

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**(CORAM: R. MWONGO, J.)**  
**SUCCESSION CAUSE NO. 47 OF 2016**  
**IN THE MATTER OF THE ESTATE OF NGARI GIKINGI (DECEASED)**

MATI NGARI.....ADMINISTRATOR/RESPONDENT

**-VERSUS-**

SPOLA WANGARI JUSTIN NJERU (dcd) substituted by

JUSTIN NJERU NGARI .....APPLICANT

**JUDGMENT**

**Background**

1. The deceased died on 27<sup>th</sup> July 2003. The respondent petitioned for a grant of letters of administration and the same was issued to her on 25<sup>th</sup> August 2016. She filed summons for confirmation of the grant proposing that she solely inherits deceased's Parcel No. Evurore/Kathera/2553 while Parcel No. Evurore/ Kathera/ 2552 be inherited by Stanley Mutwiri Junius -1¼ acres and the remaining portion to the applicant herein.
2. The summons for confirmation of grant was heard and the court noted that there was no objection to the summons. The grant was confirmed and a certificate of confirmation of grant was issued in the manner proposed in the summons for confirmation.

**Summons for Revocation of Grant**

3. The applicant filed summons for revocation of grant dated 12<sup>th</sup> July 2017 through which she seeks the following orders:
  - a) That the grant of letters of administration issued to Mati Ngari be revoked and the certificate of confirmation of grant issued also be revoked on grounds that;
    - i. The said grant and its confirmation were obtained fraudulently by making a false statement and concealment from the court of facts material to the case;
    - ii. The grant and confirmation were obtained by means of untrue allegations of fact;

- iii. The succession proceedings were filed and prosecuted by the petitioner without the knowledge or consent of the applicant herein;
  - iv. Some of the documents in the Court file record purported to have been signed by the applicant herein i.e. consent to the filing of the succession and a letter dated 13<sup>th</sup> January 2017 are false documents with forged signatures;
  - v. Stanley Mutwiri Junius is not a family member and neither is he a beneficiary of the deceased person;
  - vi. The distribution of the deceased properties as contained in her supporting affidavit are ill advised, biased, misconceived, falsehood, deceitful and not in conformity with the deceased's wishes; and
  - vii. The petitioner ignored the fact that the application herein was the sole beneficiary of all that parcel of land Evurore/Kathera/2552 having paid the purchase price of the same to the Deceased person and also to the petitioner/respondent herein in full and final settlement thereof.
4. The applicant deposed that she is a daughter of the deceased. When the respondent petitioned for a grant of letters of administration in the estate of the deceased, she did not inform the applicant. She learned of the proceedings when she was served with an application that had been scheduled for hearing on 24<sup>th</sup> July 2017. She went to the court registry to peruse the file and that is when she learned that succession proceedings had been conducted behind her back.
  5. She was surprised to learn that a consent had been signed on her behalf without her knowledge and there was also a letter purportedly written by her, informing the court that she will not be attending the court sessions as she was engaged elsewhere and that she did not contest the proposed mode of distribution. She disowned the letter and said that she did not write or sign it. The respondent misled the court to believe that all the beneficiaries were present in court at the confirmation proceedings where the estate was distributed.
  6. In fact, she disagreed with the distribution and stated that she and her husband had bought parcel number Evuvore/Kathera/2552 from the deceased for Kshs.50,000/= in 2003 before his death. A deposit of Kshs.3,000/= was paid and the balance was supposed to be staggered over time. Within 2 months of payment of the deposit, the

deceased died. In January 2016 they paid a further Kshs.10,000/= to the deceased's wife, the respondent, and another Kshs.10,000/= in July 2016. The respondent advised that they should not pay the remaining balance but instead, they should use it to construct a house for her son Alfred Muriuki Ngari on parcel no. Evurore/Kathera/2553 as a cost of Kshs.32,500/=.

7. She stated that the respondent was always aware that parcel number Evuvore/Kathera/2552 no longer belonged to the deceased. The property should not be included in the distribution of the estate. She said that she and her husband has been living on the land uninterrupted since 1983 and they have extensively developed it by planting cash and food crops.

### **Replying Affidavits**

8. In his replying affidavit, the respondent stated that prior to the death of the deceased, the applicant has requested her and the deceased to sell to her and her husband a portion of land parcel no. Evuvore/Kathera/2552. They agreed that the applicant and her husband would pay a total of Kshs.25,000/= for the portion they would be purchasing. They paid a deposit of Kshs.3,000/= but refused to make further payments until the deceased died. She stated that any proof of further payment is not true and that the documents produced by the applicants are forged.
9. That after the deceased died, she called all her children and told them that she intended to petition for a grant and so the applicant was well aware of the proceedings and she signed the consent by herself. She stated that the law of succession gives priority to her as the widow of the deceased to petition for a grant and that there is no reason to revoke it. That the applicant's interest lies in the portion of land she bought from the deceased for which she did not pay the full agreed purchase price.

### **The Evidence at the hearing**

10. The matter was heard *viva voce*.
11. PW1 was Justin Njeru Ngari who adopted his filed witness statement. He stated that he is the son-in-law of the respondent and husband to the late Spola Wangari, a daughter of the deceased and the respondent. He stated that on 13<sup>th</sup> May 2003, the deceased sold all of land parcel number Evuvore/Kathera/2552 for the price of Kshs.50,000/=. That he and his late wife paid the full amount of the purchase money,

and the deceased acknowledged receipt of the same. They went on to develop the land which included planting cash and food crops.

12. In 2013, they learned that part of the land had been given to Mutwiri Junuis a stranger through succession. PW1 stated that the deceased and his wife never utilized the land parcel number Evuvore/Kathera/2552 neither did they ever live on it. In cross-examination he stated that there is a sale agreement where the deceased acknowledged receipt of Kshs.3,000, Kshs.10,000/= and a further Kshs.10,000/= that the respondent requested that the balance of the purchase price be used to build a house. The house was built at a cost of Kshs.27,000/=.
13. PW2 was Sylvester Njiru Namu who stated that he witnessed the deceased selling the land parcel number Evuvore/Kathera/2552 to PW1 and his wife. That they bought 2 acres each costing Kshs.25,000/= which money was paid in installments of Kshs.3,000/=: Kshs.10,000/= and then the balance. He joined PW1 when they took the money to the deceased. In cross-examination, he stated that the balance of the money was not paid to the deceased and there was no agreement on how it would be paid. However, he said that the balance was used to build a house for the respondent.
14. DW1 was the respondent who stated that the deceased received Kshs.3,000/= and then she received Kshs.10,000/= only for the land. That PW1 became unable to complete payment for the land and she offered them  $\frac{1}{4}$  of the land because they could not raise the full purchase price. She denied that PW1 built her any house and stated that it was her son who built the house for her.

### **Parties' Submissions**

15. The summons was canvassed by way of written submissions.
16. The applicant filed her submissions stating that the grant should be revoked because it was obtained and confirmed without her knowledge. She referred to the sale agreements and the fact that she stayed on the land since 2003 when she purchased it with her husband. She only learned of the proceedings through perusal of the file after she was served with an application. It was her argument that the proceedings were defective in substance since the respondent misrepresented to the court that the applicant was unavailable for court attendances yet she was not even aware of the proceedings. She urged the court to revoke the grant.

### **Issues for Determination**

17. The issue for determination is whether the application has merit.

### **Analysis and Determination**

18. The dispute concerns how the grant was obtained and confirmed. The applicant indicated that her mother, the respondent, excluded her from the proceedings and used forged signatures on the consents required. The respondent countered this position by stating that the applicant was well aware of the succession proceedings and she voluntarily signed the consents required. The court saw no reason to refuse confirmation of the grant and so it ordered that a certificate of confirmation be issued since there was no objection to the mode of distribution.

19. From the pleadings and proceedings, another pertinent issue emerges and that is the argument that land parcel number Evuvore/Kathera/2552 should not form part of the estate of the deceased. It is argued that this is because the deceased sold it to the applicant and PW1 before his death, but that the purchase price was paid in instalments. The witnesses who testified spoke mostly of this issue and not the grounds for revocation that were pleaded.

20. It is in evidence that the issue is a land ownership/disposition dispute where an alleged sale agreement has been cited. Since this is a succession court, the jurisdiction of this court does not extend to determination of transfer of land and ownership upon a sale agreement. Those are issues that are reserved for the Environment and Land Court as stipulated under Article 162(2)(b) and Article 165(5) (b) of the Constitution. This court highlighted this issue in its proceedings on 26<sup>th</sup> September 2018 by Muchemi, J., when she urged the parties to file a suit before the ELC. It is not clear whether this was done. Attempts to resolve the issue through mediation also failed.

21. To that end, the property in contention should be hived off from the rest of the estate to enable determination of its ownership before the issue of distribution can be canvassed. This is provided for under Rule 41(3) of the Probate and Administration Rules as follows:

***“(3) Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the***

***grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71(2) of the Act, proceed to confirm the grant.”***

22. The foregoing notwithstanding, the court is still obliged to determine whether or not the grant should be revoked. The grounds for revoking a grant are set out under section 76 of the Law of Succession Act 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.”***

23. In the present case, the applicant deposed that she was excluded from the proceedings and that she only learned of them after she perused the court file and found that the estate has already been distributed. Nevertheless, there is, on record, an introductory letter from the chief naming the applicant as one of the beneficiaries of the estate of the deceased.

24. It appears that Form 38 (consent to the making of a grant) was signed by 8 beneficiaries including the applicant. The respondent stated that the applicant voluntarily signed the consent form. However, the applicant has disowned the signature. The onus was on the applicant to prove that her signature was forged but no such proof was provided. She also did not challenge the averment by the respondent that a meeting was held involving the whole family before the succession proceedings were instituted.

### **Conclusions and Disposition**

25. In light of the evidence availed and from a perusal of the proceedings, there is no indication that there was a defect in obtaining the grant in terms of section 76 of the LSA. There is also no proof availed by the applicant, on a balance of probabilities that the applicant was excluded from the succession proceedings. It was her duty to avail such proof.

26. In the result, the applicant's case for revocation is un-persuasive, and I hereby dismiss the summons for revocation in its entirety.

27. This conclusion notwithstanding, and in light of the evidence of the land dispute over Evurore/Kathera/2552, it is ordered that a fresh certificate of confirmation of grant be issued excluding the said property. This will be the position until such time that the ownership dispute concerning the said land is determined by the Environment & Land Court, which has jurisdiction in that dispute.

28. These, in my considered opinion, are the proper orders to give and it shall be so.

29. Orders accordingly.

**Delivered electronically, dated and signed at Embu High Court this 3<sup>RD</sup> DAY OF DECEMBER, 2025, pursuant to notices issued on 24<sup>th</sup> and 26<sup>th</sup> November 2025, as to electronic delivery.**

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**R. MWONGO**

## JUDGE