



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kiragara Bagiri (Deceased) (Succession Cause
501 of 2013) [2025] KEHC 14070 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14070 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 501 OF 2013
HM NYAGA, J
OCTOBER 8, 2025**

BETWEEN

HENRY MUTHAMIA RINTANGU 1ST PETITIONER

GRACE KAGWIRA 2ND PETITIONER

AND

JUDITH KAGWIRIA 1ST INTERESTED PARTY

JULIUS NDUBI RINGERA 2ND INTERESTED PARTY

RULING

1. The 2nd interested party herein filed a summons for revocation of grant dated 26th February, 2024, brought under Sections 47, 76(b) & (c) and 66 of the [Law of Succession Act](#) and Rules 73 of the [Probate and Administration Rules](#). It seeks the following orders;
 1. Spent
 2. That this Honourable Court be pleased to revoke and annul the temporary grant and certificate of confirmation of grant further rectified on 23rd January, 2024 and issue a fresh grant to the Interested party applicant.
 3. That this Honourable Court be pleased to issue orders of inhibition, inhibiting all the dealings with subdivisions of LR No. Abothuguchi/Githongo/416 being Abothuguchi/Githongo/5067 to 5080 until this summons are heard and determined.
 4. That this Honourable Court be pleased to order cancellation of subdivision of LR Nos. Abothuguchi /Githongo/416 being Abothuguchi /Githongo /5067- 5080 and reinstate the original land LR Nos. Abothuguchi/Githongo/416.
 5. That this Honourable Court be pleased to issue any other orders to meet the ends of justice.



6. That the costs for and incidental to this Application be borne by the respondent.
2. The Application is premised on the grounds on its face and supported by an affidavit of the 2nd Interested party/Applicant sworn on the even date.
3. Julius Ndubi Ringera, the applicant, deposed that he is the grandson of the deceased herein by virtue of being a son to his late son M'ringera Kiragara.
4. He deposed that the petitioner herein is not a direct beneficiary of the deceased since she is a widow of his late brother Joseph Muriuki M'ringera.
5. He averred that the deceased has a surviving son one Gikunda Kiragara who ranks highest over the deceased's estate and that the deceased also left behind several grandsons and granddaughters who rank next in line over the deceased's estate than the petitioner.
6. He contended that the petitioner does not know the family history since she was married after the deceased's demise.
7. He deposed that deceased's estate comprised of two parcels of land being LR No. Abothuguchi/Githongo/416 and 459 and that in the year 1980, the deceased gifted the whole of LR No. Abothuguchi/Githongo/416 to his late father M'ringera Kiragara.
8. He contended that his late father solely settled on the above parcel to the exclusion of his brothers and that is where he built his home with his children and that is where he was buried along with his wife upon their demise.
9. He averred that the deceased also shared LR No. Abothuguchi/Githongo/415 among his sons and they occupied separate, distinct and exclusive portions.
10. That the petitioner herein never involved him while filing this cause and he got the wind of the same when the family land was excised into small fragments.
11. He deposed that the subdivisions of LR No. Abothuguchi/Githongo/416, the petitioner got two portions and is in the process of selling the same.
12. He contended that the petitioner is attempting to destroy the family fabric by sharing the land contrary to what the deceased had done in his lifetime.
13. That his late M'ringera Kiragara had tea bushes in Land Parcel L.R No. Abothuguchi/Githongo/459 when the petition his shared out to other family members.
14. That the petitioner shared out the land without disclosing that the deceased had done the sharing over 40 years earlier and destroyed what the deceased himself desired.
15. He prayed all the subdivisions of Land Parcel Abothuguchi/Githongo/416 and 459 be cancelled and the same do revert to the original numbers in the name of the deceased.
16. That if the orders sought are declined the family of M'ringera Kiragara will suffer greater prejudice since they will be deprived of what the deceased gifted to him.
17. The Application is unopposed.
18. The Applicant's counsel told the court on 18.3.2025 that the 2nd petitioner is deceased while the 1st petitioner, though duly served, had not filed any response.



19. No submissions were filed. The 2nd Interested party/Applicant chose to rely on the filed statements and documents.

Analysis & Determination

20. Having gone through the summons, I am of the view that the following issues stand out for determination: -
- a. Whether the certificate of confirmation of grant issued to the Respondent should be revoked.
 - b. Whether this Honourable court should order cancellation of subdivision of L.R Nos. Abothuguchi /Githongo/416 being Abothuguchi /Githongo /5067- 5080 and reinstate the original land LR Nos. Abothuguchi/Githongo/416.
21. The circumstances under which a court will order revocation of grant are well laid out under Section 76 of the *Law of Succession Act*.
22. For avoidance of doubt, Section 76 of the *Law of Succession Act* states as follows:

- “76. Revocation or annulment of grant
- 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—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - (e) that the grant has become useless and inoperative through subsequent circumstances.”



23. A reading of the 2nd Interested/Applicant's application leaves no doubt that the grounds cited fall under section 76 (b) above.
24. The court, in the case of *Jamleck Maina Njoroge vs Mary Wanjiru Mwangi* (2015) eKLR at paragraph 11 of its ruling in revoking a grant reiterated the grounds upon which a grant can be revoked. It stated as follows:
- “The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”
25. The 2nd Interested party alleged that the respondent obtained the grant by way of concealment of a material fact that the deceased had distributed his parcels of land, and precisely that he had gifted the whole of land parcel No. Abothuguchi /Githongo/416 to his late father M'ringera Kiragara in 1980 and shared land parcel No. Abothuguchi /Githongo/415 among his sons who occupied their respective portions.
26. Before I delve into the Application, I think a little background of this matter is necessary. The deceased died intestate on 11th December,1984. Henry Muthamia Rintaugu in his capacity as the son of the Deceased petitioned for letters of Administration on 6th July,2013. Grant of Letters of Administration was issued to him on 12th November,2013 and the same confirmed on 10th February,2014.
27. The Petitioner/Respondent herein sought for revocation of the aforesaid grant vide summons dated 18th March,2014 on grounds that the grant was obtained secretly and was contrary to the deceased's wishes as Plot No. Abothuguchi/Githongo/456 was to be distributed in accordance with those wishes except for Charles Mugambi Festus who is not a member of the deceased's family but purchased the share belonging to the applicant herein, Justus Ndubi Ringera.
28. In the judgement delivered on 4th June,2015, the court held that the Julius Ndubi Ringera, the Applicant herein, share was on Plot LR No. Abothuguchi / Githongo /459 and not on plot no. 416. The court also revoked the grant and appointed the said Henry Muthamia Rintaugu & Grace Kagwiria (the petitioner/respondent herein) as the joint administrators of the deceased's estate and directed them to file mode of distribution of the estate jointly or separately.
29. Pursuant to the aforementioned judgement dated 4.6.2025, the petitioner herein and Henry Muthamia who is currently deceased filed their respective mode of distribution which the court duly considered. Vide a ruling dated 2nd November,2015 the court distributed Plot LR No. Abothuguchi / Githongo /459 & 416 as follows: -
- Plot 459
- a. Charles Mugambi Festus- two acres that being the share of Julius Ndubi Ringera but sold to him.
 - b. Henry Muthamia Rintaugu -1 acre
 - c. Gikunda Kiragara -1 acre
 - d. Julius Murithi Kiragara -1 acre to be held by the administrators for the beneficiaries of his estate.



Plot No. 416

- a. Grace Kagwira Muriuki- 1 ½ acres
 - b. Japheth Mburugu- 2 acres
 - c. Joyce Nduru- ½ acres.
30. Pursuant to the court’s ruling, a certificate of confirmation of grant was issued on 1st December,2015.
31. Subsequently, vide summons dated 26th September,2016, Judith Kagwira, the 1st Interested party herein on her behalf and on behalf of her sisters sought for revocation of the grant on grounds that she and her sisters, as daughters of the late Ringera Kiragara Bagiri, were disinherited of the share due to their late parent in this estate. The court in a ruling delivered on 17th May 2017, revoked the grant and ordered that the aforementioned assets revert to and be registered in the deceased’s name.
32. Thereafter, the deceased’s administrators i.e. Henry Muthamia Rintaugu & Grace Kagwiria filed summons for confirmation of grant and affidavit of distribution respectively. The court duly considered the same and, in a ruling, dated 9.5.2018 found that the deceased’s children entitled to inherit are; Henry Muthamia Rintaugu, Gikunda Kiragara, Julius Muriithi (deceased) and Jediel M’ Ringera (deceased), and ordered that both properties in the deceased’s estate, namely L.R. Abothuguchi/Githongo/459 (5.29 acres) and L.R. Abothuguchi/Githongo/416 (4 acres), be distributed equally to Henry Muthamia Rintaugu; Gikunda Kiragara; Julius Muriithi(deceased) to be shared equally amongst his widow and children i.e. Catherine Makena(widow),Phineas Muriuki(son), Florida Mpinda(daughter); Jediel M’ringera (deceased) to be shared equally amongst his widow and children. These are Joyce Nduru(widow), Julius Ndubi (son), Judith Kagwiria(daughter), Margaret N’kirote(daughter), Japhet Mburugu Ringera(son), Lucy Gakii(son), Hellen Karimi(daughter), Susan Naitore(daughter), Joseph Muriuki M’ringera- son and also deceased and survived by Grace Kagwiria(widow), Mwenda Muriuki(son) & Kendi Muriuki(daughter).
33. From the foregoing, it is clear that the Applicant herein was aware of the history of this matter, and it misleading for him to purport that the petitioner herein never involved him while filing this cause and that she is attempting to destroy the family fabric by sharing the land contrary to the deceased’s wishes.
34. Additionally, none of the parties including the Applicant herein did bring to the court’s attention that the deceased had gifted LR No. Abothuguchi/Githongo/416 to the late M’ringera Kiragara.
35. In raising that issue now, the applicant is inviting the court to rewrite the judgment herein. The matter is, in my view, res judicata as judgment has been delivered. The law on res judicata is clear. It is set out as follows;

7. Res judicata

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.

Explanation. (1)—The expression “former suit” means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation.(2)—For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.



Explanation. (3)—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation.(4)—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. (Emphasis mine)

Explanation. (5)—Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. (6)—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

36. Having spurned the opportunity to raise the issue during the trial, the applicant cannot be allowed to do so at this stage. From the court record, it is also apparent that the issue was considered by the court at paragraph 7 of its judgment. If the applicant was dissatisfied with the judgment, then the right course was to appeal, not to ask the court to revisit issues that were already dealt with in the judgment.
37. It is unfortunate that the parties failed to bring the evidence they are now tendering to the attention of the court, yet they were apparently aware of the matter when the confirmation and the objection took place. That said the law is as it is, and I have no other option but to hold the application to be res judicata. It is struck out for that reason.
38. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF OCTOBER, 2025.

H. M. NYAGA

JUDGE

In the presence of;

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