



REPUBLIC OF KENYA



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**In re Estate of Mwangi Kinigina (Deceased) (Succession Cause
1204 of 2013) [2025] KEHC 15894 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15894 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
SUCCESSION CAUSE 1204 OF 2013
CW GITHUA, J
OCTOBER 30, 2025**

IN THE MATTER OF THE ESTATE OF MWANGI KINIGINA (DECEASED)

BETWEEN

JOHN RUKUNGU MUGUMURA APPLICANT

AND

ISAAC KAGEMA MWANGI RESPONDENT

JUDGMENT

1. This succession cause has a chequered history. It has witnessed many twists and turns and has unfortunately outlived some of the parties who were the original contestants.
2. It all started when the respondent, Isaac Kagama Mwangi petitioned for a grant of letters of Administration in respect of the Estate of his father, the late Mwangi Kinigina who died intestate on 17th November 2000. This was done in the lower court in Thika Succession Cause No. 30 of 2017. The respondent was appointed as the administrator of the Estate in a grant issued on 8th March 2003. The Estate comprised of three parcels of land namely; LR LOC.2/Kinyona/109, LOC.2/Kangari/684 and LOC.2/Kangari/296.
3. On 7th October 2003, the respondent filed a summons for confirmation of the aforesaid grant. Charles Mugumura (now deceased) who was the deceased's biological brother filed an affidavit of protest accusing the respondent of having deliberately concealed to the court that he was entitled to land parcel No. LOC.2/Kangari/684 as the sole beneficiary and two acres out of land parcel No. LOC.2/Kinyona/109.
4. The protested summons was heard by way of viva-voce evidence and after close of the hearing, the learned trial magistrate Ms. L. Wachira (RM) delivered her judgement on 9th February 2005. In her judgement, she dismissed the summons for confirmation of grant with costs and directed that the



- affidavit supporting the summons be amended to include the protestor as a beneficiary to the deceased's Estate.
5. The record shows that following this judgement, the respondent filed Misc. Succ. Application No.50 of 2007 at the High Court of Kenya in Nairobi seeking directions on the way forward in view of the fact that the learned trial magistrate in her judgement had failed to make any finding on the identity of the deceased's beneficiaries and their respective shares. From the respondent's replying affidavit dated 26th October 2007 sworn in response to the protestor's application dated 3rd September 2007, it is clear that this application was dismissed.
 6. The protestor on his part moved the trial court in an application dated 3rd September 2007 requesting the court to issue orders compelling the respondent to apply for confirmation of grant to the deceased's Estate in a period of 60 days in compliance with the judgement delivered on 9th February 2005. The application was heard and dismissed by Hon. L.W. Gicheha (SRM) on grounds that since the summons for confirmation had been dismissed by a court of concurrent jurisdiction, the only recourse available to the parties was to appeal to the High Court.
 7. Despite having made the above directions on 11th March 2009, the same learned trial magistrate slightly over an year later changed her mind and gave different directions on 21st July 2010. The record shows that on the basis of sentiments orally expressed by learned counsel for the respondent in the absence of the applicant, the learned trial magistrate directed that hearing of the protested summons should start de novo.
 8. Following the above directions, hearing proceeded before Hon. Ndenda (SRM) in the absence of the protestor. The outcome of the hearing is that the deceased's Estate was distributed as shown in the certificate of confirmation of grant dated 20th June 2012.
 9. It is apparent from the record that subsequently, the protestor passed on and he was substituted by his son, Simon K. Mugumura, the applicant in the chamber summons dated 20th November 2013 which is the subject of this judgement. In the summons, the applicant sought inter alia, nullification of the grant of letters of administration issued to the respondent on 8th April 2013. In addition, he sought some interim injunctive reliefs to preserve the Estate's assets which were granted but which are now spent.
 10. In the grounds anchoring the summons and in his supporting affidavit, the applicant gave a brief background to the application and averred that although the respondent was aware that the protestor and his family had lived in some part of the land comprising the Estate for over 50 years and the magistrates court at Kigumo and clan elders had confirmed that he was entitled to a share of the Estate, the respondent had failed to involve the protestor in proceedings leading to confirmation of the grant and he had died without any knowledge that the grant had been confirmed; that he only got to learn about existence of the confirmed grant on 4th October 2013 when he discovered that the respondent had applied to the Kigumo Land control Board for consent to sub-divide some parcels of land in the Estate with the intention of selling them.
 11. The applicant further averred that as the protestor was not allocated any share in the certificate of confirmation of grant issued on 20th June 2012, if the orders sought were not granted, the protestor's beneficiaries will be unfairly disinherited and left without any source of livelihood.
 12. It is apparent from the record that before the application was prosecuted, the applicant passed on. He was substituted by the current applicant, John Rukungu Mugumura who is his son.
 13. In his response to the summons, the respondent filed a replying affidavit sworn on 22nd July 2015 in which he challenged the applicant's legal standing in this cause. He deposed that the applicant was not a



son to the deceased nor was he the personal representative of the Estate of the late Charles Mugumura; that he therefore lacked capacity to pursue the interests of the deceased protestor in this case.

14. He further averred that he had already executed the certificate of confirmation of grant dated 20th June 2021 as he had transmitted the Estate to its beneficiaries and all that was remaining was eviction of people who had unlawfully occupied the Estate. He prayed that the application be dismissed with costs.
15. I must point out at this juncture that it is rather unfortunate that although the record reveals that directions for disposal of the application were issued by Hon. Kimondo J way back on 18th November 2020 and parties duly filed their respective submissions within the timelines set by the court, it was not possible to conclude this matter within a reasonable time for reasons which are on record including the transfer of Hon. Kimondo J to another station and an attempt at mediation which was not successful.
16. That said, as can be discerned from the foregoing, I have painstakingly combed through the lengthy and not very well organised record of the trial court. I have also read and considered the rival written submissions filed by the parties in this matter and having done so, I find that only two key issues emerge for my determination, namely;
 - (i) Whether the grant issued to the respondent on 8th April 2013 should be revoked as prayed.
 - (ii) Depending on the outcome of (i) above, what orders should the court make in the circumstances of this cause?
17. Before embarking on a determination of the first issue, I wish to briefly address the preliminary issue raised by the respondent regarding the capacity of the applicant in these proceedings. The respondent has argued that the applicant did not have locus standi in this matter since he was not the son of the original deceased the late Simon Muruguma nor was he the legal representative of the original protestor, the late Charles Muguruma.
18. Although the applicant did not in his written submissions directly confront this preliminary objection to his standing, the court record clearly reveals that following the demise of the protestor, the original applicant, the late Simon K. Muguruma who filed the current application was by order of the trial court substituted in his place and when he also passed on, the current applicant sought and obtained a limited grant dated 14th October 2014 allowing him to step into the shoes of the late applicant in this case.
19. Relying on aforesaid limited grant, the current applicant filed an application dated 31st July 2015 seeking to be substituted in this cause in place of his late father and the application was allowed by the trial court on 10th February 2016. The respondent did not contest the trial courts' decision by either seeking a review or filing an appeal. That decision remains in force to date. It is therefore my finding that the applicant's standing in this cause is anchored on a subsisting and valid court order. Consequently, I find that the preliminary point raised by the respondent lacks merit and it is hereby dismissed.
20. Having resolved that preliminary issue, I now turn to consider the first issue isolated above for my determination, which is, whether the grant issued to the respondent should be revoked.

The law governing revocation of grants is set out in Section 76 of the [Law of Succession Act](#) which provides as follows;

“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-
 - (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.”

21. I wholly concur with the interpretation given to the above provision by Musyoka J in re Estate of Prisca Ong’ayo Nande (Deceased)

(2020) KEHC 6553 (KLR) when he stated thus;

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

22. . In this case, a reading of the applicant’s supporting affidavit and his written submissions clearly shows that although the applicant had impeached the validity of the grant issued to the respondent, he was



principally aggrieved by the grants confirmation which distributed the deceased's Estate as shown in the certificate of confirmation of grant dated 20th June 2012 and not the process used by the respondent to obtain the grant.

23. . The gravamen of his complaint is that the respondent failed to disclose in his summons for confirmation of grant that the original protestor and his family had continuously lived on some parts of the Estate property for over 50 years as a result of which they were left out during distribution thus disinheriting them. He did not claim or demonstrate that the grant issued on 20th March 2011 was obtained by fraud, misrepresentation or concealment of material facts or that any of the circumstances that would warrant revocation of grants set out in Section 76 above existed in this case.
24. . It is not disputed that the respondent is the son to the late Mwangi Kingina while the protestor on whose behalf the applicant was litigating in this cause was the deceased's brother. The respondent therefore ranked higher in the order of preference of persons entitled to issuance of a grant of representation to the deceased's Estate than the protestor.
25. . It is trite that confirmation of grant relates to distribution of Estates and not to grant of letters of administration. The process of confirmation if flawed cannot therefore affect the validity of the initial grant.
26. . In view of the foregoing, I am satisfied that the applicant has failed to establish any ground or reason that would justify nullification of the grant issued to the respondent on 20th March 2011.
27. . Although the applicant did not fault the confirmation process in the body of his application, he did so in his supporting affidavit and further affidavit sworn on 13th February 2014. Indeed, as stated earlier, his main complaint was not the validity of the initial grant but by the way the deceased's Estate was distributed.
28. . Having carefully read the court record, I find that the applicant's aforesaid grievance was not idle as I will demonstrate shortly.

To start with, the learned trial magistrate (L. Wachira (RM)) in her judgement dated 9th February 2005 held that the original protestor was entitled to a portion of the Estate and ought to be included in the list of the deceased's beneficiaries. This was the import of her decision although I must say that the manner in which the decision was communicated was wrong. After dismissing the summons, the learned trial magistrate should not have directed that the supporting affidavit be amended to accommodate the protestor's interest because the supporting affidavit had gone down the drain together with the summons and was not available for use in any proceedings.

29. In any event, the law is that an affidavit amounts to evidence on oath and cannot as a general rule be amended. The learned trial magistrate should have directed the respondent to file a fresh summons for confirmation of grant and include the protestor in the list of beneficiaries.
30. Be that as it may, it is clear from the record that the trial court's decision was informed by an earlier judgement in Kigumo CMCC No. 162 and 167 of 1972 which had found that the protestor had a beneficial interest in the deceased's Estate and was not a trespasser.
31. . Instead of complying with Hon. Wachira's decision or challenging it on appeal as he was obviously aggrieved by it, the respondent busied himself with seeking directions on how to proceed with distribution.

The trial court's record shows that although Hon. Liz Gicheha had earlier dismissed one such application, for undisclosed reasons, she subsequently changed her position and without being moved



by an application for review, she gave directions that the matter should proceed de novo. This was done in the absence of the applicant or his advocate. It is on the basis of these directions that hearing started afresh and was concluded in the absence of the protestor leading to issuance of the certificate of confirmation of grant dated 20th June 2012.

32. . In my considered view, the trial magistrate's direction that hearing should start de novo was unlawful because of three main reasons:

First, the direction was made pursuant to a statement from the bar made by the respondent's counsel in the absence of the applicant. Such a direction ought to have been issued on the basis of a formal application for review of Hon. Wachira's decision which had been filed and served on the applicant which was not done in this case.

33. Secondly, it is not clear what was to start de novo considering that the summons for confirmation of grant filed by the respondent had already been dismissed by another magistrate. The record does not show that a fresh summons for confirmation of grant had been filed.

34. Thirdly and most importantly, the learned trial magistrate's direction amounted to sitting on appeal on a decision made by another court of concurrent jurisdiction which amounted to an illegality. I agree with the applicant's averment in his further affidavit that the learned trial magistrate did not have jurisdiction to sit on appeal over a decision made by a fellow magistrate.

35. Having found that the direction giving rise to the proceedings that led to confirmation of the grant and issuance of the certificate of confirmation of grant dated 20th June 2012 was illegal, it automatically follows that both the proceedings and the ensuing certificate of confirmation of grant were products of an illegality and were thus void abinitio. They did not have any legal effect.

36. Consequently, there cannot be any doubt that as the orders on distribution of the Estate were based on proceedings which were conducted pursuant to an illegal order, they lacked legal validity and they cannot be allowed to stand. The same are hereby set aside. The resultant certificate of confirmation of grant dated 20th June 2012 is also cancelled.

37. Lastly, there is evidence that subsequent to the aforesaid certificate of confirmation of grant, the respondent transmitted the Estate properties and had their titles registered in his name as shown in the three certificates of official search dated 26th February 2013. As the transmissions were done pursuant to a certificate of confirmation of grant which now stands cancelled, the titles processed in the respondent's name are hereby cancelled. The Land Registrar Murang'a is ordered to revert title to all the Estate properties to the name of the deceased, the late Mwangi Kinigina.

38. Having made the above orders, what then is the way forward? Although the value of the Estate properties is not clear and I would have been entitled to remit this file back to the lower court to have the mode of distribution of the Estate determined, I find that doing so would not serve the ends of justice as it would further delay the conclusion of this bitter succession dispute which has remained unresolved for over 8 years. In the interest of expediting conclusion of this matter and since this court has original jurisdiction to hear and determine all civil disputes which includes succession disputes, I direct that hearing on distribution of the deceased's Estate shall proceed before this court.

39. That said, under Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules which allows this court to make any orders it deems fit in the interest of justice, I now proceed to make the following additional orders;

i) In order to protect and safeguard the protestor's interest and those of his beneficiaries, the applicant herein is appointed as a co-administrator of the deceased's Estate to manage the Estate



jointly with the respondent. The earlier grant issued to the respondent on 8th March 2003 is hereby revoked. A fresh grant to issue in the joint names of the respondent and the Applicant.

- ii) The Co-administrators shall within the next three months file a summons for confirmation of grant either jointly or severally.

40. . This being a family dispute, I will not make any order on costs.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 30TH DAY OF OCTOBER 2025.

HON. C. W. GITHUA

JUDGE

In the presence of:

The applicant

Ms. Wangari for the respondent

Ms. Susan Waiganjo, Court Assistant

