

REPUBLIC OF KENYA

IN THE HIGH COURT AT CHUKA

HCCA NO. E031 OF 2024

**IN THE MATTER OF THE ESTATE OF THE LATE
MURUA KAGUNDU (DECEASED)**

JEDLINE CIAMBURA MURUA.....1ST APPELLANT

JEREMY IRERI MURUA.....2ND APPELLANT

VERSUS

FREDRICK MWENDA NJUE.....RESPONDENT

JUDGEMENT

1. This matter relates to the estate of the late Murua Kagundu who died intestate in 1996 and was survived by: -

- i. Sacilia Ciekamba Muthungu - (wife, deceased)
- ii. Jeremy Ileri Mutua (Son, the 2nd Appellant herein).

- iii. William Mbaka Murua (Son, deceased)
- iv. Hariette Ciangai (daughter, deceased)
- v. Jedline Ciambuba Murua (daughter and the 1st Appellant).

2. On 31st October 2022 letters of administration were granted to Jeremy Ileri Mutua. The Respondent Fredrick Mwenda Njue filed summons for revocation of grant dated 24th July 2023 and be joined as a co-petitioner to the estate. On 7th August 2023 the trial court granted letters of administration to both Jeremy Ileri and Fredrick Mwenda which letters of administration were confirmed on 16th November 2023 as per the affidavit in support of confirmation dated 21st September 2023.

3. The affidavit dated 21st September 2023 by Fredrick Ileri, listed the following beneficiaries: - Sylvester

Ciangai, Fredrick Mwenda Njue, Carolyn Muthoni, Mary Kaari, Lucy Gaceri and Florence Kainyua. From the record, these are the direct beneficiaries of the late Japheth Murua Kangundu and the grandchildren to the late Murua Kangundu.

4. Jeremy Ileri, a co-administrator subsequently filed a Notice of Motion dated 13th May 2024 seeking the following orders:-

- (i) Spent
- (ii) Spent
- (iii) The grant of letters of administration issued jointly to Jeremy Ileri and Fredrick Mwenda and confirmed on 16th November 2023 be annulled.
- (iv) The consequent order of this honourable court of 2nd April 2024 authorizing the executive officer and/or administrator of the honourable court to

sign all the documents to effect transfer of parcel no. Karingani/Gitarene/227 and all attendance consequence be vacated.

(v) An order of temporary injunction be issued restraining the Respondent Fredrick Mwenda whether by himself, his agents, servants, employees, family members, nominees or whomsoever from dealing with, trespassing, disposing off, transferring, wasting, cutting down trees, harassing the Applicant or in any other way interfering with the whole or part of the estate pending the hearing and determination of this application inter partes.

(vi) Spent.

(vii) That the honourable court be pleased to order for the cancellation of all the titles arising out of the impugned order of 2nd April 2024.

(viii) Any other costs.

5. His application was founded on the grounds that he is the biological son of the late Murua Kangundu and with the consent of the other beneficiaries he obtained letters of administration in respect of the estate of Murua Kangundu. He argued that Fredrick (Respondent) obtained the grant of letters of administration fraudulently by making false statements and concealing material facts. Further, that he had omitted the beneficiaries of the estate of Murua Kangunda and instead brought in strangers as the beneficiaries.

6. On his part Fredrick averred that Jeremy Ileri had his own parcel of land being Magumoni/Mwonge/101 registered in his name by the late Murua Kangunda.

That Karingani/Gitarene/ 227 was meant for his late father Japheth Murua and would devolve to his beneficiaries. Further, that this parcel of land was given to his father by his grandfather who died before transmission.

7. On 5th September 2024 Hon. D.A Ocharo (SPM) in Chuka Chief Magistrates Succession Cause No. E052 of 2022 delivered his ruling in respect of the application dated 13th May 2024. The court dismissed the application with costs to the Respondent.

8. Dissatisfied with the ruling the Appellants Jedline Ciambura Murua and Jeremy Ileri Murua lodged the appeal on the following grounds as per the Memorandum of Appeal dated 23rd September 2024:

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- i. That the learned magistrate erred in law and in fact in failing to appreciate the grant confirmed on 16th November 2023 jointly to the 2nd Appellant and the Respondent disinherited all the lawful beneficiaries of the deceased.
- ii. That the learned magistrate erred in law and in fact by upholding a grant that awarded the entire estate of the deceased to the Respondent and other strangers of the estate of the deceased (without any proof of dependency) to the exclusion of the rightful beneficiaries to the estate.
- iii. The learned magistrate erred in law and in fact by ignoring the overwhelming evidence placed before him proving that the impugned grant had awarded the entire

estate of the deceased to total strangers to the estate while leaving out and disinheriting the rightful beneficiaries.

- iv. The learned magistrate misapprehended and misapplied the provisions of Section 29 of the Law of Succession Act by upholding a grant that excluded the children of the deceased from inheriting the estate.
- v. The learned magistrate erred in law and in fact by failing to consider the overwhelming evidence placed before him proving that the confirmed grant of the impugned letters of administration was obtained fraudulently by the making of false statements and concealment of material facts to the court.
- vi. The learned magistrate erred in law and in fact by failing to consider the overwhelming

evidence placed before him proving that of grant dated 11th November 2023 and the subsequent orders of 2nd April 2024 in favour of the Respondent were issued in the absence of and/or without the knowledge and participation of the rightful beneficiaries to the estate of the deceased.

- vii. The learned magistrate erred in law and in fact by failing to consider the overwhelming evidence placed before him proving that the impugned order of the confirmation of grant dated 1st November 2023 was obtained through forgeries purported to be the signatures of the 2nd Appellant herein and thereby misapplying the provisions of Section 76 of the Law of Succession Act.

- viii. The learned magistrate erred in law and fact by making a presumption that the 2nd Appellant had consented to being disinherited despite the 2nd Appellant tendering evidence proving that he had not and thereby disinheriting all other beneficiaries to the estate of the deceased.
- ix. The learned magistrate erred in fact and in law by holding that the 2nd Appellant's application for revocation or annulment of grant was an abuse of court process and thereby dismissing the application with costs.
- x. The learned magistrate erred in fact and law by not only disinheriting him but condemning him to pay costs of the application with costs in a family matter.

9. The Appellants prayed that the appeal be allowed and the trial court's ruling be set aside.

10. This being a first appeal, the Court is under a duty to re-evaluate, re-analyse and reconsider the evidence on record and draw its own independent conclusions while giving due allowance to the fact that it did not see or hear the witnesses testify. This duty was restated by the Court of Appeal in the case of **Imanyara & 2 others v Attorney General [2016] KECA 557 (KLR)** as thus:-

“This being a first appeal, it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and 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 allowances in this respect.”

11. The Appeal was canvassed by way of written submissions. The Appellant filed written submissions dated 29th May 2025 raising the following issues for determination: -
- i. Whether the 1st Appellant has standing to appeal.
 - ii. Whether the trial court erred in law and fact in confirming and upholding a grant that disinherited the lawful beneficiaries of the estate of the deceased.

iii. Whether the grant was obtained fraudulently by false statements, concealment of material facts and forgery.

iv. Whether the trial court ignored evidence of forgery and non-disclosure.

(v). Whether the trial court misapplied Section 29 of the Law of Succession Act by awarding the grant to the Respondent who is the grandson of the deceased intestate.

(vi). Whether the trial court erred in dismissing the revocation application as an abuse of the court process and in awarding costs against the 2nd Appellant.

12. The Respondent filed written submissions dated 14th July 2025 raising the following issues for determination: -

(i). Whether the 1st Appellant has the requisite locus standi to file the appeal whereas she was not a party in the trial proceedings in the magistrate's court.

(ii) Whether the ruling delivered on 5th September 2024 should be set aside or vacated.

iii. whether the appeal should be dismissed.

iv. who shall bear costs of the appeal.

13. I have considered the grounds as per the Memorandum of appeal and the respective submissions of the parties. The following issues lend themselves for my determination: -

- i. Whether the 1st Appellant has the requisite locus standi to institute and prosecute this appeal.
- ii. Whether the impugned ruling issued on 5th September 2024 should be vacated.

(i).Whether the 1st Appellant has the requisite locus standi to institute and prosecute this appeal.

14. The Appellants submitted that the 1st Appellant is a daughter of the deceased and a rightful beneficiary and her exclusion is a violation of her constitutional right to property. They submitted that daughters are entitled to inherit from their father's estate and cited the case on In **Re Estate of Kimotho Mukiria [2020] eKLR** in support of their argument.

15. They further submitted that as a daughter of the deceased and a beneficiary of his estate, she has the locus standi to approach the court for revocation of grant which was fraudulently obtained by the Respondent who is a grandson of the deceased and not a direct beneficiary. They relied on the following authorities: -

i. **Karega & 2 Others v Kiama & 2 Others [2022]**

KEHC 9980 (KLR) where the court held that the Applicant did not need any letters of administration to seek revocation of a grant.

ii. **In Re Estate of Kakua Kioko (Deceased)**

[2018] KLR where the court held that the Applicant being a bona fide beneficiary of the estate of the deceased was entitled to approach the court for redress.

16. The Respondent submitted that the 1st Appellant was not a party in the lower court proceedings whose decision is being appealed from and thus has no *locus standi* to institute the appeal. He cited the following authorities: -

i. **Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others [2014] KLR**

where the Court of Appeal held that where a person, not initially a party to a suit and wishes to participate, such party can upon application be enjoined to the suit as an interested party.

ii. **Kingori v Chege & 3 Others [2002] KLR**

where the court held that a proper party in a suit is one who has a subsisting direct and substantive interest in the issues arising from litigation which

interest will be recognizable in the court of law being an interest which the court will enforce.

17. The Respondent urged that the 1st Appellant was not a legal representative of the estate of Murua Kagundu and any proceedings brought by her were null and void. In support of this argument, the Respondent relied on the case of **Rugiri v Kinuthia & 3 Others [2024] KECA 1601 (KLR)** where the court held that where a suit is filed relating to a deceased's estate without a grant of representation, the proceedings were null and void for want of locus standi.

18. The question that immediately arises is whether, in the above circumstances of this case, the 1st Appellant possesses the requisite locus standi to maintain her appeal.

19. Jurisprudence abound that *locus standi* in proceedings is not a matter of technical form but a jurisdictional threshold. It determines whether a party has the legal capacity to move the court. It is also trite that proceedings touching on the estate of a deceased person must be conducted by, or against, persons recognized in law as having authority or representation.

20. In **Trouistik Union International & Another v Jane Mbeyu & Another**, [1993] KECA 89 (KLR) the Court of Appeal held that the personal representative of a deceased person is the only person who can sue or be sued on behalf of the estate. The Court stated that causes of action survive for the benefit of the estate, but they can only be enforced by a duly appointed legal representative. Similarly, in **Otieno v Ougo & Another**

[1987] KECA 79 (KLR), the Court of Appeal declared that an administrator is not entitled to bring an action as administrator before obtaining letters of administration; any action filed before such grant is incompetent *ab initio*.

21. It is critical however to distinguish between two distinct situations. The first concerns litigation brought on behalf of the estate in external civil proceedings. In such matters, the strict rule in **Trouistik and Otieno** (supra) applies that only a personal representative clothed with a grant has standing. The second situation concerns proceedings within a Succession Cause itself particularly applications for revocation under section 76 of the Law of Succession Act. In that context, the statute expressly permits “any interested party” to move the

court. A beneficiary of an estate falls under the category of an Interested Party.

22. The breadth of the phrase “any interested party” was interpreted in **Rajesh Pranjivan Chudasama v Sailesh Pranjivan Chudasama [2014] KECA 250 (KLR)** where the Court reiterated that locus standi in estate matters flows from a grant where a party seeks to litigate on behalf of the estate. Nonetheless, the Court acknowledged that beneficiaries and dependants have standing within the succession proceedings by virtue of their beneficial interest. Their standing in such instances is not derivative of a grant, but of their recognized interest under the Law of Succession Act.

23. Applying the above principles to the present appeal, the question is not whether the 1st Appellant required a grant to represent the estate. She does

not purport to sue on behalf of the estate in separate civil proceedings. Rather, she asserts that she is a beneficiary aggrieved by the refusal to revoke a grant allegedly obtained or confirmed in a manner prejudicial to her interests.

24. The more fundamental difficulty arises elsewhere. She was not a party to the revocation proceedings in the trial court. An appeal, by its very nature, is a continuation of the proceedings below. It is designed to correct errors of law or fact allegedly committed by the lower court in relation to the parties who were before it. As a general rule therefore, a person who was not a party to proceedings in the court below has no automatic right of appeal against that decision. Such a person is neither bound by the decree in the strict sense nor entitled, without more, to challenge it on appeal.

25. In succession matters, a beneficiary who alleges exclusion or concealment of material facts has a clear statutory remedy under section 76 of the Law of Succession Act, she may move the Succession court directly for revocation or annulment of the grant on grounds of fraud, concealment of material facts, or defective proceedings. The Statute does not confine that right to parties who participated in earlier proceedings. It extends to “any interested party.” Therefore, while she may well possess standing to initiate her own revocation proceedings, that is distinct from maintaining an appeal against a decision rendered in proceedings to which she was not a party.

26. From the above, it is clear that as a beneficiary, the 1st Appellant has a recognizable interest in the estate and would have *locus standi* to apply for

revocation in her own right within the succession cause. However, her competence to mount an appeal against a decision delivered in proceedings in which she was not a party is untenable unless she first regularizes her participation for example, by seeking joinder or demonstrating that she was improperly excluded despite having a direct and substantial interest. She can only participate in the appeal as an interested party but not as a direct party or litigant on appeal.

27. Accordingly, while the law is generous in recognizing beneficiaries as “interested parties” for purposes of revocation, it is equally firm that appellate standing cannot arise in a vacuum. A beneficiary who was not a party below must either demonstrate lawful participation or pursue the statutory remedy of revocation independently and in

proceedings in the court seized of the Succession Cause. Without that, the appeal, insofar as it is mounted by her, is procedurally untenable.

28. In sum, I find that that the 1st Appellant lacks the locus standi to bring the appeal as the 1st Appellant. She is struck out of the proceedings as an Appellant. For avoidance of doubt, the 2nd Appellant's appeal is competently before this court and is maintainable.

(ii).Whether the impugned Ruling issued on 5th September 2024 should be set aside.

29. The Appellant submitted that the grant issued to the Respondent was vitiated by concealment of material facts, forgery of the 2nd Appellant's signature and exclusion of rightful beneficiaries. It was submitted that the Respondent is a grandson of

the deceased and he deliberately misled the court into granting him the grant.

30. It was also submitted that the affidavit for confirmation of grant bore a forged signature. That the 2nd Appellant denied having signed and his assertion was not controverted.

31. The Appellant further submitted that the Respondent listed strangers (Silvester Ciangai Mukuru, Fredrick Mwenda Njue, Caroline Muthoni Japhet, Mary Kaari Japhet, Lucy Gacheri Japhet and Florence Kainyu Japhet) as beneficiaries while excluding the 1st and 2nd Appellants who are the biological children of the deceased. He relied *inter alia* in the case of **Re Estate of Kagonye Warindi (deceased) [2021] eKLR** where the court held that it could not countenance fraudulent practices where the grant confirmed and later rectified was obtained

through concealment of material facts and the proceedings to obtain the grant were defective in substance.

32. The crux of this appeal and the Application before the trial court, was the allegation that the grant obtained by the Respondent issued on 16th November 2023, was obtained fraudulently through concealment of material facts, non-disclosure of lawful beneficiaries or forgery thus calling for revocation under Section 76 of the Law of Succession Act.

33. The grounds raised for revocation of grant were not addressed by the trial court as the Application was summarily dismissed without hearing. In dismissing the Application, the trial court stated: “I find this Application by a joint Petitioner against a co-

petitioner to be an abuse of the process of the court and I dismiss it with costs to the Respondent -Co-Petitioner.”

34. The above summary ruling was a misdirection particularly because Section 76 of the Law of Succession Act clearly sets out the grounds upon which such an application can be brought. The trial court was under duty to hear the parties and indeed the affected beneficiaries on the Application in order to arrive at a determination.

35. Following the above, and the Application having not been heard on merits, I remand the matter back to the trial court.

36. In the end these are my final orders:-

- (i) The Appeal mounted by the 1st Appellant is struck out.

- (ii) The Appeal as mounted by the 2nd Appellant is allowed to the extent that the Ruling dated 5th September 2024 is set aside in its entirety.
- (iii) This matter is remanded back to the trial court for hearing and determination.

Orders accordingly.

Judgement delivered, dated and signed at Chuka this 5th day of March, 2026.

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R. LAGAT-KORIR
JUDGE

Judgement delivered in the presence of Ms Ochola for the Respondent and Ms Bett holding brief for Ms Mutua holding brief for the Applicant; Muriuki (Court Assistant.)