



**Muriuki v Njagi & another; Njeru (Interested Party) (Miscellaneous Succession Cause 161 of 2014) [2024] KEHC 14447 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14447 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MISCELLANEOUS SUCCESSION CAUSE 161 OF 2014  
LM NJUGUNA, J  
NOVEMBER 20, 2024**

**BETWEEN**

**JOHNSON MURIUKI ..... APPLICANT**

**AND**

**JERVASIO NYAGA NJAGI ..... 1<sup>ST</sup> RESPONDENT**

**JANE NDEGI NJERU ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**PATRICK NGARI NJERU ..... INTERESTED PARTY**

**RULING**

1. The interested party/applicant filed summons general dated 20<sup>th</sup> September 2023 seeking the following orders:
  1. That the summons for revocation or annulment of grant dated 11<sup>th</sup> September 2014 be struck out; and
  2. Costs for the summons be provided for.
2. It is the applicant's case that the summons for revocation seeks to revoke the certificate of confirmation of grant and not the grant which are 2 separate instruments. That the application for revocation is premised on section 76 of the *Law of Succession Act* but this provision does not extend to certificate for confirmation of grant. He stated that the certificate of confirmation of grant is incapable of revocation in law thus the summons should be struck out as the same is incompetent.
3. The applicant/respondent, who filed the summons for revocation filed a replying affidavit stating that summons for revocation was already heard by way of viva voce evidence and the proceedings therein were recorded by Muchemi J. That the said judge considered the evidence and the submissions filed



but stayed delivery of the judgment until Siakago MCELC case no. 66 of 2018 is concluded. That the orders of the judge staying the judgment are still valid and the application herein amounts to contempt of court. That the parties should await Muchemi J. to deliver her judgment before the application herein can be considered. He stated that the grant and certificate of confirmation of grant are one and the same thing and that the application is valid.

4. The court directed parties to file their written submissions and they all complied save for the respondents.
5. The interested party/applicant relied on the cases of *In re Estate of Ngai Muranga (Deceased)* [2024] KEHC 3649 (KLR), *Re Estate of Kiberege Mukwa (deceased)* [2021] eKLR and *In Re Estate of Joel Cheruiyot Ronoh* [2016] KEHC 2964 (KLR) and argued that the grant and certificate of confirmation are different documents. That the certificate of confirmation of grant cannot be revoked under section 76 of the *Law of Succession Act*. He urged the court to strike out the summons for revocation with costs since he was painfully dragged through these proceedings for a long time. Further reliance was placed on the cases of *Tobin & Twomey Services Ltd V. Kerry Foods Ltd* (1991) ILRM 428, *Gundry v Sainsbury* [1910] 1 KB 645 and *Dyotte v. Reid* (1876) 10 I.L.T.R. 110.
6. The applicant/respondent submitted that Muchemi J. stayed her judgment pending the outcome in Siakago MCELC 66 of 2018. That if the application herein is determined, the ruling will interfere with the judgment intended to be delivered by Muchemi J. since the matter is sub judice. That the parties herein ought to keep silent and await the court's judgment. He urged the court to use its discretion under Article 159 of the *Constitution* to determine the application at hand by letting the pending judgment of the court to be delivered. He urged the court to overlook the small difference between the grant and certificate of confirmation of grant given that the guiding authorities on the issue are decisions of the courts of equal status as this court, hence they are merely persuasive.
7. The issue for determination is whether the summons dated 16<sup>th</sup> September 2014 should be struck out.
8. The applicant herein is an interested party claiming purchaser's right of the estate of the deceased
9. There are several factors to consider before determining this application which seeks to have a pleading struck out. The summon for revocation was already heard by way of viva voce evidence but the Judge directed that she will deliver her judgment after the Siakago ELC matter has been finalized. The court continually mentioned the matter and the judge who issued those directions transferred to another station. The application herein comes in the pendency of the said judgment.
10. Before striking out a pleading, in this case, the summons for revocation, the court must bear in mind the wholesome effect of doing so. The application raises a point of law which has been canvassed by way of written submissions. In the case of *Blue Shield Insurance Company Ltd v. Joseph Mboya Oguttu* [2009] eKLR, the court relied on the case of *D.T. Dobie and Company (Kenya) Ltd vs Muchina* (1982) KLR 1 where it was held that;

“The power to strike out should be exercised after the Court has considered all facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial Judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial Judge in disposing the case.



11. Similarly, in the case of *Cail Zeiss Stiftung v. Ranjuer & Keeler Ltd and others* (No.3) (1970) ChpD 506, the court said:

“The power to strike out any pleading or any part of a pleading under this rule is not mandatory; but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending pleading.”

12. Striking out the revocation application should be considered through the court’s discretion bestowed upon it by Article 159 of the *constitution*. Striking out of a pleading should be done without the court having to consider the merits of the case. In this case, there is a great temptation to enter into the merits of the case before the application can be struck out or otherwise. It is abundantly clear that by determining the application herein, the ruling will affect the pending judgment of the court.

13. In light of the fact that there is a pending ELC case that ought to give bearing to this case, it is my view that the parties should move the court for a judgment since the matter was already heard. I have taken the liberty of perusing the Siakago ELC case which has been concluded. In the circumstances, it is prudent to allow this court time to deliver its final judgment on the matter.

14. In the premises, I find that the application herein lacks merit and it is struck out.

15. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**L. NJUGUNA**

**JUDGE**

