



**In re Estate of Kinyanjui Kanja (Deceased) (Family Appeal  
E017 of 2024) [2026] KEHC 440 (KLR) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 440 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
FAMILY APPEAL E017 OF 2024  
FN MUCHEMI, J  
JANUARY 22, 2026  
IN THE MATTER OF THE ESTATE OF J J  
(DECEASED**

**BETWEEN**

**JOSEPH MUGWE KINYANJUI ..... APPELLANT**

**AND**

**FRANCIS KANJA KINYANJUI ..... RESPONDENT**

*(Being an Appeal from the Ruling of Hon. I. F. Koome (SRM) delivered  
on 23rd May 2024 in Thika CM Succession Cause No. 416 of 2016)*

**JUDGMENT**

**Brief facts**

1. This appeal arises from the ruling of Thika Senior Resident Magistrate in CM Succession Cause No. 416 of 2016 whereas the court dismissed the application of the appellant that sought orders for review of the ruling delivered on 27<sup>th</sup> January 2022 whereas the court had dismissed the appellant's summons for revocation of grant. The said ruling was delivered on 23<sup>rd</sup> May 2024 which aggrieved the appellant.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 5 grounds of appeal summarized as follows:-
  - a. The learned trial magistrate erred in fact and law by dismissing the application for review and for revocation of grant.
  - b. The learned trial magistrate erred in fact and in law in failing to delve into the issue of revocation of grant and pronouncing it moot without any justification.
3. Parties put in written submissions.



## **Appellant's Submissions**

4. The appellant submits that the respondent filed a succession cause Thika CM Succession No.416 of 2016 without involving him. As such, the appellant did not participate in the said proceedings and neither was he notified of the existence of the cause. The appellant states that he came to learn of the said proceedings after he was served by the respondent with a notice to vacate a parcel of land which he has developed and lives together with his family for decades. The appellant then filed an application dated 9/09/2020 for revocation of grant which the trial court dismissed indicating that he was served with the pleadings and thus aware of the proceedings. He then filed an application of review of the said ruling on grounds that there was sufficient reason to review the impugned ruling but the court dismissed the application on the premise that the appellant did not demonstrate any new and important material discovered or that there was a mistake or error apparent on the face of the record. The appellant argues that the trial court did not address his ground of review as he did not consider his submissions and appreciate the fact that he built a permanent matrimonial house on the property before the death of his father who allocated him the said portion on parcel number Kiganjo/Gatei/142. The appellant argues that he has been living on the said portion of land with his family for decades yet the respondent went ahead and issued a notice to him to vacate parcel number Kiganjo/Gatei/2242 which arose from subdivision of parcel number Kiganjo/Gatei/142.
5. The appellant further argues that he did not participate in the succession proceedings of his father as he did not sign any documents filed in court. The appellant submits that he only participated in the proceedings upon filing the application for revocation of grant. The appellant argues that the grant issued to the respondent emanates from defective proceedings as he was never notified of the proceedings at the trial court neither did he participate in the same.
6. The appellant submits that the respondent has all along been stating that the appellant is getting the largest share of the estate which is not disputed. However, the respondent did not disclose that the subdivision and allocation is tantamount to disinheriting the appellant his rightful share that was allocated to him by his father before death.

## **The Respondent's Submissions**

7. The respondent submits that the appellant is a beneficiary of the greatest share of the estate of the deceased and from inception of the succession proceedings, frustrated the same as he has been aware of the proceedings and was always informed and served with court documents but he chose to stay away. The respondent submits that the trial court on 27/1/2022 made a determination and dismissed the appellant's application and he lodged an appeal in the High Court in Kiambu whereby the appeal was dismissed.
8. The lower court had been called upon to review a ruling that was subject to appeal proceedings in Kiambu Civil Appeal No. E138 of 2022 whereby Lady Justice Abigail Mshila dismissed the application with costs for being an abuse of the court process on 29/9/2023.
9. The respondent submits that the estate is comprised of land parcel number Kiganjo/Gatei/142 which was distributed as per the provisions of the amended certificate of confirmed grant dated 4<sup>th</sup> July 2019 with the appellant having the largest share in the estate.
10. The respondent argues that the appellant is litigious and does not appreciate that litigation must come to an end as he has not been disinherited.



11. The respondent relies on Order 45 of the Civil Procedure Rules, Section 80 of the *Civil Procedure Act* and the cases of *Shah vs Mbogo & Another* [1967] EA 116, *Francis Origo & Another vs Jacob Kumali Mungala* (no citation given) and *Equity Bank vs West Link MBO Limited* Civil App No. 78 of 2011 and submits that the trial court exercised its discretion and found that there was no error on the face of the record and no new facts were discovered. The respondent further submits that the learned judge in her ruling in *Kiambu High Court Civil Case No. E138 of 2022* re-evaluated the same issues that are currently before the instant court and dismissed the appeal and further held that the appellant had already obtained a larger share of the estate.
12. The respondent argues that the application for review was brought three years after the ruling was delivered and the delay was not explained thus it is unreasonable and inexcusable.

### **Issue for determination**

13. The main issue for determination is whether the appeal has merit.

### **The Law**

14. Being a first Appeal, the court relies on a number of principles as set out in *Selle and Another vs Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

“.....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 either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

15. In *Gitobu Imanyara & 2 Others vs Attorney General* [2016] eKLR the Court of Appeal stated that:-

An appeal to this court from a trial by the High 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.

16. From the above cases, the appropriate standard of review to be established can be stated in three complementary principles:-
  - a. That on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
  - b. That in reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and
  - c. That it is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.

### **Whether the appeal has merit**

17. On perusal of the record, the appellant herein filed an application dated 15<sup>th</sup> June 2022 in *Kiambu High Court* vide Civil Appeal No. 138 of 2022 seeking for leave of the court to file an appeal against



the ruling dated 27/1/2022 in Succession Cause No. 416 of 2016. The court on 29/09/2023 dismissed the said application for it lacked merit. Thus the instant appeal is lawfully before the court as it seeks to appeal against the ruling of the trial court delivered on 23/5/2024.

18. The appellant argues that he premised his application for review on the ground of sufficient reason on the basis that he built his permanent matrimonial home on the suit property and has lived there for decades with his family. Furthermore, his father, allocated the said portion to him before he died and the fact that he did not participate in the succession proceedings leading to the confirmation of the grant.
19. I have perused the appellant's application dated 30<sup>th</sup> November 2023 and submission dated 26<sup>th</sup> March 2024 and although the appellant sought for review of the ruling dated 27<sup>th</sup> January 2022, he did not premise his grounds for review on sufficient reason. The appellant in his affidavit gave an account of how the grant was confirmed on 25<sup>th</sup> February 2019 yet he was not aware of the same or involved in the said proceedings. The appellant gave the same account in his submissions and it is only in his conclusion that he submitted that he had adduced sufficient reasons why the grant ought to be revoked. Thus, it is evident that the appellant did not raise any grounds of sufficient reasons to warrant review and therefore it is unjust for him to argue that the trial court did not address that limb in his judgment while in fact the trial court did so in its judgment whereby the court held that the appellant did not demonstrate any other sufficient reason to warrant the review of the ruling dated 27/1/2022.
20. It is evident from the record that the appellant is a beneficiary of the estate of the deceased pursuant to the certificate of confirmation of grant dated 25/2/2019 whereby he was allocated 1.35 acres of land parcel Kiganjo/Gatei/142, being the biggest share. Thus, it is evident that the appellant does not stand to be disinherited. This issue was already dealt with by the High Court in Kiambu in Civil Appeal No. E138 of 2022 as the learned Judge found that the appellant received the biggest share in the estate as compared to other beneficiaries and therefore his allegations that he was disinherited are unfounded.
21. On further perusal of the record, the appellant did not demonstrate any new and important material that he discovered nor did he show any error apparent on the face of the record to warrant review of the ruling dated 27/01/2022. As such, the appellant did not demonstrate any sufficient reasons to warrant review of the ruling dated 27/1/2022. Furthermore, at the onset of the succession proceedings before the trial court, the respondent cited the appellant on 29/01/2018 and the trial court found that the citation was properly served upon the appellant and since he did not respond to the citation, the trial court issued letters of administration to the respondent. Further during the succession proceedings and even during the confirmation of the grant, the appellant was duly served vide affidavits of service filed in court. It is evident that the appellant was aware of the succession proceedings but he chose not to participate in the cause.
22. The appellant has further argued that he has built his matrimonial home on the said piece of land and he has lived there for decades with his family. It is my considered view that this line of argument is neither here nor there as it does not suffice as a sufficient reason to warrant review. Furthermore, the appellant was allocated 1.35 acres of the suit property, being the lion's share of the estate. The other three beneficiaries got 1.25 and 0.5 acres respectively a fact that was not disputed by the other beneficiaries. The appellant has received his share of inheritance in the estate.
23. The appellant argues that the trial court erred in not dealing with the matter of revocation of grant. I have perused the record and noted that the trial court did not delve into the issue of revocation of grant as the same had been rendered moot. The court having found that the appellant did not demonstrate that the impugned ruling ought to be reviewed, there was no point in considering the



prayer for revocation of grant. The said prayer could only have been considered if the appellant had shown cause that the ruling ought to have been reviewed which he failed to do.

24. The application for review was brought on 30/11/2023 and the impugned ruling was delivered on 27/1/2022 which is a period of over 11 months. It is trite law that an application for review ought to be brought promptly. The appellant herein did not explain the reasons for his delay in bringing the said application. It is my considered view that the application for review was brought with unreasonable and undue delay.
25. The court notes that the succession cause in issue was instituted in the year 2016 and it has been in court for over nine years and the matter is still pending despite the grant having been confirmed. The record shows that the appellant seems to be litigious and his continued pursuit has caused delay in the determination of these proceedings.
26. Consequently, I find that the appeal lacks merit and is hereby dismissed with costs to the respondent.
27. It is hereby so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 22<sup>ND</sup> DAY OF JANUARY 2026.**

**F. MUCHEMI**

**JUDGE**

