

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

FAMILY APPEAL NO. E001 OF 2025

IN THE MATTER OF THE ESTATE OF MUGAI NGUMI

(DECEASED)

**CHARLES MWANGI GITUTU.....1ST
APPELLANT**

NECTARIUS NYUTU GITUTU.....2ND APPELLANT

MARY NYANJUGU GITUTU.....3RD APPELLANT

ALICE MUTHONI GITUTU.....4TH APPELLANT

GRACE WANGECI GITUTU.....5TH APPELLANT

DANIEL WAMAITHA GATUTU.....6TH APPELLANT

JANE WANGUI KIONGO.....7TH APPELLANT

-VERSUS-

MICHAEL MUCHIRI MURAGE.....1ST RESPONDENT

**BETH WANJIRU NG'ANG'A.....2ND
RESPONDENT**

JUDGMENT

1. Mugai Ngumi (Deceased) died on 13th February, 1993 and letters of Administration Intestate were granted to Michael Muchiri Murage, Beth Wanjiru Ng'ang'a and Nectarius Nyutu Gitutu in respect of his estate on 4th July,2022.

2. The deceased left three (3) houses and was survived by the following;

1st House

- Michael Muchiri - Grandson
- Daniel Gatutu - Grandson
- Benjamin Mwangi - Grandson
- Mwathi Muraga - Grandson
- George Muraga - Grandson
- Gathoni Muraga - Daughter
- Wambui Muraga - Daughter
- Njoki Muraga - Daughter
- Wanjohi Muraga - Grandson
- Macharia Muraga - Grandson
- Ndurumo Muraga - Grandson
- David Muraga - Grandson

2nd House

- Beth Wanjiru Ng'ang'a - Daughter
- Alice Mukami Mwangi - Daughter
- Jane Wangui Kiongo - Daughter in - law

3rd House

- Charles Mangi Gitutu - Son
- Nectarius Nyutu Gitutu - Son
- Mary Nyanjugu Gitutu - Daughter
- Alice Muthoni Gitutu - Daughter
- Grace Wangeci Gitutu - Daughter

- Daniel Gitutu Wamaita - Grandson

3. Subsequently, a certificate of confirmation of grant was issued on 29th September, 2022, property left by the deceased L.R. No. Gilgil/Karunga Block 9/56 Gitare measuring 27 acres or thereabout was distributed thus;

- 1st House - 5 acres
- 2nd House - 11 acres
- 3rd House - 11 acres

4. The Appellants later on approached the court through summons for annulment of grant dated 17th January, 2023, seeking an order for annulment of the grant of letters of administration issued to the Administrators of the estate on grounds that;

1) That the letters of administration issued to Michael Muchiri Murage, Beth Wanjiru Ng'ang'a and Nectarius Nyutu Gitutu confirmed on 29th September, 2022 be annulled.

2) That the Petitioners/Respondents be restrained from administering the estate flowing from the deceased pending the hearing and determination of this summons.

3) That pending the hearing and determination of this summons, the Petitioners/Respondents be restrained by way of injunction, themselves, their agents, servant or any other person claiming through them from intermeddling, trespassing, surveying, subdividing or in any

***way dealing with the property namely
Gilgil/Karunga Block 9/56 (Gitare)***

5. The trial court considered the matter and in the impugned ruling the trial court declined to interfere with the manner in which the estate was distributed as the estate was fairly distributed. In the result, the application was dismissed.

6. Aggrieved, the Appellants appeal on grounds that;

1) That the learned Magistrate erred in fact and in law by finding that the summons for revocation lacked merit after disregarding the evidence adduced before the honourable court.

2) That the learned Magistrate erred in fact and law by addressing the issue of revocation or annulment together with subdivision therefore mixing up issues leading to an inevitable erred conclusion.

3) That the learned Magistrate erred in fact and law by contradicting himself after admitting that some of the beneficiaries did not sign the consent form and therefore holding that the procedure for acquiring the grant dated 29th September, 2022 was valid.

4) That the learned Magistrate erred in fact and in law in finding that the Administrators of the estate were duly appointed despite the 2nd Applicant not being aware and involved in acquiring the grant.

5) That the learned Magistrate erred in fact and in law by disregarding and or ignoring the Applicants' pleadings and finding that the estate of the deceased was properly subdivided despite admitting that the evidence on subdivision was not clear.

6) That the learned Magistrate erred in fact and in law by completely disregarding the summons for revocation and basing the ruling solely on the grant issued.

7) That the learned Magistrate erred in fact and in law by completely disregarding inter purpose of the suit by finding that the Applicant/Petitioner's contention was not concerned with the appointment of the Administrators.

8) That the learned Magistrate erred in fact and in law by finding that there was no intermeddling with the estate of the deceased despite admitting to unprocedural method of acquiring the grant.

9) That in all circumstances of the case, the findings of the learned Magistrate were not supported by the evidence adduced in court.

7. The appeal was disposed through written submissions. It is urged by Appellants that the learned trial Magistrate summarized evidence of the Appellants and confused that

the application was based on fraud other than defects in proceeding to obtain the grant, confusion that led to an erroneous decision. That in dismissing the application, the learned Magistrate ruled that the distribution of the estate was fair.

8. That although the court found that the Appellants had not executed consents both for the grant and confirmation, it ignored that fact yet the consent of all beneficiaries is a mandatory requirement.
9. That distribution of the estate was not an issue before the trial court and even after finding that there was confusion as to the average of the estate did conclude that the distribution was fair.
10. That the learned Magistrate misapprehended the law hence the ruling was flawed.
11. The Respondent submits that the deceased was survived by three houses. In the first house was only one child – Miriam Wanjugu who was deceased but was survived by 12 grandchildren who are entitled to inherit as held in **Re Estate of Veronica Njoki Wakagoto (deceased) [2013] eKLR.**
12. That the court provided for an equal share of the estate between 2nd and 3rd houses and 5 acres for the 1st house has more beneficiaries but has conceded to a lesser share of 5 acres. For that reason, they urged that the distribution in the impugned Ruling be upheld on appeal.

13. This is a first appellate court where its duty is to re-evaluate and re-analyze the findings of the trial court so as to come to an independent conclusion. In **Selle v Associate Motor Boat Company Ltd [1986] EA 123** the court stated that;

“An appeal to this court from a trial by the High 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. 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 account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence generally (Abdul Hameed Saif vs. Ali Mohamed Sholan [1955] 22 EACA 270).

14. As submitted by the Appellants, all grounds of the appeal shall be condensed. As correctly submitted the gravamen of that application was annulment of the grant.

This is provided for in **Section 76 of the Law of Succession Act** that provides thus;

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 **re Estate of Dr. Quintus Ekessa (Deceased) (Succession Cause E011 of 2020) [2025] KEHC 274 (KLR) (24 January 2025) (Ruling)** Musyoka J. stated as follows:

“Section 76 of the Law of Succession Act provides for revocation of grants. Under section 76(a)(b) and (c), a grant would be liable for revocation, where the process of obtaining it was defective, or tainted with fraud, misrepresentation and concealment of matter from the court. The process would be defective,”

16. The argument put forth is that the proceedings to obtain the grant were defective in substance and the grant was obtained by concealment of material facts from the court. Notably, the Applicants are from the 3rd house. A

scrutiny of form P&A 80, the Petition of letters of Administration Intestate was not signed by most beneficiaries of the estate. Nectarius one of the Administrators who allege he was not aware of the process did not append his signature. Out of 27 beneficiaries only 7 signed. The entire 3rd house did not sign. The affidavit for justification of proposed Administrator was also not signed by one of the Administrators, Nectarius Nyutu Gitutu.

Coming to the consent that was a requirement, it was similarly not signed by the 20 beneficiaries.

Regarding confirmation of grant, the consent thereto was similarly signed by the initial 7 beneficiaries out of 27.

17. The fact of Nectarius Nyutu Gitutu having been named as a Petitioner and Administrator of the estate without his knowledge and/or consent is evidence of there having been lack of transparency. He had no idea he was required to manage the estate. The process of administration of the estate required some consensus between the Administrators who were obligated to discharge duties to all beneficiaries.

18. At the point of confirmation of grant and subsequent distribution of the estate parties were required to signed the schedule of distribution. Evidently, not all the beneficiaries complied. Proceedings do not show who was present during hearing of summons for confirmation of thee grant. The distribution was required to adhere to the law as enshrined in the **Law of Succession Act**. The application filed for

annulment of the grant was a clear expression of non-concurrence.

19. From the foregoing, it is clear the grant was obtained without disclosure of material facts, and, lack of consent resulted into the disagreement afore demonstrated. It is deposed by the Appellants that they were not involved in the process of taking out letters of administration, a fact supported by documentary evidence. They averred that they were approached by the 2nd Respondent who stated that the land was to be re-surveyed so as to be subdivided in accordance with the court order that she was in possession of. This triggered the application as according to the Appellants the land was subdivided during the lifetime of the deceased.

20. All these culminate into the conclusion that the process in obtaining of the grant of letters of administration was not handled, justly, properly and in accordance to the law.

21. As correctly submitted the trial court indeed found that the Appellants had demonstrated that they were not aware of the Respondents' action of petitioning for letters of administration hence not signing the consent forms. The court also questioned the acreage of the estate which did not seem to be within the knowledge of the parties. Despite that, the court reached a finding that the estate was fairly distributed hence declined to interfere with the decision of the court. This was a misdirection, as the Appellants had made a case for annulment of the grant.

22. As a result of the fundamental procedural error that emanated from the outset, the Administrators of the estate have failed to administer the estate diligently which calls for annulment of the grant of letters of administration intestate issued herein.

23. The upshot of the above is that the appeal is meritorious. The Ruling of the trial court dated 07/08/2023 be and is hereby set aside and substituted with an order annulling the grant issued and confirmed. Consequently, the matter is referred back to the lower court for issuance of a fresh Grant of Letters of Administration Intestate to parties desirous to administer the estate of the deceased.

24. Costs of the appeal shall be borne by the Respondents.

25. It is so ordered.

Dated, signed and delivered virtually this 2nd day of December, 2025.

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L.N. MUTENDE
JUDGE