IN THE COURT OF APPEAL
AT NAIROBI

(CORAM: KIAGE, M'INOTI & JOEL NGUGI,

JJ.A) CIVIL APPEAL NO. 376 OF 2019

BETWEEN

COUNTY HOME DEVELOPERS LTD.....APPELLANT

AND

REGINA NJOKI KIMAARA.....RESPONDENT

(An appeal from the Judgment of the High Court of Kenya at Nairobi (Muchelule, J.) dated 21st September, 2018

in

Succ. Cause No. 2514 of 2015)

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JUDGMENT OF THE COURT

1. This is an appeal arising from the judgment of the High Court at Nairobi (Muchelule, J., *as he then was*) delivered on 18th December, 2017 in ***Succession Cause No. 2514 of 2015***. The dispute traces its roots to a land sale agreement dated 24th October, 2013
allegedly entered into between the appellant, County Homes Developers Ltd, and the late Wilson Nganga Kimaara (the deceased).

2. The appellant contends that it paid Kshs. 2.3 million to the deceased as part of the purchase price for the property known as Kiambaa/Ruaka/703. Before the transaction could be completed, the deceased passed away. Thereafter, the respondent, the

widow of the deceased, petitioned for **letters of administration intestate**,

listing herself and four children as survivors and beneficiaries, and obtained a grant on **25th February**, **2016**. The grant was **confirmed on 29th June**, **2016**.

3. The appellant, claiming that it had an interest in the estate as purchaser and creditor, filed summons for revocation of the grant under section 76 of the Law of Succession Act. It argued that the respondent had fraudulently concealed material facts by failing to disclose the existence of the sale agreement and the attendant liability.

4. The respondent opposed the application, contending that the sale agreement was unenforceable for want of consent under section 6 of the Land Control Act, and that succession proceedings were not the proper forum to enforce contractual claims against the estate.

5. The learned Judge (Muchelule, J. as he then was) dismissed the summons for revocation. He held, first, that the respondent was under no obligation to disclose the sale agreement since it was void for want of land control board consent. Secondly, he found that the succession court was not the proper forum for enforcement of such a contract, which fell within the jurisdiction of the Environment and Land Court.

6. In the result, the learned Judge declined to revoke the grant, dismissed the appellant's application, and ordered costs to the respondent.

7. Aggrieved, the appellant lodged this appeal raising the following grounds as contained in the Memorandum of Appeal dated 8th August, 2019:

   a. ***THAT the learned Judge erred in law and fact in failing to find that the respondent had fraudulently concealed material facts in obtaining the grant.***
   b. ***THAT the learned Judge erred in law in proceeding to determine the validity of the sale agreement, thereby prejudicing the appellant's claim.***
   c. ***THAT the learned Judge misdirected himself in law in holding that the sale agreement was null and void for want of land control board consent.***
   d. ***THAT the learned Judge erred in failing to revoke the grant issued to the respondent.***
   e. ***THAT the learned Judge erred in law and in fact in failing to consider the appellant's evidence and submissions in their entirety***.

8. When the appeal came up for hearing before us on 9th July, 2025, Mr. Mutiso appeared for the appellant instructed by R. M. Mutiso & Co. Advocates, while Mr. Njagi appeared for the respondent instructed by the firm of Ndung'u Njoroge & Kwach Advocates. Both relied on their written submissions, gave oral highlights and engaged with the Court.

9. The appellant submitted that the respondent was obligated under section 76 of the Law of Succession Act to disclose all material facts, including the sale agreement and the sums paid by the appellant. Counsel argued that the omission amounted to fraudulent concealment.

10. It was further argued that although the learned Judge acknowledged that the respondent ought to have disclosed the sale agreement, he improperly proceeded to declare it void under section 6 of the Land Control Act. According to counsel, that determination was outside the jurisdiction of the succession court and prejudiced the appellant's rights in any subsequent proceedings before the Environment and Land Court.

11. The appellant relied on ***In re Estate of Julius Ndubi Javan (Deceased)*** **[2018] eKLR**, where the High Court held that while a succession court lacks jurisdiction to enforce land sale contracts, disclosure of such contracts remains material for purposes of revocation. It also cited ***Gabriel Makokha Wamukota v. Sylvester Nyongesa Donati*** **[1987] eKLR** and ***Aliaza v. Saul*** **(Civil Appeal 134 of 2017) [2022] KECA 583 (KLR)**, urging that parties should not be permitted to rely on the Land Control Act to perpetrate fraud or unjust enrichment.

12. Counsel urged this Court to revoke the grant issued to the respondent, or in the alternative to hold that the learned Judge erred in making final pronouncements on the validity of the contract.

13. The respondent's counsel opposed the appeal. He submitted that the petition for letters of administration was properly filed with full disclosure of beneficiaries, assets, and liabilities in accordance with section 51 of the Law of Succession Act. The omission of the sale agreement, he argued, did not constitute fraudulent concealment

since the deceased had not completed the transaction, and the appellant still owed the balance of the purchase price.

14. Counsel emphasized that succession proceedings are not the proper forum for enforcement of contracts. He cited ***In re Estate of Mwangi Gikonyo (Deceased)*** **[2017] eKLR**, where the court held that contested claims founded on contracts of sale of land belong to the civil courts, not succession courts. He also invoked section 2(1) of the Law Reform Act, submitting that contractual claims against an estate survive the deceased but must be pursued in civil proceedings.

15. In conclusion, the respondent urged this Court to dismiss the appeal, maintaining that the appellant had an alternative remedy in the Environment and Land Court or through a civil suit.

16. Being a first appellate court, our mandate is to reconsider and re-evaluate the evidence on record and arrive at our own independent conclusions, while bearing in mind that the trial court had the advantage of seeing and hearing the witnesses. (See ***Selle & Another v Associated Motor Boat Co. Ltd [1968] EA 123***). Similarly, in ***Jabane v. Olenja*** **[1986] KLR 661**, this Court reiterated that it will not lightly differ from the findings of fact of the trial court unless they are based on no evidence, or are based on a misapprehension of the evidence, or unless it is shown that the trial court acted on wrong principles.

17. From the record, submissions, and the law, the following two issues arise for determination:

(i) Whether, on the facts and the law, the letters of administration were liable to revocation under section 76 of the Law of Succession Act.

(ii) Whether the learned Judge erred by pronouncing on the enforceability/validity of the sale agreement and, relatedly, whether a succession cause is the proper forum to determine or enforce such a contested contractual claim.

18. The first issue is whether the letters of administration issued to the respondent were liable to be revoked on the facts of this case. The categorical answer is no. That conclusion rests on two interrelated reasons which we set out below.

19. The first reason is that, on the pleadings and the record, the estate did not accept that the alleged sale agreement constituted a valid and enforceable liability. The respondent took the view — rightly or wrongly — that the agreement lacked Land Control Board consent and was, therefore, unenforceable. Whether that view ultimately succeeds is not for the succession court to determine; it belongs to the appropriate court. But the point for revocation is narrower: section 51 requires disclosure of assets and liabilities of the estate; it does not compel an administrator to list as a “liability” a contested, unaccepted claim whose enforceability is disputed by the estate. Where the administrator does not accept the claim, the alleged creditor must first establish its validity in the proper forum. Until then, the omission to list a disputed, unadjudicated claim does not

amount to fraudulent

concealment within section 76(b). See the approach in ***In re Estate of Grace Nyokabi Wamoko (Deceased) [2016] eKLR*** (omission to list a contract not accepted by the estate is not fraudulent concealment).

20. The second reason is that the remedy of revocation of grant is not designed as a forum for enforcing contested contractual or land claims. The purpose of section 76 is to ensure that succession proceedings are honest, transparent, and fair to those with a legitimate interest in the estate, principally the heirs and beneficiaries. It is not a substitute for civil proceedings where disputed debts or liabilities are to be established. A person who claims to be a creditor of the estate, but whose claim is disputed by the administrator, must vindicate that claim in a court with jurisdiction over contracts or land, as the case may be. It would subvert the structure of the Law of Succession Act to allow contested debts to be smuggled into succession causes under the guise of revocation applications. Indeed, to permit such a course would blur the lines between succession jurisdiction and civil jurisdiction, and would create instability in succession proceedings by opening the door for any alleged creditor to halt administration of estates by merely asserting a disputed claim. For that reason, a creditor whose liability is not accepted by the estate has no standing to seek revocation of a grant; the appropriate remedy lies in pursuing their claim in a civil suit and, if successful, presenting it as an established liability in the succession proceedings.

21. For these two reasons, the learned Judge was right to decline revocation of the grant. The appellant remains at liberty to pursue any civil/environment and land remedies available in law.

22. The foregoing conclusion on revocation does not, however, end the matter. The second issue is whether the learned Judge erred when he pronounced himself on the contract's validity. The appellant properly complained that, in dismissing the revocation application, the learned Judge went further and pronounced on the validity of the sale agreement, stating that it was void for want of Land Control Board consent. That definitive determination was not necessary to resolve the revocation summons and, more importantly, it was outside the province of the succession court.

23. Our jurisprudence is now settled that the succession court is concerned with identification of beneficiaries, ascertainment, preservation, and distribution of estate property. It is **not** the forum to adjudicate and finally determine contested contractual or proprietary claims, which are reserved to the Environment and Land Court under Article 162(2)(b) of the Constitution and section 13 of the Environment and Land Court Act, or to the ordinary civil courts, as the case may be. See ***In re Estate of Mwangi Gikonyo (Deceased) [2017] eKLR***; compare ***In re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR*** (succession court acknowledges materiality of the contract's existence but refrains from enforcing/invalidating it).

24. Practical and doctrinal reasons underpin this boundary. A

contested land-sale dispute often raises pleadings, discovery,

evidentiary burdens, statutory defences (including limitation and Land Control Act issues), and equitable questions (trust, unjust enrichment, proprietary estoppel) that require the full civil process and jurisdictional tools unavailable in a summary succession application. If a succession court purports to uphold or invalidate a sale contract, it risks producing a preclusive pronouncement (*res judicata* argument) without the procedural safeguards and jurisdictional footing demanded for such disputes.

25. Accordingly, while the learned Judge was correct to refuse revocation, the learned Judge ought not to have rendered a final view on the enforceability of the sale agreement. That portion of the decision was beyond jurisdiction and is properly set aside, leaving the parties to litigate the contract in the appropriate forum. For clarity, nothing in this judgment should be read as expressing any concluded view on the merits of the appellant's contractual claim or the respondent's defences under the Land Control Act or otherwise. Those are matters for the trial court seized of jurisdiction.

26. In the result, this appeal fails to the extent that the appellant sought revocation of the grant through the succession cause. The appeal is, therefore, dismissed.

27. However, we hereby set aside that part of the judgment of the High Court which pronounced upon the validity of the sale agreement. The learned Judge ought not to have made a definitive determination on that question.

28. The appellant remains at liberty to pursue its contractual claim before the appropriate forum.

29. Given the circumstances of this matter, and to avoid further escalation of costs, we direct that each party shall bear its own costs of this appeal.

30. Orders accordingly.

Dated and delivered at Nairobi this 3rd day of October, 2025.

P. O. KIAGE
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…… JUDGE OF APPEAL

K. M'INOTI
……
JUDGE OF APPEAL

JOEL NGUGI
……
JUDGE OF APPEAL

I certify that this is a true copy of the original.
Signed
DEPUTY REGISTRAR