



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Chege v Mureithi (Family Appeal 6 of 2020)
[2025] KEHC 16930 (KLR) (21 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16930 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
FAMILY APPEAL 6 OF 2020
MA ODERO, J
NOVEMBER 21, 2025**

BETWEEN

MIRIAM WANJIRU CHEGE APPELLANT

AND

HELLEN NJERI MUREITHI RESPONDENT

JUDGMENT

1. Before this Court is the Memorandum of Appeal dated 27th July 2020 by which the Appellant Mirriam Wanjiru Chege seeks the following orders:-
 - “1. That the Appeal be allowed and the Ruling of the Learned Magistrate delivered on the 29th June 2020 be quashed and set aside.
 2. Such other and further relief as this Honourable Court may deem just to grant.
 3. That the costs of the Appeal be provided for.”
2. The Respondent Hellen Njeri Mureithi opposed the appeal. The matter was canvassed by way of written submissions. The Appellant filed the written submissions dated 30th July 2025. The Respondent did not file any submissions.

Background

3. This appeal emanates from Nyeri Succession Cause No. 600 of 2018, which had been filed in the Lower Court. The matter related to the estate of the late Angela Nyawira who passed away on 10th January 2014.
4. Following the demise of the Deceased the Respondent sought and obtained Grant of letters of Administration Intestate which Grant was issued to her on 29th May 2019.



5. The Appellant then filed a Summons for Revocation of Grant dated 4th November 2019 in which the Appellant asserted that the Deceased had died testate having left a written will in which she (the Appellant) had been named as the sole executor.
6. In the Summons for revocation of Grant the Appellant sought the following orders:-
 - “ 1. That this Honourable Court be pleased to revoke the letters of administration intestate issued in this matter to the respondent on the 29th May 2019.
 2. That consequent to prayer (2) above the applicant be granted leave to file an objection to the making of grant of representation to the estate of the deceased as sought in the petition filed on 24th January 2019 by the respondent.
 3. That the applicant be granted leave to petition by way of a cross application for a grant of probate of written will of the estate of the deceased per the annexed petition by way of cross application for grant.”
7. The Respondent opposed the summons for revocation of the Grant which had been issued to her. The matter was heard in the Lower Court and vide Ruling delivered on 29th June 2020 Hon W Kagendo Chief Magistrate (as she then was) dismissed the summons.
8. Being aggrieved by that ruling the Appellant filed this present appeal which is premised upon the following grounds:-
 - “ 1. The Learned Magistrate erred in law in failing to revoke the grant of letters of administration intestate issued to the Respondent on 29th May 2019.
 2. The Learned Magistrate erred in subjecting a testate Estate with a valid will to an otherwise intestate process.
 3. That the learned Magistrate erred in failing to consider the Appellant’s submissions regarding the nature of grant to issue and the rightful sole executor of the Deceased’s will.
 4. The Learned Magistrate erred in locking out of administration of the Deceased Estate the Appellant, despite her acknowledged and undisputed higher rank in the order of priority as set out by the Law of Succession Act.
 5. The Learned Magistrate erred in law in reaching a wrong decision in law and fact not supported by the weight of the evidence before her.
 6. The Learned Magistrate failed to exercise her discretion judicially thus arriving at an unfair judgement against the Appellant.”

Analysis And Determination

9. I have carefully considered this memorandum of appeal, the record of Appeal filed in this matter as well as the written submissions on record.
10. This is a first appeal. It is settled law that the duty of the first appellate court is to re-evaluate the evidence which was adduced in the subordinate court both on points of law and fact and come up with its own findings and conclusions [see *Peters -vs- Sunday post limited* [1958] E. A 424]



11. In SELLE and Another -vs- Associated Motor Boat Company Ltd & Others [1968] 1 E.A 123 it was stated as

“.....this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind [the fact] that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears that he has clearly failed on some point to take into account particular circumstances or probabilities materially to estimate the evidence.”

12. Likewise in Gitobu Imanyara & 2 Others -vs- Attorney General [2016] eKLR, the Court of Appeal stated as follows:-

“An appeal to this court is by way of a 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.”

13. In her summons before the Lower Court the Appellant had sought revocation of the Grant issued to the Respondent on grounds that the Deceased had left a written will and therefore died testate not intestate as represented by the Respondent in her Petition.

14. Section 76 of the Law of Succession Act Cap 160 Laws of Kenya sets out the grounds upon which a grant may be revoked 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.”

15. In her summons therefore the Appellant alleged that the Respondent obtained the grant by way of misrepresentation i.e by misrepresenting that the Deceased had died intestate.
16. In my view the trial court ought to have directed that the matter be disposed by way of a Vive Voce hearing in which the Appellant would have been invited to call evidence to prove her claim that the Deceased left a valid written will. Both parties would have been invited to call witnesses in support of their respective positions which witnesses would have been cross-examined by the other side.
17. As the saying goes ‘there are many ways to skin a cat.’ The Learned trial magistrate exercising her discretion directed that the summons be canvassed by way of written submissions.
18. The trial magistrate in dismissing the summons for revocation of grant directed the Administrator (Respondent) proceed to file a Summons for confirmation of Grant which the Appellant would be at liberty to oppose by way of filing an objection.
19. In her ruling the trial magistrate stated that:-

“The court finds no merit in the application [for revocation of Grant] They will not suffer any prejudice as the role of an administrator is simply to distribute the estate. They should wait until the application for the confirmation of grant has been filed. Then they can file a protest if need be. Revoking the grant would be setting back the clock for no good reason.”
20. I do agree with the magistrate that revoking the grant would merely be a step backwards in that the entire probate process would have to begin afresh. The decision of the learned trial magistrate still left the door open for the Appellant to prove her claims that the Deceased died testate through the objection proceedings.
21. If the appellant managed to prove her claim that the Deceased left a valid will, then the court would at that stage revoke the grant and direct that a fresh Petition for grant of Probate with written will be filed. If on the other hand the appellant failed to prove her allegations then the succession cause would proceed to its logical conclusion.
22. As such the ruling did not in any way prejudice the Appellant. In either case the Appellant would remain a party to the proceeding and would have an opportunity to ventilate her issues.
23. The Appellants apprehension that he Administrator would proceed to distribute the estate is unfounded as the Grant is yet to be confirmed. I find that the trial magistrate did not err out in her ruling delivered on 29th June 2020. Accordingly I find no merit in this appeals. The same is dismissed in its entirety. Each party to meet its own costs.

DATED IN NYERI THIS 21ST DAY OF NOVEMBER 2025.

.....

MAUREEN A. ODERO

JUDGE

