

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CORAM: R. MWONGO, J.

SUCCESSION CAUSE NO. 133 OF 2003

IN THE MATTER OF THE ESTATE OF RURINJA KAMAU (DECEASED)

RUNJI NJAGI.....APPLICANT

-VERSUS-

JOSEPH NJIRU RURINJA KAMAU.....ADMINISTRATOR/RESPONDENT

R U L I N G

Summons for Revocation of Grant

1. The applicant filed summons dated 23rd September 2021 seeking revocation of the grant issued to the respondent in the estate of the deceased on 04th November 2003 and confirmed on 06th July 2007. She sought that following revocation, the court be pleased to issue an order that land parcel numbers Gaturi/Githimu/6910, 6909, 6908, 6907 and Gaturi/Githimu/T.95 be cancelled and the same revert to the name of the deceased to be distributed to the rightful beneficiaries.
2. The summons is premised on grounds that:
 - 1) The grant was obtained fraudulently by concealing facts material to the case that the applicant and her children were beneficiaries of the estate of the deceased; and
 - 2) That the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant.
3. Through the supporting affidavit to the summons, the applicant deposed that he is the 1st wife of the deceased herein who had 2 wives. That the 2nd wife of the deceased, who is the respondent's mother is called Elizabeth Njura Rurinja. She stated that at the time of petitioning for the grant, the respondent did not inform her and her children of his intention to petition for the grant and the proceedings continued without them.
4. The fact that she was the deceased's first wife was known but withheld from the court. She stated that her children are Francis G. Njagi, Felister Ngima, Cecily Wandiri Njagi and Jane Wambogo (dcd). It was her case that even at the point of distribution of the estate, she and her children were not involved and they were never named as

beneficiaries of the estate of the deceased, neither were their consents sought for. The estate has already been distributed to the respondent and the members of his family and some of them are contemplating disposing the properties by way of sale.

Replying Affidavit

5. The respondent filed a replying affidavit stating that when he petitioned for the grant, nobody ever filed an objection and when he applied for distribution, nobody protested. He stated that he does not know the applicant as a wife of the deceased and that he has never seen her at his home. That he does not know the applicant's children whom she claims are his step siblings.
6. He stated that they are all strangers to him and they never lived on or cultivated any of the deceased's properties. He stated that the applicant and her children were never introduced as the deceased's kin by the Chief's introductory letter to the court and that the onus was on them to prove as much. He urged the court to dismiss the summons for revocation.

Applicant's Supplementary Affidavit

7. In her supplementary affidavit, the applicant further stated that she could not object or protest in the succession proceedings because she was not aware of them. That she was married to the deceased in the 1940's and had 6 children with him, 3 of whom are dead. That the deceased married the respondent's mother following disagreements with her in 1965. After marrying the respondent's mother, the deceased started mistreating the applicant and her children and removed them from his home. She moved to Kathangari where the deceased used to visit them since Ki-Embu customary law forbade her from returning to her matrimonial home once another wife had already been settled there.
8. Whenever she tried returning, the respondent's mother would chase her away. She stated that before she was evicted, she had planted coffee on a part of the property and one of her late children is buried on the deceased's land. That even when the deceased died, the respondent and his family concealed the matter and she learned of it during burial preparations. She stated that she is living on land given to her son by the deceased's clan. She said that there was mischief as far as the Chief's introductory letter is concerned and the court should not regard it as the truth. She urged the court to revoke the grant and distribute the estate to the rightful beneficiaries.

The Hearing

9. The matter was heard *viva voce*.
10. The applicant testified as PW1. She stated that she is the 1st wife of the deceased and she left her matrimonial home after she disagreed with the deceased. She stated that before she left, the deceased had given each wife a portion of land to farm she had used hers to cultivate maize and beans. She was surprised to learn that the respondent claimed not to know her yet when she left, he was already born and he knew that she was the 1st wife of the deceased. She stated that some of the children she had with the deceased died and they were buried on the deceased's land. She stated that she was not divorced from the deceased and that she and her children are entitled to a part of the estate of the deceased.
11. In cross-examination, she stated that when she moved out of her matrimonial home, the deceased used to ask her to return but she refused. She did not respond to the fact that none of her children bore the name of the deceased. She said that the deceased paid school fees for one of her children but she paid for the remaining ones. That she could not recall the name of the person on whose land she is living, although in her supporting affidavit, she had said that the place belonged to her son. She stated that she had witnesses who can attest to the fact that she was married to the deceased. That the chief also knew about this but he lied in his introduction letter.
12. PW2 was Jackson Njeru Nyorotha, a neighbor of the applicant at Kathagari village. He stated that the applicant is the 1st wife of the deceased; and that she used to live with him in Kithimu before they disagreed and she moved to Kathagari. He was aware that the respondent's mother was the deceased's second wife; and that when the respondent petitioned for a grant, he did not involve the applicant and her children. In cross-examination, he stated that the land on which the applicant lives belongs to her son. He said he knew that the applicant separated from the deceased after they had been married under Ki-Embu Customary Law, and they had 6 children, some of whom had died. He did not know whether the applicant had attended the burial of the deceased. He did not know the deceased's properties and whether the applicant was using any of them at any given point.
13. PW3 was Joseph Njururi who stated that when the applicant and the deceased became estranged, she moved with her 4 children to Kathangari to live with her

parents. That she could not afford to feed her children because she had left maize growing at her estranged husband's home in Kithimu but she could not access the food. That the deceased sent for the applicant's children to go and get maize from his home in Kithimu. He testified that he escorted these children to their father's home to get the food as promised and that is when he learned that the deceased had been married to the applicant.

14. He stated that when they arrived at the home of the deceased, one of the deceased's second wife's children opened the granary for them and they carried the food. After one month, the deceased looked for the applicant in the hope of taking her back to Kithimu with her children. The deceased met with the applicant's parents and then he left and never returned. The applicant did not return to her matrimonial home. On cross-examination, he stated that the applicant is his immediate neighbor who moved from Kithimu to Kathangari with her children.
15. He learned of the applicant's marriage to the deceased when he escorted the applicant's children to the home of the deceased to collect some maize. That when they arrived, they met the respondent's mother who was living there with her children. He stated that the deceased attempted to return his first wife and children but the applicant's parents told him to bring his elders so that they could talk about it but he did not return. That the applicant lived on her father's land until her eldest son acquired land, and she then relocated there.
16. PW4 was Francis Gatunyu Njagi, the applicant's son and the respondent's step-brother. He stated that his mother is the first wife of the deceased with whom they had 6 children. The applicant moved from her matrimonial home when she disagreed with the deceased and she moved to Kathangari. After she moved, the deceased used to visit her and her children. When the deceased died, the first house was not informed but they learned about it. He stated that he represented his mother at the burial because at the time, she was unwell.
17. He said that the respondent was advised to involve him in the succession proceedings but he failed to do so and petitioned for the grant secretly. He stated that his mother and her 3 surviving children are entitled to a part of the estate. On cross-examination, he stated that when his mother left her matrimonial home, he stayed for a few years before he bought his own property. That his father, the deceased, used to visit his mother often although he did not pay school fees for the applicant's children. He

attended the burial ceremony of the deceased and was acknowledged as one of the sons of the deceased.

18. Finally, he stated that he tried to obtain the deceased's death certificate but found out that the second house had already procured it. Their uncle, called Gatumo, told the respondent to involve the applicant's son in succession but he did not. He said that he did not go to the chief for an introductory letter. He stated that his first national identification card indicates that he is Gatunyu Rurinja while the new generation ID shows that his name is Francis Gatunyu Njagi. He stated that the old ID does not show that he was from Kathangari. None of the other children of the applicant bore his name as their surnames. On re-examination, it emerged that the PW4's surname according to his ID is his paternal grandfather's name. He only got his Christian name when he was baptized.
19. RW1 was Joseph Njiru Rurinja Kamau who stated that the applicant and her children are strangers to him and the estate, and that is why he did not include them as beneficiaries. He stated that prior to his death, the deceased had begun subdividing his land with the intention of giving portions to his wife and children but he died before completing the process. That the death of the deceased was not handled in secrecy since it was announced in the daily nation newspaper which has nationwide circulation and locally at the church. In cross-examination, he denied knowing the applicant and her children and stated that no graves were placed on his father's land. He insisted that the deceased was in the process of subdividing his land so that he could give it to his wife and children. The deceased had called RW2 and his family in a meeting and expressed this but there are no minutes of the said meeting.
20. RW2 was Augustus Njagi Karucu who is a retired surveyor. He testified that the deceased called him and sought advice since he wanted to survey his land for purposes of subdividing it. The deceased also wanted him to accompany the surveyor during the subdivision, and he did. After subdivision, the deceased did not transfer the properties to his wife and children. He stated that the family he was shown by the deceased did not include the applicant and her children. In cross-examination, he stated that he knew the deceased from 1960 going forward. He had attended functions at the deceased's home and he knew his wife and children who were introduced during those occasions. He did not know of any other wife of the deceased.

21. RW3 was Michael Njiru Kamwengu, a friend of the deceased's family from 1961 who stated that besides the respondent's mother and siblings, he did not know of any other family of the deceased. He was also present when the deceased subdivided his land with the intention of dividing it amongst his family which did not include the applicant and her children. This distribution was to be done as such: the 6 acres of land parcel number Gaturi/Githimu/144 be divided to his children as follows: 2 acres to Joseph Njiru 1 acre to Agosta Wanjira, 1 acre to Catherine Muthoni and 2 acres to his wife and last born.
22. He said that he visited the deceased many times and he had never seen the applicant or her children at the home of the deceased. In cross-examination, he stated that he was born in 1955 and he did not know about the life of the deceased in the 1940's. During the subdivision, he assisted in placing beacons on the deceased's land. He said that the deceased was a transparent person who did not unjustly take away land from anyone.
23. RW4 was Catherine Muthoni Rurinja, the respondent's sister who stated that she has never seen the applicant or her children at their home. None of them were introduced to them as step mother and siblings. She stated that none of them (applicant and her children) attended family functions at their home. That they did not attend the burial ceremony of the deceased. She further stated that the estate has already been distributed and it should not be disturbed. In cross-examination, she stated that she never knew her father to have another wife and children before her mother. She said that she knew of an uncle called Gatumo whom the deceased predeceased. That she does not know of any animosity between the applicant and the deceased. She denied having any step mother and siblings.

Parties' Submissions

24. The applicant submitted that the grounds for revocation of a grant under section 76 of the Law of Succession Act had been proved. She relied on the cases of **Matheka and Another v Matheka [2005] 2 KLR 455** and **Joyce Ngima Njeru & another v Ann Wambeti Njue [2012] KECA 61 (KLR)**. She stated that she got married to the deceased in the 1940's and had her first child in 1952. She separated from him in 1965. She submitted that the respondent would not know of her marriage to the deceased, therefore, their evidence does not controvert the fact that she was married to the deceased.

25. It was her case that the Chief is not the custodian of information on family lineage and that it was the respondent's responsibility to disclose to the Chief that the deceased had another wife and children. Since this information was concealed from the court at the point of petitioning for the grant, it ought to be revoked. She stated that the fact that she was separated from the deceased does not negate her entitlement to the estate in light of section 29 of the Law of Succession Act. She urged the court to allow the application, revoke the grant and order cancellation of transmission of the deceased's estate so that the properties revert to the name of the deceased for redistribution.
26. The respondent submitted that through the evidence adduced, the applicant failed to prove that she was married to the deceased. The applicant stated that when she left the deceased's home, she had one son and she never returned even though the deceased used to attempt to bring her back. However, she did not disclose who sired her other children after she had left. None of the witnesses could prove that the deceased paid dowry for the applicant according to Ki-embu customary law.
27. She submitted that the Chief of Kithimu did not know the applicant and neither did the respondent and his siblings. He submitted that it is questionable that the applicant did not institute succession proceedings in the estate of the deceased for the past 19 years. That the evidence adduced proves that the applicant and her children were not known as dependants of the deceased hence the respondent had no responsibility to include them in the proceedings. He urged the court to dismiss the summons for revocation and let the estate settle as it is.

Issue for Determination

28. The issue for determination is whether the grant issued to the respondent should be revoked.

Analysis and Determination

29. Revocation of a grant is governed by Section 76 of the Law of Succession Act where the grounds are provided 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.”

30. The applicant has claimed that she was married to the deceased in the 1940's but she could not remember the exact date. That she was married under Ki-embu customary law and she stayed with the deceased in Kithimu until 1965 when they disagreed and she left and returned to her parent's home in Kathangari. She stated in her testimony that when she left, she had one child who was born in 1952. She stated that the deceased tried to get her to return to the matrimonial home but she refused because the respondent's mother and her children were hostile to her.

31. PW2, PW3 and PW4 attested to the fact that the applicant started living in Kathangari after she separated from her husband in 1965. PW4 stated that he was 17 years old when the deceased and the applicant separated in 1965, and that he stayed on with the deceased until 1969 before he moved out to his own piece of land where his mother later relocated. He said that he was born in 1952 to the applicant and the deceased, and that his first national ID bore the deceased's name as his surname. PW2 testified that when he escorted the applicant's children to the home of the

deceased to collect maize, he met the respondent's mother and one of the children opened the granary for them to take the maize.

32. P. Exhb 1 which was the original ID of PW4 shows that he was called Gatunyu Rurinja. He said his father was Rurinja Njagi alias Rurinja Kamau Kamau who he said was the deceased. He was born in 1952 and his mother was the applicant who separated from the deceased in 1966. He testified that after her separation, he stayed on with the deceased for four years until 1969. That his father used to visit him at Kathageri. His evidence in cross-examination was not shaken, and was plausible.
33. RW1-RW4 denied knowing the applicant and her children. RW1 said that he was born in 1955 as the first born of his mother and the deceased. He was not alive in the 1940's, therefore he couldn't speak of the whereabouts of the deceased during that time. RW2 and RW3 stated that they were born in the 1950's and they knew the deceased and his family from the 1960's. RW4 was born in 1973.
34. From the evidence adduced by the respondent, it is clear that the respondent's mother was the deceased's wife; but this evidence does not, however, controvert the applicant's case that she was married to the deceased in the 1940's. The standard of proof is on a balance of probabilities and the onus is on the applicant to prove that she was the first wife of the deceased. Considering all the evidence on a balance of probabilities, I am persuaded, on balance, that the applicant was a wife of the deceased even though they were estranged in 1965. It emerges that by the time she separated from the deceased, she had 3 children with him and he visited them periodically.
35. The standard of proof in civil cases is on "balance of probabilities" That standard was discussed in **William Kabogo Gitau v George Thuo & 2 others [2010] IKLR 526** as follows:

"In ordinary civil cases, a case may be determined in favour of a party who persuades the Court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party, is said to have established his case on a balance of probabilities. He has established that it is more probable than not that the allegations he made occurred".

36. The introductory letter by the Chief is dated 25th June 2003 and it accompanied the petition for a grant. It did not disclose the applicant or her children as survivors of the deceased. The chief acknowledged in this letter that at the time of its authoring, there was no known dispute over succession in the estate of the deceased. The fact that the chief wrote the letter does not necessarily mean that he was personally aware of the family circumstances of the deceased. The letter captures the position presented by the respondent and his family as the known survivors of the deceased but it does not mean that they are the only ones. Given the evidence produced herein, it is clear on a balance of probabilities that the applicant was a wife of the deceased long before the respondent's mother was married by the deceased.
37. In light of the foregoing, I am satisfied that the applicant has therefore proved that the grant was obtained fraudulently by concealing facts material to the case. That is the answer I find plausible. I find that at the time of issuing the grant, the court was not made aware of the fact that the deceased had another wife and children before the respondent and his mother and siblings came into the picture. This is sufficient ground to revoke the grant under section 76 of the Law of Succession Act.

Disposition

38. In the result, the summons has merit and is hereby allowed as prayed. It is therefore ordered as follows:
- a) The grant issued on 4th November, 2003 and confirmed on 6th July, 2007 is hereby revoked.
 - b) Accordingly, all resultant sub divisions in respect of Land Parcels Nos. Gaturi/Githimu/6907, 6908, 6909 and 6910 and Plot No. Gaturi Githimu/7.95 are hereby cancelled.
 - c) The estate of the deceased shall revert back into the name of the deceased for re-distribution to all the offspring of the deceased.
39. In light of the orders herein, it is ordered that any party aggrieved by the said orders shall be at liberty to challenge the same in the Court of Appeal within Thirty (30) days.

Delivered electronically, dated and signed at Embu High Court this 19th day of November, 2025, pursuant to notices issued on 10th November and 12th November, 2025 as to electronic delivery.

**R. MWONGO
JUDGE**