



**In re Estate of Mugwongo s/o Mugwika alias Muguomgo Mugwika (Deceased)  
(Succession Cause 12 of 2019) [2024] KEMC 91 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEMC 91 (KLR)

**REPUBLIC OF KENYA  
IN THE GITHONGO LAW COURTS  
SUCCESSION CAUSE 12 OF 2019  
AT SITATI, SPM  
MAY 17, 2024**

**IN THE MATTER OF THE ESTATE OF MUGWONGO S/O MUGWIKA  
ALIAS MUGUONGO MUGWIKA (DECEASED)**

**BETWEEN**

**RUTH KAJUJU M'INOTI ..... PETITIONER**

**AND**

**EVANGELINE NCEKEI M'MURITHI ..... APPLICANT**

**RULING**

1. By a Summons for Revocation or Annulment of Grant dated 23<sup>rd</sup> January, 2024 supported by an affidavit of similar date, the Applicant prayed for:

1. (Spent).
2. That the Honourable Court be pleased to issue an order for revocation of grant of the letters of administration intestate and the certificate of the confirmation of grant issued to the petitioner Ruth Kajuju M'inoti and issue a fresh grant to Evangeline Ncekei M'murithi.
3. That the honourable court be pleased to issue an order for rectification of certificate of confirmation of grant as per paragraph 7 of the affidavit herein.
4. That the costs of the application be provided for.

The 3 grounds relied on by the applicant were that:

- i. the administrator herein Ruth Kajuju M'inoti has failed and/or refused to administer the estate and cooperate with other beneficiaries in distributing the estate of the deceased as per the certificate of the confirmation of grant issued to her by this honourable court;



- ii. the family has agreed and appointed Evangeline Ncekei M'murithito be the administrator in this matter on order to complete the administration and distribution of the estate of the deceased;
  - iii. one of the beneficiaries herein one Florence Karegi M'ringeradied and she has substituted by Joseph Kaimenyi M'ringeravide application of substitution dated 24<sup>th</sup> January, 2022 the application dated 24<sup>th</sup> January, 2022 was allowed but Florence Karegi M'ringerera –deceased appears in the certificate of grant hence the need for rectification.
2. The applicant proposed that the certificate of the confirmation of grant be rectified to read as follows:

“Land Parcel Abothuguchi/Katheri/1058 measuring 0.97Acres be shared as follows:

Evangeline Ncecke M'murithi, Joseph Kaimenyi M'ringerera, Anyesi Mwari M'kirera And Judith Kanyamu M'ngaruchito shared 0.776Acres jointly in equal shares

Ruth Kajuju M'noti– 0.194Acre”

The firm of Wanjohi, Mutuma & Company Advocates represented the applicant herein.

3. The Respondent who was represented by Gichunge Muthuri & Company Advocates opposed the application by way of a Replying Affidavit dated 22<sup>nd</sup> March, 2024. In summary, the Petitioner/ Respondent contended that:
  - i. the primary obstacle to the distribution of the estate of the deceased is the steadfast refusal of the applicant and other beneficiaries to reimburse the respondent equitable costs and expenses incurred while pursuing the succession matter.
  - ii. The applicant and other beneficiaries had refused to pay for their survey costs for the sub-division of LR Abothuguchi/Katheri/1058 including the transfer costs and instead wanted the respondent to shoulder all the costs.
  - iii. The respondent was willing to distribute to administer the estate of the deceased upon the refund of the costs of the succession cause, provision of funds to cater for the sub-division and transfer of land parcel LR Abothuguchi/Katheri/1058.
4. Accompanying the replying affidavit were written submissions dated 16<sup>th</sup> May, 2024 in which the Respondent contended that the application lacked merit. She submitted that it was the acts of frustration by the beneficiaries that had prevented the completion of the administration processes. The respondent relied on the authorities of *Mary Wangari Kibika v John Gichuhi Kinuthia & 2 Others* [2015]eKLR where it was held:

“The above finding of concealment of material facts or untrue allegations of facts essential in point of law on the part of the respondent would warrant a revocation by the court of the confirmed grant. However, taking into account the fact that the present case been ongoing since 1997 that would not be a just course of action, a revocation of the confirmed grant would cause the parties to return to the drawing board and it could likely take a long time before the distribution of the suit is concluded.”

5. In reply, the applicant filed a replying affidavit dated 19<sup>th</sup> April, 2024 stating that the beneficiaries had procured a surveyor to complete the subdivision but the respondent had refused to cooperate with them due to her ulterior motives.



6. At the end of their respective contentions the court was called upon to determine if the application or merited or not.

### **Issue for Determination**

7. The question to be decided is whether or not the applicant has proved the necessary grounds for the revocation or annulment of the grant.
8. From the body of the application, the court notes that the ground relied on is that the Administratrix has failed and/or refused to complete the administration by failing or refusing to conduct a sub-division of the estate parcel in the shares ordered by the Certificate of Confirmation of Grant issued by the court. This is a question of fact and is to be weighed under the standards of section 76 (d)(ii) of the *Law of Succession Act* providing:
  76. Revocation or annulment of grant

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 –

    - (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
    - (ii) to proceed diligently with the administration of the estate;
9. The only issue of fact is whether or not the Administratrix has been indolent in the administration of the estate. For this indolence to be proved, section 76(d)(ii) demands the proof of a due notice to the Administratrix.
10. From a perusal of the Affidavit in support of the Summons for Revocation as well as the Supplementary Affidavit by the Applicant, the court has not found any annexure of a notice to the Administratrix to prove that the Administratrix was given a written notice to complete the administration process. There is no written proof to show which surveyor had been allegedly procured by the applicant and the other beneficiaries to complete the survey and sub-division process. There is no proof to show the written estimate of fees for the exercise. In the result, the applicant has failed to prove a major ingredient of the alleged failure by the Administratrix as required by sections 107 and 108 of the *Evidence Act* which provide that:
  107. Burden of proof
    - (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
    - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person
  108. Incidence of burden

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side
11. Furthermore, the record shows that the certificate of confirmation of grant dated 5<sup>th</sup> May, 2023 ordered the sharing of the only estate parcel of land Abothuguchi/Katheri/1058 “equally” between Evangeline Ncekei M’Murithi, Florence Karegi m’Ringera, Anyesi Mwari M’Kirera, Judith Kanyamu M’Ngaruchi and Ruth Kajuju M’Inoti. Ideally and for practicable reasons, the equal sharing of the



parcel would automatically attract costs such as survey fees, sub-division costs, transmission and titling fees. These are costs incidental to the process.

12. Under section 83 of the *Law of Succession Act* it is provided that the Administratrix of the estate is required to pay out of the estate any incidental costs to the process:

83. Duties of personal representatives

Personal representatives shall have the following duties

(d). to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);

13. The wording used is “pay out of the estate of the deceased” meaning that this is a cost on the estate and not a cost on the Administratrix personally. That legal provision presupposes that the estate has income or funds from which the Administratrix could pay out the expenses. In the present case, there is no evidence to show that the estate has any funds from which the Administratrix could pay out the costs incidental to the completion of the survey and sub-division process. With this finding, it fell upon all the beneficiaries including the Administratrix as a co-beneficiary to collaborate and fundraise the costs and pay the same. There is no evidence, however, of collaboration. Instead, there is evidence of accusations and counter-accusations about non-collaboration which has resulted in stalling to the detriment of everyone interested in the estate.

14. Consequently, the court makes the following orders after weighing the entire legal problem:

1. The prayer for revocation and/or annulment of the grant is dismissed for lack of proof as enumerated in the body of this ruling.
2. The prayer for rectification of the Certificate of Confirmation of grant so as to substitute Florence Karegi M’ringerawith Joseph Kaimenyi M’ringerais merited and is allowed since the said Florence Karegiis deceased.
3. The prayer of the replacement of the current Administratrix with the Applicant is dismissed since there is no consent by the other beneficiaries to this replacement.
4. The Administratrix is hereby ordered to engage a government surveyor and the Lands Registrar under whose jurisdictions the land is situated and this shall be done in the next 30 days of this order. In that engagement the Administratrix shall obtain a written breakdown of the estimate of the costs for the entire process of the survey and sub-division and titling processes and serve the beneficiaries with that written breakdown using either WhatsApp or other efficacious processes.
5. The Administratrix and all the beneficiaries i.e. Evangeline Ncekei M’murithi, Joseph Kaimenyi M’ringera, Anyesi Mwari M’kirera And Judith Kanyamu M’ngaruchiand Ruth Kajujushall share Equallyand pay within 45 days of the Land Registrar’s and a government Surveyor’s assessment the costs of the survey, sub-division, titling and incidental processes in order to complete the administration process.
6. Within 14 days of the completion of the titling process, the Administratrix shall file a report with this Honourable court.
7. Each party shall bear her own costs of this application.

It is so ordered.



**DATED, READ AND SIGNED AT GITHONGO THIS 17<sup>TH</sup> DAY OF MAY, 2024**

**HON. T.A. SITATI**

**SENIOR PRINCIPAL MAGISTRATE**

**GITHONGO LAW COURTS**

Present

Miss Onyango for the Applicant/Protestor

Miss Mugo for the Respondent/Petitioner

