



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

IN THE MATTER OF THE ESTATE OF STEPHEN KIMANI GACHANGA
(DECEASED)

PROBATE AND ADMINISTRATION NO. 32 OF 2019

LILIAN NJERI NJEHIAOBJECTOR/APPLICANT

VERSUS

SERAH WAMBUI GACHANGA &

ELIUD KIBIU KIMANI.....ADMINISTRATORS /RESPONDENTS

RULING

1. The Applications before me are two Chamber Summons Applications by Lilian Njeri Njehia dated 10th December 2024 the 1st Application is filed pursuant to Order 1 Rule 10 of the Civil Procedure Rules Section 3A of the Civil Procedure Act, sections 73 and 76 of the Law of succession Act, sections 25 and 26 of the Land Registration Act, 2012, and Articles 23, 27, 28, & 40 of the constitution craving for the following reliefs;

- a) SPENT**
- b) SPENT**
- c) SPENT**
- d) SPENT**

e) SPENT

f) That, the honorable court be pleased to stay, suspend and or otherwise review its orders and ruling dated 8th August, 2024.

g) That, the grant dated 30th September, 2019 and as confirmed on 8th August, 2024 be revoked upon the hearing of this application.

h) That the costs of this application be provided for.

2. The 2nd Application is filed pursuant to section 76 of the Law of Succession Act seeking the revocation or annulment of the grant of letters of Administration made to the Respondents on the 8th August 2024 on the basis that the deceased died on 30th August 1993, letters of administration were issued on the 30th September 2019 and confirmed on the 8th August 2024 and that the Respondents have failed, neglected or refused to diligently administer the deceased estate and have failed to render a full account of the state of affairs of the estate.
3. The 1st Application is supported by the sworn Affidavit by **Lilian Njeri Njehia** who contends that she was on the 29th November, 2024 invaded by surveyors and the agents of the Petitioners/respondents on a land subdivision mission in respect of LR. No. Naivasha Mairaugushu Block 11/218 devoid of the knowledge and her consent as the registered land owner.
4. That the Respondents then served upon her a ruling dated 8th August, 2024 demanding their mission on the subject land, with which ruling and consequential orders compliance was sought.

5. That, she is likely to be irreparably harmed by the implementation of the said orders, having been determined without her participation in the matter, and therefore total factual misrepresentation and ownership trail and in violation of her right to property more a registered title deed validly obtained pursuant to a court order in Naivasha succession cause E048 of 2022.
6. That efforts are underway to dispose-off the subject property against the law, correct and against superior set of facts, hence a clear pointer to injustice.
7. That she had appointed **David K. Gichuki** advocate to represent her, but who only entered appearance on 16th November, 2024 and never executed the said instructions to respond to the application leading to the ruling dated 8th August, 2024 and the grant as confirmed on even date, without the same being contested and consequent to the failure and abdication by counsel her side of the matter and the application was unheard, despite the merits of her rightful accusation of the subject property and the false accusations against her.
8. That, the Respondents, out of the omission by her counsel on record proceeded to misrepresent facts before the court leading to a manifestly flawed grant, which is due for revocation, they having done so under oath.
9. That upon the death of her late Husband **Allan Kimani Njihia**, on the 2nd April, 2020 she undertook probate proceedings in Naivasha Chief Magistrates Court, Succession Cause No. E48 of 2022 and was issued a grant in respect of the estate of her late husband, and the title deed

herein subject whereof having been in his name as early as 24th September, 2009 and as issued to him on 14th January, 2010 was legally transferred to her vide court orders.

10. That the Petitioners/Respondents did not disclose to the court that the deceased had distributed the subject matter in his life time, and instead accused her and falsely of fraud together with her late husband, who maintained the deceased alongside herself almost exclusively and it is for that reason he was gifted the subject matter during the lifetime of the deceased and to hold in trust for **Hannah Wanjiku Njogu** his sister, and George Kimani, a nephew son of his late sister who was unmarried in a ratio of 3.25 and 1 acre each with her late husband retaining the 3.25 having been instructed to pay for the outstanding sums due to the land at Karai.
11. That, the Said Serah Wambui Gachanga, is now deceased, and Eliud Kibiu Kimani, were allocated land in Nyahururu, and she has no claim over the said Nyahururu parcel NYAHURURU LESHAN MBUYU BLOCK-2/245 and where they both reside, hence a clear interference with the deceased's arrangements during his lifetime.
12. That the subject land has been her home since she was married to Allan NJEHIA KIMANI in 1985 and has maintained the same all through with her husband until his demise.
13. That they have also lived on this land, save for holding the title in trust, for Hannah Wanjiku Njogu and her family, and George Kimani, his late mother, Cecilia Nduta Kimani.

14. That the formulae used to reach the apportionment and distribution in the grant disregarded these prior arrangements, and worse still the said Serah Wambui Gachanga posthumously apportioning herself 1. 75 acres devoid of any lawful cause and against valid and subsisting court orders.
15. That Applications and Affidavits' towards the confirmation of the grant in question and the Objectors now deceased motions to revoke the grant and now in this application seek to clarify that earlier erroneous position and in effect have every other wrong action corrected before it is too late and costly.
16. That she has developed her portion of this land, and already on the strength of the title in her name and that of her late husband, settled her sons on the said land, variously, atop the threat of demolition of the said buildings and graveyards seven in total.
17. That she has also lost two children and who are buried on the said land, and the beaconing about to be undertaken towards subdivision as per the grant in issue, borne to split her own house of four decades and her children's graveyards devoid of a hearing and when facts were also falsified.
18. That, even if she was unrepresented to be joined because she is directly affected by the proceedings herein by will, title, ongoing suits and previously by power of attorney and had the same explained to her by her advocates on record and wish to respond as hereunder.
19. That the succession cause herein was commenced in 2019 while her husband was still alive, but was never involved at all, despite far

reaching false allegations of fraud and theft of land, issues they if at all were genuine should have raised against him, and or herself then, rather than condemn him unfairly in death.

20. That she is advised by her advocates which advise she treasures to be real, that the Respondents harbors nefarious and criminal intents against her property, and are entirely disinterested in orderly and peaceful coexistence of family members, both of them have never lived on this land despite coming of age during the lifetime of the deceased, as they were during his lifetime already occupying their present residences and properties, more so trafficking falsehood and illegal takeover of the deceased property knowing his wishes and intentions in life.
21. That she risks being deprived, condemned and or consigned to consequential returns of a process without being a party, whence my rights are above the party before court by will and power of attorney conferred to me during the lifetime of the deceased, and have crystallized and acquired property at the of the deceased objector.
22. That the land parcels in question, were the lifeline, foremost source of employment, food and related needs, to her and were his families inheritance, now sought to be taken-over through unconventional means by the Petitioners/ Respondents, hence the conduct or the activities of the Respondents shall definitely work to her detriment, more so the wild spate of fraud, being perpetrated by invaders.
23. That, the intended revocation/ annulment as mooted by the objector/ applicant will facilitate the fair distribution of the estate of the deceased,

without disenfranchising parties and beneficiaries who have resided on the subject matter their entire lives, developed and known only this land as home, to a new life, aided singularly by falsehood and grave misrepresentation with far reaching implications, whose consequences shall have an enormous bearing on her personal interests, more so future and even livelihood.

24. That the hearing and confirmation of the grant was conducted in an evidence inadequate method and only which annulment of grant will restore order and avoid anarchy already being fomented by the respondents and their agents and This court was goaded and misled into furthering an injustice.

25. That, the impugned grant and the decision thereto in favor of the Respondents and their preferred mode of distribution, was procedurally unfair and was made in bad faith to the objectors and now interested party's detriment and loss.

26. That the Respondents deliberately misled the court into entertaining an illegality when they knew they lacked locus and even legitimacy, against the objectors compelling and accurate account of the issues.

27. That as a stakeholder and being among the rightful beneficiaries of the portion estate in particular, she has legitimate expectation of participating in all the processes which seems slanted to lock her out for nefarious intents, as they did her late Husband Allan Njehia Kimani.

28. That, given that the subject matter of this suit being a registered property prior to the commencement of the suit herein and with valid title, fraud should have been expressly pleaded and particulars whereof

demonstrated as she is advised by her advocates, and whose advise she holds sacred, and now subject of administrative processing as well as private interests, it is necessary she be granted the prayers sought as is necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit, more so private farmers like herself.

29. That she swore the affidavit in support of the application that the Applicant be joined as an interested party to these proceedings.

30. The Applicant equally swore an Affidavit dated 10th December 2024 in support of her 2nd Application for revocation and annulment of grant wherein she depones that;

- a) That to-date, the administrators Serah Wambui Gachanga and Eliud Kibiu Kimani have failed to proceed diligently and lawfully with the administration of the deceased's estate.
- b) That notwithstanding the confirmation of the grant over four months ago, the surviving administrator has failed to distribute the estate to its rightful beneficiaries and lawfully so
- c) That the surviving administrator Eliud Kibiu Kimani, did not disclose at the confirmation of the grant that his co administrator has since passed-on and therefore his actions are clothed in misrepresentation, fraud, and outright control by third parties to the instant succession, through whom, NAIVASHA.

MUURAGUSHU Block 11/218 (KARAI) now faces the imminent threat of wastage and illegal disposal.

Respondents Case

31. The Respondent opposed the Applications by filing a replying Affidavit dated 15th April 2025 contending that;

- a) That, the deceased owned several properties before his demise and one of them is a parcel of land namely Naivasha/Mariagushi Block 11/218 measuring 7 acres.
- b) That, Before the deceased's demise one of his sons Allan Kimani Njihia now deceased was taking care of the above-mentioned parcel of land.
- c) That, the other family members and him moved the court via succession process but the wife to the late Allan Kimani Njihia declined to co-operate and refused to sign the consent on distribution of the late Stephen Kimani Gachanga's assets.
- d) That, it is this failure to co-operate that led to the realization that her late husband Allan Kimani had intermeddled with the deceased's estate and had transferred the property namely Naivasha/Mariagushi Block 11/218 to his name before succession was done.
- e) That, the Applicant having hindered the process of distribution of the aforesaid property, he moved court vide an application to

have her restrained from wasting, transferring, selling, damaging or further dealing with the same.

- f) That, the Applicant was represented by Advocate David K Gichuki who entered appearance on her behalf.
- g) That, the Application was prosecuted and the court delivered its ruling on the application on 8th August, 2024 where my application was allowed.
- h) That, the court in its ruling having taken into consideration all the factors stated that it was persuaded that the late Allan Kimani Njihia without colour of law, illegally and criminally intermeddled fraudulently transferring and taking possession of the subject property namely Naivasha/Mariagushi Block 11/218 and thus the entry no.5 on the title transferring the subject parcel to the late Allan Kimani Njihia was unlawful, Illegal without the sanction of the court as the deceased's assets were subject to the law of succession from the 30th August, 1993.
- i) That, the Applicant was given a chance to place before the court all claims and evidence at the hearing of the application but has now filed the present application.
- j) That, the facts as presented to court earlier on in the proceedings remain the same and there is no new development and there was no concealment of any facts from the court.

- k) That, the Applicant's application is an afterthought, a waste of the court's precious time and the same should not be allowed to see the light of day.
- l) That the Applicant is not deserving of any orders sought in the application and the same ought to be dismissed with costs.

32. The Court directed that the Application be heard and disposed by way of filed written submissions of which none of the parties complied and the ruling is without the benefit of any filed written submissions.

Analysis and Determination

33. Having considered the pleadings on record, the issue to, determine is whether on merits this court should review or vary the orders given on 8th August, 2024.

34. Section 80 of the Civil Procedure Act states as follows;

“80. Any person who considers himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

35. Order 45 of the Civil Procedure Rules 2010 states thus; -

“45. 1(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, or

(b) by a decree or order from which no appeal is hereby allowed

And who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reasons, desires to obtain a review of the decree or order may apply for a review of judgment to the court which pass the decree or made the order without unreasonable delay”

36. The above provisions circumscribe the jurisdiction of the Court in an application for review. The conditions in Order 45 of the Civil Procedure Rules 2010 have to be satisfied although within a much wider approach expressed in constitutional desire in Article 159 of the Constitution and the overriding objective in sections 1A and 1B Civil Procedure Act to serve substantive justice. Now that the Applicant came under Order 45

of the Civil procedure Rules, has she satisfied the standard as stated in **Kithoi v Kioko (1982) KLR 177, page 181**, by the Court of Appeal that;

“.....the Civil Procedure Rules Order XLIV demands inter alia, that an application for review must be based in the discovery of new and important evidence which was not within the applicant’s knowledge or could not be produced by him at the time when the decree was passed or the order made or on account of some mistake on the face of the record or for any other sufficient reason. The application for review must strictly prove the grounds for review, except for review on the ground of mistake or error apparent on the record, falling which the application will not be granted.” (Emphasis added)

37. Save for the Alleged indolence by her former Advocate whom she accuses of failing to defend the Application while having been instructed and there is no discovery of any new and important matter or evidence. And, there is no any mistake or error apparent on the face of the record. Perhaps, in the constitutional desire that courts should take a much broader approach in applying legal thresholds, the only point on which the instant application can be decided is whether there is any other sufficient reason presented before the court to warrant the court to vary the orders herein.

38. I agree with the holding in **Rajesh Rughani v Fifty Investments Limited & another [2016] eKLR** that:

“Mere allegation of indolence by counsel is not enough and that a litigant guilty of delay should offer an explanation as to the action taken in order to show that he did not condone or collude in the delay. An applicant must not have been careless on their own part. Surely, the applicants cannot say that for the entire period that their previous advocate kept assuring them that they had won the case, they never bothered to ask for the judgment”.

39. If **Mr. David Gichuki** Advocate committed gross indolence and professional misconduct of such a magnitude warranting this review, then the court expects evidence of the gross misconduct and adverse action undertaken against the advocate for the indolence. No evidence of complaint(s) against the former advocate for failure to defend has been tendered.
40. The court finds no evidence that the Respondent willfully withheld crucial information from the court at the point of confirmation of the grant, that the death of a co-administrator is no basis of a revocation of grant.
41. It is in the Interest of justice that the probate be concluded without any other or further hindrance, the fact that Co-Administrator Sarah Wambui Gachanga is deceased does affect the conclusion and that I order the issuance of a rectified grant and rectified certificate of confirmed grant in the name of the surviving Administrator Eliud Kibiu Maina.

42. The 2nd Application is for revocation of grant and I do find no reason has been advanced as to why the Grant should be revoked or annulled. The four months complained of after confirmation of grant was the period within which the administrator was to undertake the subdivision, distribution and transmission and the court had reserved a mention date to confirm conclusion. It is with respect that the court views such a period as one in which no beneficiary may file a summons for revocation of grant on the basis of failure to diligently administer the grant or conclude the probate I unfortunately observe that the 2nd Application was spurious at best. The delay complained of by the Applicant has her contribution and cannot thus be the basis for revocation.
43. I am thus unconvinced that the two Applications dated 10th December 2024 have any merit and both Applications are dismissed with costs to the Respondents.
44. The Interim Orders dated 17th December 2024 are hereby vacated.
45. The Administrator shall conclude the Distribution within the next six (6) months from today and a mention date to confirm the conclusion shall be fixed.

It is ordered.

Dated, Signed and Delivered at Nakuru

On this 12th day of January 2026

Mohochi S. M.

JUDGE