



REPUBLIC OF KENYA



KENYA LAW
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**Kivesi v Wambua & 2 others (Succession Cause 56 of 2012)
[2025] KEHC 19074 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19074 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 56 OF 2012
EN MAINA, J
DECEMBER 18, 2025**

IN THE MATTER OF THE ESTATE OF NAOMI KALONDU MUTUNGA (DECEASED)

BETWEEN

MARSHALL MWANGI KIVESI APPLICANT

AND

JUSTINA WAMBUA 1ST ADMINISTRATOR

JOSEPHINE KIOKO 2ND ADMINISTRATOR

FEDALIS MANG'UU MWIKYA 3RD ADMINISTRATOR

RULING

1. The Applicant herein filed a Summons dated 28th November 2023 for revocation or annulment of the grant and certificate of confirmed grant issued to Justina Wambua and Josephine Kioko on 26th July, 2023.
2. In the affidavit in support of the summons, the Applicant deposes that there was concealment of material facts; that the grant was obtained by means of an untrue allegation of an essential point of law and that the Administrators did not disclose to the court that he, Marshall Mwangi Kivesi is a creditor to the estate having purchased land parcel LR No. Ukia/Utaati/688 (hereinafter referred to as the “suit property”) from the deceased at Kshs 500,000- in an agreement in which he was also to refund the costs of all the developments on the land including the fence at a cost Kshs 150,000/- which he duly did. That the Summons for Confirmation of grant dated 6th April 2023 and consent dated 6th April 2023 fraudulently introduced Fedalis Mang’uu Mwikya/3rd Respondent yet he was never a creditor to the estate and apportioned to him the land which he, the Applicant had purchased from the deceased.
3. The 1st Administrator/Respondent filed a replying affidavit dated 18/12/2023 in which she deposed that she is the daughter in law of the deceased herein having been married to her son, the late John



- Wambua Mutunga. She confirmed that the Applicant was a creditor of the estate having bought the suit property from the deceased on 5th February 1997 and that her late husband was a witness. That after the sale, the Applicant took full possession of the suit property and has carried out a lot of developments. She stated that the schedule of distribution was never shown nor read to them before the grant was confirmed. She also stated that Fedalis Mang'uu Mwikya never bought the suit property from the deceased even though they apportioned the same to him.
4. The 2nd Administrator/Respondent filed a replying Affidavit dated 18th December 2023. She deposed that she too is a daughter of the deceased herein. She confirmed that the Applicant was a creditor of the estate having purchased the suit property at a consideration of Kshs 500,000/- together with the expenses Kshs 150,000/-. She stated that she witnessed the agreement for sale and that the Applicant took immediate possession of the property and has carried out a lot of developments. She deposed further that the schedule of distribution/mode of distribution which resulted in the land being allocated to the 3rd Respondent was never given to them nor read to them before the grant was confirmed. She also deposed that Fedalis Mang'uu Mwikya/3rd Respondent did not purchase the suit property from the deceased.
 5. The 3rd Respondent filed a replying affidavit dated 6th February 2024 in which he contended that this application/summons is devoid of merit and should be dismissed. He stated that the suit property belonged to Mwikya Mang'uu Kiseu, his father and a case was filed at Nziu Law Courts after one Mutunga Mutua purported to have obtained a title over it and the court found in favour of Mwikya Mang'uu. Despite this finding, the title had already been issued to Mutunga Mutua and was never cancelled due to an objection that was filed but was never determined. That when Mutunga Mutua died, his wife who is the deceased in this estate took over ownership and the land was changed to her name. He contended that some members of the deceased's family had filed Machakos Succ 266 of 2006 but abandoned it at the confirmation stage when he filed a protest; that he later cited Sammy Kasamba Mutunga to take out letters of administration but he refused and the court ordered Mwikya Mang'uu, Augustine Kisilu Mwikya and Nduuti Mwikya to apply for letters of administration. He further stated that the said Sammy Mutunga consented to having two portions from UKIA/UTAATI 862 and UKIA/UTAATI 688 allocated to his father's family Mwikya Mang'uu, Augustine Kisilu Mwikya and Nduuti Mwikya in equal shares. That as the succession was ongoing, Kasamba Sammy filed Makueni Succession cause no 27 of 2012 over the same estate which was subsequently consolidated with the one before this court.
 6. He also deposed that on 6th June 2015 he obtained letters of administration ad litem for his father's estate and that the beneficiaries of the estate herein consented and agreed to this father's family being given some parcels of land. Lastly, he contended that the applicant has chosen to participate in the succession proceeding despite being aware of the same. He asserted that equity aids the vigilant and not the indolent.
 7. The summons was canvassed through viva voce evidence. The Applicant adopted his statement filed on 12th March 2024, further statement dated 15th May 2024, bundle of documents dated 11th March 2024 and further list of documents sated 15th May 2024 and reiterated that he bought the land from the deceased herein at Kshs 500,000/- and paid a further 150,000/- but she died before signing the transfer. That he has built his home and lives there to date. He testified that he did not have a problem with the family until the deceased died. Further, that 3rd Respondent is the proprietor of the land adjoining the subject parcel; that John Mutunga, the husband of the 1st Administrator is the one who wrote the agreement for sale between him and the deceased; that there was a boundary dispute in regard to land parcels LR No. Ukia/Utaati/684, LR No. Ukia /Utaati/688 and LR No. Ukia/Utaati/1141 belonging



to the deceased herein, Mwikya Mang'uu and the late Kituku and a report dated 20th August 2007 was made which resolved the dispute.

8. He stated that the Summons for Confirmation of grant dated 26th July 2023 and the consent dated 6th April 2023 intentionally, wrongly, maliciously and illegally introduced Fedalis Mang'uu Mwikya as a creditor of the estate yet that was not the position. That Mwikya Mang'uu (father of the 3rd Respondent), had sued him in ELC 136/2017 but he died before the case was heard and concluded and when Fedalis Mang'uu Mwikya sought to substitute him, the application was dismissed with costs on 13/12/2018.
9. He further, stated that he was not aware of, nor privy to Machakos Succession Cause 266/2006, Machakos Succession Cause 612 of 2011, Makueni Succession Cause no 27 of 2012, Machakos Succession Cause 56 of 2013 and Machakos Succession Cause no 61 of 2012. That upon perusal of Machakos Succession Cause 56 of 2013, he noted that there was no liability to the estate of the deceased herein. He also stated that the late Kasamba Mutunga, a son of the deceased herein had no authority to sign a letter of consent transferring the properties of the deceased herein to Mwikya Mang'uu, Augustine Kisilu Mwikya and Nduuti Mwikya. That in any event, the certificate of confirmation only grants the parcel to Fidelis Mang'uu Mwikya and not the other persons mentioned. Furthermore, that the affidavit in support of the Summons of Confirmation of grant had no schedule of distribution nor a consent from all the beneficiaries of the estate.
10. He told the court that the signature on the agreements dated 5/2/1997, 12/12/1997 and 6/4/1998 were his. That all the children of the deceased were present when they were negotiating the purchase price but not all of them were present when they signed the agreement.
11. PW2 Jonah Mwendo Kivesi, the Applicant's brother, testified that his brother, bought the parcel of land from the deceased herein at a consideration of Kshs 500,000/- and a refund of all developments at Kshs 150,000/- That there was a boundary dispute in regard to the parcel he purchased but it was resolved by the report dated 20th August 2007. He confirmed the evidence of the Applicant that he together with the son of the deceased, daughter in law Josephine Peter and the Applicant's wife were present when the sale agreement was executed. He conceded that the Chief and his Assistant chief were not present when the agreement was signed.
12. PW3, Catherine Mwangeli Kimanthi aka Catherine Mwangi testified that she witnessed the execution of the agreements for sale; that the Applicant paid the full consideration; that they got married in 1996; that the signature on the agreements dated 5th February 1997 and 6th April 1998 were hers; that the people who were present during the signing of the agreement were Naomi, her son Wambua, Josephine, Jonah Mwenda, Marshal and herself. She confirmed that they compensated the deceased for the mango and orange trees at Kshs 20,000/- and 50,000/- respectively as well as for the barbed wire fence.
13. On his part, the Respondent called three witnesses. Josephine Kioko DW1, the 2nd Administrator/ Respondent who however testified that the applicant was a creditor of the estate; that the land was sold to him by their mother, the deceased herein, in 1997. She confirmed that she witnessed the signing of the agreements but denied signing any court documents allocating the land to Fedalis Mang'uu/3rd Respondent. That it is their former advocate who filed the Summons for Confirmation.
14. Justina Wambua, the 1st Administrator/Respondent (DW2) testified that the subject property was sold by Naomi, the deceased herein to the Applicant. She did not witness the execution of the agreement; she denied signing any document stating that the subject property should go to Fedalis Mang'uu/3rd Respondent and contended that they were only asked for identity cards and it is the advocate who



signed the summons for confirmation. She stated that as far as she is concerned, the land belongs to the Applicant.

15. Fedalis Mang'uu Mwikya/3rd Respondent, stated that according to the Summons for confirmation of grant filed by the administrators, there are no liabilities. It was his testimony that the Applicant claims land that is partly in property number 684 which belongs to him but he should get property number 688, the subject property. He proposed that a surveyor be required to mark the boundaries. He stated that Sammy Mutunga has never been an administrator of his father's estate, that the summons were signed by the advocate for the administrators, and not by the administrators or beneficiaries but that the consent which bequeathed the subject land to him was signed by JM Tamata Advocate and BM Mungata Advocate. It was his contention that the Applicant's parcels are 862, 688 and 690.

Submissions

16. In submissions dated 7th August 2025, the Applicant prayed that the grant be revoked and or annulled. He submitted that unlike Fedalis Mang'uu Mwikya he purchased the land from the deceased and solely owns it. That he should be allocated the land as he is in peaceful possession, use and occupation of it and thus the application should be allowed. He further submitted that the 2nd Administrator confirmed that she witnessed the sale and that he is a creditor of the estate. He stated that the administrators also denied signing the consent that was presented to court and which bequeathed the subject property to Fedalis Mang'uu Mwikya.
17. The 3rd Respondent filed submissions dated 18th September 2025 it is submitted that disputes concerning ownership of land and titles can only be handled by the Environment and Land Court and therefore this court lacks jurisdiction to determine this issue. Secondly, that the grant should not be revoked as the application has not met the threshold under section 76 of the Succession Act. Lastly, that it was suspicious that the 2nd and 3rd Administrators disowned the consent after they were sued. The court was urged to dismiss the summons.

Analysis and determination

18. I have considered the Summons, the affidavits in support and in reply, the evidence adduced by both sides, rival submissions and the law. The issues for determination are whether the certificate of confirmation of grant issued to Justina Wambua and Josephine Kioko should be revoked and/or annulled and whether this court is seized of jurisdiction to do so.
19. As to whether this court has jurisdiction to hear this summons, my finding is that it does have jurisdiction under Section 47 of the Law of succession Act and Rule 73 of the Probate and Administration Rules which state:-

“ [Section 47]

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:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

[Rule 73]

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.”



20. My finding is that the issue in dispute concerns the revocation of a certificate of confirmed granted issued by this court but is not a purely land dispute which should go to the Environment and land court. The argument that this court is not seized of jurisdiction cannot therefore hold.
21. As to whether this grant should be revoked Section 76(a), (b) and (c) of the Law of Succession Act provides as hereunder:
- 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.”
22. From the evidence placed before this court, all the witnesses confirm that Ukia/Utaati/688 belongs to the Applicant herein. The Administrators deny signing the consent which led to the land going to the 3rd Respondent rather than the applicant and stated that it is their advocate who signed. That has been confirmed from the court record as the consent dated 6th April 2023 was signed by JM Tamata Advocate and BM Mungata Advocate. By the Administrators own admission, some facts pertaining to the estate herein were concealed from the court. Even so, the Applicant has managed to prove that he purchased the subject property from the deceased herein through the agreements for sale dated 5/2/1997, 12/2/1997 and 6/4/1998 and called witnesses to confirm that to be the position. It is also transpired that there was a boundary dispute between the Applicant and the 3rd Respondent which seems to have been resolved by the report of Peter M. Ndonge, District surveyor, Makueni district dated 20th August 2007 which has not been disputed. I am therefore satisfied that the applicant is a creditor of the estate of the deceased and his right to the parcel of land supersedes that of the 3rd Respondent. That is the position whether there are other succession causes or not. The summons dated 28th November 2023 is merited. However, it would not be just to revoke the entire grant. In my view it would be sufficient to amend the confirmed grant to remove the name of the 3rd Respondent and substitute it with that of the Applicant.
23. In the end, I grant orders as follows:
- a. That in place of revoking the grant and the confirmed grant dated 16th July 2023, the same be and is hereby rectified to allocate LR No. Ukia/Utaati/688 to Marshal Mwangi Kivesi in place of Fedalis Mang’uu Mwikya.
 - b. A fresh rectified certificate of confirmation to issue.
 - c. Parties to bear their own costs.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY THIS 18TH DECEMBER, 2025.

E. N. MAINA

JUDGE

In The Presence Of:

Rebecca Nthamo Makau – Applicant



Mr. Mutua for Respondent

Geoffrey – Court Assistant/Interpreter

