

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIVASHA

CIVIL APPEAL NO. E064 OF 2024

**IN THE MATTER OF THE ESTATE OF EDWIN MURUMBI
GITAU (DECEASED)**

JACINTA WAMBUI MURUMBE
APPELLANT
VERSUS
PAULINE NJERI MURUMBI
RESPONDENT

***(Being an appeal from the ruling of Hon. W. Rading (PM)
delivered on 23rd May 2024 in Naivasha CMSUCC. No.
E039 of 2020)***

JUDGMENT

Background

- 1.** The deceased herein, **Edwin Murumbi Gitau**, left behind several beneficiaries including his widow, who is the Appellant herein, and the Respondent, who is a biological daughter from a different marriage. The Appellant filed for and obtained a grant of letters of administration, which was confirmed on 11th October 2022. Pursuant to the confirmed grant, property **Muguga/Gitaru/1022** was transmitted and registered in the name of the Appellant's son, James Gitau Murumbe.
- 2.** The Respondent subsequently filed an application for revocation of grant, alleging that her identity as a beneficiary to the deceased's estate had been concealed,

that she was not notified of the proceedings, did not give consent, and was excluded from the distribution of the estate. The trial court agreed with the Respondent's arguments in the application and revoked the grant thereby setting the stage for the instant appeal.

3. The appeal was canvassed by way of written submissions which I have considered.

The Appellant's Case

4. The Appellant filed the Memorandum of Appeal dated 20th June 2024 in which he she listed the following ground of appeal: -

- i) ***The Learned Trial Magistrate erred in Law and in fact by considering the application in the absence of the other beneficiaries of the deceased's estate contrary to the principles of natural justice and rule 44 of the Probate and Administration Rules. As a result the deceased's son who is the registered owner title number MUGUGA/GITARU/1022 by virtue of transmission has been condemned unheard.***
- ii) ***The Learned Trial Magistrate erred in Law and in fact by failing to hold a hearing, through which viva voce evidence would have been taken as agreed by the parties on 20th February, 2024. As a result the Appellant has been prejudiced by being***

denied the opportunity to present evidence on the grant of title number MUGUGA/GITARU/1022 to the Appellant's son as a gift inter vivos.

iii) The Learned Trial Magistrate erred in Law and in fact by holding that the estate should be divided among the 3 children of the deceased equally thereby disinheriting the Appellant who is the widow.

iv) The Learned Trial Magistrate erred in Law and in fact by revoking the grant and making the Objector/Applicant a joint administrator yet she had not prayed to be made a co administrator while it is crystal clear all she wanted was a share of the estate of the deceased.

- 5.** The Appellant reiterated the grounds listed in the Memorandum of Appeal in her submissions and faulted the trial court for failing to involve other beneficiaries in the revocation proceedings, contrary to principles of natural justice and Rule 44 of the Probate and Administration Rules (Rules).
- 6.** It was submitted that the trial court wrongly revoked the grant instead of merely including the Respondent as a beneficiary and that since the Respondent did not seek to be appointed a co-administrator, the revocation was excessive.

7. It was the Appellant's case that the revocation has caused unnecessary inconvenience, especially because land registries often require gazettelement before registering transmissions. Reference was made to the decisions in the cases of ***Alton Homes Ltd vs. Davis Nathan Chelongi [2020] eKLR*** where the Court of Appeal discussed the issue of breach of natural justice and ***Kipkurgat arap Chepsiror vs. Kisugut arap Chepsiror CACA No. 24 of 1991***, where the court declined to revoke grants and instead ordered that the names of the applicants who had been omitted be included in the certificate of confirmation of grant.

The Respondent's Case

8. The Respondent, on the other hand, opposed the appeal and supported the ruling of the Chief Magistrate's Court revoking the grant issued to the Appellant.
9. The Respondent submitted that the original grant was obtained through concealment of material facts, false statements, and failure to obtain mandatory consent of entitled beneficiaries, in particular the Respondent, who is the biological daughter of the deceased.
10. The Respondent's case was that she was intentionally omitted from the petition for grant and the subsequent confirmation proceedings despite the fact that she is a

rightful beneficiary of the deceased's estate. She argued that her exclusion violated Rule 26 of the Probate and Administration Rules, which requires either the consent of all beneficiaries or renunciation of their rights.

- 11.** The Respondent submitted that the Appellant's deliberate failure to involve her constituted fraud, misrepresentation, and concealment of material facts, rendering the grant defective. She cited the decision in ***Samuel Wafula Wasike vs. Hudson Simiyu Wafula (CA No. 161 of 1993)*** for the principle that a grant obtained through false statements or concealment is liable to revocation as of right.
- 12.** Reliance was also placed on Section 76 of the Law of Succession Act (the Act), which allows revocation where proceedings are defective in substance, where the grant was obtained fraudulently and where essential facts were concealed or misrepresented.
- 13.** The Respondent further also relied on the following cases: -
 - a) ***In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR***, affirming revocation where survivors are not disclosed.
 - b) ***Tirus Mwaniki Njiru vs. Jane Igandu (2021) eKLR***, for the argument that discretion to revoke must be exercised upon evidence and not capriciously.
 - c) ***In re Estate of Mathenge Gichobi (Deceased) [2022] eKLR***, where the court confirmed the

mandatory nature of beneficiary consent under Rule 26.

- d) ***Ibrahim vs. Hassan & Charles Macharia (2019) eKLR***, where it was held that obtaining a grant without the consent of persons of equal priority renders the grant defective.

- 14.** On cancellation of the title issued through transmission, the Respondent submitted that once a grant is revoked, all actions taken pursuant to it are null and void, including transfers and transmissions. It was submitted that even if the property had already been transmitted to beneficiaries aligned with the Appellant, such transmissions cannot override the defective nature of the grant that facilitated them.
- 15.** The Respondent argued that the Appellant “stole a march” over her by completing transmission without her knowledge, and added that validating such actions would amount to endorsing unlawful conduct. It was therefore the Respondent’s case that cancellation of the titles was necessary to achieve substantive justice and allow fresh administration of the estate with all beneficiaries represented.
- 16.** On the court’s exercise of discretion, the Respondent submitted that under Section 47 of the Act and Rule 73 of the Probate and Administration Rules, the court has inherent jurisdiction to make orders necessary for the ends of justice. It was the Respondent’s case that the

subordinate court exercised this discretion properly because the Appellant acted to the detriment of the Respondent and excluded her from the process in a bid to vest property solely in her preferred beneficiaries.

- 17.** According to the Respondent, preservation of the estate required issuance of fresh letters of administration. It was submitted that the trial court was justified in revoking the grant and issuing fresh administrative orders in the interests of justice.
- 18.** The Respondent urged this court to dismiss the appeal in its entirety and uphold the trial court's decision with costs to her.

Issues for Determination

- 19.** Having considered the record, the rival submissions and law, I find that the following issues arise for determination:

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- a) ***Whether the grant issued to the Appellant was obtained through concealment of material facts or without mandatory consent of a beneficiary.***
 - b) ***Whether the trial court exercised its discretion judiciously in revoking the grant.***
 - c) ***Whether the revocation of the grant necessarily rendered the subsequent transmission and title invalid.***
 - d) ***Whether the appeal has merit.***

Analysis and Determination

- 20.** On whether the grant was obtained through concealment or without consent, I note that it was not disputed that the Respondent is a biological daughter of the deceased. It was also uncontested that she did not sign any consent, did not renounce her rights, was not involved in the confirmation process and was excluded from the schedule of beneficiaries.
- 21.** Rule 26 of the Probate and Administration Rules requires that in cases where a petitioner is not the only person entitled in equal priority, the petitioner must secure the written consent of all other beneficiaries, or written renunciation of their rights.
- 22.** Courts have consistently held that intentional exclusion of beneficiaries is sufficient ground for revocation, regardless of whether the omission was malicious or inadvertent. In ***Re Estate of Prisca Ong'ayo Nande (Deceased)*** (supra) the court held as follows: -

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process

was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of

being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

(See also ***Samuel Wafula Wasike vs. Hudson Simiyu Wafula and Ibrahim vs. Hassan*** (supra).

- 23.** My finding is that the exclusion/omission of the Respondent from the succession proceedings before the trial court was a material defect to the said proceedings which this court cannot overlook. I therefore agree with the Respondent’s position that the proceedings leading to the grant and its confirmation were defective in substance as provided under Section 76(a) and (b) of the Act.
- 24.** On whether the trial court exercised discretion judiciously, the Appellant argued that instead of revoking the grant, the trial court should have added the Respondent as a beneficiary. The law is however clear that revocation is the appropriate remedy where a grant is obtained through concealment, misrepresentation or defective proceedings.
- 25.** In the present case, I find that revocation of the grant was not arbitrary but was grounded in statute and precedent as the trial court considered the Respondent’s exclusion, the lack of her consent, and the statutory requirement of Rule 26.
- 26.** I therefore find that the trial magistrate acted within the confines of judicial discretion and applied the correct legal principles.

27. The question that then begs an answer is the effect of the revocation on the transmission of titles. It is trite that once a grant is revoked, any actions flowing from it fall with it. This is to say that a grant obtained unlawfully cannot vest genuine rights in beneficiaries, however innocent they may be. I am guided by the decision in ***Njaimwe vs. Ngugi & 3 others (Civil Appeal 313 of 2019) [2025] KECA 1979 (KLR)*** where the Court of Appeal addressed the issue of sale based on a revoked grant and held that: -

“...once a grant is revoked or set aside, any acts founded upon it are void and incapable of conferring good title.”

28. Similarly, in ***Daudi Kiptugen vs. Commissioner of Lands & 4 Others [2015] eKLR***, the Court held thus:

“...the acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a proper process, the title itself cannot be a good title. If this were not the position then all one would need to do is to manufacture a Lease or a Certificate of title at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein.”

29. I have already noted elsewhere in this judgment that the Respondent was not involved in the administration process, yet the estate was transmitted entirely to the Appellant's

son. I am satisfied that the trial court was justified in cancelling the titles arising from the defective grant in order to preserve the estate and restore fairness. My take is that the Appellant's argument regarding inconvenience at the Lands Registry cannot override statutory requirements.

- 30.** On the merits of the appeal, I note that the totality of the evidence shows that a mandatory beneficiary was wholly excluded from succession proceedings yet her consent or renunciation was not obtained as required by Rule 26 of the Probate and Administration Rules. It is thus clear that material facts were concealed and that the trial court correctly applied Section 76 of the Law of Succession Act and exercised its discretion lawfully.
- 31.** In sum, I find that the instant appeal is not merited and I therefore dismiss it and make the following final orders: -
- a) ***The decision of the Chief Magistrate's Court revoking the grant issued to the Appellant is upheld.***
 - b) ***All transmissions, transfers, and titles flowing from the revoked grant remain cancelled and of no legal effect.***
 - c) ***Fresh application for grant of letters of administration shall proceed in the subordinate court with full involvement of all beneficiaries, including the Respondent.***

d) Since this is a family dispute, each party will bear her own costs of the appeal.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 5TH DAY OF FEBRUARY, 2026.

HON. W. A. OKWANY

JUDGE

05/02/2026

FOR APPELLANT Osoro

FOR RESPONDENT Mathu

COURT ASSISTANT Karani