



**In re Estate of Jua Kaminza Kilumbi (Deceased) (Succession Cause
2 of 2017) [2024] KEHC 14168 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14168 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
SUCCESSION CAUSE 2 OF 2017**

RK LIMO, J

NOVEMBER 14, 2024

IN THE MATTER OF THE ESTATE OF JUMA KAMINZA KILUMBI (DECEASED)

BETWEEN

DAVID MUTUMO MUMO 1ST INTENDED INTERESTED PARTY

MAHMOUD ABDALLA MOHAMED 2ND INTENDED INTERESTED PARTY

MARY NYAMBURA MAINA 3RD INTENDED INTERESTED PARTY

AND

REHEMA JUMAN KAMINZA 1ST ADMINISTRATRIX

RUKIA ABDALLA 2ND ADMINISTRATRIX

RULING

1. Before this court is summons for revocation of grant dated 30.1.2023 applied by David Mututo, Mahmoud Abdalla Mohamed and Mary Nyambura Maina the 1st, 2nd & 3rd interested parties/ applicants respectively and they are asking for the following reliefs namely;
 - i. Spent.
 - ii. That they be enjoined in this cause as interested parties.
 - iii. Spent.
 - iv. That this honourable court be pleased to review the part of its ruling delivered on 9.12.2022 which ordered that all sub-divisions be cancelled and the estate reverts back to the original Kyangwithya/Kaveta/303 in the name of Juma Kaminza Kilumbi (deceased).



- v. That this court do exempt the applicant's parcel numbers Kyangwithya/ Kaveta/1358, 1399, 1371 and 1820 from the order of cancellation and reverting back to the original Kyangwithya/ Kaveta/303 in the name of Juma Kaminza Kilumbi (deceased)
2. The application is supported by respective affidavits sworn by the three (3) applicants sworn on 30.1.2023.
 3. The 1st applicant, David Mututu Mumo avers that he bought two parcels No's Kyangwithya/ Kaveta/1358 and 1399 from Miriam Kaele Kaminza (now deceased) who was the widow and the administratrix of estate of the deceased in this case.
 4. He avers that parcels No's 1358 and 1399 were resultant sub-divisions from Kyangwithya/Kaveta/303 and that he obtained title on 12th October 2010 for Parcel No 1358 and Parcel No 1399 on 20.12.2011 respectively.
 5. He further avers that he has since developed the two parcels by erecting a maize meal factory and that revocation of grant and cancellation of titles affects his rights to property which are protected under Section 93 of the Law of Succession Act.
 6. At the trial the 1st applicant tendered an agreement dated 13.9.2010 (D Exhibit 1 a) between himself and Miriam Kaele Kaminza over 0.45ha portion from Kyangwithya/Kaveta/303 at an agreed price of Kshs 2.5million. The agreement shows a deposit of Kshs 1million was to be paid upon signing the agreement. The 1st applicant exhibited a deposit slip (D Exhibit 1b) of Kshs 998,000.00 in favour of Rehema Juma Kaminza. The 1st applicant stated that he paid the daughter of the seller because the seller was too old. However, conceded under cross-examination by Kilonzi for the respondent that the agreement did not indicate that Rehema was to be the recipient of the consideration. He insisted that he was dealing with the lawyer of the seller one Mr. Musyoki.
 7. He further stated that he could not recall seeing the seller, Miriam Kaminza signing the agreement. He denied a suggestion that Rehema signed on her behalf. He agreed with the respondent's counsel that all the documents filed in respect to the succession indicated that the late Miriam Kaminza signed by thumb printing unlike the exhibited agreement which indicates a hand signature.
 8. He tendered a copy of the title in respect to parcel No Kyangwithya/Kaveta 1399 but had no agreement to demonstrate that Mariam Kaminza sold it to him. He also did not have proof of payment.
 9. Mahmoud Abdalla Mohamed, the 2nd interested party/applicant in his affidavit avers that he bought parcel No Kyangwithya/Kaveta/1371 from Mariam Kaele Kaminza (now deceased). He tendered a copy of handwritten agreement indicating that he bought 100 x 50 (measurement not clearly indicated) at agreed price of Kshs 180,000.00.
 10. In his oral testimony in court, he stated that he bought the plot and started paying from 2004 to 2011. He stated that he paid the money because the family of the late Kaminza was in dire need of financial help and that he even paid more than what is captured in the agreement because he was eager to help.
 11. He further stated that he has since 2017 sold the parcel to a third party and tendered an agreement (D Exhibit 8) as proof.
 12. He started under cross-examination that the agreement indicated Juma Kaminza (deceased) but it was the wife Mariam Kaminza who was transacting because by then (2004) Juma Kaminza had died.
 13. He further acknowledged that the agreement (D Exhibit 6 (e) dated 15.3.2009 was not signed by Mariam Kaminza but the daughters Rehema and Halima. He stated that some of acknowledgements



- of payments were done by daughters of Mariam Kaminza (deceased) but insisted that the original agreement was executed by Mariam Kaminza (deceased) in 2004.
14. Mary Nyambura Maina on her part avers that she purchased parcel No Kyangwithya/Kaveta/1820 from Halima Juma but in her oral testimony she stated that she bought it from Rehema Juma Kaminza and tendered an agreement dated 9.4.2018 (D Exhibit 10) as proof.
 15. She stated that the share she claims is the share from Rehema. She also confirmed that when she was taken to ground of the parcel she found it occupied but was assured by Rehema that Rukia had come to occupy houses belonging to Mariam Kaminza. She stated that she thought that the issue between Rukia and Rehema were fairly issues to be sorted out between them and did not want to get involved.
 16. She further stated that she first engaged Rehema when she went to borrow Kshs 10,000.00 and when she asked for refund, she promised to sell her a plot which she eventually did by selling her 50ft by 100ft plot.
 17. Rukia Abdalla (the 2nd respondent) on her part is opposed to the application to revoke the grant. She has sworn a replying affidavit dated 6.2.2023 where she avers that co-administratrix want to frustrate her by ganging up with purported purchasers who did not show interest until the estate reverted back to the deceased.
 18. She avers that the interested party are already named in this cause and had been aware of the existence of her claim over the estate.
 19. It is the 2nd respondent's (Rukia Abdalla) case that the titles in respect to interested parties have already been cancelled and the only issue to be determined is whether they have established an interest which can be determined during the distribution process.
 20. In her oral evidence, she stated that she was the wife of Abdalla (deceased) who was a Son to Juma Kaminza. She stated that the administratrix tried in vain to lock her out of the estate by attempting to sell the portion where she has been living but thwarted attempts to evict her.
 21. She stated that when the 3rd applicant (Mary Nyambura Maina) went to the ground to verify the plot, she cautioned her to keep off but she reportedly put her off telling her she did not have documents to prevent her from buying the plot.
 22. She stated that the 3rd respondent later went with the police claiming that she had purchased the plot. She stated that her mother in law Mariam Kaminza (deceased) did not recognize her and used to call her squatter and that explains why her daughters in law do not want to cooperate with her.
 23. He also faulted the 1st applicant stating that there is a time he sent workers to put up a wall in encroaching where she occupied and when she protested he allegedly told her she was crazy and threatened her.
 24. She disputed the signatures appearing in the agreements where Mariam Kaminza signed by hand stating that he mother in law used to thumb print only due to her age.
 25. She submits through counsel that the interested parties/applicants obtained titles to the respective plot through questionable process because it is not clear who signed the mutation forms or transfer forms. She contends that Section 93 of *Law of Succession Act* cannot offer protection to such people.
 26. This court has considered the application by the interested parties and the response by the 2nd respondent. It is apparent from the record that the applicants are already interested parties having been named way back in the application dated 17.7.2018 save that the present 3rd applicant had by then not



come into the picture. The interested parties have established that they have an interest in the estate of the deceased in this case. Prayer 2 of the application is therefore allowed and the interested parties in this cause.

27. On the question of revocation of grant, it is quite clear from the evidence tendered that the applicants' respective claims are based on purchaser's interest as they are not beneficiaries or dependants to the deceased. It was improper or misleading for the 2nd applicant Mahmoud Abdalla Mohamed to have been misrepresented as a dependant (Son) of the deceased in the petition for letters of administration by the late Mariam Kaminza (deceased) who described her as a son of the late Juma Kaminza.
28. The same was misleading and a misrepresentation because he was not a Son but a person whose only interests were purchaser's interest. However, I will leave that at issue at that since the same is not relevant to the issues at hand.
29. The main issue in this matter is whether the interested parties/applicants herein have established grounds as stipulated under Section 76 of the Law of Succession Act to warrant revocation of grant issued on 9.12.2022 to the 1st and 2nd respondents herein. Section 76 of the Law of Succession Act provides the grounds upon which a grant can be revoked. It states;
- “(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”
30. Going by the above provisions, it is quite evident from the application before court that the applicants have not anchored their application specifically to any ground stipulated under Section 76 of Laws of Succession Act but rather have only come strongly with claims of purchase of portion of the estate and that under Section 93 of the Act their interests are protected. I will consider the claims made by the three applicants individually with a view to determining whether sufficient cause has been made to revoke the grant or grant any other order deemed just.



31. I will begin with the 1st applicant, David Mututo Mumo who has staked claim on two portions namely Kyangwithya/Kaveta 1358 and parcel No Kyangwithya/Kaveta 1399 with respect to parcel No Kyangwithya/Kaveta 1358 the 1st applicant/1st interested party has exhibited a title deed (D Exhibit 2) and a sale agreement dated 13.9.2010 (D Exhibit 1a) to prove his claim. He also placed reliance on a deposit slip (D Exhibit 1b) to show that he paid a consideration of Kshs 998.000/=
32. The 1st applicant submits that based on the above documents exhibited and the provisions of Section 93 of the Law of Succession Act, the grant issued herein should be revoked.
33. This court has carefully considered the sale agreement (D Exhibit 1 (a)) and finds that there are issues raised by the 2nd respondent which casts doubts about the validity of the transaction leading to the issuance of Kyangwithya/Kaveta 1358. Firstly, there were no supporting documents like transfer forms, stamp duty and mutation forms to show that the process was procedural/lawful.
34. Secondly and more importantly there seems to be a disconnect between the terms of the sale agreement and proof of payment. This is because while the sale agreement stipulated that the total consideration was Kshs 2.5million and that a down payment of Kshs 1 million was to be paid to the seller who was Miriam Kaele Kaminza (deceased), the only proof of payment is a deposit slip (D Exhibit 1(b) and even then the deposit is Kshs 998,000.00 and to Rehema Juma Kaminza. The agreement does not stipulate that the amount or deposit was to be paid through Rehema who no doubt is the daughter to the late Mariam Kaele Kaminza.
35. The 1st respondent (Rehema Kaele Kaminza) has not denied the 1st applicant's claim that she was paid on behalf of her late mother. There is something however that has been pointed by 2nd respond which is the fact that the late Miriam Kaele Kaminza did not sign the agreement because she used only thumb print.
36. I have considered the petition for letters of administration herein and all the forms filed and note that all the documents were thumb printed.
37. This court cannot also ignore the striking resemblance of the signature of Rehema Juma Kaminza who is listed as a witness in the agreement and the signature appearing against the name of Miriam Kaele Kaminza. There was no expert called to clarify the issue but the resemblance of the two signatures is too conspicuous even on untrained eye.
38. There is however no doubt that Miriam Kaele Kaminza was the administratrix of the estate at the time of sale agreement. She was granted certificate of confirmation of grant on 24.3.2010. The date of the agreement is in respect to Parcel No 1358 was 13.9.2010 and therefore she had the capacity to deal with what was distributed to her which was only 0.28 ha out of parcel No Kyangwithya/Kaveta/303.
39. What is doubtful is how she was able to dispose 0.45 ha when she was only entitled to 0.28 ha going by certificate of confirmation of grant. It is not clear if the other beneficiaries including Rehema and other beneficiaries consented to their mother selling their shares. It is also uncertain if the remaining balance in consideration of Kshs 1.5million was ever paid to her or to her daughter Rehema.
40. In light of the above issues, it is not clear whether the process and indeed the validity of the title with respect to parcel No 1358 is protected under Section 93 of the Law of Succession Act. The 1st interested party/applicant in respect to that parcel No 1358 can base his claim on the share that will eventually go to 1st respondent and other beneficiaries who acknowledge that interest. I am not persuaded that the grant has to be revoked for the right of the 1st applicant on parcel No 1358 to be realized. The same can still be realized via distribution of the estate herein.



41. This court has considered the 1st applicant's claim with respect to parcel No Kyangwithya/Kaveta/1399 and it is apparent from the evidence tendered by the 1st applicant that apart from the title deed (D Exhibit 3) the applicant did not exhibit any other document to demonstrate how he came into ownership of that property but in the event that the 1st respondent and other beneficiaries acknowledged receipt of any monies in consideration the claim.
42. For now, this court cannot verify that the title exhibited in respect parcel No 1399 is valid. The process to acquire the same is as important as the title itself.
43. In regard to the 2nd applicant, Mahmoud Abdallah Mohamed apart from what I have observed above with regard to misrepresentation made that he was a Son to the deceased therefore entitled to a share, I have also noted from his testimony that he began purchasing his parcel in 2004 from the late Mariam Kaminza way before she obtained letters of administration.
44. This court finds therefore that the 2nd applicant cannot now claim that Section 93 of Law of Succession Act can be applied in revoking the grant as he prays. From his evidence, it is evident that he paid the consideration for his 50 x 100 ft over a long period of time and might have actually assisted the deceased fairly. This court finds no reason to doubt him as he appeared quite forthright about close relationship he had built with the family of the deceased over time.
45. This finds that the 2nd applicant's claim over parcel No Kyangwithya/Kaveta/1371 will better be determined during the distribution of the estate of the deceased herein.
46. In regard to the 3rd applicant Mary Nyambura Maina, her claim over parcel No 1820 is based on the title exhibited as D Exhibit 9. Her testimony in court on who sold her the portion however was at variance with her affidavit sworn on 30.1.2023. In his affidavit she avers that she bought the portion from Halima Juma but during her oral evidence in court, she stated that Rehema Juma Kaminza sold the portion to her. What however came out clearly is that when she visited the site of the plot she found the 2nd respondent in occupation. The 2nd respondent states that he cautioned her not to buy but she bought it all the same. The 3rd applicant told this court that she had at first lent some money to Rehema and when she asked for a refund, she offered to sell her a plot and that could explain her determination to get the plot despite the protests by the person occupying the site she was shown.
47. This court finds that having taken the risks knowingly, the 3rd respondent cannot claim protection under Section 93 of the Law of Succession Act. Her claim can only be hinged on the share going to Rehema or Halima whoever received the money in consideration.
48. In sum, this court for the aforesaid reasons, save for prayer 2 of the application, finds no merit in the application dated 30.11.2023. The same is disallowed but each party will meet own costs.
49. The interested parties/applicants have the option of pursuing their rights in the distribution of the estate to the respective beneficiaries. The 2nd respondent/administratrix avers that she has already lodged the application for confirmation of grant.
50. If that is so (because at the writing of this ruling this court was unable to confirm if an application has been filed or not) then the court will give a date for the application and a chance for any party dissatisfied with the proposed mode to file protests.
51. If none is filed, the administratrix are at liberty to move the court accordingly.

DATED, SIGNED AND DELIVERED AT KITUI THIS 14TH DAY OF NOVEMBER, 2024.

HON. JUSTICE R. LIMO



JUDGE

