

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

PROBATE AND ADMINISTRATION APPEAL CAUSE NO. 1 OF

2023

PETER GICHURU MURIITHI.....
.....APPELLANT

VERSUS

ISAAC MURIITHI NJEGA.....
....RESPONDENT

JUDGEMENT

1. The Appellant **PETER GICHURU MURIITHI** has filed in the High Court this Memorandum of Appeal dated **4th January 2023** challenging the ruling and orders of the Senior Resident Magistrate in **Nyeri CM Succession No. 346 of 2016**.
2. The Respondent **ISAAC MURIITHI NJEGA** opposed the appeal. The matter was canvassed by way of written submissions. The Appellant relied on his written submissions dated **20th March 2025** whilst the Respondent relied upon his written submissions dated **31st July 2025**.

BACKGROUND

3. The matter relates to the estate of the late **LEAH NYAWIRA NJEGA** (hereinafter '**the Deceased**') who died on **30th April 2015**. A copy of the Death certificate Serial No. **0249883** was filed in court on **22nd February 2016**.
4. Following the demise of the Deceased the Appellant **Peter Gichuru Muriithi** describing himself as a '**brother-in-law**' of the Deceased filed in the Lower Court a Petition dated **10th November 2016** seeking to be issued with Grant of letters of Administration Intestate. The Grant was issued to the Appellant on **20th June 2017**.
5. Thereafter the Appellant filed a summons for confirmation of Grant dated **4th November 2017**. The Appellant in that Summons indicated that the following properties left behind by the Deceased would all devolve to himself '**absolutely**'
 - (i) **LR No. Nyeri/Gatarakwa/919**
 - (ii) **LR No. Nyeri/Gatarakwa/920**
 - (iii) **LR No. Nyeri/Gatarakwa/921**
 - (iv) **LR No. Karatina Township Block 1/492**

6. The Grant issued to the Appellant was duly confirmed on **7th February 2018**.

7. On **22nd February 2018** the Respondent **Isaac Muriithi Njega** filed a summons seeking revocation of the Grant which had been issued to the Appellant on grounds that the same was obtained fraudulently by way of misrepresentation.

8. The summons for revocation of grant was heard by way of oral evidence. On **23rd November 2022**, **Hon. F. Muguongo Senior Resident Magistrate** delivered a judgment in which she allowed the summons and made the following orders:-

“(i) The summons for Revocation/Annulment of Grant by one Isaac Mureithi Njega dated 22/02/2018 meets the threshold set under Section 76 of the Law of Succession Act.

(ii) The Grant of representation issued to Peter Gichuru Mureithi on 20th June 2017 is hereby revoked.

(iii) All the consequential orders emanating therefrom are hereby annulled.

(iv) A Grant of Representation Intestate for the estate of Leah Nyawira Njega - Deceased hereby issue to one Issac Mureithi Njega.

(v) The Applicant/Objector is awarded costs.”

9. Being aggrieved by this decision the Appellant filed this present appeal which is premised upon the following grounds:-

“(i) The Senior Resident Magistrate erred in law in not determining whether the Respondent is a child/son of the Deceased whether biological or otherwise when this was one of the issues before her and she had framed it as one of the issues. A miscarriage of justice was thereby occasioned.

(ii) The learned Senior Resident Magistrate erred in law and fact in revoking the grant issued to the Appellant when the Respondent had not proved he is a child of the Deceased and/or proved the grounds

of revoking a grant. A miscarriage of Justice was thereby occasioned.

(iii) The Learned Senior Resident Magistrate erred in Law and fact in issuing a grant of letters of representation intestate to the Respondent when the court had not determined whether he is a child/son of the Deceased whether biological or otherwise. A miscarriage of justice was thereby occasioned.

(iv) The Learned Senior Resident Magistrate erred in Law in issuing a grant of letters of administration intestate to the Respondent when the Court had only found that he had “proved that he was a dependant of the Deceased” in total disregard of Section 66 of the Law of Succession Act. A miscarriage of justice was thereby occasioned.

(v) The Learned Senior Resident Magistrate erred in Law and fact in finding that the Appellant was not entitled to the estate of the Deceased as a brother-in-law being the closest surviving relative, merely because they had previous Court cases over the same property, which were not concluded. A miscarriage of Justice was thereby occasioned.

(vi) The Learned Senior Resident Magistrate erred in Law in appointing the Respondent as an administrator of the estate yet the Appellant still holds a Certificate of Confirmation of Grant which remains intact. A miscarriage of justice was thereby occasioned.

(vii) The Learned Senior Resident Magistrate erred in law in revoking the grant on the basis that he had concealed material facts when he was petitioning for letters of

administration to wit, “that Leah had a dependant - the Applicant” when in Law a dependant does not rank in priority with the Appellant. A miscarriage of Justice was thereby occasioned.

(viii) The Learned Senior Resident Magistrate erred in law in framing wrong issues in issues (iv) and (v) as to who are rightful heirs under section 29 of the Law of Succession Act and what comprises the assets of the estate of the Deceased thus arriving at the wrong decision. A miscarriage of justice was thereby occasioned.

(ix) The Learned Senior Resident Magistrate erred in Law in relying on pleadings in High Court Civil Case Number 50 of 1998 (OS) High Court Civil Case Number 100 of 2011 (OS) and High Court Civil Case Numbers 128 of 2011(OS) to hold that the

Appellants interest in the estate was equated to greed and use the same against him when such pleadings were not admissible in evidence under Section 34 of the Evidence Act. A miscarriage of justice was thereby occasioned.

- (x) The Learned Senior Resident Magistrate erred in Law in not finding and holding that having found the Respondent as a dependant, he could only apply for provision as a dependant in the estate of the Deceased under Section 26 of the Law of Succession Act, not an administration. A miscarriage of justice was thereby occasioned.”**

ANALYSIS AND DETERMINATION

10. I have carefully considered this memorandum of appeal as well as the record of Appeal filed in this matter.

11. 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 conclusion **[see Peters - vs- Sunday post limited [2958] E. A 424]**

12. In **SELLE and Another -vs- ASSOCIATED MOTOR BOAT COMPANY LTD & Others [1968] 1 E.A 123** it was stated that

“An appeal to this court from the High Court is by way of 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 [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.”

13. 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 allowance in this respect.”

14. The two issues for determination in this appeal were as follows:-

(i) Whether the grounds warranting revocation of the Grant had been established by the Objector.

(ii) Who was entitled to be issued with Grant of representation to the estate of the Deceased herein.

15. Section 76 of the Law of Succession Act Cap 160, Laws of

Kenya sets out the grounds upon which a Grant maybe 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 was obtained fraudulently by 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

(iv) that the grant has become useless and inoperative through subsequent circumstances.”

16. The Appellant obtained the Grant to the estate of the Deceased in his

capacity as the '**brother-in-law**' of the Deceased. The chief's letter dated **4th November 2016** indicated that the Deceased was a widow who had no biological child. The letter named the Appellant, who was the brother to the late husband of the Deceased as her only surviving relative. I do agree with the trial magistrate that the chief's letter is not conclusive proof of who the heirs of the Deceased were.

17. That being said it would appear from the evidence of the witnesses

that indeed the Deceased was a widow whose husband died on **27th June 1996** thereby pre-deceasing her. It was also

confirmed by the witnesses that the Deceased had no biological children.

18. The evidence shows that despite having had no biological children of

her own the Deceased had taken the Respondent into her home from a very young age and that she treated him as her child. This is a fact which was well known to the Appellant. The Appellant in his evidence admitted that he started seeing the Respondent living with the Deceased in her home way back in the year **1993**. That the Deceased treated and even referred to the Respondent as her son yet the Appellant made no mention at all of the Respondent in the Petition for Grant. This was dishonest to say the least.

19. The Appellant provided for the Respondent and he continued to live in

one of the Deceased's properties even after her demise.

Indeed

even the Appellant in an affidavit which he swore on **11th October 2011** referred to the Respondent as the '**son**' of the Deceased.

20. Whether or not the Respondent was a biological child of the Deceased,

he was a person whom the Deceased had taken into her home and whom the Deceased treated as her son. The Appellant was fully aware of this fact. The failure of the Appellant to disclose the existence of the Respondent in his petition for Grant amounts to material and willful non-disclosure.

21. Aside from the Respondent the court was also informed that the

Deceased was survived by a sister - one **Virginia Njoki Kagotho**. Being a brother-in-law to the Deceased I have no doubt that the Appellant was fully aware of the existence of the Deceased's sister. Once again he willfully withheld the fact of her existence from the court.

22. It is evident that the Appellant obtained the Grant of representation

fraudulently by concealing material facts. Knowing that the Deceased was a widow the Appellant rushed to court on the

assumption that he and only he had the right to inherit her estate.

23. The trial court noted that following the death of the Deceased's

husband (the Appellant's brother), the Appellant had been engaged in protracted legal battle with the Deceased over the assets comprising her estate. That as a result the relationship between the Appellant and the Deceased was not good yet as soon as she died the Appellant rushed to court misrepresenting himself as the sole heir to the estate.

24. I am satisfied that the trial court correctly found that the Appellant

obtained this Grant by way of misrepresentation. He deliberately failed to mention the Respondent and the Deceased's sister all of whom had a legitimate claim to the estate. As such I do agree that the Grant issued to the Appellant was for revocation and uphold the decision of the trial court to revoke the said Grant.

25. The next question to be answered is who had the right to be issued

with letters of Administration. The learned trial magistrate directed that the Grant be issued in the name of the Respondent. In my view this was a hasty decision. The Respondent needed to prove that he ranked first in priority (over even the sister of the Deceased) to be issued with the Grant of representation.

26. The trial court fell short of making a definitive finding that the

Respondent was indeed a son of the Deceased. Accordingly I find that although the Respondent did prove that he was dependent on the Deceased in terms of **Section 29** of the **Law of Succession Act**, he also needed to prove that he ranked first in priority to be issued with the Grant of representation, in line with **Section 66** of the **Law of Succession Act**. Further the trial magistrate erred in failing to consider or take into account the position of the Deceased's sister and what share (if any) of the estate she would be entitled to. Accordingly I do revoke the Grant issued to the Respondent as well as the certificate of

confirmed Grant issued to the Appellant on **7th February 2018.**

27. **Section 47** of the **Law of Succession Act** vests courts with wide

discretion in granting orders for purposes of safeguarding the estate of a Deceased person as follows:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”

28. Likewise **Rule 73** of the Probate and **Administration Rules** provide

as follows:-

“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.”

29. Finally this appeal partially succeeds. This court makes the following

orders:-

(1) The Grant of Representation made to Peter Gichuru

Muriithi on 20th June 2017 and confirmed on 7th February 2018 be and is hereby revoked.

(2) The orders for issuance of Grant to Issac Muriithi

Njega are hereby set aside.

(3) The Grant of Representation issued to Issac Muriithi

Njega on 18th January be and is hereby revoked.

(4) The parties including any siblings of the Deceased

and her late husband to hold discussions with a view

to agreeing on who is to be appointed as

Administrator of the estate.

(5) In the event that the parties are unable to reach an agreement, in line with (3) above then the Matter will be sent to the Public Trustee to administer the estate.

(6) Each party to meet its own costs.

Dated in Nyeri this 5th day of December 2025

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MAUREEN A. ODERO
JUDGE