

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE NO. 34 OF 2000
IN THE MATTER OF THE ESTATE OF PETER NJUGUNA
KARUIRU (DECEASED)

NDIRANGU MACHARIA

APPLICANT

VERSUS

CHARLES NDIRITU NJUGUNA 1ST

RESPONDENT

JOSEPH NDIRANGU NDIANGUI 2ND

RESPONDENT

RULING

1. The deceased herein died on 29.03.1981, 45 years ago. This cause was filed on 07.02.2000 by Charles Nderitu Njuguna. He indicated that the deceased left Theresa Wangari Njuguna, a spouse and the petitioner, aged 80 years and 57 years respectively. Joseph Ndirangu Ndiangui was described as a purchaser at the time of filing. The cause was gazetted in April 2000. An application for confirmation of grant was made on

18.1.2001. The petitioner indicated that the only asset, being Tetu/ Muthuaini/391 was to be registered in the names of Joseph Ndirangu Ndiangui, absolutely. The grant was confirmed on 16.03.2001. Ndirangu Macharia sought to have the grant revoked for being obtained fraudulently. He posited that Joseph Ndirangu Ndiangui obtained the title fraudulently and as a result he was convicted of the fraud.

2. The said application was dismissed for non-attendance on 26.1.2010, and an application was filed on 12.02.2010 for reinstatement. That application was opposed not by the petitioner but the said Joseph Ndirangu Ndiangui.
3. The application for reinstatement was allowed by Sergon J, on 29.11.2010.
4. The Respondent, Joseph Ndirangu Ndiangui, posited that the petitioner sold him land around January 2001, which was paid by installments until 16.03.2001. Never mind that, as at 7.02.2000, he was indicated as a purchaser.
5. The petitioner, Charles Ndiritu Njuguna, supported the application for revocation. He stated that the late Peter Njuguna Karuiru(deceased) sold the said property long ago and surrendered interest to the applicant and moved out. He stated that the second respondent misled him that the applicant was his father, who had given him the land in Gatarakwa. Joseph Ndirangu Ndiangui financed the succession. He maintained that the land was sold to Ndirangu Macharia.

6. He said he was under mistaken but honest mistake that he was assisting the son of Ndirangu Macharia, who bought land. Upon discovery of the fraud, he reported the fraud. The said Joseph Ndirangu Ndiangui, was convicted on appeal. He denied the sale of the land.
7. The court has perused the said judgment and noted that Joseph Ndirangu Ndiangui was charged with the following counts:

Count 1: "On the 15th day of May, 2001, at Nyeri Lands Office, in Nyeri District within Central Province, with intent to defraud obtained a title deed for Tetu/Muthuaini/391 from land Registrar by falsely pretending that he was the right person to acquire the said Title Deed for the said parcel No. Tetu/Muthuaini/391 which had been earlier bought by Ndirangu Macharia from Njuguna Karuiru."

Count 2: "On the 15th day of May, 2001 at Nyeri Lands Office in Nyeri District of Central Province, with intent to defraud obtained a title-deed for Tetu/Muthuaini 391 from the Land Registrar by falsely pretending that he was the right person to acquire the said Title-Deed for a plot earlier bought by Ndirangu Macharia."

8. Joseph Ndirangu Ndiangui was convicted by Ombija J and sentenced to one year imprisonment. The sentence and conviction were confirmed by the Court of Appeal [ARM Visram, EM Githinji, MK Koome, JJ.A, as they then were, in **Joseph Ndirangu Ndiangui v Republic** [2013] KECA 390 (KLR), where they rendered themselves as follows;

The learned Judge, in reversing that decision, observed that the complainant had a “choice” between pursuing the issue of revocation, or criminal charges, and he chose the latter option. With great respect to both the courts below, we are of the view that the issue here is not one of choices - the complainant had a right to pursue all his rights simultaneously - to initiate criminal proceedings against the appellant, and to also apply for revocation of the Grant of Letters of Administration. In any event, the learned Judge eventually came to the right conclusion that on the basis of the evidence before the lower court, the prosecution had proved beyond reasonable doubt that the appellant was guilty of the two charges. We also affirm that decision, and find that this appeal has no merit, and dismiss the same.

9. The matter was stayed pending the determination of the criminal matter. Upon determination of the matter on the 6th day of February, 2013, the matter was available to proceed. However, nothing has been done until recently. Directions were given. The applicant indicated that they filed submissions in 2012. The respondent did not file the same. Given that these are the only submissions and there is only one issue, the court will subsume them in the analysis.

Analysis

10. The issues before me for determination are: -

- a) Whether the court ought to revoke the grant issued and confirmed herein.
- b) What orders ought to issue.

11. Revocation of the grant is provided under section 76 of the Law of Succession Act as follows:

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.

11. The main contention was that the grant was obtained and confirmation was fraudulent. There is no dispute that Joseph Ndirangu Ndianguui was a fraudster in two aspects. In the documents filed in court, he alleged to have bought the suit land in 2001. However, as at 7.2.2000, he was indicated as a purchaser.

12. Secondly, the land was already bought from the deceased. This was before 1981. The Court of Appeal, in **Joseph Ndirangu Ndiangui v Republic [2013] KECA 390 (KLR)**, settled this question of fact as follows:

We have examined the record carefully and concur with the submissions of the learned Assistant Deputy Public Prosecutor that indeed there is no merit in this appeal. The learned Judge rightly found that the complainant, Ndirangu Macharia (PW 1) had bought the suit land in 1960 long before the appellant was even born. Macharia built two houses on it, and lived there since 1960. Unfortunately, he had not effected the transfer in his name. The appellant took advantage of the situation, gave the Chief false information that he was the son of Njuguna Karuiru, the deceased previous owner of the suit land, and obtained Letters of Administration, which he used to obtain title to the suit land. When the complainant, the true owner, was threatened with eviction from his own land, he initiated criminal proceedings against the appellant. In finding the appellant innocent, it would appear that the learned Magistrate erroneously assumed that the complainant ought to have applied for revocation of the Grant of Letters of Administration issued to the

appellant instead of pursuing criminal proceedings against him.

13. Therefore, the applicant was the only person entitled to the suit land to the exclusion of anyone else. The agent is therefore liable for revocation. The same is consequently set aside. As a fraudulent transfer, it is not protected by the doctrine under section 93 of the Law of Succession Act. Secondly the applicant is in possession. He is protected by this court.

14. The next issue is costs for the cause. Costs are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of **Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR)** had this to say:

"It is our finding that the position in law if that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

15. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of **Jasbir Singh Rai**

**& 3 others v. Tarlochan Singh Rai & 4 others, SC
Petition No. 4 of 2012; [2014] eKLR**, as follows:

18. It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.

22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The

relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.

16. The applicant is a successful party. They are entitled to costs. Joseph Ndirangu Ndiangui should bear the same. The other respondent shall equally be entitled to half the costs. The applicant shall have costs of 125,000/= while the petitioner, Charles Ndiritu Njuguna, shall have costs of 80,000/=.

Determination

7. In the upshot, I make the following orders:

- a) The grant of letters of administration issued to Charles Ndiritu Njuguna and confirmed on 16.03.2001 is hereby revoked.
- b) Land Parcel Number Tetu/Muthuaini/391 shall revert to the name of the deceased to be distributed to the rightful heir.
- c) A fresh grant is issued to Ndirangu Macharia and Charles Ndiritu Njuguna. The new grant is confirmed in favour of Ndirangu Macharia, who is entitled to the whole share of land parcel Tetu/Muthuaini/391.
- d) The applicant, Ndirangu Macharia shall have costs of 125,000/=.
- e) Charles Ndiritu Njuguna, shall bear his own costs.

- f) Transmissions be completed by 19.07.2026.
- g) The file is closed

DELIVERED, DATED and SIGNED at Nyeri, on this 19th day of January 2026.

Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the Presence of: -

Mr. Kebuka Wachira for the Applicant / Protestor

No Appearance for the Petitioners / Respondents

Court Assistant -Michael