



In re Estate of Githu Muhoho alias Anthony Muhoho Githu (Deceased) (Succession Cause 1109 of 2006) [2023] KEHC 24888 (KLR) (Family) (6 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24888 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1109 OF 2006
PM NYAUNDI, J
OCTOBER 6, 2023**

BETWEEN

RAPHAEL MBUCHO MUHIA CITOR

AND

GABRIEL GITHUMUHU CITEE

RULING

1. On the 7th of March 2023 when this matter was mentioned before the Deputy Registrar, the Deputy Registrar directed that the Application dated 8th June 2017 be mentioned on 25th April 2023 before this court.
2. When the matter came up for mention on 25th April 2023, the parties did not attend Court and the matter was listed for mention on 14th June 2023.
3. On 14th June 2023, Counsel for the Citor indicated that they wished to take directions on Application dated 8th June 2017. The Court directed that the Application would proceed by way of written submissions and ordered that the Citor file submissions within 14 days and Citee file their submissions within 14 days of service. The matter was thereafter mentioned on 26th July 2023 to confirm compliance and take a date for ruling.
4. The Citor filed submissions dated 11th July 2023 in respect of citation dated 8th June 2018. (sic) The Citee did not file their submissions and counsel who attended Court on 26th July 2023 indicated to Court that they were unable to reach their client for instructions and they would be filing a formal application to cease acting for the Citee.
5. When the Court retired to write the ruling, the record showed that the Citation had already been disposed of by Hon. Lady Justice Muigai vide her ruling 9th April 2018.



6. Subsequent to this, the Applicant herein had filed Application dated 27th November 2020 seeking to compel the Citee herein to execute documents to effect transfer 2 acres of land from property L.R. Kiganjo/ Nembu/1157 in his favour in compliance with the Order of 16th April 2018.
7. In ruling delivered on 7th June 2021, Muchelule J (as he then was) rightly dismissed the Application noting that the application was incompetent and misconceived as the respondent not being the representative of the estate of the deceased did not have any legal obligation to transfer any land to the applicant.
8. This state of affairs led to a letter dated 4th August 2021 addressed to the Deputy Registrar by the Citor's former Counsel expressing their frustration as they appeared to be confronted by a brick wall.
9. In keeping with his conduct through the history of the proceedings the Citor did not participate in the proceedings before this Court.
10. As matters stand the Applicant is seized of Court orders that recognize his entitlement to the 2 acres but is unable to realize his right. This is quite a conundrum if there ever was one. This Court is a Court of Justice and therefore no party who presents a legal issue to the Court can be turned away empty handed.
11. From my perusal of the file, both the Administrators Beatrice Wanjiku Githu and Antony Muhoho Githu are now deceased. Despite there being a certificate of confirmation issued on 12th March 2007 distributing the estate of the deceased, to date the transmission of the estate to the beneficiaries is yet to be finalised.
12. In the case of *MN v TAN & another* [2015] eKLR the Court declared-

“A valid court order has to be obeyed or complied with regardless of how aggrieved a party is about it. The order has the force of law. It is not a mere wish or proposition. Disobedience or non-compliance with it attracts severe consequences. It would appear to me that the appellant believes that the orders of [.....] are not valid and has [not] explained why he has chosen to disregard or disobey them. Yet he is bound to obey the orders for as long as they are still in force. He has no choice, he cannot decide when and how to obey or comply with them.”
13. Under Article 159 of the *Constitution* this Court is under obligation to dispense justice in a manner that upholds the principles and purpose of the *Constitution*. One of the pillars of the *Constitution* of Kenya is that we are a country governed by the Rule of Law.
14. Rule of law is realized when the Constitutional right of Access to Justice provided for under Article 48 is given effect. This means that at the very least where there is an infringement of an individual rights, there will be a remedy.
15. This therefore is the remedy the Court will frame. Under Section 76 of the *Law of Succession Act* this Court can move *suo moto* to revoke a grant under the following circumstances
 - 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. The grant has become useless and inoperative through subsequent circumstances.

16. The power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the persuasive decision in *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* Succession Cause No. 158 of 2000 where Mwita J stated: -

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

17. In this case, both the administrators are deceased (the grant is therefore inoperative), or if Beatrice Wanjiku Githu is alive she has failed to proceed diligently with the administration of the estate, thus frustrating the Applicant, notwithstanding the clear orders of this Court.

18. I therefore make the following orders,

- a. The Grant issued herein made to Beatrice Wanjiku Githu and Anthony Muhoho Githu on 16th August 2006 is hereby revoked.
- b. That the beneficiaries of the Estate of Githu Muhoho (deceased) to file appropriate application for their appointment as administrators and distribution of the Estate that includes the interest of the Applicant, 2 acres to be hived off the entitlement of the Estate of Anthony Muhoho Githu (deceased) in the property L.R Kiganjo/Nembu/1157, within 14 days from the date hereof
- c. That in the event that the Beneficiaries of the Estate fail to comply with b) above, Raphael Mbucho Muhia to file and serve Summons for Amendment



of Confirmed grant within 21 days from the date of default which factors in his interest of 2 acres to be hived off the entitlement of the Estate of Anthony Muhoho Githu (deceased) in the Property L.R Kiganjo/Nembu/1157

- d. The Application by the Beneficiaries or in default by Raphael Mbucho Muhia to be heard on 29th November 2023, all beneficiaries to attend.
- e. Each party to bear their own costs

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 6TH DAY OF OCTOBER, 2023.

P. NYAUNDI

JUDGE

