  - a. That the confirmed grant issued in the estate of the deceased be revoked or annulled;
  - b. That the grant confirmed in the estate of the deceased be annulled and rectified and the estate be distributed to Lazarous Warui Frengi and the mode of distribution granted and reviewed to Elias Murango Rugaita and Jacinta Rugaita be revoked and reviewed to Felista Muthoni Lazarous;



- c. That all L.R. No. Mwea/Tebere/B/275 be registered in the name of Lazarous Warui Frengi and all the subdivisions Mwea/Tebere/B/1904-1936 be nullified and cancelled and the original reference number revert back to Mwea/Tebere/B/275:
- d. That the county land registrar dispenses with production of subdivision title deeds of Mwea/Tebere/B/1904-1936 for cancellation; and
- e. That costs be in the cause.

These orders are sought on the grounds set out on the face of the said application.

5. The court gave directions that the summons dated 10<sup>th</sup> May 2022 challenging the jurisdiction of the court, be heard and dispensed with first, before the summons for revocation of grant.
6. To the application dated 10<sup>th</sup> May 2022, the administrator/respondent filed a replying affidavit terming the application as an afterthought and frivolous, the same only coming up after a series of unnecessary adjournments whenever the summons for revocation of grant came up for hearing, thereby abusing the court process. She insisted that the orders prayed for, in the summons for revocation of the grant are properly before the court as intended under the *Law of Succession Act*. That the grant can be revoked only by this court which is clothed with proper jurisdiction in accordance with the *Law of Succession Act*.
7. The Applicant filed her written submissions in which she reminded the court that the summons for revocation of the grant has been filed by the administrator/respondent 18 years after the grant in question had been confirmed. That the cancellation of register of Mwea/Tebere/B/275 was done 21 years ago culminating into 33 title deeds following subdivision. She further stated that the matter of jurisdiction of the court is key and must be determined before anything else. In support of this, she cited the case of Owners of the Motor Vessel “Lillian S” Vs Caltex Oil (Kenya) Ltd [1989] eKLR. She submitted that Sections 44, 45, 74 and 76 of the *Law of Succession Act* and Rules 43, 44, 49 and 73 of the *Probate and Administration Rules* indeed provide for annulment of a grant but Rule 73 does not limit the court’s power to make any such orders as may be necessary towards the ends of justice to prevent abuse of the process of court.
8. The applicant further relied on Article 162(2)(b) of *the Constitution* of Kenya 2010 and Section 13 of the *Environment and Land Court Act*, 2011 which establishes and defines the jurisdiction of the specialized court that should be tasked with the issues raised in the summons for revocation of the grant. On the issue of transmission of titles, she stated that the same is provided for under the *Land Act* and the *land Registration Act*, which issues cannot be addressed by this court. She further stated that on the allegation of fraud in the summons for revocation of grant, the court should not address the same due to lack of proper jurisdiction.
9. The administrator/respondent did not file her submissions. I have considered the preliminary objection and submissions made herein and do find that it is paramount that jurisdiction be established before all else. I reiterate the sentiments in the celebrated case of *Owners of the Motor Vessel “Lillian S” Vs Caltex Oil (Kenya) Ltd* [1989] eKLR where the court held:

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....where a court takes it upon itself to



exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

10. The summons for revocation of grant is without a doubt founded on a claim of fraud. However, from a keen perusal of the same together with the supporting affidavit thereof, I gather that the kind of fraud alleged relates to land and it involves the estate of the deceased and a third party. The orders sought can only be issued by the Environment and Land Court. In my view, once these issues relating to land are placed before the relevant forum and are determined, it is likely that the parties will be pursuing a different recourse from this court. The only way to glean the issues for succession, if any, is through directing all the land issues arising to the Environment and Land Court. This court is established under Article 162(2)(b) and Article 165(5)(b) of the Constitution of Kenya 2010 as follows:

Article 162(2)(b)

- (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a) .....and

(b) the environment and the use and occupation of, and title to, land.

Article 165(5)(b)

- (5) The High Court shall not have jurisdiction in respect of matters—

(a) ..... or

(b) falling within the jurisdiction of the courts contemplated in Article 162 (2).

11. The jurisdiction of Environment and Land Court is also set out under Section 13 of the Environment and Land Court Act and Section 150 of the Land Act also devolves upon the Environment and land court, the relevant jurisdiction in this application. It states:

“ 150. Jurisdiction of the Environment and Land Court

The Environment and Land Court established in the Environment and Land Court Act and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”

12. In the upshot, this court will not be able to grant any orders regarding the alleged land fraud, cancellation of titles and nullification of subdivision, as to do so would amount to a nullity. In the case of Joseph Muthee Kamau & Another Vs. David Mwangi Gichure & Another (2013) eKLR the court held:

“When a suit has been filed in a court without jurisdiction, it is a nullity....We hold that jurisdiction cannot be conferred at the time of delivery of judgment. Jurisdiction does not operate retroactively. Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.

13. With this in mind, this court will not belabor itself any further on the merits of the summons for revocation of grant until the issues of land disposition, transfer and any investigation thereof are determined by the relevant court.



14. I therefore find that the summons dated 10<sup>th</sup> May 2022 has merit and is hereby allowed. Each party shall bear their own costs.

15. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 17<sup>TH</sup> DAY OF OCTOBER, 2023.**

**L. NJUGUNA**

**JUDGE**

.....for the Administrator/Respondent

.....for the Applicant

