



REPUBLIC OF KENYA



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**In re Estate of Gatere Wahome (Deceased) (Succession Cause
248 of 1996) [2025] KEHC 14822 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14822 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 248 OF 1996
MA ODERO, J
OCTOBER 22, 2025
IN THE MATTER OF THE ESTATE OF GATERE WAHOME (DECEASED)**

JUDGMENT

1. Before this Court for determination is the Summons for Revocation of Grant dated 10th April 2022 filed by Simon Macharia Gatere And David Wanjau Maingi (hereinafter ‘the Applicants’). In the said Summons the Applicants seek the following orders:-
 - “ 1. That letters of administration issued to Cecilia Muthoni Gatere and confirmed on the 4th February 2000 be revoked.
 2. That upon revocation being granted the same be issued to the applicants Simon Macharia Gatere And David Wanjau Maingi.
 3. That the estate be distributed as proposed in paragraph 8 of the supporting affidavit sworn by the 1st Applicant as follows:-
 - (i) LR. Tetu/karaihu/319 - Simon Macharia Gatere
 - (ii) Lr. Ruguru/Karuthi/76
 - A. Nderitu Gicheru - 3.05 Acres
 - B. Simon Macharia Gatere - 1.525 Acres
 - C. David Wanjau Maingi - 1.525 Acres”
2. The Respondent Charles Mwangi Nderitu filed a Replying Affidavit dated 3rd March 2023 in which he opposed the Summons for revocation of Grant.
3. The matter was referred to Court Annexed Mediation but no settlement was reached. The Summons then proceeded for hearing by way of Vive Voce evidence in open court.



Background

4. This succession cause relates to the estate of the late Gatere Wahome (hereinafter 'the Deceased') who died intestate on 20th March 1969. A copy of the Death certificate Serial Number 388377 was filed in court on 12th September 1996.
5. The Deceased was survived by the following persons;-
 - (a) Cecilia Muthoni Gatere - Wife
 - (b) John Wahome Gatere - Son
 - (c) Peter Munyori Gatere - Son
 - (d) Simon Macharia Gatere - Son
 - (e) Joseph Ndiritu Gatere - Son
6. The estate of the Deceased comprised of the following assets
 - (i) Parcel of land known as TETU/KARAIHU/319
 - (ii) Parcel of land known as Ruguru/Karuthi/76
7. Following the demise of the Deceased his widow Cecilia Muthoni Gatere obtained Grant of letters of Administration Intestate which grant was made to her on 8th March 1999.
8. The widow thereafter filed a summons for confirmation of Grant. A certificate of confirmed of Grant was issued by the Court on 4th February 2000.
9. According to the confirmed Grant the estate of the Deceased was to be distributed as follows;-
 - (1) Cecilia Muthoni Gatere - Tetu Karaithu/319 - Absolutely
 - (2) Ruguru/Karuthi/76 to
 - Nderitu Gacheru - 3.05 acres
 - Cecilia Muthoni Gatere - 1.52 acres
 - James Ndungu Wahome - 1.525 acres
10. Unfortunately the administrator of the estate Cecilia Muthoni passed away on 24th September 2014 before the estate had been distributed. The Applicants who are sons of the Deceased now seek to have the Grant issued to Cecilia revoked and a fresh Grant to issue to themselves as Administrators.

The Evidence

11. PW1 was the 1st Applicant Simon Macharia Gatere. He told the court that the Deceased was his father whilst the late administrator of the estate Cecilia Muthoni was his mother.
12. PW1 confirms that following the demise of the Deceased a Certificate of confirmed Grant was issued to his mother on 4th February 2000. That the family had all consented to the mode of distribution of the estate as set out in the confirmed grant. However the Administrator was not able to proceed with distribution of the estate due to a suit filed by one Nderitu Gacheru (now Deceased) who was a step-brother to the Deceased and the father of the Respondent.



13. PW1 told the court that the Administrator of the estate passed away on 24th September 2014. A copy of her Death certificate Serial Number 0217844 appears as Annexure 'SM1' to this Summons for Revocation of Grant. That all the beneficiaries are agreed that the Grant be revoked and a fresh Grant issue to the Applicants. He prays that upon a new grant being issued the property known as Ruguru/Karuthi/76 be distributed to as set out in the previously confirmed grant.
14. PW2 David Wanjau Maingi told the court that the Deceased Gatere Wahome was his uncle i.e the elder brother to his father. As such the 2nd Applicant is a cousin to the 1st Applicant. PW2 confirmed the evidence of PW1 in all material aspects.
15. DW1 was the Respondent Charles Mwangi Nderitu. He told the court that he is representing his late father Nderitu Gacheru who was a step-brother to the Deceased herein.
16. DW1 told the court that he has no objection to the revocation of the Grant nor to the issuance of a fresh grant in the name of the Applicants. However DW1 strenuously opposes the proposed mode of distribution of the parcel of land known as Ruguru/Karuthi/76. The witness insists that the Deceased during his lifetime sold his share in this parcel of land to his late father who paid him Kshs. 3,000 in installments.
17. DW1 asserts that this 'Ruguru Plot' did not belong to the Deceased, it does not form part of his estate and is not available for distribution. He states that the entire Ruguru plot belonged to his late father and opposes any attempt to distribute this parcel of land.
18. DW1 called two witnesses Jackson Nderitu Wangari who told the court that he was a witness to the sale of the suit land by the Deceased to Nderitu Gatheru.
19. DW3 Judy Wacera also claims to have been a witness to the sale of the Ruguru Plot. The Respondents urge the court not to approve the proposed mode of distribution of the Ruguru Plot.
20. Upon conclusion of the Oral evidence the parties were invited to file and exchange written submissions. The Applicant filed the written submissions dated 30th May 2025, whilst the Respondents relied on their written submissions dated 30th June 2025.

Analysis And Determination

21. I have carefully considered the summons before this court, the Replying affidavit filed by the Respondent, the evidence on record as well as the written submissions filed by both parties.
22. It is not in any dispute that the Deceased Gatere Wahome passed away on 20th March 1969. It is also common ground that letters of Administration Intestate in respect of the estate of the Deceased were issued to her widow Cecilia Muthoni. That the Grant was duly confirmed on 4th February 2000. Finally the parties all confirm that the Administrator of the estate passed away in the year 2014 before having distributed the estate as set out in the confirmed grant.
23. The issues which arise for determination in this case are
 - (1) Whether the Grant should be revoked.
 - (2) How the estate should be distributed.



Revocation of Grant

24. The grounds upon which a Grant may be revoked are set out in Section 76 of the [Law of Succession Act](#) which provides as follows:-

“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 –

- 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.” [own emphasis]

25. This provision of the law was expounded upon by the court in the case of RE ESTATE OF PRISCA ONG'AYA NANDE (Deceased) 2020 eKLR where it was held as follows:-

“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 circumstance, 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.”

26. Therefore Section 76 of the *Law of Succession Act* provides that a Grant may be revoked if the same is found to have become ‘useless and/or inoperative.’ Where a single Executor/Administrator dies then the grant is rendered both useless and inoperative. This is because a Grant of representation is issued to a particular person or persons. It is given ‘in personam’ and cannot be transferred to a third party under any circumstances.
27. It would appear that the *Law of Succession Act* did not contemplate the death of a single Executor/Administrator to an estate. Section 81 of the Act deals with a situation where one or more of several administrators passes away. In such a situation the surviving Administrator [s] are mandated to proceed with the administration of the estate to finality.
28. In *Re Estate Of Mwangi Mugwe Alias Elieza Ngware (Deceased)* [2003] eKLR, the Court in considering the situation where the sole Executor/Administrator of an estate had passed away stated as follows:-

“.....the operative word is substitution.” The law of Succession has no provision talking about substitution of a deceased single administrator. In the circumstances therefore it is my considered view that the proper provisions of the law to apply in Section 76 (e) of the *Law of Succession Act* and Rule 44 of the Probate and Administration Rules whereby the Applicant would apply for revocation or annulment of a grant on the ground

“that the grant has become useless and inoperative through subsequent circumstances.” The Applicant would proceed to put a prayer in the same application that a new grant be made to him and could as well add a further prayer if need be for confirmation of the new grant. The application should of course, be supported by consent from adult beneficiaries in the estate of the first deceased person, the second deceased person being the deceased administrator.” [Own emphasis]

29. Similarly in *Re Estate Of George Ragui Karanja (Deceased)* [2016] EKR, Hon, Justice William Musyoka held as follows:-

“The *Law of Succession Act* does not expressly provide for substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act which provides for vesting of the powers and duties of personal representatives in the survivor of survivors of a dead personal representative. The provision provides as follows;-

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them provided that, where there has



been a grant of letters of administration which involve any continuing trust a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him. It would appear to me that once all the holders of a grant die section 81 of the Act would be of no application. Indeed, the said grant becomes useless and inoperative and liable for revocation under Section 76 (e) of the Law of Succession Act to pave way for appointment of new administrators. The appointment of fresh administrators to take the place of the previous ones following their death is subject to the provisions of section 51 through to section 66 of the Act.” [Own emphasis]

30. Finally on this point in *Re Estate Of Elijah Oktah Mikah Tsimbwele (Deceased)* [2021] eKLR, Hon. Justice Musyoka stated that

“The death of one or more administrators does not affect the grant, in terms of rendering it invalid or inoperative or useless. Under Section 81 of the Act, the powers and duties of personal representative rest in the surviving personal representative on the death of one of them. Section 76e of the Act only applies where there is a sole administrator who then dies.....” [Own emphasis]

31. In this cause the Administrator of the estate has passed away. She was the sole administrator. As a result the Grant which had been issued to and confirmed in the name of ‘Cecilia Muthoni’ has now been rendered ‘Useless and inoperative’. As such in order to progress this cause it is necessary to have the Grant be re-issued to another person or persons.

32. The Applicants in this Summons for revocation of Grant have prayed that the Grant be re-issued to them jointly. The 1st Applicant who is a son of the Deceased certainly has locus standi in this matter.

33. All the beneficiaries to the estate have signed a consent dated 2nd September 2022 confirming their agreement to have a fresh Grant issued to the two applicants. The Respondent in his evidence confirmed that he has no objection to the revocation of the Grant or to the issuance of a fresh grant to the Applicants jointly.

34. I therefore find merit in this prayer for revocation of the Grant I allow that prayer and I do direct that a fresh grant be re-issued jointly to the two Applicants.

Distribution of the Estate

35. The Applicants have proposed that the estate of the Deceased be distributed in the manner that was set out in the Grant which was confirmed on 4th February 2000 (which Grant the Court has now revoked). The beneficiaries of the estate have all consented to this proposed mode of distribution and have signed the consent dated 2nd September 2022.

36. The Respondent strenuously opposes the mode of distribution of the estate on the grounds that one of the properties listed in the Grant being Ruguru/Karuthi/76 did not belong to the Deceased.

37. The Respondent states that the Ruguru Plot belongs to his father one Nderitu Gacheru. The Respondent relied on a Sale Agreement which appears as Annexure ‘C2’ to the Affidavit sworn on 1st March 2024 as proof of this alleged sale.

38. Firstly the document marked as ‘C2’ is not a Sale Agreement. It was merely a document which articulated a decision made by clan elders that one ‘Nderitu Gicheru’ would purchase land for Kshs. 3,000. Neither the Deceased nor the purchasers have signed this document and thus it cannot be



deemed to be binding on any of them. Further the document makes no reference to LR. Ruguru/Karuthi/76. None of the so called clan elders was called as a witness to clarify which parcel of land was being sold.

39. Further there is no proof of payment to the Deceased of Kshs. 3000. All in all I reject the so called Agreement. It is not a valid contract and does not amount to proof of sale of the suit land by the Deceased.
40. Secondly the question of ownership of this Ruguru Plot is now Res Judicata' I note that the same issue arose in Nyeri Civil Case No. 220 of 2001 (OS) Nderitu Gicehru -vs- Cecilia Muthoni Gatere in which the Respondents Father sued the Administrator of the estate seeking declaratory orders in respect of the parcel of land known as Ruguru/Karuthi/76 which case was heard by Hon. Lady Justice Hannah Okwengu (now retired). In that case the Respondents Father sought to enforce the Sale Agreement in order to claim the entire parcel of land.
41. In a judgment delivered on 21st September 2007 the Honourable Judge dismissed the plaintiff's claim in the following words.

“For all the aforestated reasons, I find that the plaintiff has failed to prove to the required standard that there is any enforceable agreement of sale to him of the half share of the suit land belonging to Gatere Wahome or that the plaintiff has been in adverse occupation of the half share of Gatere Wahome. Accordingly I decline to grant the declaration sought and therefore dismiss the plaintiff's suit.”

42. Finally the Respondent is not a beneficiary of the estate of the Deceased and as such has no real locus in this matter. He is claiming ownership of a property which belongs to the estate of the Deceased. The question of whether the parcel of land known as Ruguru/Karuthi/76 belongs to the Respondent or to the estate is not one which this court sitting as a Probate Court can determine.
43. Matters relating to the ownership use and occupation of land have now under Article 162 of *the Constitution* of Kenya 2010 been mandated to be determined by a specialized court being the Environment and Land Court ('ELC').
44. Section 13 of the *Environment and Land Court Act* provides for the jurisdiction of that court as follows:-

13. Jurisdiction of the Court

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162 (2) (b) of *the Constitution*, the Court shall have power to hear and determine disputes -
- (a) relating to environmental planning and protection climate issues, land use planning, title tenure boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;



- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land [Rev. 2012] No. 19 of 2011 Environment and Land Court 9 [Issue 1].

45. Therefore, the correct and proper forum before which the parties ought to ventilate their claim to the suit land is the ELC. The Environment and Land Court is the only court exclusively mandated by law to determine the question of ‘ownership’ of the suit land.

46. In RE Estate Of Stone Kathubi Muinde (Deceased) [2016] eKLR Hon. Justice William Musyoka held that:-

“Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit property brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and Civil Procedure Rules. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.” (Own emphasis)

47. I therefore find that this court has no jurisdiction to make any pronouncement regarding the Respondents claim to ownership of the Ruguru Plot. If the Respondent wishes to seek orders on that regard he must file a civil suit in the Environment and Land Court, which is the only court with the Mandate to make a decision over issues relating to ‘ownership’ of land.

48. I have considered the mode of distribution proposed by the Applicants, I note that a share of the Ruguru plot has in fact been allocated to Nderitu Gacheru who is the father to the Respondent. I also note that all the beneficiaries have signed a consent to the proposed mode of distribution of the estate.

49. In the circumstances I do allow the summons dated 10th April 2022 and make the following orders:-

- (1) The letters of Administration issued to Cecilia Muthoni Gatere on 8th March 1999 and confirmed on 4th February 2000 be and are hereby revoked.
- (2) A fresh Grant in respect of the estate of the Deceased shall be issued in the joint names of Simon Macharia Gatere And David Wanjau Maingi .
- (3) The estate of the Deceased shall be distributed in the following manner
 - (a) Lr Tetu/karaihu/319 - Simon Macharia Gatere
 - (b) Lr Ruguru/Karuthi/76 To Be Distributed As Follows:-
 - (i) Nderitu Gicheru - 3.05 Acres
 - (ii) Simon Macharia Gatere - 1.525 Acres
 - (iii) David Wanjau Maingi - 1.525 Acres
- (4) A certificate of Confirmed Grant to be issued in terms of (3) above.
- (5) This being a family matter I make no orders on costs.

DATED IN NYERI THIS 22ND DAY OF OCTOBER 2025.



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MAUREEN A. ODERO

JUDGE

