

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**(CORAM: R. MWONGO, J.)**

**FAMILY APPEAL NO. E001 OF 2025**

**IN THE MATTER OF THE ESTATE OF NJIRU RUNDIE ALIAS RUNDIE NJUE ALIAS**

**BENJAMIN NJUE RUNDIE (DECEASED)**

PERMINUS NJIRU.....APPELLANT

**-VERSUS-**

CATHERINE WARUGURU NJUE.....RESPONDENT

*An appeal from the decision of Hon. C.K. Kisiangani PM delivered on 23<sup>rd</sup> December 2024 in Runyenjes MC Succession Cause No. E066 of 2022*

**JUDGMENT**

**Memorandum of Appeal**

1. In his memorandum of appeal dated 06<sup>th</sup> January 2025, the appellant seeks orders that: the appeal be allowed and the ruling of the trial court and other consequential orders be reversed, reviewed and or set aside, the costs of the appeal be awarded to the appellant, and any other orders as the court shall deem just and fair to grant.
2. The appeal is premised on the following grounds:
  - 1) That the learned Principal Magistrate erred in law and fact in failed to appreciate that the respondent failed to strictly prove if the appellant had extensively developed his piece of land;
  - 2) That the learned Principal Magistrate erred in law and fact in not questioning how the said respondent if other piece of land in the certificate of confirmation of grant are development or not;
  - 3) That the learned Principal Magistrate erred in law and fact in not considering how long the said appellant have lived the said land for more than 20 years and that other land in the grant are undeveloped;
  - 4) That the learned Principal Magistrate erred in law and fact in not questioning the said respondent if the deceased and the appellant were

business people together and if they ventured into business which formed part of acquiring the said beneficial lands;

- 5) That the learned Principal Magistrate erred in law and fact in not questioning why the chief's letter which was used by the respondent to file succession cause was not from the local chief of the deceased location;
- 6) That the learned Principal Magistrate erred in law and fact in not considering the replying's affidavits and numerous applications by the appellant which were detailed;
- 7) That the learned Principal Magistrate erred in law and fact in not considering that the appellant was given smaller than other beneficiaries;
- 8) That the learned Principal Magistrate erred in law and fact in not considering the succession by the respondent was obtained fraudulently by making of false statements and concealment from the Court something material to the case;
- 9) That the learned Principal Magistrate erred in law and fact in not considering that the respondent is over 89 years and is easily misled by other beneficiaries;
- 10) That the learned Principal Magistrate erred in law and fact in not considering that the matter is of family issues and ought to consider meditation so that that we can narrow some issues;
- 11) That the learned Principal Magistrate erred in law and fact when he exhibited biasness against the appellant in his judgment;
- 12) That the learned Principal Magistrate erred in law and fact in falling to give the necessary weight to the appellants evidence; and
- 13) That the judgment was against the weight of evidence adduced.

### **Background of the case in the Trial Court**

3. Following the death of the deceased on 10<sup>th</sup> October 2015, the respondent (his widow) petitioned for a grant of letters of administration in his estate. The grant was issued on 26<sup>th</sup> May 2022 and she filed summons for confirmation of the grant dated 23<sup>rd</sup> December 2022 in which she proposed a mode of distribution. According to the court's record, the beneficiaries entered a consent on distribution of the estate and it was adopted. A certificate of confirmation of grant was issued

portraying the distribution proposed by the respondent in the summons for confirmation.

### **Summons for Revocation of Grant**

4. The appellant then filed undated summons for revocation of grant seeking that the grant issued to the respondent be revoked. The grounds for revocation were noted to be that the distribution ordered by the court was not equitable or fair. That when the distribution is implemented, the appellant will be forcefully evicted from the piece of land on which he is residing which he has extensively developed, and he risks being moved to a less developed area.
5. He stated that his signature on the consent accompanying the petition was forged. That it is was in the interest of justice that the grant be revoked and he be appointed as a co-administrator of the estate of the deceased. He denied being involved in the succession proceedings and that his consent was not sought yet he is a son of the deceased. He also alleged that the respondent concealed from the court the fact that the deceased had other dependants including his daughter-in-law and grandchildren who are also entitled to the estate of the deceased.

### **Replying Affidavit**

6. In response, the respondent filed a replying affidavit in opposition to the summons for revocation. She stated that she had no obligation to seek the appellant's consent before petitioning for the grant since she is the widow of the deceased and he is the deceased's son. That the appellant wants to sneak in a claim that the deceased gave him the land where he is living as a gift *inter vivos* but such claim cannot succeed. That the appellant freely signed all the documents regarding succession proceedings and he indeed fully participated in the proceedings.
7. She stated that the appellant had assaulted her physically and verbally on many occasions and he even threatened to kill her while claiming land from her. She defended the mode of distribution and noted that all the beneficiaries are fine with that mode except the appellant. She stated that the distribution is fair, equitable and just.

## **The Hearing in the trial Court**

8. Parties agreed to canvass the summons application by way of written submissions but none of them had filed their submissions by the time the court was determining the matter. The trial court delivered its ruling finding no merit in the summons for revocation. It found that the appellant fully participated in the succession proceedings and the distribution was fair and just. There was no basis for revoking the grant.

## **Parties' Submissions on the appeal**

9. The appeal herein was canvassed by way of written submissions.

10. The appellant submitted that the deceased had other beneficiaries who were not included in the proceedings. On this, he relied on section 29 of the Law of Succession Act. He contested the mode of distribution ordered and stated that he has been given land that is smaller than what the other beneficiaries got from the distribution. He stated that the deceased gave him the land on which he now lives before he died and he had developed it extensively. He relied on the case of **In the Matter of the Estate of Kariuki Mjogu alias Kariuki s/o Njogu (Deceased) (Succession Appeal E027 of 2021) [2023] KEHC 25716 (KLR)** and urged the court to allow the appeal.

11. The respondent relied on the case of **In re Estate of Phylis Muthoni M'inoti (Deceased) [2019] KEHC 1934 (KLR)** and argued that there was no gift *inter vivos* given to the appellant by the deceased. That the deceased did not subdivide the land before he died, neither did he give any portions to any of the beneficiaries excluding the rest. She also relied on the case of **In re Estate of Godana Songoro Guyo (Deceased) (2020) eKLR**.

## **Issue for Determination**

12. The issue for determination is whether the appeal has merit.

## **Analysis and Determination**

13. As an appellate court, this court must make its decision based on the record of the trial court. It was so held in the case of **Selle & Another v Associated Motor Boat Co. Ltd & Others [1968] EA 123**, as follows:

***“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this 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 that it has neither seen nor heard the witnesses and should make due allowance in this respect...”***

14. The parties did not give evidence or submissions before the trial court even though they were given a chance to make representations and be heard. The trial Magistrate went on to rely on the pleadings on record. The appellant's grounds for revocation were that he has been given an unfavorable share of the estate which is away from his current residence, and that he would be forced to move out to another piece of land when the distribution is implemented.
15. He also stated that he did not participate in the proceedings and that his signature on the documents was forged. He claimed that the petitioner concealed material facts from the court when petitioning for the grant, and that it was in the interest of justice that he be appointed co-administrator of the estate. He stated that the deceased was also survived by grandchildren and a daughter-in-law as beneficiaries of his estate.
16. On the other hand, the respondent deposed that she ranked higher than the appellant in the hierarchy of people to whom a grant may be issued in the estate of the deceased. That the deceased did not give any kind of gifts to anyone before he died neither did he subdivide his land.
17. Section 76 of the Law of Succession Act provides for revocation of a grant at any time when a court so decides and on the grounds set out in the section. The provision states:

***“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.”***

18. From the appellant's pleadings before the trial court, the core ground cited for revocation is that there was unfair distribution of the estate. This is not one of the proper grounds provided for in Section 76 for revocation as it touches on the implementation of the certificate of confirmation and not on the acquisition of the grant of representation itself. **In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR)**, W. Musyoka, J. after analyzing section 76 and discussing the meaning of a grant within the provisions of the laws governing succession in Kenya, correctly in my view, stated thus:

***“17.I have very closely perused through the provisions of the Law of Succession Act, and I have not come across any provision that provides a remedy to a person who is aggrieved by confirmation orders. Sections 71, 72 and 73 of the Law of Succession Act, which***

*deal with confirmation of grants, do not address the question of redress for parties who are unhappy with the confirmation process, nor do they deal generally with flaws in the confirmation process. As stated above, section 76 has nothing to do with the confirmation process, and provides no relief at all to any person unhappy with the confirmation process. In the absence of any provision in the Law of Succession Act, for relief or redress for persons aggrieved by such orders, the aggrieved parties have only two recourses under general civil law, that is to say appeal and review, to the extent that the same is permissible under the Law of Succession Act. I would believe that one can also apply for the setting aside or vacating of confirmation orders, where the same are obtained through abuse of procedure.”*

19. The other ground for revocation raised by the appellant is that he did not participate in the proceedings and that his signature was forged. This is an issue that the appellant ought to have raised before the trial court when he was given a chance to prosecute his summons for revocation. However, he did not take that opportunity thereby denying the court a chance to take relevant steps and make orders towards investigating the signatures on the pleadings. It was the applicant's obligation to provide sufficient evidence to prove his allegation as to forgery, which he did not do. Accordingly, his allegation of forgery, not having been dealt with in the trial court or proved, hereby fails.

20. As to the ground that the petitioner failed to name some beneficiaries, the issue would also have been well ventilated before the trial court if the parties had taken the opportunity they were given to be heard. However, none of them did so in order to prove their allegations either through *viva voce* evidence or through written submissions. The trial court had no option but to rely on the pleadings before it, and it reached a finding. To that end, there is no basis to revoke the grant

### **Disposition**

21. For all the foregoing reasons, the appeal lacks merit and it is hereby dismissed.

22. Orders accordingly.

**Delivered, dated and signed at Embu High Court this 21<sup>st</sup> day of January, 2026.**

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**R. MWONGO  
JUDGE**

**Delivered in the presence of:**

1. Kariuki for Respondent
2. Perminus Njiru Appellant in Person
3. Francis Munyao - Court Assistant