



REPUBLIC OF KENYA



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In re Estate of Wambui Muchira Mumu (Deceased) (Succession Cause 112 of 2015) [2024] KEHC 14227 (KLR) (12 November 2024) (Judgment)

Neutral citation: [2024] KEHC 14227 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 112 OF 2015
RM MWONGO, J
NOVEMBER 12, 2024**

IN THE MATTER OF THE ESTATE OF WAMBUI MUCHIRA MUMU (DECEASED)

BETWEEN

SAMUEL NDINJI MUCHIRA APPLICANT

AND

LUCY WAINOI MUCHIRA 1ST RESPONDENT

JACINTA KAGUU NJOKA 2ND RESPONDENT

TERESIA WANGECHI MWANIKI 3RD RESPONDENT

JULIANA WANJIRU NGATIA 4TH RESPONDENT

JUDGMENT

1. The deceased died on 29th March 2007. According to the affidavit in support of the petition he was survived by four daughters: 1) Lucy Wainoi Muchira, 2) Jecinta Kaguu Njoka, 3) Teresia Wangeci Mwaniki and 4) Juliana Wanjiru Ngatia. The petition was filed by Lucy Wainoi Muchira on 15th May 2007 in Nairobi Succ. 1807/2007.
2. A grant of letters of administration was issued by the High Court in Nairobi on 23rd November 2007. It was confirmed on 10th November 2008. The deceased parcel Inoi/Kariko/1255 was distributed to the four respondents in equal shares.
3. The applicant filed summons for revocation of grant dated 1st December, 2014 on the following grounds:
 1. That the grant was obtained fraudulently by the making of a false statement and by concealment of material facts to the case in that the deceased had other dependants who were deliberately left out.



2. That, the proceedings to obtain the grant were defective in substance in that the deceased died Intestate.
3. That, the Respondents by their fraudulent conduct have dispossessed the Applicant and his siblings off their rightful interest in the deceased Estate in their capacity as sons of the deceased.
4. This application is supported by the annexed affidavit of Samuel Ndinji Muchira, and contains the following major averments:
 1. That, the deceased named Wambui Muchira Mumu died on 29th March, 2007 and a grant of Letters of Administration Intestate was made to Lucy Wainoi Muchira on the 23rd November, 2007 and confirmed on the 10th day of November 2008.
 2. That the deceased died leaving the following:
 - a. Lucy Wainoi Muchira
 - b. Jacinta Kaguu Njoka
 - c. Teresia Wangechi Mwaniki
 - d. Julian Wanjiru Ngatia
 - e. Johnson Kabui Muchira (Deceased) survived by wife Esther Keru Kabui.
 - f. Samuel Ndinji Muchira.
 3. That, the grant was issued and confirmed without disclosing that the applicant was a brother to the respondents alongside their sister-in-law who are entitled in equal priority to the Estate of their deceased mother.
 4. That, the deceased had executed a will dated 14th February, 2007 in Kikuyu Language on how she intended her properties distributed.
 5. That, the applicant has already transmitted land parcel No. Inoi/Kariko/1355 into their names and are currently seeking our eviction on the land.
 6. That, the applicant and my late brother's wife one Esther Keru Kabui resides on land parcel No. Inoi/Kariko/1355 and we have been in actual occupation for over twenty years and have extensively developed the same.
 7. That, the respondents secretly filed the cause herein without our knowledge and had the land distributed contrary to the wishes of our mother.
 8. That, none of the Respondents resides and/or cultivate on land parcel No. Inoi/Kariko/1355 as all are all married.
 9. That, it is therefore mete and just that the grant be revoked and the land parcel number Inoi/Kariko/1355 do revert back to our deceased mother's name.
 10. That, from the unfolding events, it is clear that the grant was obtained through fraud and concealing from the court valuable material facts that the court ought to have known.
5. The 1st Respondent filed a replying affidavit dated 25th November, 2015 deposing the following major averments:



1. That the applicant is her brother while the 2nd, 3rd and 4th respondents are her sisters. The 3rd respondent Teresia Wangechi Mwaniki is however deceased having died sometimes in September, 2011 or thereabouts.
 2. That the deceased Wambui Muchira Mumu was their mother.
 3. That her now late father Muchira Mumu was the owner of land parcel number Inoi/Kariko/27.
 4. That upon the death of her father, a succession cause was filed whereby her brothers Samuel Ndinji Muchira and Johnson Kabui Muchira got one acre each. Her father's brother by name Ndinii Mumu received one acre while one acre remained in the name of her now late mother Wambui Muchira Mumu for her and the 4 daughters.
 5. That consequently the land parcel number Inoi/Kariko/27 was partitioned into 4 portions being Inoi/Kariko/1355, 1356,1357 and 1358.
 6. That land parcel number Inoi/Kariko/1355 was registered in the name of Wambui Mumu and is the suit land herein.
 7. That land parcel number Inoi/Kariko/1356 was registered in the name of Johnson Kabui Muchira.
 8. That land parcel number Inoi/Kariko/1357 was registered in the name of Samuel Ndinji Muchira.
 9. That parcel number Inoi/Kariko/1358 was registered in the name of Ndinji Mumu.
 10. That the sons cannot therefore purport to benefit twice from the same land originally number Inoi/Kariko/27. Contrary to Section 42(b) of the [Law of Succession Act](#) Cap 160 Laws of Kenya.
 11. That as of now, the respondents are the registered owners of land parcel number Inoi/Kariko/1355 as appearing in the green card. The applicant was even present before the Land Control Board and never objected.
 12. That I have also seen a copy of the purported will dated, 14/12/2007. That will is a forgery for reasons that the account mentioned which is at Kirinyaga Tea Growers Sacco was operated by the deceased and Juliana Wanjiru Ngatia. The money which was in that account was shared equally by all the six children of the deceased. Further, my mother could not as a surviving spouse appoint or give by way of a will the suit land by virtue of section 35 (2) of the [Law of Succession Act](#).
6. The applicant filed a supplementary affidavit dated 5th November, 2015 and made the following major averments:
1. That, he had never at any given time presented himself at the Land Control Board to approve the transaction in the cause herein as alleged. However, he only came to learn of the cause after being informed that the land had changed hands from their late mother to the respondents herein.
 2. That there was no money in Kirinyaga Tea Growers Sacco that was shared among all the six children of the deceased equally as alleged. On the contrary their mother was ailing by then and had instructed Juliana Wanjiru Ngatia (Deceased) to be withdrawing money from the



account towards meeting medical needs. However, the said Juliana Wanjiru Ngatia (Deceased) withdrew all the money and ran away with the proceeds together with their mother's passbook and identity card to Subukia in 2006, and the proceeds were shared equally amongst the Respondents.

3. That the above act prompted the applicant to do a letter to the manager Kirinyaga Tea Growers withdrawing approval by Juliana Wanjiru Ngatia (Deceased).
 4. That the only money the applicant and his brothers and sisters accessed was the benevolent fund which was geared towards the burial expenses of their mother as we did not have funds.
 5. That indeed this was confirmed by the Chief from their location in an introductory letter to the court as to their dependency.
7. The Respondents filed a further replying to affidavit dated 25th November, 2015 and made the following major averments:
1. That the allegations in paragraph 3 of the supplementary affidavit are untrue. On the date of the land control board, the applicant was present in the company of one Esther Kabui, wife to the now late Johnson Kabui, the applicant's brother. Nobody raised any objection.
 2. That the applicant has an account with the Bingwa Sacco being account number 041XX-XX-XX342. His sister Jecinta Kaguu's account number is 041XX-XX-XX951; and his sister Juliana Wanjiru Ngatia's account is 041XX-XX-XX866. The account number for the other sister Teresia Wangechi Mwaniki, now deceased, is 041XX-XX-XX950, while his brother's Johnson Kabui, also now deceased, account number is 041XX-XX-XX061. On 24th June, 2009, they all shared equally the money that was in the account of the deceased, each one receiving Ksh.2,544/=.
 3. That they all also shared equally amongst the six (6) of them the housing shares, each one receiving Ksh.580.
 4. That the unwithdrawable deposit was also shared amongst the six of them equally, each receiving Ksh.679.
 5. That the Sacco shares were also shared equally amongst the six of them, each receiving Ksh.833/=
 6. That the allegation in paragraph 4 of the supplementary affidavit that Juliana Waniiru Ngatia is deceased is a lie since she is alive and kicking.
 7. That the deceased's pass book and the national identity card were in the custody of the applicant.
 8. That the applicant has not denied having received a parcel of land from the original parcel number Inoi/Kariko/27 and he has offered no reasons as to why he should benefit twice from the same land, while we the daughters had not received anything.
 9. That the chief's letter dated 19/10/2015 cannot in any way be of assistance to the applicant since the chief cannot determine the beneficiaries of the estate of the deceased. The letter only mentions the children left behind by the deceased. The issue of distribution of the properties of the deceased is solely the work of the court.
8. A hearing was held at which the applicant testified, and the respondent also testified, before parties filed written submissions.



Applicant's submissions

9. The applicant submits that Form 37 and the affidavit in support filed by the petitioner Lucy Wainoi Muchira clearly indicates that the respondents were the only dependants within the meaning of section 29 of the *Law of Succession Act*.
10. The applicant has never renounced his right over the share of his mother's estate, further as per form 37B which is the consent dated 27th July, 2006, the applicant never consented to the mode of distribution as proposed in the affidavit of Lucy Wainoi Muchira. On the other hand, the respondents submitted that Land parcel Inoi /Kariko/1355 was left to them by their deceased mother. She did not transfer the same to them during her lifetime. It remained the free property of the deceased.
11. The applicant submits that the allegations that Land parcel Inoi /Kariko/1355 are gifts inter vivos cannot succeed as the law is clear in the decision of Re Estate of the Late Gedion Manthi Nzioka (Deceased) (2015) eKLR wherein it was held that:

“In law, gifts are of two types, there are gifts made between the living persons (gifts intervivos) and gifts made in contemplation of death (gift mortis causa). For gifts inter vivos, the requirement of the law is that the said gifts may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trust or the presumption of gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by declaration of Trust in writing. Gifts inter vivos must be complete for the same to be valid.”

12. Thus, the respondents obtained the grant fraudulently by the making of a false statement or by the concealment from the court of something material to the case without disclosing that indeed there was the applicant and sister-in-law who were not involved and should be revoked.
13. The applicants further cite the case of In the Matter of the Estate Of Ibrahim Hassan Alias Sheikh Ibrahim Hassan (Deceased Ibrahim v Hassan & Charles Kimenyi Macharia, Interested Party [2019] eKLR where the court held:

“In the foregoing, I have no doubt that the Respondent herein had all the intention to disinherit the Applicant's father; Abdi Ibrahim Hassan and Fatuma Ibrahim Hassan of the estate in question herein as seen in the about account. She deliberately left out their names on the list of beneficiaries when she applied for the Grant of Letters of Administration and the subsequent Confirmation of the same. Therefore, this court finds that the Grant of Probate or Letters of Administration to Asha Ibrahim Hassan on 22nd April 1997 and confirmed on 15th May, 1998 was defective as the same was obtained fraudulently and by concealment from court of material acts, that is the exclusion of Abdi Ibrahim Hassan and Fatuma Ibrahim Hassan on the list of beneficiaries. The said grant is hereby revoked and annulled under the provisions of section 76(6) Cap Laws of Kenya”.

Respondent's submissions

14. On the issue of the alleged Will, the respondents submit that it is handwritten and they contend it is a forgery.
15. During the hearing, the applicant stated that their deceased mother wrote the Will in 2007. The applicant conceded during cross-examination that their mother, the deceased herein, didn't know how to write and there was no evidence as to who wrote the alleged Will. Further though the applicant had



indicated that he would avail a witness who was present when the Will was written, he later changed his mind and decided not to bring the witness. The inference is that the said witness feared to appear in court to tell lies. The alleged Will which is in Kikuyu language and dated 14/2/2007 shows that one of the alleged beneficiaries in the Will, Johnson Kabui Mucira signed the alleged Will against his national identity card number. This is a document prepared with the sole purpose of misleading this court.

16. The applicant has contended that the Respondents failed to disclose the existence of their brothers, yet the brothers had not renounced the right to inherit. The 2nd Respondent while testifying indicated that there was an unwritten family agreement/arrangement, that since the brothers had obtained their shares of land from their parents, the remaining portion was to be for the daughters, the Respondents herein.

17. On his part, the applicant in cross-examination conceded to there being such an arrangement when he said:

“My mother stated that number Inoi/Kariko/1355 of one acre would be divided into 4 for my sisters. Problem is the written will.”

18. It is apparent that the daughters, based on that arrangement while the mother was alive, had every reason to believe that the brothers will not be interested in parcel number Inoi/Kariko/1355. Hence there was no need to involve them while filing succession proceedings for that particular portion. The court should note that this is a case involving a brother and his sisters, and therefore it is not expected that every family meeting be documented. The proceedings were therefore conducted in good faith, based on that understanding. The applicant cannot now feign ignorance of the family arrangement.

Issues for Determination

19. The only issue for determination is whether the grant should be revoked.

Analysis and Determination

20. The applicant’s summons for revocation alleges that the grant was obtained fraudulently by making of a false statement and by concealment of material facts to the case in that the deceased had other dependants who were deliberately left out.

21. Under Section 76 of the [Law of Succession Act](#) the circumstances in which a Grant may be revoked or annulled are set out as follows:

“76. 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—

- I. that the proceedings to obtain the Grant were defective in substance;
- II. 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;
- III. 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;



- IV. that the person to whom the Grant was made has failed, after due notice and without reasonable cause either—
- a. 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
 - b. to proceed diligently with the administration of the estate; or
 - c. 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
- V. That the Grant has become useless and inoperative through subsequent circumstances.”

22. It is not contested that the deceased Wambui Muchira Mumu was their mother and the respondents are the applicant’s sisters.
23. It was the Applicant’s evidence that the respondents secretly filed Succession Cause 112 of 2013 at Kerugoya High Court (Formerly succession cause No.1877 of 2007 at the High Court of Kenya at Nairobi) without involving him and latter had land parcel number Inoi/Kariko/1355 transmitted into their names.
24. The applicant further stated that he together with Esther Keru Kabui, a sister-in-law resides on land parcel number Inoi/Kariko/1355 and that the respondents had filed Civil Suit No.98 of 2013 at the Environment and Land Court at Kerugoya seeking for their eviction, the applicant further stated that the deceased had left a will on how her property should be distributed.
25. Upon cross-examination, the applicant stated that his father had one wife Wambui Muchira who died in 1986. Initially, the applicant stated that the land was Inoi/Kariko/27 and was sub-divided into four portions Inoi/Kariko/1355 to 1358 and registered in the name of Wambui Mumu. It is the suit land herein.

Proof of written Will

26. The applicant stated that the deceased had a Will providing that the land would be inherited by his two sons before she died in the year 2007. However, he conceded during cross-examination that their mother, the deceased herein, did not know how to write. The respondents submit that It’s not known who wrote the alleged Will.
27. The respondents averred that Land parcel Inoi /Kariko/1355 was left to them by their deceased mother. However, she did not transfer the same to them during her lifetime. It remained the free property of the deceased.



28. The applicant submits that the allegations that Land parcel Inoi /Kariko/1355 are gifts inter vivos cannot succeed as the law it is clear including in decisions such as In Re Estate of the Late Gedion Manthi Nzioka (Deceased) (2015) eKLR wherein it was stated as follows:

“In law, gifts are of two types, there are gifts made between the living persons (gifts intervivos) and gifts made in contemplation of death (gift mortis causa). For gifts inter vivos, the requirement of the law is that the said gifts may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trust or the presumption of gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by declaration of Trust in writing. Gifts inter vivos must be complete for the same to be valid.”

Concealment of material facts

29. Section 76 of the *Law of Succession Act* was clearly expounded up on by the court in re Estate of Prisca Ong'ayo Nande (Deceased)2020 eKLR where it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds...It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons...”

30. The Respondents while testifying indicated that there was an unwritten a family agreement/ arrangement, that since the brothers had obtained their shares of land from their parents, the remaining portion was to be for the daughters, the Respondents herein. They then proceeded with the succession process without informing the applicant

31. The applicant denied attending any Land Control Board and that he was not aware of the succession cause until he was served with summons in the suit for eviction. Further, the applicant has never renounced his right over the share of his mother's estate. In Form 37B which is the consent dated 27th July, 2006, the applicant has not signed the same and has never consented to the mode of distribution as proposed in the affidavit of Lucy Wainoi Muchira.

32. Section 51(2)(g) of the *Law of Succession Act* provides that:

“Every application (for grant) shall include information as to-

In cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased.”

33. The respondents knew about the existence of the applicants and should have informed them before filing the succession proceedings. In Re Estate of Wahome Mwenje Ngonoro (2016) eKLR it was held:

“It is trite law that if a grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case; or that the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently, such a grant can be revoked or annulled. The law permits the court to revoke a grant on its own motion or on application by an interested person.



The evidently deliberate failure by the Respondent to involve the Applicants at the time of filing these proceedings, failing to list them among the beneficiaries or seek their consent or renunciation was in view in bad faith and amounts to concealment of material facts. My conclusion is that the proceedings leading to the issuance of the grant are defective in substance and that material information was not disclosed to the court in that had the court been made aware that there were other beneficiaries who were interested in the deceased's estate, the court would have hesitated to issue the grant.” (Emphasis added)

Conclusion and Disposition

34. It is clear from the foregoing that the respondents conducted the succession without involving the applicant; that the applicant is a beneficiary in that he is the respondent's brother; and that he did not consent to the succession or renounce his right thereto.
35. It is further clear that the deceased's property was free property, and that there is no proof that the alleged Will was executed by the deceased. All parties agreed that the said property was a disposable part of the deceased's estate.
36. There is no doubt that the grounds for revocation under Section 76 *Law of Succession Act* have been proved.
37. Accordingly, the application is allowed and the grant dated 23rd November 2007 is hereby revoked. The result is that any land distributed thereunder shall revert to the name of deceased.
38. The parties shall agree on the new administrator, failing which the court shall appoint an administrator or joint administrators.
39. It is so ordered.

DATED AT KERUGOYA THIS 12TH DAY OF NOVEMBER 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Muthoni - holding brief for Mwaura for Applicant

No representation by Kagio for Respondents

Mr. Murage, Court Assistant

