



**Kaini v M’Mauta (Civil Appeal E029 of 2022)
[2024] KEHC 14658 (KLR) (20 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14658 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E029 OF 2022
CJ KENDAGOR, J
NOVEMBER 20, 2024**

BETWEEN

AMOS MAUTA KAINI APPELLANT

AND

GEOFFREY NTOKAUWA M’MAUTA RESPONDENT

((Being an Appeal from the Ruling of Hon. Tito Gesora, Chief Magistrate, in Maua CM Court Miscellaneous Succession Case No. E138 of 2021, delivered on 17th February, 2022))

JUDGMENT

Background

1. The parties are brothers and the sons of M’mauta M’ibwathu, deceased. The Appellant filed Summons for Revocation and/or Annulment of Grant dated 4th November, 2021 in Maua Miscellaneous Succession Cause No. E138 of 2021. In the said Application, he sought orders that the Grant of Letters of Administration issued to the Respondent on 24th April, 2003 and confirmed on 14th October, 2003 be revoked and/or annulled. The Appellant asked the Court to declare all actions taken based on the Certificate of Confirmation of Grant as legally invalid, allowing the land in question to revert to the name of the deceased. Additionally, the Applicant sought to have the costs of the Application provided for.
2. According to the Appellant, the said Application was informed by the fact that the proceedings to obtain the grant were defective in substance and that the grant was obtained fraudulently by the making of false statements and concealment of material facts from the Court. The Appellant further informed the Court that he and other beneficiaries were not involved in the succession proceedings.
3. On 17th February, 2022 the trial Court ruled that the Appellant’s application was not merited and thus dismissed it with costs.



4. Being dissatisfied with the decision of the trial Court, the Appellant herein preferred this Appeal premised on the following grounds: -
 - i. That the learned trial Judge erred in both law and fact by holding that the Appellants application dated 4th November, 20221 is not merited.
 - ii. That the learned trial judge erred in law and in fact in failing to consider the evidence tendered by the Appellants.
 - iii. That the learned trial Court erred in law and fact by amending an already confirmed grant in a miscellaneous suit which was confirmed in a substantive succession cause.
 - iv. That the learned trial Court erred in law and fact by failing to consider that there was an existing substantive succession cause being Meru High Court Succession No. 36 of 2002.
 - v. That the learned trial Court erred in law and fact by exercising powers where it had no jurisdiction to do so.
 - vi. That the learned trial Court erred in law and fact by purporting to amend and/or review the orders of a superior Court
 - vii. That the learned trial Judge erred in fact and in law by failing to consider the merits of the application and dismissing it on a procedural technicality.
 - viii. That the Ruling is against the weight of evidence on record.
5. The Appellant prayed for the following orders: -
 - a. The Ruling of the lower Court be set aside.
 - b. That in the alternative, the ruling of the Lower Court be reviewed
 - c. The Respondent do bear the costs of this Appeal.
6. The Appellant submitted his Record of Appeal, and directions were issued for parties to file submissions. The Respondent filed their submissions dated 11th November, 2024, the Appellant did not file any submissions.

Analysis and Determination

7. I have reviewed the grounds of appeal, submissions on record and the lower Court record and outline the following issues for determination;
 - i. Whether the trial court erred in failing to revoke the grant of letters of administration issued to the respondent herein based on the grounds presented before it by the appellant;
 - ii. What orders the Court should make regarding the distribution of the Estate of M'Mauta M'ibwathu.
8. This being a first appeal, I am duty-bound to review the evidence before the lower Court and satisfy myself that the decision was well-founded. This enduring duty was espoused in *Selle & Another vs Associated Motor Boat Co. Ltd & Others* [1968] EA 123.



9. Section 76 of the Law of Succession Act gives the Court the power to revoke a grant provided the conditions stipulated therein have been met. It states that:-

“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 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
 - iv. The grant has become useless and inoperative through subsequent circumstances.”

10. The Appellant’s discontent that informed the filing of the Application dated 4th November, 2021 from which the impugned Ruling sprang is premised on the allegation that the grant of Letters of Administration was obtained fraudulently by making a false statement and/or concealment of material facts from the Court and that the Appellant and other beneficiaries and/or dependants of the deceased M’Mauta M’ibwathu were not involved in the succession proceedings.

11. In response, the Respondent stated that the deceased had several parcels of land forming his estate beyond the parcel that the Applicant has indicated in his application. These included: Land Parcel No. Amwathi/Maua/4001, Land Parcel No. Amwathi/Maua/821, Land Parcel No. Amwathi/Maua/4189, Land Parcel No. Amwathi/Maua/3992, Land Parcel No. Amwathi/Maua/5896, Land Parcel No. Amwathi/Maua/2443, Land Parcel No. Amwathi/Maua/2778, Land Parcel No. Amwathi/Maua/3762.

12. The Respondent further told the lower Court that prior to his demise, the deceased had transferred Land Parcel No. Amwathi/Maua/5896, Land Parcel No. Amwathi/Maua/2443, Land Parcel No. Amwathi/Maua/2778 and Land Parcel No. Amwathi/Maua/3762 to his sons Amos Kaini Mauta, Charles Meeme Mauta and Albino Ntarangwi and Luka Muroki respectively and that at the time of his death, Geoffrey Ntokauwa M’Mauta, Thomas Kithia M’Mauta (deceased) and Peter Kilulu M’Mauta had not attained the age of majority. Thus, their inheritances remained in the name of their deceased



father's name. No attempts were made by the Appellant herein to controvert these claims, nor were they denied.

13. The Respondent further stated that he, together with Thomas Kithia, Peter Kilulu and Zipporah Mukompara, were entitled to. Land Parcel No. Amwathi/Maua/4001, Land Parcel No. Amwathi/Maua/821, Land Parcel No. Amwathi/Maua/4189 and Land Parcel No. Amwathi/Maua/3992, respectively, and which parcels of land were the subject of Succession Cause No. 36 of 2002. The Respondent further stated that at the time of filing Succession Cause No. 36 of 2002, the Appellant and all the beneficiaries were involved and fully participated in the proceedings.
14. In the Appeal, the Appellant refers to Meru High Court Succession Cause No. 36 of 2002. However, this is misleading because the estate of M'Mauta M'ibwathu was settled in Maua Chief Magistrate's Court Succession Cause No. 36 of 2002, not at the High Court. Meru High Court Succession Cause No. 36 of 2002 relates to a different estate - The estate of M'Mukira M'Nthiri, deceased, and the Petitioner is one Kinyari M'Mukira.
15. The proceedings in Maua Misc. Application No. 138 of 2021 shows that the Original file – Maua Succession Cause No. 36 of 2002 was not traced, and subsequent proceedings relating to the Rectification of the Grant issued in the main file were processed in the miscellaneous file. The Appellant, after that, moved the trial Court for revocation of the grant in the same misc. cause. The trial Court faulted him for submitting the application for revocation in the miscellaneous file. He cannot be blamed for this decision, as proceedings were already underway in the miscellaneous application file after the main file was not found. It is highly desirable to reconstruct the Succession file so that subsequent applications can be processed in this reconstructed file, creating a tidier record where the full pleadings in the case are easily accessible.
16. I have reviewed the lower court record. There are annexures in the Replying Affidavit sworn on 16th November, 2021 and the affidavit in support of the application for rectification that give an overview of Mau Succession Cause No. 36 of 2002. The petition indicates that the Appellant was listed as a son of the deceased, among other children, and a widow of the deceased. The Grant was confirmed and a Certificate of Confirmation of Grant was issued dated 24th April, 2003. The properties that were distributed are the parcels mentioned in paragraph 12 of this Ruling, which the Respondent stated were part of the estate that was yet to be distributed as they had not come of age.
17. The evidence that the trial Court relied on was as contained in the affidavits and the submissions filed by the parties. I believe there are no other proceedings in the Estate of the deceased, apart from Succession Cause 26 of 2002 and the Miscellaneous Cause that is the subject of this Appeal. That being the case, it raises eyebrows as to why the Appellant would approach the Court about 20 years later seeking revocation of the grant confirmed in 2003. There was no authority to plead nor anything to show that the other siblings mentioned in his application- Charles Meeme and Albino Ntarangwi - shared his sentiments about being involved in the Succession proceedings. It is thus believable that they were bequeathed their shares of their father's estate before his demise, and that explains why they were left out of the distribution of the residue of the deceased estate upon his demise.
18. The Rectification seems to have generated the interest of the Appellant, whose application before the trial Court was only with regard to the parcel L.R Maua/Amwathi/821, which in the original distribution was going to Thomas Kithia, who is stated to have passed on 27 September 2014 before the implementation of the confirmed grant. Hence, the rectification to include and distribute the land to his dependants.
19. The power to revoke a grant is discretionary and must be exercised judiciously and only on sound grounds. Discretion should be exercised thoughtfully and with careful consideration, avoiding any



whimsical or capricious tendencies. There must be evidence of wrongdoing for the Court to invoke Section 76 and order for revocation or annulment of a grant. When a court is called upon to exercise this discretion, it must consider the interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be in the interest of justice. (See *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR.

20. The affidavits show that the family is embroiled in disputes over the occupancy of the parcels, which are not the subject of the present succession proceedings. The Probate Court has the authority to revoke a grant if the conditions set out in Section 76 of the *Law of Succession Act* are met. This action aligns with the Probate Court's responsibility to ensure the deceased's property is distributed to the rightful beneficiaries. If a property has been allocated to the wrong beneficiary, the Court can revoke the grant, allowing the property to revert to the deceased for proper distribution. There is nothing to show that there is any mischievous conduct on the part of the administrator (Respondent) in the execution of his role as administrator.
21. I concur with the trial Court's findings that no compelling evidence was presented to the Court to warrant the revocation of the grant based on the grounds advanced in the Application dated 4th November, 2021.
22. This Appeal lacks merit and is dismissed with no order as to costs.
23. In exercising the inherent powers under Rule 73 of the Probate and Administration Rules, I direct that upon the return of the original record (Misc. file), the trial Court shall, upon certification that the original record in Maua Succession Cause 36 of 2002 has not been located, cause a reconstruction and re-issue the Rectified Certificate of Confirmation of Grant, maintaining the original reference. The Rectified Certificate of Confirmation of Grant should include all assets as per the original form, except for the modifications made regarding Amwathi/Maua/821, which reflect the rectifications made by the learned magistrate. This will help maintain organized records regarding the deceased's estate and prevent situations where multiple grants may be issued under different files/references, as seen in the rectified grant from Misc. 138 of 2021. Additionally, it ensures that all matters related to the deceased's estate are processed within a single file.
24. It is so ordered.

DELIVERED, DATED, AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 20TH DAY OF NOVEMBER 2024.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant – Beryl

Advocate for the Appellant – Absent

Advocates for the Respondents – Absent

