

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CORAM: R. MWONGO, J.**  
**FAMILY APPEAL NO. E006 OF 2025**

**IN THE MATTER OF THE ESTATE OF APIBAEL IKAMBA TIRAS (DECEASED)**

CATHERINE NJERI NJIRU.....APPELLANT

**-VERSUS-**

JANE WANJIRA TIRAS NYAGA.....1<sup>ST</sup>

RESPONDENT

ROSE RUGURU TIRAS.....2<sup>ND</sup>

RESPONDENT

*An appeal from the Ruling of Hon. C.K. Kisiangani in Runyenjes MC Succession Cause  
No. 10 of 2015 delivered on 18<sup>th</sup> February 2025*

**JUDGMENT**

**The Appeal**

1. By a memorandum of appeal dated 11<sup>th</sup> March 2025 the appellant seeks that the Appeal be allowed and the ruling of the trial court be set aside. The appeal is premised on the grounds that the Learned Trial Magistrate erred in Law and fact:
  - 1) In holding that the appellant was not entitled to inherit a share of the estate of the deceased;
  - 2) In holding that the applicant failed to prove forgery on part of her signature being her thumbprint;
  - 3) In failing to appreciate that the proceedings in respect of confirmation of grant on 27<sup>th</sup> January 2016 did not indicate the actual beneficiaries who consented to the alleged mode of distribution herein;
  - 4) In holding that the applicant was present in court on 27<sup>th</sup> January 2016;
  - 5) In relying on the consent to rectification of grant dated 26<sup>th</sup> February 2016 whereas no such document formed part of the proceedings thereto; and
  - 6) In going against the weight of the evidence on record.

**Background**

2. The appellant filed summons for revocation of grant dated 12<sup>th</sup> February 2024 under certificate of urgency. She sought that the grant issued to the respondents on 06<sup>th</sup> July 2015 be revoked and the certificate of confirmation of grant be annulled on grounds that the proceedings to obtain the grant were defective and that the grant was obtained fraudulently by concealment of facts material to the case. She deposed that after the grant was issued, it was confirmed and land parcel number Kagaari/Kigaa/6234 was solely inherited by the respondents in equal shares, thus disinheriting her as a daughter of the deceased.
3. She also stated that the whole process was questionable because the consent had the deceased's husband's signature yet he died a long time ago. It was her claim that her consent to obtain the grant was not sought yet she is also a daughter of the deceased with every right to the estate. That even though it appeared that she had signed the consent form for confirmation of grant, her signature was forged since she has no known signature and she did not sign the document. For these reasons, she urged the court to revoke the grant which was fraudulently obtained.
4. The respondents opposed the summons for revocation through their replying affidavit dated 25<sup>th</sup> July 2024 in which they stated that the appellant voluntarily appended her signature to the consent form and that she was present throughout the proceedings until the point of confirmation of the grant. They denied having forged the appellant's signature and added that the appellant agreed to the mode of distribution. They deposed that the appellant had been seen walking around the deceased's property with land buyers without the knowledge of the respondents.
5. Before the appellant filed summons for revocation, one Njagi Tiras Nyaga, the appellant's brother and son of the deceased had filed summons for revocation dated 14<sup>th</sup> August 2018. The grounds of revocation were the same as those cited in the appellant's application, mainly being that the respondents did not involve the rest of the family in the succession proceedings. The court found that there was nothing in the proceedings supporting the allegations made by the applicant Njagi Tiras Nyaga in his revocation summons. That the confirmation proceedings indicate that Njagi Tiras Nyaga was present in court and he did not contest the distribution. That none of the beneficiaries swore affidavits to state to the court

that their signatures were forged. The summons for revocation was dismissed and the distribution upheld as between the respondents alone.

### **Summary of the Evidence in the Trial Court**

6. The matter was heard *viva voce*.
7. PW1 was the appellant who stated that the consent for confirmation was obtained fraudulently and the form even contains the signature of their late father. That the respondents did not ask her for consent but they forged her signature. She stated that the proceedings leading to issuance of the grant and its confirmation were flawed and so the grant should be revoked and the certificate of confirmation be set aside. She denied being present during the succession proceedings.
8. In cross-examination, she denied that her son was present in the proceedings. That her son was given land by her father and that the estate herein belongs to their mother, the deceased, and not their father. That the deceased gave land to all her daughters. She did not report the forgery of her signature. She stated that their father died in 1976. She was not present during confirmation of the grant. In re-examination, she stated that her father's name is Tiras Nyaga and he is the one who gave land to her son who is called Tiras Nyaga. She clarified that she is claiming from the estate of her mother and not that of her father.
9. RW1 was the 1<sup>st</sup> respondent who stated that the appellant was involved in the succession proceedings from the start. She was even at the Chief's office when the introduction letter was written. That the appellant's son was given 1½ acres of the land in place of his mother the appellant, therefore she was not entitled to more land since her son had already been given land. She urged the court to give the respondents the land equally because they do not have any land from their parents. In cross-examination, she stated that the deceased is her mother and the appellant is her sister. The appellant was not included in the succession proceedings. That the appellant's son was given land on her behalf. She stated that the appellant has a known signature which she uses even at the bank.
10. RW2 was the 2<sup>nd</sup> respondent. She stated that she and RW1 got ¾ acres of the land while the appellant got 1½ acres through her son but they are not

complaining. She stated that the appellant signed the documents and she was also present when the chief's letter was written. On cross-examination, she stated that the deceased's land is Kaagari/Kigaa/6334 and it measures  $\frac{3}{4}$  acres. All their siblings were given land and the appellant was not included because her son was given  $1\frac{1}{2}$  acres of the land. She stated that when their brother filed summons for revocation, the same was dismissed by the trial court and on appeal.

### **Findings of the Trial Court**

11. In its ruling, the trial court relied on section 29 of the Law of Succession Act and the cases of **In re Estate of the Late M'thigai Muchangi (Deceased) [2020] KEHC 904 (KLR)** and **M R M v J K E [2018] eKLR**. The court found that there was no doubt that the applicant is a child of the deceased. The learned Magistrate found that the consent form was titled consent for rectification and it concerned the estate of the deceased. That it was correctly signed by all the beneficiaries including the appellant. The court also noted that the Chief's introductory letter and the petition for the grant all include the appellant as a beneficiary. That the distribution was fair given the evidence adduced as to why that distribution mode was proposed. The summons for evocation was dismissed.

### **Submissions on appeal**

12. The parties were directed to file written submissions on the appeal. Only the appellant complied.

13. In her submissions, the appellant drew the court's attention to the confirmation proceedings and noted that the court did not indicate who of the beneficiaries were present. The court only recorded that the beneficiaries were present, hence it was misled as to who was supposed to be present in the first place. She submitted that she only signs documents by way of affixing her thumbprint but in this case, there is a handwritten signature in the pleadings which she stated was not hers. She denied having given her consent for confirmation of the grant. She relied on the case of **In re Estate of Kiplangat Chumo (Deceased) [2023] KEHC 22701 (KLR)** where the Judge was guided by

the finding in the case of **Charles Mutua M'anyoro v Maria Gatiria [2009] KEHC 2589 (KLR)**. She urged the court to allow the appeal.

### **Issue for Determination**

14. The issue for determination herein is whether or not the appeal has merit.

### **Analysis and Determination**

15. The role of an appellate court is to re-examine the evidence at trial and come up with its own conclusions while keeping in mind the findings of the trial court. In the case of **Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123**, this principle was enunciated thus:

*"...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect..."*

16. The subject of the trial court's ruling is a summons for revocation dated 12<sup>th</sup> February 2024. This was the second one. There had been another summons for revocation dated 14<sup>th</sup> August 2018. That one was heard, determined and dismissed by the same court through a ruling delivered on 08<sup>th</sup> December 2020 by Hon. J.W. Gichimu. This ruling is part of the proceedings making part of the present record of appeal.

17. The grounds for revocation as stated by Njagi Tiras Nyaga are identical to the grounds stated by the appellant in her summons for revocation. The trial court labored twice to hear and determine summons for revocation involving the same estate, beneficiaries, arguments and court. The second time the summons for revocation was filed, the matter was in fact *res judicata* from the start. It should never have been entertained by the trial court in the first place.

18. Section 7 of the Civil Procedure Act provides for *res judicata* as follows:

***“No court shall try any suit or issue 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 has been heard and finally decided by such court.”***

19. Following the ruling delivered on 08<sup>th</sup> December 2020 by Hon. J.W. Gichimu, the summons for revocation was determined in the estate of the deceased. At that point, the respondents were at liberty to execute the grant and complete administration of the estate. This is because once a determination is made on a particular matter or set of facts, litigation must come to an end at some point. In the case of **Lal Chand v Radha Kishan, AIR 1977 SC 789** the principle of *res judicata* was stated as follows:

***“The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue. The practical effect of the res judicata doctrine is that it is a complete estoppel against any suit that runs afoul of it, and there is no way of going around it – not even by consent of the parties – because it is the court itself that is debarred by a jurisdictional injunct, from entertaining such suit.”***

20. Even though the trial court entertained the summons for revocation and went further and took *viva voce* evidence, it is pointless for this court to re-examine that evidence and determine the appeal on its merits because the matter should have been held to be *res judicata* in the first place. The summons for revocation filed by the appellant herein had no merit before the trial court, hence the determination thereof is void and there is no place for an appeal on that later determination.

## **Conclusions & Disposition**

21. In my view, the right thing to do at this point is to set aside the latter ruling of the trial court delivered on 18<sup>th</sup> February 2025 because it is based on an illegality. The matter was in fact, *res judicata*. In the circumstances, I think the proper order to make is that the said ruling be substituted with a finding that the summons for revocation of grant dated 12<sup>th</sup> February 2024 is/was *res judicata*, an identical application having been determined by the same court on 08<sup>th</sup> December 2020. That ruling was not challenged on appeal, even though it was capable of being challenged.
22. I would make the following additional observations concerning this matter. From perusal of the trial file, I have noted that the applicant herein filed summons dated 04<sup>th</sup> July 2024 seeking orders inter alia that her signature as appended on the summons for rectification of grant be investigated by the DCI. This application was dismissed by the trial court. There is a consent to rectification of grant and it includes the signature of one Tiras Nyaga (deceased) who is the husband of the deceased who died in 1976. Succession was completed in his estate and an amended certificate of confirmation of grant was issued in the year 2007. The signatures on that consent for rectification of grant are questionable even to the untrained eye.
23. The Chief's letter includes the applicant herein as a survivor of the deceased but the petition for letters of administration does not include the applicant. Were the matter properly on appeal against the first ruling on revocation, these issues would be considered conclusively by this court.
24. As already noted in conclusion, the appeal is dismissed as the subject matter thereof was *res-judicata*, a prior determination having been made on 8<sup>th</sup> December, 2020.
25. No order is made as to costs.
26. Orders accordingly.

**Delivered, dated and signed at Embu High Court this 15<sup>th</sup> day of October, 2025.**

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**R. MWONGO  
JUDGE**

**Delivered in the presence of:**

1. Kariuki for Appellants
2. Jane Wanjira Tirus 1<sup>st</sup> Respondent
3. Rose Ruguru Tirus 2<sup>nd</sup> Respondent
4. Francis Munyao - Court Assistant