



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 1227 OF 1999
IN THE MATTER OF THE ESTATE OF JANE MUNJANGI
MUKAI alias
MUNJANGI MUKAI (DECEASED)

WANJIKU	KAMAU.....	1 ST
APPLICANT/ADMINISTRATOR		
WAKONYO	MUKAI.....	2 ND
APPLICANT/ADMINISTRATOR		
STEVEN	MUKAI	3 RD
APPLICANT/ADMINISTRATOR	KAMAU.....	
MIRING'U	KIMANI	4 TH
APPLICANT/ADMINISTRATOR	
	AND	
WAMBUI	MUKAI	1 ST
RESPONDENT	
MUTAHI	SUO	2 ND
RESPONDENT	
	AND	
BEDA	KUBAI	1 ST
INTERESTED PARTY	GATHUKU
PATRICK CHEGE	GITHUKA	2 ND INTERESTED
PARTY		
DR. LAWRENCE	MWAURA	3 RD
INTERESTED PARTY	
ALICE WANGUI	WANGU	4 TH INTERESTED
PARTY		
WANGARI	MWANZIA	5 TH
INTERESTED PARTY	ADVOCATE
MURINGA	COMPANY	6 TH
INTERESTED PARTY	LIMITED

THE HON. ATTORNEY GENERAL	7 TH
INTERESTED PARTY	
THE HON. CHIEF LAND REGISTRAR	8 TH
INTERESTED PARTY	
THE HON. REGISTRAR OF TITLES	9 TH
INTERESTED PARTY	
THE HON. COMPANIES REGISTRAR	10 TH
INTERESTED PARTY	
THE HON. PUBLIC TRUSTEE	11 TH
INTERESTED PARTY	
THE HON. COUNTY COMMISSIONER NAIROBI....	12 TH
INTERESTED PARTY	
GITONGA NGURE KARIUKI	13 TH
INTERESTED PARTY	
JUDISION ADONIRUM ORIEMA OKOTH	14 TH
INTERESTED PARTY	

RULING

1. Justice is often described as a journey, and in this case, that journey has followed a long and arduous path, testing the patience and resolve of the applicants. The matter arrived in Court by way of a Petition for Grant of Probate of Oral Will in 1999. For a quarter of a century the matter has weaved its way through the corridors of justice, kicked out but bouncing back every time. From the outset it was not a complicated matter; a mother died leaving four daughters. One of the daughters presented a Petition contending that her mother left all her properties to her. Three of the daughters sought to

annul the grant on the basis that they were beneficiaries of the estate of their deceased mother and are also entitled to a share of her estate. They challenged the authenticity of the Oral will.

2. The Court's extensive record reveals how the applicants herein kept running into a legal cul-de-sac until 3rd February 2023, when in the face of recantation of the impugned oral will by Mutahi Suo the 2nd respondent herein, the Court revoked the grant issued on 5th August 2009 and vacated the orders giving rise to the confirmation of the Grant on 5th May 2000. On 23rd June 2023, the Court directed that the applicants herein present petition for grant of administration of the estate of the deceased herein.

3. There being no objection a grant of letters administration intestate issued to **WANJIKU KAMAU, WAKONYO MUKAI, STEVEN MUKAI KAMAU, MIRINGU KIMANI** on 18th January 2024.

4. The Administrators now present summons for confirmation of grant dated 9th June 2024 presented under Sections 27, 38, 42 (a), 45, 47, 52, 71, 83,& 94 of the Law of Succession Act;

Rules 40, 41, 63,64,66,69, & 73 of the Probate and Administration Rules; Articles 2, 10, 19, 23,27, 40 (6), 47, 60 (1) (b) & 162 (2) (b) of the Constitution of Kenya; Sections 3, 13, 18 of the Environment and Land ACT; Sections 26, 27(1), 28 & 80 of the Land Registration Act; Sections 150 &158 of the Land Act and seek the following orders:-

1) Spent.

2) That the Honourable Court be pleased to certify that this application/suit raises substantial questions of law under the Law of Succession and the Land Law and consequently refer the same to the Chief Justice for directions empaneling a three-judge bench constituting judges of the High Court and the Land and Environment Court on jurisdiction on from both courts.

3) That the Honourable Court as so constituted issues orders canceling and rectifying fraudulent entries in title deeds and land registry documents on property Land Reference Number 7785/732 [original number 7785/399/17] and Land Reference Number 7785/424 [original number 7785/8/57] and reverts the said titles to the Estate of the deceased for distribution as proposed in the application.

4) That the grant of probate (or letters of administration intestate) made over the said Estate of JANE MUNJANGI MUKAI alias MUNJANGI MUKAI alias JANE WANJANGI NGUGI (Deceased) in this matter on 18th day of January 2024 be confirmed and the estate be divided in terms of the annexed proposed mode of distribution.

5) The costs of this application be costs in the cause.

5. The Application was supported by the Affidavit of even date sworn by the Applicants/ Administrators.
6. The application is not opposed. The 2nd respondent though served did not file a response or submissions as directed. She was however represented by Counsel who indicated that she was opposed to the mode of distribution and there was a pending appeal challenging the decision of 3rd February 2023 revoking the grant. The Applicants submissions are dated 10th August 2025.

SUMMARY OF THE APPLICANTS CASE.

7. The applicants aver that the deceased's estate is comprised of the following assets and liabilities;

ASSETS;

- 1) 212 Shares in Muringa Company Limited.
- 2) Land Reference Number 7785/424 [original number 7785/8/57] (3/4 acre. (Transmitted to Wambui Mukai under the revoked grant issued to Mutahi Suo on 5th August 2009)
- 3) Land reference No. 7785/732[original number 7785/399/17] 1/2 acre (Illegally sold by Wambui Mukai to Gitonga Ngure Kariuki who later sold it to Judision Adonirum Oriema Okoth.)
- 4) 1/9 share in Land Reference Number 7785/433 (3/4 acre). (Wambui Mukai entered into a sale agreement

with Bedad Kubai Gathuku, Patrick Chege Githuka, Dr. Lawrence K. Mwaura and Alice Wangui Wangu.)
5) Kshs. 252,000/= paid by Muringa Company Limited in installments which were collected by Wambui Mukai.

LIABILITIES.

Legal fees incurred from instructing Kevin Ndoho Macharia Advocates on 9th September 2019.

8. The Administrators contend that the grant herein having been nullified, all transactions emanating from that grant are void. This include the sale of Land Reference Number 7785/732 (Original Number 7785/399/17) as confirmed by the Chief Parklands location and the Directors of Muringa Company Limited. Further the transmission of Land Reference Number 7785/424 pursuant to the certificate of confirmation of grant and finally the attempted sale of 1/9 of Land Reference Number 7785/433.
9. It is further averred that the 2nd Respondent received a total of Kshs 236,000 (paid in 3 instalments) from Muringa Company Limited after selling some company assets.
10. It is urged that the 2nd respondent has been collecting rent from ten houses on Land Reference Number 7785/424(original number 7785/8/57) from 1994 to date and

assess the rent so collected as Ksh. 6,275,000 as at 18th May 2023. They propose to distribute the estate as follows;

- 1) 212 shares in Muringa Company Limited- to be shared equally among Maria Wanjiru, Wanjiku Mukai, Wakonyo Mukai, Wambui Mukai. (53 shares each).
- 2) Land Reference Number 7785/424 (Original Number 7785/8/57) (3/4) acre- to all beneficiaries in four equal parts (0.1875 acres each).
- 3) Land Reference Number 7785/732 (Original Number 7785/399/17) (1/2 acre)- to all beneficiaries in equal shares in four equal parts (0.125 acre).
- 4) 1/9 share in Land Reference Number 7785/433 (3/4 acre)- - land to be sold and each beneficiary to get equal share of the sale of the estates share less fees to be paid to the Estates Firm (Kevin Ndoho Macharia Advocate) amounting to Kshs. 700,000.

11. In submissions filed they frame the following as issues to be determined by this Court;

- i. Were the titles owned by the Estate being property Land Reference Number 7785/732 [original number 7785/399/17], and Land Reference Number 7785/424 [original number 7785/8/57] transferred in contravention of the Law of Succession and if so, should they revert to the estate for distribution?**
- ii. Should this Honourable court distribute the assets of Estate as proposed by the Administrators?**
- iii. Costs.**

12. On the first issue, the applicants reiterated the averments in their supporting affidavit which I will not reproduce here.

Relying on the decision of **Santuzzabilioti alias Mei Santuzza (deceased) vs Giancarlo Felasconi [2014] eKLR**, it was their submission that this court has jurisdiction to cancel titles which were fraudulently transferred or sold to third parties. In this case, it was their argument that in the judgment dated 3rd February 2023, there is evidence that the deceased's properties were fraudulently transferred to the first respondent. The Secretary of Muringa Company Ltd confirmed that the properties were transferred to the deceased's widow and not the 1st respondent.

13. On the second issue on distribution of the deceased's estate, the applicants submit that the deceased died intestate and is not survived by a spouse. She is survived by children and therefore the estate should be distributed in accordance to Section 38 of the Law of Succession Act. Relying on the decisions of **re Estate of John Mulwa Nzioki (Deceased) [2021] eKLR**, **Keshavlal Bhoja vs. Tejalal Bhoja [1967] EA 217**, **Mary Nanjala Muhalya v Ambrose Kipruto [2014] eKLR**, it was their submission that the 1st respondent

intermeddled in the deceased's estate and is therefore, she should be excluded from benefiting from the estate.

ANALYSIS AND DETERMINATION.

14. I have considered the application, submissions by the applicant's counsel and the decisions cited. The issues for determination are;

- i. What assets comprise the estate of the deceased?**
- ii. Arising from the determination of (i) above what are the appropriate orders with regards to assets disposed of by the 2nd respondent pursuant to Grant as confirmed on 5th May 2000.**
- iii. How should the estate be distributed among the beneficiaries**
- iv. Who should pay costs**

What assets comprise the estate of the deceased?

15. It is not disputed that the following assets are part of the estate of the deceased
- a. 212 shares in Muringa Company Limited**
 - b. Land Reference Number 7785/424 (Original Number 7785/8/57) (3/4) acre**
 - c. Land Reference Number 7785/732 (Original Number 7785/399/17) (1/2 acre)**
 - d. 1/9 share in Land Reference Number 7785/433 (3/4 acre)**

Arising from the determination of (i) above what are the appropriate orders with regards to assets disposed of by

the 2nd respondent pursuant to Grant as confirmed on 5th May 2000.

16. It is also common ground that LR No. 7785/424 (original number 7785/8/57) 3/4 acre is currently registered in the name of the 2nd respondent by virtue of transmission pursuant to the grant that was confirmed on 5th May 2000. It is also conceded that the 2nd respondent has sold LR No. 7785/732, the validity of this sale is challenged. The 2nd respondent has initiated a process to sale 1/9 share in Land Reference Number 7785/433 (3/4 acre)

17. The Schedule of Certificate of Confirmation of Grant dated 5th November 2000 itemised LR Number 7785/424 as the sole asset of the deceased. That Grant could therefore not be the basis of any transactions that the 2nd respondent purported to have in relation to LR No. 7785/732 and 1/9 share in Land Reference Number 7785/433 (3/4 acre) all her transactions are void.

18. In **Monica Wanjeri Njiri & Another vs Eunice Wanjira Igambe & Another (2016) eKLR**, the court stated that jurisdiction is the authority by which a court has to decide

matters that are litigated before it. The question herein is whether this court has jurisdiction to cancel a title.

19. The Law of Succession Act, was enacted to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons and for purposes connected therewith and incidental thereto.

20. The issues in this matter pertains to the estate of the late **Jane Munjagi Mukai**. Under **Section 47 of the Law of Succession Act**, the High Court has inherent powers to make appropriate orders in the interest of Justice and for the preservation of the deceased's estate. It reads as follows;

The High Court shall have jurisdiction to entertain any application and determine any dispute under the Act and pronounce such decrees and make such orders therein as may be expedient; provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

Rule 73 of the P&A also provides;

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

21. In this case, the grant issued to Mutahi Suo had been confirmed to but was revoked on 3rd February 2023. He denied that the deceased pronounced an Oral will. In his evidence before court, he stated that Wambui Mukai coerced him to support her case. He denied that the deceased made an oral will. He said that he was tricked by Wambui Mukai who took him to a lawyer to sign a paper. The alleged oral will is what was used by Wambui Mukai to have the property transferred to her and then she sold it to third parties. It was on these grounds of fraud that the grant was revoked. The deceased's estate is part of what had been transferred to third parties.

22. **Section 45 of the Law of Succession Act** prohibits intermeddling with a deceased person's estate. The section provides as follows;

1. Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

2. Any person who contravenes the provisions of this section shall;

a) Be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of

imprisonment not exceeding one year or to both such fine and imprisonment, and;

b) Be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administrations.”

23. **J. Musyoka** in considering the above section stated as follows; in Estate of **Veronica Njoki Wakegito (2013) eKLR:**

“The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a serious view of intermeddling and makes it a criminal offence.”

24. What the 1st Respondent did was intermeddling with the deceased’s estate and the law takes a very serious view of intermeddling and goes as far as making it a criminal offence.

25. In **Santuzzablioti alias Mei Santuzza (deceased) vs Giancarlo Felasconi (2014) eKLR,** the court said as follows regarding the jurisdiction of the court in succession matters;

“This cannot be the case as the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancelation of the title deed. Further, a succession court can order a cancelation of title deed if a deceased’s property is being fraudulently taken away

by non beneficiaries such as where the property is being sold before a grant is confirmed.”

26. There is a host of decisions where courts have held that the High Court has jurisdiction to order cancellation of a title if a matter is a succession cause and the title has been fraudulently or irregularly transferred.

27. In **Succession Cause 265/2004 Munyasya Mulili vs Sammy Muteti Mulili**; the court cancelled titles after revoking the grant. The court in the above case relied on the decision of J. Musyoka in **Re Estate of Alice Mumbua Mutua (deceased) (2017) eKLR** on the limited occasions when the Probate Court has jurisdiction post confirmation of a grant.

28. The grant that was issued to Mutahi Suo was revoked. It means that, all actions taken by him as an administrator in executing the will which included the registration of the deceased's property in Wambui Mukai's name are rendered a nullity. This court has jurisdiction to order cancellation of the said titles so that the land can revert back to the deceased's names.

29. Having voided the transactions, the titles of Land Reference Number 7785/732 [original number 7785/399/17] and Land Reference Number 7785/424 [original shall revert to the name of the deceased.

How should the estate be distributed among the beneficiaries?

30. The deceased having died intestate the applicable provisions are Section 38 of Law of Succession Act which provides-

Section 38

Where a deceased has left a surviving child or children but no spouse

Where an intestate has left a surviving child or children but no spouse, the net intestate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

31. In this case the deceased was survived by 4 daughters, of course as has been severally held, in distributing the estate of the deceased, there is no distinction made between male and female children or regard had to the marital status of the beneficiaries. **In re Estate of Francis Andachila Luta (Deceased) (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment)** Musyoka J stated as follows;

Let me revisit section 38 of the Law of Succession Act. It provides for equal distribution of the estate amongst the children. The language of section 38 is gender neutral. It does not classify children into male and female, nor sons and daughters, nor men and women. There is no discrimination nor differentiation nor classification nor categorization along gender lines. That would mean that sons and daughters of a dead person are entitled on equal basis to a share in the estate of their dead parent. Section 38 does not make marriage a factor in the distribution of the estate of a dead parent. Gender and marital status are factors under customary law, but not under the Law of Succession Act. The estate herein is not subject to customary law, for the reasons that I have discussed in paragraphs 13, 14 and 15 a foregoing. The estate is subject to the Law of Succession Act, which is blind on biases founded on gender and marital status.

32. The 2nd respondent has not controverted the evidence that she has over the years benefitted directly from rental income of the estate and receiving proceeds of sale from the estate. In the circumstances I agree with the applicants that in distributing the estate the Court ought to factor in, the benefit that the respondent has enjoyed over the years.
33. Accordingly, the estate of the deceased will be distributed as follows

- a. **212 shares in Muringa Company Limited- to be shared equally among Maria Wanjiru, Wanjiku Mukai, Wakonyo Mukai.**
- b. **Land Reference Number 7785/424 (Original Number 7785/8/57) (3/4) acre- to all beneficiaries in four equal parts (0.1875 acres each).**
- c. **Land Reference Number 7785/732 (Original Number 7785/399/17) (1/2 acre)- to be shared equally among Maria Wanjiru, Wanjiku Mukai, Wakonyo Mukai.**
- d. **1/9 share in Land Reference Number 7785/433 (3/4 acre)- - land to be sold and to be shared equally among Maria Wanjiru, Wanjiku Mukai, Wakonyo Mukai, less fees to be paid to the Estates Firm (Kevin Ndoho Macharia Advocate) amounting to Kshs. 700,000.**

34. On the issue of costs, having regard to the fact that this is a family matter each party

will bear their own costs.

34. Leave to appeal is granted, the party exercising their right to appeal to do so within 30 days.

It is so ordered

**DATED and DELIVERED at NAIROBI this 28TH Day of
NOVEMBER 2025**

**P. M NYAUNDI
JUDGE**

In the presence of:

Fardosa Court Assistant

Muyove holding brief Macharia for Applicants/Administrators

Wanjira for Respondent

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