



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

SUCCESSION CAUSE NO. 29 OF 2017

IN THE MATTER OF THE ESTATE OF KAGONYE WAIRINDI (DECEASED)

ELIJAH MUIRURI KAGONYE.....1ST APPLICANT

LUCIA WAITHIRA MUCHIGU.....2ND APPLICANT

VERSU

KAMAU KAGONYE WAIRINDIRESPONDENT

RULING

1. The summons for revocation or annulment of grant made to KAMAU KAGONYE WAIRINDI brought under Section 76 of the Law of Succession Act and Rule 44(1) of the Probate and Administration Rules was filed on 14th April, 2016 by **Elijah Muiruri Kagonye** and **Lucia Waithira Muchigu** (hereafter the 1st and 2nd Applicants, respectively). It is premised on ground that the grant was obtained fraudulently by concealment of material facts or by means of an untrue allegation of an essential fact.

2. The 1st Applicant swore the affidavit in support of the summons in his own behalf and on behalf of the 2nd Applicant Therein, he deposed that he was a son of the deceased herein, **Kagonye Wairindi**; that the deceased was survived by two houses consisting of three children; and that the deceased died possessed of two parcels of land namely **LR. Nos. JUJA MILIMANI BLOCK xxxxx/x** and **NGENDA/GITHUNGUCHU/xxx**. That **Succession Cause No. 13 of 2001** was subsequently filed in then **RM's Court, Gatundu**. He contended that the administrator herein **Kamau Kagonye Wairindi** (hereafter the Respondent), the administrator appointed in the cause filed a summons to confirm the grant in which he disclosed the size of the Applicants' share but concealed the actual acreage of the share apportioned to him in land parcel **LR. No. Juja Milimani Block xxxxx/x**; and that the certificate of confirmation of grant issued on 9th January, 2003.

3. That the Applicants later discovered that the Respondent's share of the land parcel **LR. No. Juja Milimani Block xxxxx/x** was 5 ½ acres while between them the Applicants received only ½ acre; that unfortunately the lower court file was destroyed in a fire that razed Gatundu court house in 2009; and that when they sought to have the file reconstructed, the Respondent applied to introduce new beneficiaries alleged to be purchasers. The deponent any knowledge of the alleged sale of family land and that the Applicants opposed the move but nonetheless, eventually the Court allowed rectification of the confirmed grant which meant that the Respondent received 5 ½ acres of **LR. No. Juja Milimani Block xxxxx/x**. The Applicants complained that the Respondent hoodwinked them by failing to disclose the acreage of the Juja land parcel in the summons to confirm the grant and therefore fraudulently obtained their consent thereto. The court was urged to revoke the grant so that the deceased's properties are shared equally among the beneficiaries.

4. In opposition to the summons for revocation of grant, the Respondent filed a replying affidavit. To the following effect. That the grant was obtained with consent of the Applicants herein; that Juja/Milimani Block xxxxx/xx was initially owned by white settlers who offered the said parcel of land for sale to the deceased who, not having sufficient funds invited **Chege Wairindi** and **Murira Mungai** his brother and friend respectively, to contribute towards the purchase price; that each of them contributed Shs. 1000/- entitling each of them to 2 acres of the entire parcel measuring 6 acres but which was registered in the name of the deceased. The Respondent averred that all the beneficiaries of the deceased's estate were aware of that position at the time of filing the Petition for grant and gave their consent.

5. In a Further affidavit titled as a replying affidavit, the 1st Applicant disputed the contents of the Respondent's affidavit and reiterated that during confirmation of the grant, the Respondent had concealed the acreage of his portion of the Juja land parcel so that the Applicants did not realize that the Respondent's share larger was than their own. He asserted that no proof had been proffered in relation to the allegations that **Chege Wairindi** and **Murira Mungai** had purchased the Juja parcel jointly with the deceased. The Deponent disputed that the deceased had during his lifetime sold any portion of the Juja land parcel.

6. The Respondent also filed a further affidavit reiterating that all the beneficiaries had consented to the mode of distribution.

7. The Summons for revocation of grant was heard by way of viva voce evidence based on affidavits filed pursuant to the Court's directions.
8. The 1st Applicant testifying as **PW1** relied on his affidavits. He contended that although the Applicants were involved in the succession proceedings in the lower Court, the Respondent had received the lion's share of the land parcel LR. No. Juja Milimani Block 10093/ by concealing his actual share in the summons to confirm the grant. Therefore, his consent given in respect of the said summons was not informed as they were not aware of the parcel's full acreage. He conceded that the Applicants had no objection in respect of the other assets of the deceased's estate. He asserted that the deceased used his own money to buy the Juja property. Under cross-examination he admitted that he had signed the consent regarding confirmation of the grant but at the time, did not know the actual size of the Juja land parcel. He denied allegations that Chege Wairindi and Murira Mungai were relatives of the deceased herein and asserted that both were strangers to his estate, further disputing that Chege Wairindi and Murira Mungai assisted the deceased in purchasing land parcel LR No. Juja Milimani Block xxxxx/x. He asserted that the deceased was a man of means.
9. The Respondent testified as **RW1**. He too adopted his affidavits and asserted that Chege Wairindi and Murira Mungai are relatives of the deceased who had jointly purchased the 6 acres making up Juja Milimani Block xxxxx/x and that the deceased was only to receive two acres thereof. During cross-examination he denied that he had deceived the Applicants regarding the actual acreage of the Juja parcel at land. He admitted that the parcel of land at Juja is 6 acres but claimed that it was purchased jointly bought by three people each of whom received 2 acres. Nevertheless, he stated that he did not have any agreements of sale to support these claims.
10. The court directed the parties to file their written submissions. The Applicants' submissions reiterated their evidence. They argued that there was no justification for the Respondent to get a larger portion than the Applicants who are equal beneficiaries to the estate. The Applicants asserted that due to the Respondent's concealment of facts material to the case the proceedings to obtain the grant were substantially defective and the grant ought to be revoked. Further that there was no proof laid before the court regarding the alleged joint purchase of the Juja property or sale to third parties by the deceased. The court was urged to revoke the grant and direct that a fresh grant be issued and any prior transactions be declared null and void because the alleged purchasers cannot benefit from the confirmed grant having been aware of the fraud herein. Reliance was placed on the case in **Monica Adhiambo v Maurice Odero Koko (2016) eKLR**.
11. The Respondent on his part submitted that all beneficiaries were included in the succession proceedings and none filed objections as they were in agreement concerning the petition for grant and the mode of distribution. It was the Respondent's contention that if the Applicants are aggrieved by the mode of distribution, they could either file an appeal or apply to set aside the certificate but not seek revocation of the confirmed grant. The Respondent took the position that the Applicants had failed to discharge burden of proving the alleged fraud and/or concealment of material facts. He cited the decision **In the Matter of the Estate of Mutiga Gathige (deceased) (2017) eKLR**. In the Respondent's view the instant summons has not been brought within the circumstances envisaged in Section 76 of the Law of Succession Act and should be dismissed.
12. The court has considered the material canvassed in respect of the summons for revocation dated 14th April, 2016 through affidavit and oral evidence of the parties, and their respective submissions. There is no dispute that the deceased herein, **Kagonye Wairindi** died intestate on 28th December, 1984 and **Succession Cause No. 13 of 2001** filed in then **RM's Court at Gatundu**, with the consent of the persons surviving him, being the parties herein, namely, **James Kamau Kagonye** alias **Kamau Kagonye Wairindi** (Respondent), **Elijah Muiruri Kagonye** (1st Applicant) and **Lucia Waithira Muchigu** (2nd Applicant).
13. The deceased was polygamous and had two wives during his lifetime. These were **Njeri Kagonye**, mother of the 1st Applicant, **Elijah Muiruri Kagonye** and one **Muchigu Kagonye**, the latter who seemingly predeceased the deceased herein and was the husband of **Lucia Waithira Muchigu** (2nd Applicant). The second wife was **Wangari Kagonye**, mother to **James Kamau Kagonye alias Kamau Kagonye Wairindi** (the Respondent). The estate of the deceased comprised of two assets being land parcels LR.Nos. **Ngenda/Githunguchu/xxx** and **Juja/Milimani Block xxxxx/x** (there was an error in the latter particulars but corrected via rectification.)
14. The Respondent was the sole petitioner in the Lower Court Succession cause and a grant was issued in his name on 22nd February, 2002 (see bundle of annexures marked "A1" annexed to the Respondent's further affidavit filed on 19/09/2018). In the same bundle is the certificate of confirmation of grant dated 9th January, 2003 distributing the two assets of the deceased's estate as follows:
- A.Ngenda/Githunguchu/xxx:
- i. Kamau Kagonye -0.75acres
 - ii. Elijah Muiruri Kagonye – 0.35acres
 - iii. Lucia Waithira Muchigu – 0.35acres
- B.Juja/Milimani Block xxxxx/x
- iv. Elijah Muiruri Kagonye – ¼ acre
 - v. Lucia Waithira Muchigu ¼ acre
 - vi. James Kamau Kagonye ("the remaining Portion")
15. It appears that the lower court file was destroyed in a fire that gutted the Gatundu Court House in May 2009 and by the year 2012, the Applicants had already discovered that the so-called remaining portion allotted to the Respondent under the conferred grant was 5 ½ acres. They had also discovered that the correct particulars of the Juja land parcel was **LR. No. Juja/Milimani/Block xxxxx/xx**(hereafter the

disputed property) and not as particularized in the confirmed grant. Thus, on 10th January 2012 the Applicants applied to have the destroyed file reconstructed. On 24th September, 2013 the Respondent filed a similar application but which contained two additional prayers, firstly, that the confirmed grant “issued on 9th January, 2003 be amended and/or rectified so as parcel No. Juja/Milimani/xxxxx/x to read Juja/Milimani/Block xxxxx/xx”.

16. The further prayer sought that:

“3. THAT, the purchasers namely JOHN MBURU MURIRA, RAPHAEL KAGONYE CHEGE and JAMES KAMAU KAGONYE be included in the mode of distribution of the deceased’s estate “(sic).

17. It was claimed in that application that the deceased had prior to his death *sold* part of the said land parcel to the alleged purchasers who had not been “included at the time of filing this succession.” From correspondence on the record, the reconstructed file of the lower court was forwarded to the Family Division Milimani on 13/09/2016 but it appears that when the present succession cause was transferred to this court, the said reconstructed file was either not received or was misplaced. Efforts to trace the lower court reconstructed file bore no fruit and hence this court had granted leave to parties to file any pleadings in their possession by way of affidavits.

18. However, on the record of the High Court file are uncertified typed proceedings of the lower court cause running from 24/09/2010 to 7/05/2015. The said record indicates that a skeleton file was ordered reconstructed on 14/10/2013 and that the Applicants herein had opposed the rectification of the grant to include alleged purchasers from the start and that alleged purchasers whose identities were not recorded appeared in court severally in connection with the rectification application. On 24/02/2014 the lower court made the following orders:

“That purported purchasers who are in court are directed to file replying affidavits disclosing their interest in the estate and annexing sale agreements (if any)”.

19. A subsequent attempt by the so-called 1st protestor/ alleged purchaser and the Respondent herein to settle their matter out of court was resisted by the Applicants herein. Other “protestors”(alleged purchasers) were absent on that day and they and the so-called 1st protestor did not subsequently participate in the hearing in respect of the Respondent’s application for rectification of confirmed grant.

20. Without the benefit of the original lower court file, it is difficult for this Court to verify some of the documents filed in respect of the said rectification application, as are annexed to the further affidavit of the Respondent filed on 19/09/2018. The Respondent being an administrator and represented by counsel throughout the proceedings would have been expected to furnish the Court with a more comprehensive set of pleadings in the lower court than the Applicants who were acting in person. It seemed that he selected just a few, some of which do not assist the Court. For instance, the purported undated affidavits of **Raphael Kagonye Chege, John Mburu Murira and Kamau Kagonye** claiming that they had purchased 4 acres of the Juja land asset and that the parcel was registered in the deceased’s name in trust and for their benefit too. Interestingly, the said affidavit bears signatures of deponents with different names, viz, **Isaac Muigai Kariuki, Joseph Njoroge Nyamatu and Joseph Kariru Maina**. The copy of affidavit of protest by **Simon Mureithi Kariuki, Joseph Njoroge Nyamatu, Rosalind Njoki Gitau, John Ndungu Mutaha, John Karanja Maara, Isaac Muigai Kariuki, Joseph Kairu Maina** does not bear a legible court stamp to signify filing but the said deponents swore to have purchased two acres of the Juja parcel that was due to **Raphael Kagonye Chege**, from his brother **John Cubu** and to which they were laying claim.

21. The copy of affidavit in support of petition for letters annexed to the Respondent’s further affidavit reflects three persons as having survived the deceased, the parties herein. However, there are two different copies of consent to making of grant. The first, attached to the Respondent’s affidavit filed on 8/06/2016 reflects that there were five beneficiaries namely, the Applicants and **John Mburu Murira and Chege Wairindi** and the Respondent. The Respondent however claimed before this Court claimed that the second copy of consent attached to his further affidavit reflecting only the parties herein as beneficiaries is the fruit of tampering by the Applicants. However, a close scrutiny of the former copy of the consent reflecting five beneficiaries including Chege Wairindi and John Mburu Murira reveals that the latter two names are in a different font from the other names and appear to have been separately added to the consent document.

22. Such is the state of the scraps of material proffered on either side of the dispute that it is difficult to rely on some of the alleged copies of pleadings in the lower court. Be that as it may, it is not in dispute that pursuant to leave granted by the court on 5/02/2015, the Respondent filed an amended summons for rectification of grant seeking rectification of the particulars of the disputed Juja land parcel, further that the reference to his share of the said parcel as “the remaining portion” be rectified to read 5 ½ acre, while dropping the prayer for the inclusion of alleged purchasers. According to the uncertified copies of proceedings in the lower court, this is the summons argued on 16/07/2015, counsel for the Respondent asserting *inter alia* that the latter prayer was intended to resolve an ambiguity and not to interfere with the mode of distribution. And further that the present Applicant’s responses thereto contained new proposals to alter distribution which the subordinate court had no jurisdiction to entertain. The Applicants were acting in person.

23. Although there is evidence from proceedings before that date and copies of filings in respect of the rectification summons that the Applicants had opposed the rectification application throughout, the typed proceedings of 16/07/2015 indicate the 1st Applicant as addressing the court as follows:

“We were given the land by our father to be registered with Kamau (Respondent) who is my brother.....I do not agree with the application. The number given and purported to be changed could be a lie. I do not know why he is changing his name. He is James Kamau Kagonye. I however do not object to the application.”

24. As for the 2nd Applicant, the record shows that she merely stated she had no objection to the application whereupon the court allowed the amended summons in its entirety. Thus, on 18th August 2015, an amended grant issued in the name of **Kamau Kagonye Wairindi**. The amended certificate of confirmation of grant to Kamau Kagonye Wairindi issued on 16th July 2015 indicates that the said administrator was entitled to 5 ½ acres of the disputed Juja property, i.e **LR No. Juja/Milimani/Block xxxxx/xx** while the Applicants retained their original

share of ¼ acre each of the said asset. The distribution in respect of land parcel **LR. No.Ngenda/Githunguchu/xxx** , not being disputed, remained as before.

25. Through their affidavit and oral evidence, the Applicants attack the distribution of the disputed property , stating that the Respondent had earlier on deceived them by not indicating the size of the so-called remaining portion of the disputed property in order to obtain their consent in the original summons to confirm the grant. Although the Respondent severally reiterates that the Applicants did give consent to the distribution, the court has not had the benefit of seeing the initial summons to confirm the grant as no party has availed a copy. Nevertheless, the certificate of confirmed grant issued on 9th January 2003 clearly indicated that the Respondent's portions out of the disputed property was **"the remaining Portion"**(sic).

26. The court must now determine whether the said grant is liable for revocation for want of informed requisite consent or concealment of facts material to the case and whether the proceedings in the Court below were defective in substance. Section 76 of the Law of Succession Act provides 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—
...

(e)"

27. The confirmation of grants is provided for in Section 71 of the Law of succession Act. The proviso to Section 71 states that:

"Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares".

This proviso is repeated in Rule 40(4) of the Probate and Administration Rules. The grant confirmed on 9th January, 2003 evidently identified the beneficiaries of the intestate herein and the shares to the undisputed asset namely, LR. No. Ngenda/Githunguchu/xxx.

28. However, with respect to the disputed asset **Juja/Milimani/Block xxxxx/x**(as referred to at the time) only the shares due to the Applicants are stated, the share to the Respondent being described as *"the remaining Portion"* whose exact acreage is not stated. Such reference to an undisclosed remaining portion is vague and flies in the face of the requirements of the proviso that beneficiary shares be stated explicitly. This ambiguity must have occasioned subsequent difficulty to the Respondent hence his subsequent application for "rectification" of the grant to state the precise acreage of his share .

29. The Applicants, who by their own admissions are barely literate relative to the Respondent said to have been previously employed as a driver, complain that they did not know the exact size of the disputed Juja land parcel at the time of the confirmation of grant and that the Respondent did not make disclosures to them on this matter as he sought their consent. The size of the disputed land parcel in Juja was a fact material to the confirmation of the grant which ought to have been disclosed, not just to the Applicants to enable them give informed consent, but also to the court to enable it determine whether the mode of distribution in the summons was equitable and consistent with the applicable law, in this case, Section 40 of the Law of Succession Act.

30. As the administrator who lodged the summons to confirm the grant , the Respondent must be deemed to have known the extent of the estate of the deceased at the material time and in particular the size of the disputed parcel . The Respondent has not stated before this court anything to the contrary. His conduct in the proceedings subsequent to the issuance of the confirmed grant in January, 2003 appears to suggest that the failure to state his precise share of the disputed property before the lower court was a deliberate omission.

31. For instance, he has through his further affidavit filed on 19/09/2015 proffered before this court what is a patently doctored copy of the consent to the making of grant purporting that, **Chege Wairindi** and **James Mburu Murira**, the alleged purchasers were involved in the original cause before the lower court and were accepted as beneficiaries of the estate. Equally, the copy of affidavit in support of the petition in the same bundle reflects the inclusion of these alleged purchasers as surviving the deceased. The names of these alleged purchasers have clearly been inserted subsequently as the font used in their names markedly differs from that of the rest of the document, including the names of the parties herein.

32. It is also telling that in his affidavit filed on 4/06/2016 the Respondent asserted at paragraphs 10 – 15 that his deceased father purchased the Juja land parcel jointly with **Chege Wairindi** and **Murira Mungai** each of whom had *contributed* Kshs. 1,000/- and taken possession of their 4 acre-piece as of 1968. However, in the copy of affidavit sworn in support of the original summons to rectify grant dated 23rd

September, 2013, (also contained in the Respondent's bundle of pleadings in the lower court) he stated at paragraph 6 that "before his death, the deceased had **sold** part of the land parcel No. Juja/Milimani/Block xxxxx/xxto John Mburu Murira, Raphael Kagonye Chege and James Kamau Kagonye who were left out at the time of filing this succession cause." (emphasis added)

33. In his copy of further affidavit filed in the lower court on 1/09/2014 and annexed in the bundle marked "A1" to his further affidavit herein, the Respondent had stated that:

"6. THAT all the beneficiaries of the estate of Kagonye Wairindi are aware of this position (contribution by Chege Wairindi and Murira Mungai) and that is why Chege Wairindi and John Mburu Murira son of Murira Mungai were included in the petition for grant (annexed hereto are copies of petition forms marked "KK1 (a) & b")"(sic) (emphasis added).

34. These annexures "KK1 a & b" are the apparently doctored forms referred to earlier in this ruling. What is the truth concerning the alleged purchasers, and why are there so many discrepancies and inconsistencies in the Respondent's material in that regard? The copy of the Respondent's original rectification summons filed on 24/09/2013 also in his bundle states in prayer (2) that one **James Kamau Kagonye** was also a purchaser of the disputed asset. The Applicants had maintained before the trial court that the Respondent's name was James Kamau Kagonye and not Kamau Kagonye Wairindi. Who is the purchaser James Kamau Kagonye and why did the Respondent insist on changing his names by the amended summons for rectification when he had always used the name **Kamau Kagonye** in the court below?

35. The court reviewing the material before it reads mischief in the said change of name and the Respondent's conduct in the lower cause. The alleged purchasers for whom the Respondent appears to have acted a proxy throughout the proceedings after 2003 did not participate in the proceedings after they were directed to file affidavits annexing sale agreements. The sale agreements annexed by the Respondent to his affidavits herein by themselves prove nothing. If indeed these alleged persons were genuinely entitled to the share of 4 acres of the disputed property, why did the Respondent not include them at the confirmation of the grant in the lower court, and why have they not come forward before this court to establish their claims? In purporting to advance the said purchasers alleged claims, the Respondent was a mere busybody, and the motivation was to remove and exclude four acres out of the deceased's 6 acres from the reach of the Applicants, in furtherance of his fraudulent trick that had resulted in a clearly defective certificate of confirmation

36. Regarding confirmation of grants, Rule 40(8) of the Probate and Administration Rules requires that all dependants and persons beneficially entitled file written consents thereto. In order for any party to give informed consent, the full facts surrounding the estate must be disclosed by the administrator applying to confirm the grant.

37. This court is of the firm view that the deliberate failure by the Respondent to indicate the size of the Juja parcel of land or his share thereof in the original summons to confirm the grant was intended and did mislead the illiterate Applicants as to the share he was due to receive and hence to procure their consent to a mode of distribution that saw him receive the lion's share of the said disputed property.

38. The court cannot countenance such fraudulent practices and finds that not only was the grant confirmed and later rectified obtained through concealment of facts material to the matter, but also that the proceedings to obtain the confirmed grant were defective in substance. The subordinate court, in subsequently purporting to rectify the certificate of confirmed grant effectively allotted the Respondent 5 ½ acres of the Juja land parcel, despite the protestations of the Applicants. Thus, the proceedings before the lower court were substantially defective from the time the summons to confirm the grant was filed and allowed until the purported rectification.

39. In my considered view, the said rectification of the grant by the lower court related to a matter not envisaged in Section 74 of the Law of Succession Act among errors that can be rectified. Section 74 states:

Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.

40. The lower court therefore overreached its jurisdiction in purporting to assign the Respondent 5½ acres of the disputed land parcel. The argument advanced by the Respondents to the effect that that a confirmed grant cannot be revoked is a novel one and is inconsistent with the wording of section 75 of the Law of Succession Act.

41. In the circumstances of this case, the grant confirmed in the lower court and subsequently amended or rectified cannot stand and is hereby revoked. Judging from the Respondents spirited efforts to remove a portion measuring 4 acres from the Juja parcel, it may well be that some person or persons acting in concert with him may have taken steps to alienate parts of the Juja asset. The initial confirmed grant having been obtained through fraud by the Respondent and being defective for vagueness did not confer upon the Respondent a good title capable of being passed to any so-called purchaser. Section 93 of the Law of Succession Act cannot provide any succor to such persons.

42. And while there is no evidence that any transfers have been effected in favour of these persons the Court of Appeal stated in **Jane Gachoka Gathetha v. Priscilla Nyamira Gitungu & another [2006] eKLR** that:

"We think with respect there is a fallacy in invoking and applying the provisions of Section 93(1) of the Law of Succession Act and the superior Court fell into error in reliance of it. The section would only be applicable where firstly, there is a transfer of any interest in immovable or moveable property. Kabitau has no interest in plot 321 or any part thereof and therefore he could not transfer any. A thief acquires no right or interest which is transferable in stolen property. The transaction would be void ab initio and the property is traceable."

43. The amended certificate of confirmation of grant was obtained through irregular proceedings brought in furtherance of the Respondent's initial fraud. Thus, any purported sale of any part of the 5 ½ piece of the disputed land parcel at Juja cannot stand and is void *ab initio*. Any title obtained as a consequence hereby stands revoked and it is so ordered.

44. Furthermore, the disclosed conduct of the Respondent in this matter demonstrates that he is not suited for the fiduciary duties of an administrator and he is not a suitable person to be entrusted with the administration of the estate of the deceased.

45. In the circumstances, the court having revoked the grants in the Respondent's favour hereby makes the following orders:

a. A fresh grant be issued in the joint names of the two Applicants herein.

b. A certificate of confirmed grant be issued in favour of the Applicants herein, showing the mode of distribution between the parties as follows:

Land Parcel LR. No. Ngenda/Githunguchu/xxx to be shared as follows:

i)Kamau Kagonye alias James Kamau Kagonye alias Kamau Kagonye Wairindi – 0.75acres

ii) Elijah Muiruri Kagonye – 0.375acres

iii) Lucia Waithira Muchigu – 0.375 acres

Land Parcel LR. No. Juja/Milimani/Block xxxxx/xxt to be shared as follows:

i)Kamau Kagonye alias James Kamau Kagonye alias Kamau Kagonye Wairindi – 2 acres

ii) Elijah Muiruri Kagonye – 2 acres

iii) Lucia Waithira Muchigu – 2 acres

c. The new administrators are directed to proceed with dispatch to complete the administration of the estate within 7 (seven months of today's date and to file accounts in terms of section 83(i) of the Law of Succession Act not later than 1st December, 2021. For this purpose, there will be a mention before the Judge on 1st December, 2021.

d. In view of the nature of the proceedings and given the demonstrated conduct of the Respondent which has resulted in extended litigation, the Respondent will bear all the costs occasioned by the instant application.

Delivered and signed electronically on this 13Th Day of May 2021

C. MEOLI

JUDGE

In the presence of:

For Applicants: Mr Mwariri.

For the Respondent: Ms. Muritu h/b for Mr Muthomi .

C/A: Kevin Ndege.