



REPUBLIC OF KENYA



**In re Estate of Late Macera Kanyi (Succession Cause 475 of 2013)  
[2024] KEHC 15881 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15881 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
SUCCESSION CAUSE 475 OF 2013  
RM MWONGO, J  
DECEMBER 3, 2024**

**BETWEEN**

**LUKE MACERA NJERU ..... APPLICANT**

**AND**

**KANYI MACERA ..... RESPONDENT**

**AND**

**LUKE GACHOKI NDAMBIRI ..... SUBSTITUTE**

**AND**

**SICILY WANJIRA IRERI ..... INTERESTED PARTY**

**RULING**

1. The applicant's summons dated 31<sup>st</sup> January, 2024 seeks that the summons for revocation of grant dated 16<sup>th</sup> June, 2016 be struck off with costs for being res judicata and having been overtaken by events.
2. The application is supported by the annexed affidavit of Luke Gachoki Ndambiri containing the following major averments:
  1. That the administrator of the estate of the deceased herein was Kanyi Macera, the Respondent herein.
  2. That when an application for confirmation of grant was filed, my father, the now late Samuel Ndambiri Macera filed a protest. The petitioner/Respondent, Kanyi Macera and the Applicant, Luke Macera Njeru, testified on 25/5/2007.
  3. That judgment was delivered in favour of my late father, and no appeal was preferred against that judgment.



4. That the applicant and the other beneficiary, Sicily Wanjira Ileri filed the application for execution orders, and that application was allowed.
  5. That the transmission process was completed, and the title of land parcel number Baragwe/Guama/527 was registered in the names of the two beneficiaries.
  6. That the applicant, who participated in the succession proceedings and even filed the application seeking orders for the executive officer of the court to be signing transmission documents, is the same person who is now moving this court to revoke the same grant whose confirmation he actively participated in, and eventual transmission to the beneficiaries, which is a gross abuse of the due process of the court.
  7. That the administrator, Kanyi Macera, died on 10/11/2020 after he had completed his duties as an administrator.
3. The respondent opposed the application through grounds of opposition as follows:
1. That the application is incompetent and bad in law.
  2. The summons dated 31<sup>st</sup> January, 2024 do not meet the conditions with regard to the doctrine of res judicata.
4. Parties filed submissions as directed by the court.

#### **Applicant's submissions**

5. The applicant submits that Luke Machera Njeru having moved the court, together with Sicily Wanjira Ileri, for confirmation of grant; and having participated in the proceedings and even testified; having moved the court for orders of execution he cannot at the same time file an application to set aside the same grant which he moved the court to confirm.
5. If the applicant was dissatisfied with the court's ruling of 22/6/2007, he had the option to appeal. He cannot seek to restart the succession proceedings afresh, and is estopped.
6. In re Estate of Beniamin Kiregenyi Muiri (Deceased)(2022) eKLR, where the applicants were aware of the succession proceedings, the court held that the provisions of section 76 were not satisfied. Further In Murang'a High Court Succession Cause No.433 of 2013, Mburu Njoroge v Fredrick Mburu Nioroge (2014) eKLR, at page 3, the court held:

“Having actively participated in the proceedings out of which the grant was made and subsequently confirmed, it would be insincere of the applicant to come back to court to seek nullification or revocation of the same grant simply because he is not satisfied with the manner in which the deceased's estate was shared out amongst the survivors or the beneficiaries of the deceased. In any event, a disagreement or dissatisfaction with the distribution of the estate of a deceased person is not among the grounds upon which a grant may be revoked or nullified, irrespective of how genuine such a disagreement or dispute may be. It cannot be resolved in the context of a summons filed under section 76 of the [Law of Succession Act](#).”
7. Finally, it was submitted that the administrator of the estate, Kanyi Macera died on 10/11/2020 having finished his duties as an administrator, and after the transmission process was completed. Thus, he cannot be substituted in his capacity as an administrator and no other person can answer on behalf of



the deceased administrator as to what he did or did not do as an administrator. The magistrate's court had pecuniary jurisdiction to handle the succession cause.

### **Respondent's Submissions**

8. The law pertaining to the doctrine of res judicata is captured under the provisions of Section 7 of the [Civil Procedure Act](#), which provides:

“No court shall try any suit or issues in which the matter directly and substantially in issue has been directly and substantially in issue a former suit between the same parties, or between parties under whom they or any of them claim litigating under the same title. In a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and it has been heard and finally decided by such court.”
9. It was submitted that applying these provisions to the objection at hand, it is crystal clear that Veronica Warui did not participate in the hearing of Principal Magistrate Court Succession Cause No. 30 of 1991 at Kerugoya.
10. Further, it was submitted that the key elements that would give rise to res judicata were identified in the case of *Uhuru Highway Development Ltd v Central Bank of Kenya (1999) eKLR* to include the following:
  - a The former judgment or order must be final;
  - b The judgment or order must be on merits;
  - c It must have been rendered by a court having jurisdiction over the subject matter and the parties; and
  - d There must be between the first and the second action identity of parties, of subject matter and cause of action”.
11. That 2<sup>nd</sup> issue in this suit is in regard to the jurisdiction of Senior Principal Magistrate's Court-Kerugoya and the judgment delivered by Hon. A.K Ithuku Resident on 22<sup>nd</sup> June, 2007 in view of Section 49 of the [Law of Succession Act](#) which at the time provided that the magistrate court did not have jurisdiction to hear and determine a matter where the gross value exceeded Kshs. 100,000/=.
12. That from paragraph 6 of P&A Form filed in Senior Principal Magistrate Court Succession Cause No.30 of 1991-Kerugoya the suit land (Baragwe/Guama/527) had gross value set out as Kshs.50,000/=.
13. The respondent urges this court to take judicial notice that under Section 59 of the [Evidence Act](#) that title number Baragwe/Guama/527 whose approximate area is 4.90 acres within Kirinyaga County exceeds the estimated gross value of Kshs.50,000/=.
14. Thus, that clearly at the material time the magistrate court did not have jurisdiction to hear and determine this case as the value of the estate exceeded the value of Kshs.100.000/=.

### **Issues for Determination**

15. The core issue for determination is whether the summons are res judicata and should be struck off.



## Analysis and Determination

16. The applicant's application seeks orders to have the summons for revocation of grant dated 16<sup>th</sup> June, 2016 struck off for being res judicata and having been overtaken by events. It is opposed by the Respondent, Samuel Ndambiri Macera through grounds of opposition dated 7<sup>th</sup> March, 2024.
17. The Summons for revocation of grant dated 16<sup>th</sup> June, 2016 was filed by Luke Machera Njeru against Kanyi Macera. It seeks to have the grant issued on 22<sup>nd</sup> June, 2007 to Kanyi Macera in respect of the estate of Macera Kanyi, deceased, in Kerugoya High Court Succession Cause Number 30 of 1991 be revoked. However, the said grant was issued by the Magistrate's Court Kerugoya and not the High court.
18. The main reason for seeking to revoke the grant is that Samuel Ndambiri Macera and Sicily Wanjira Ileri are brother and sister. They had another sister by name Veronica Warui who is deceased and they assert that Luke Machera Njeru is a son to the said Veronica Warui, a material fact that was allegedly concealed and thus the said Veronica Warui heir was left out in the distribution.
19. Samuel Ndambiri Macera joined the proceedings as a third party and filed a replying affidavit to oppose the summons for revocation of grant. Sicily Wanjira Ileri also filed a replying affidavit sworn on 17<sup>th</sup> October, 2018 in opposition to the said application.
20. The third party, Samuel Ndambiri Macera died on 7/12/2018. He was substituted through an application dated 16<sup>th</sup> July, 2019, by Luke Gachoki Ndambiri on 11/11/2019 and also on 28/6/2022.
21. In the supporting affidavit sworn on 31<sup>st</sup> January, 2024, the third party/applicant has annexed the proceedings for Kerugoya Principal Magistrates Court Succession Cause No.30 of 1991. There, it is clear that on 25/5/2007, Luka Machera Njeru testified. He even proposed how the suit land should be shared by three people: Samuel Ndambiri getting 2.5 acres, Luka Machera 1.5 acres and Cicily Wanjira 0.5 of an acre. The Applicants in that case were the Applicant herein, Luke Macera Njeru, and the interested party herein Sicily Wanjira Ileri, who were grandson and daughter, respectively, to the deceased.
22. In a ruling delivered on 22<sup>nd</sup> June, 2007, the court directed that the suit land be shared by two people. Samuel Ndambiri Macera, the original third party, getting 3.5 acres, and Sicily Wanjira Ileri getting 1.5 acres.
23. The applicant submits that Luke Machera Njeru having moved the court, together with Sicily Wanjira Ileri, for confirmation of grant, cannot now simultaneously file an application to set aside the same grant in which he moved the court for confirmation. In re Estate of Benjamin Kiregenyi Muiiri (Deceased) [2022] eKLR, the court dealt with a situation where the applicants were aware of succession proceedings. It held that where the applicants were aware of the succession proceedings, the provisions of Section 76 were not satisfied.

## Res Judicata

24. The issue of res judicata is provided for under Section 7 of the *Civil Procedure Act*, which states that:

“No court shall try any suit or issues in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim litigating under the same title. In a court



competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and it has been heard and finally decided by such court.” (Emphasis added).

25. The respondent submits that applying the very clear provisions above to the objection at hand, it is clear that Veronica Warui did not participate in the hearing of Principal Magistrate Court Succession Cause No. 30 of 1991-Kerugoya.
26. No material has been availed to this court to show that Veronica Warui or anyone on her behalf participated in Succession No. 30 of 1991. In light of that fact, I find that she did not.

### **Conclusion and Disposition**

27. Ultimately, the applicant has not disputed the facts that: Veronica Warui was their sister; and that she was left out in the succession process. Thus, that the grant was obtained by concealing material facts, one of the original sins frowned upon by Section 76 *Law of Succession Act*.
28. At its core, the summons for revocation of grant dated 16<sup>th</sup> June, 2016 is grounded on the fact that the grant was obtained by concealing material facts. That is, that their deceased sister, Veronica Warui, was succeeded by her son Luke Machera Njeru. He was left out in the distribution of the estate, land parcel No. Baragwe/ Guama/527.
29. These are facts which are incontrovertible and, on the strength thereof, I am persuaded that the application for striking out the summons for revocation of grant should be dismissed. It is hereby dismissed with no orders as to costs.
30. Orders accordingly.

**DATED AT KERUGOYA THIS 3<sup>RD</sup> DAY OF DECEMBER, 2024**

---

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Mwagiru - holding brief for Kagio for Applicant

Gwaro - holding brief for Otuke for Respondent/Applicant

Nyaga for beneficiary Sicily Wanjiru Ileri

Mr. Murage, Court Assistant

