



**Ngigi & another v Ngugi & another (Sued on their Behalf as the Administrators and Legal Representative to the Estate of Paul Ngugi Murua alias Njuguna Kamau (Deceased)) (Succession Cause 822 of 1985) [2024] KEHC 15473 (KLR) (Family) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 15473 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 822 OF 1985  
EKO OGOLA, J  
OCTOBER 3, 2024**

**BETWEEN**

**GRACE WAMUHU NGIGI ..... 1<sup>ST</sup> APPLICANT**

**SUSAN WANGARI GICHIA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**HELLEN MBUTU NGUGI ..... 1<sup>ST</sup> RESPONDENT**

**LILIAN WANJUHI NGUGI ..... 2<sup>ND</sup> RESPONDENT**

**SUED ON THEIR BEHALF AS THE ADMINISTRATORS AND LEGAL  
REPRESENTATIVE TO THE ESTATE OF PAUL NGUGI MURUA ALIAS  
NJUGUNA KAMAU (DECEASED)**

**RULING**

1. There are two applications before this Court. The first application is dated 17<sup>th</sup> May 2021, and the second is dated 23<sup>rd</sup> September 2023.

**First application**

2. This application was filed by the applicants. They prayed for the following orders:-

- a. Spent;
- b. That the Honourable court be pleased to stay the proceedings in Senior Principal Magistrate's Court at Kikuyu, Succession cause number 58 of 2018: In the matter of the Estate of Paul Ngugi Murua alias Njuguna Kamau- deceased, pending the hearing and determination of the summons herein;



- c. That the Grant of probate for Letters of Administration intestate (or with will annexed) issued to Paul Ngugi Murua made on the 25<sup>th</sup> February 1986 and confirmed on 26<sup>th</sup> May 2009, be revoked and annulled;
  - d. That all steps taken by the Paul Ngugi Murua, the Administrator, pursuant to the Order granting the Letters of Administration and Certificate of Confirmation and which may have changed the status of the assets of the estate subject of this application be declared a nullity in law;
  - e. That the petition herein be amended by including properties left out in the schedule of assets as indicated in the annexed schedule;
  - f. That the Applicants herein be appointed as administrators of the estate of Loise Mbutu Murua (Deceased);
  - g. That costs of this Application be provided for.
3. The application was based on the grounds set out therein and the 1<sup>st</sup> applicant's Supporting Affidavit.

### **Second application**

4. The application was filed by the applicants. They pray for the following orders:-
- a. Spent;
  - b. That pending the inter partes hearing and determination of this application this Honourable Court be pleased to issue a temporary order of injunction stopping the Respondents whether by themselves, their employees, their agents, or any other person authorized by them herein from entering into, trespassing into, alienating, selling, cultivating on, tilling on, planting any crops, utilizing, using in any manner wasting, transferring, possession or otherwise interfering and/or dealing with all that piece and/or parcel of land known as title number L.R. No. Muguga/Muguga/340 and L.R Muguga/Muguga/80;
  - c. That pending the inter partes hearing and determination of this application this Honourable Court be pleased to issue a temporary order of injunction stopping the Respondents whether by themselves, their employees, their agents, or any other person authorized by them herein from alienating, selling, cultivating on, tilling on, planting any crops, utilizing, using in any manner wasting or otherwise interfering and/or dealing with all that piece and/or parcel of land known as L.R.No.Muguga/Muguga/340 and L.R Muguga/Muguga/80;
  - d. That pending the interparte hearing and determination of the application dated 17th May,2023 this Honourable Court be pleased to issue a temporary order of injunction stopping the Respondents whether by themselves, their employees, their agents, or any other person authorized by them herein from alienating, selling, cultivating on, tilling on, planting any crops, utilizing, using in any manner wasting or otherwise interfering and/or dealing with all that piece and/or parcel of land known as L.R.No.Muguga/Muguga/340 and L.R Muguga/Muguga/80
  - e. That this Honourable Court grants any order that it deems fit.
  - f. That cost of this application be provided for.
5. The application was based on the grounds set out therein and the 1<sup>st</sup> applicant's Supporting Affidavit.



6. The back ground of this cause is that the deceased died intestate in 1985. He was survived by three children namely; Paul Ngugi Murua, Grace Wamuhu Ngugi, and Susan Wangari Gichia. The estate of the decease comprises of two properties;L.R.No.Muguga/Muguga/340 and L.R Muguga/Muguga/80.
7. Paul Ngugi petitioned the Court for Grant of Letters of Administration Intestate. In his Petition and affidavit, he deposed that the deceased left two daughters who were already married. There was no consent from the Grace Wamuhu and Susan Wangari. The grant was consequently issued to Paul Ngugi on 25<sup>th</sup> February 1986.
8. On record is a Renunciation of Right to apply for Letters of Administration intestate dated 29<sup>th</sup> January 2009, allegedly signed by Grace Wamuhu and Susan Wangari. With the strength of the said renunciation, a Certificate of Confirmation of Grant was issued to Paul Ngugi and he was to wholly inherit the deceased estate.
9. This led to the applicants filling the Summons for revocation dated 17<sup>th</sup> May 2021. In their affidavit, they deposed that this succession cause was filed without their knowledge, their consent was not sought before the Grant of letters of administration was issued and they were never issued with any citation.
10. They further deposed that they never renounced their rights to apply for letters of administration intestate. They contended that the signature in the renunciation document was forged. To buttress their claim, they deposed that they were illiterate and if they were to execute a document, they would do so by a thumbprint as they had done in their supporting affidavits.
11. According to the applicants, renunciation of the right to apply for letters of administration intestate should be made when petitioning for a grant. Therefore, the procedure as set out in Rule 26 of the Probate and Administration Rules was not adhered to.
12. The applicants deposed that they only became aware of the existence of the suit herein in the year, 2021, after obtaining green cards for the deceased estate.
13. It is for these reasons that the applicants pray that the Certificate of Confirmation of Grant and the Grant of Letters of Administration be revoked on the grounds that the proceedings to obtain the grant were defective in substance; it did not involve all the beneficiaries of the estate, and the grant was obtained fraudulently by making false statements and forging documents.
14. On the second application, the applicants pray for a temporary injunction restraining the respondents from dealing in any way with the two properties.
15. Unfortunately, Paul Ngugi died in 2016. He was survived by his children, the respondents. The respondents have instituted a succession cause for Paul Ngugi's estate. In their replying affidavit, they deposed that L.R.No.Muguga/Muguga/340 and L.R Muguga/Muguga/80 belong to the estate of Paul Ngugi since a transfer was already done.
16. The application was canvassed by way of written submissions..

### **Determination**

17. I have read and considered the applications, the affidavits, submissions and the entire record of the court.
18. The preliminary point of determination before determining the application is on the respondents' allegation that the Summons for revocation is defeated by the doctrine of laches.



19. Does the doctrine of laches apply in succession matters? It is trite that there is no limitation period under Section 76 of the [Law of Succession Act](#) for the filing of Summons for Revocation of Grant. It states inter alia:

“ A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion”

20. The [Limitation of Actions Act](#) prescribes periods for limitations of actions and arbitrations. My reading of the actions to which that statute applies is that it does not include succession causes, or, at any rate, causes or actions governed by the [Law of Succession Act](#). It covers such matters as actions founded on contracts and torts, actions to recover land and rent, actions to recover money, actions in respect of trust property or movable property of a deceased person, and related causes. In short, it envisages ordinary civil suits brought within the framework of the [Civil Procedure Act](#) and Rules. It does not envisage the special proceedings governed by such statutes as the [Law of Succession Act](#).

21. In Patrick Mwangemi Wanjala & 3 others vs Jackson Ngoda Jumwa [2016] eKLR, the Court held as follows-

“ Although the Summons herein was filed on 12.8.14, six years after the Grant was issued on 28.3.08, and ten years after the demise of the deceased on 24.12.04, the law is clear that a “grant of representation, whether or not confirmed, may AT ANY TIME be revoked or annulled ...” There is therefore no limitation as to the time for filing summons for revocation of Grant. The law does not even provide that a party must explain any delay in seeking revocation of a grant. Consequently, this Court makes nothing of the fact that the Summons herein was filed 8 years after the grant was issued.”

22. Similarly in Jane Wambui Wahuga & 4 others vs Ruth Njoki Mwangi [2016] eKLR, it was held-

“ The said section states that a grant of representation, whether confirmed or not, may at any time be revoked by the court if it was obtained by fraud, or concealment. It may also be revoked if the proceedings were defective in substance and/or it was obtained by means of untrue allegation of facts essential in point of law to justify the grant. An application for revocation of grant cannot therefore be claimed to be time-barred. Thus, the Applicants’ grounds for revocation of grant as set out in the summons for the revocation or annulment of the grant cannot be dismissed based only on the ground of limitation. The court has an obligation to determine the application on the basis of the provisions of the law.”

23. The respondents have argued that the application has come in too late. In other words, the same was filed after an inordinate delay, which has had the effect of rendering it time-barred due to effluxion of time. The answer to this submission is that the office of administrator is for life. He can be called to account at any time so long as he is still alive. Needless to say, Section 76 of the Act does not impose any time limitations within which an application for revocation of grant ought to be filed.

24. The upshot is that there is no limitation as to when a Summons for revocation of grant may be filed. In this case, the grant was obtained in 1986 and the Certificate of Confirmation was issued in 2009. The Summons was filed in 2021. Indeed, there has been a delay. However as indicated by the statement of the law and the authorities cited herein above, there is no lateness per se in these matters until the court has heard the parties and determined the circumstances. I agree with the above authorities as they, in my view state the correct position of the law and I need not say more. Hence it is my finding that the doctrine of laches is inapplicable in Succession Matters.



25. The second issue is whether the applicants' signatures were forged. The applicants argued that they were illiterate and all their documents were executed by a thumbprint. The respondents argued that they have not presented any report from a document examiner affirming the applicants' allegations and the applicants have not provided to court their signatures for comparison.
26. There are certain principles or requirements that must be met for the allegation of fraud to be admitted by a court of law. The first principle is that an allegation of fraud must be specifically pleaded and proved. In *Vijay Morjaria vs. Nansingh Madhusingh Darbar & Another* [2000] eKLR, where Tunoi, JA (as he then was) stated as follows:
- “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently.
- It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from facts.”
27. In *R.G Patel -V-Lalji Makanji* [1957] EA 314 the former Court of Appeal for East Africa stated as follows:
- “Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”
28. The second principle is that the burden of proof of an allegation of fraud is on the person alleging it. In *Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of Sospeter Mukuru Mbeere (deceased) v Stephen Njoroge Macharia* [2020] eKLR, the Court of Appeal observed as follows:
- “In the instant case, the appellants needed to not only plead and particularize the fraud, but also lay a basis by way of credible evidence upon which the Court would make a finding that indeed there was fraud in the transaction leading to the transfer and registration of the suit land in the name of Janet all the way to the respondent.....”
29. The third principle is that the burden of proof of allegation of fraud is higher than that required in civil cases, i.e. proof on a balance of probabilities; and lower than that required in criminal cases, i.e. beyond reasonable doubt. In *Ndolo -V-Ndolo* [2008] 1KLR (G &F) 742 the Court stated that:
- “.....Since the Respondent was making serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases.....”
30. From the forgoing precedents, it is settled law that the allegation of fraud is a serious allegation that must be strictly pleaded and proved. The burden of proof is on the person alleging and the standard of proof is higher than that of civil cases, which is on a balance of probability, and lower than the one in criminal cases, which is beyond reasonable doubt.
31. In this instant case, the applicants have specifically pleaded fraud, their only shortcoming being in proving that allegation. They stated that they are illiterate and they execute documents by a thumbprint. This was seen from how they executed their affidavits in this suit. However, this is not



proof enough to tip the scale to more than a balance of probability. It is probable that they are indeed illiterate and cannot even write their names. The probability should be more than 50%. To tip the scale further than what is required in the usual civil cases, the applicants ought to have given more evidence of their illiteracy. They could have annexed previous documents, such as their identification documents that prove that indeed they execute all documents, past and present using a thumbprint.

32. The third issue is whether the grant should be revoked. Other than the alleged forged signatures, the applicants stated that the proceedings for obtaining the grant were defective in substance. They averred that the renunciation should be done before a grant is issued and not during the confirmation of grant.
33. Rules 7 and 26 of the Probate and Administration Rules provide as follows:

“7 (7). Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has –

- a. renounced his right generally to apply for grant; or
- b. consented in writing to the making of the grant to the applicant; or
- c. been issued with a citation calling upon him to renounce such right or to apply for a grant. “

26(1). Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.

(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equally or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”

34. Rule 26 would apply where representation is sought by a person with equal rights to others who have not petitioned like him or with a lesser right. In such case, the petitioner is expected to notify such persons with equal entitlement with notice. The individuals with entitlement who have not applied for representation would signify that they had been notified of the petition by either executing their renunciation of their right to administration or by signing consents. Where consent or renunciation is not forthcoming, then the petitioner should file an affidavit, ostensibly dealing with these issues, that is by indicating that notice was given to all the other persons equally entitled, and perhaps demonstrating that such person had failed or refused to renounce their rights or to sign consents to allow him to go ahead with his petition.
35. In this case, the deceased was not survived by a spouse, but by a son and two daughters. All three children had equal rights or entitlement to apply for administration, going by section 66 of the *Law of Succession Act*. A reading of section 66 and Rules 7(7) and 26 of the Probate and Administration Rules together, would mean if any one of the three children of the deceased sought representation to the estate, to the exclusion of the other two, there would, then, be need to comply with the requirements



of Rules 7(7) and 26 Probate and Administration Rules, since those provisions apply to persons who seek representation while they had an equal or lesser right to administration.

36. The administrator herein had equal right to administration with the applicants, he, therefore, needed to obtain their consent or their renunciation of right to administer or obtain citations to be issued and served on them, before he applied for representation to the estate of their late mother.

37. So, should the grant be revoked? Revocation of grant is provided for in Section 76 of the Law of Succession Act. The provision stipulates as follows:-

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (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 order or allow; 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) that the grant has become useless and inoperative through subsequent circumstances.”

38. I have perused the record before me relating to the process of application for grant. I have noted that there was no consent from the applicants, there was no citation issued to the applicants, and there was no renunciation from the applicants. The alleged renunciation came afterwards, during the confirmation of grant.

39. From the foregoing, I am satisfied that the proceedings to obtain the grant were defective in substance. Therefore, the Grant of Letters of Administration and the Certificate of Confirmation or grant issued to Paul Ngugi Murua are revoked.

40. I make the following orders:-

- a. The application dated 17<sup>th</sup> May 2021 and 23<sup>rd</sup> September 2023 are hereby allowed.
- b. The Grant of Letters of Administration and the Certificate of Confirmation or grant issued to Paul Ngugi Murua are revoked.



- c. All transactions made on the strength of the Certificate of Confirmation of grant are hereby declared null and void.
- d. Injunction be issued to the respondent from dealing with the estate of the deceased in any way pending the confirmation of grant.
- e. Grace Wamuhu Ngugi, Susan Wangari Gichia, Hellen Mbutu Ngugi, and Lilian Wanjuhi Ngugi are hereby appointed as the administrators of the deceased estate.
- f. Fresh grants of Letters of Administration be issued forthwith.
- g. The administrators are hereby directed to collect, administer and apply for confirmation of grant within 6 months from the date of this Ruling.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER 2024**

**E.K. OGOLA**

**JUDGE**

In the presence of:

Mr. Lusmeti for the Applicant

Ms. Ndindu h/b for Mr. Macharia for the Respondent

Gisiele Muthoni Court Assistant

