

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NYERI**  
**SUCCESSION APPEAL NO. 787 OF 2009**  
**IN THE MATTER OF THE ESTATE OF MBUTHIA KOMU**  
**alias MWANGI KOMU (Deceased)**

**DAVID MWANGI KOMU**

**alias DAVID KOMU .....**  
**APPLICANT**

**VERSUS**

**MUTHONI KOMU .....**  
**PETITIONER**

**RULING**

1. Wonders will never cease. Fraudsters have devised ways to circumvent legal processes in a way never imagined before. This matter brought to the core the need to remain eternally vigilant to maintain the dignity of the court.
  
2. By way of background, the late Komu Mbuthia died at a ripe old age of 71 years peacefully at Kenyatta National Hospital on 16.09.2000. His usual residence was Murang'a. He left behind three wives and several dependants and several parcels of land. Among them is land parcel number *Loc.14/Gakurwe/600* measuring 1.2 acres (0.48 ha). This parcel was registered in the name of *Mbuthia Komu* on 29.09.1966.
  
3. As in every misfortune, he had a son, Mwangi Komu, who died at the age of 16 years on 19.06.1971. By parity of

reasoning, he was born in 1955, making him 11 years old in 1966. Upon the demise of Komu Mbuthia, Jennifer Muthoni Komu, David Mwangi Komu, and James Mwangi Komu applied for and were granted letters of administration of the estate of the late Komu Mbuthia, alias Joseph Komu Mbuthia, vide Nairobi HC P 7 A 74 of 2001. At that point, the parcel had been left out, necessitating that the applicant protest to have it included. The disputation is ongoing. The applicant indicates that they have been on the suit land for over 60 Years. The estate appears to be highly contested between the three houses.

4. The petitioner herein is a party and is aware of the said dispute. In spite of the disputations, she filed a succession cause number 181 of 2008 at the Murang'a Law Courts. This was transferred to this court as 787 of 2009. At the time of confirmation, the respondent changed the name of the deceased from Mwangi Komu to Mbuthia Komu. The grant was confirmed and registered in the names of the Muthoni Komu and given to James Gathira Komu, Harrison Maina Komu, and Muthoni Komu, and the title was issued on 28.12.2010.
5. The applicants herein were unaware of the presence of the succession proceedings in Nyeri until they were served with Murang'a MCELC E085 of 2025.
6. The matter came to me for directions yesterday. It was brought to my attention that the death certificate used to

commence these succession proceedings was of a minor aged 16 years. The succession, however, concerned land belonging to an adult named Mbuthia Komu.

7. The chief's letter showed that the deceased was the owner of the land and was not married. They did not indicate to the chief that the deceased was a minor.
8. The applicants herein applied vide an application dated 14.11.2025 and sought the following prayers.
  - a) The applicant be allowed to file an objection out of time to the petition
  - b) Grant of letters of administration made to Muthoni Komu, the petitioner herein, and confirmed on 27.11.2009, be revoked /annulled.
  - c) Costs be borne by the administrator.
9. The grounds were that the grant was obtained fraudulently through concealment of the facts that the deceased herein is not the owner of the land parcel number Loc. 14/Gakurwe/600. The same belonged to Joseph Komu Mbuthia or Komu Mbuthia, who died on 6.09.2000. The children of the deceased in the first and second houses occupied the said parcel. The deceased died barely 10 years after the land was allocated to his father, Joseph Komu Mbuthia. The deceased minor could not have been the absolute owner of the land. It was also stated that Nairobi succession cause number 74 of 2001 is still pending, and the applicant is one of the administrators of the estate of Komu Mbuthia.

10. The respondent had not responded despite being served. I declined to adjourn the matter and required at least a reasonable explanation. The respondent sought to explain that the land belonged to the minor, but was evasive about how it was registered in the minor's name. I directed that this ruling be delivered today. Three factors were constant in my mind.
11. The suit land is subject to succession cause number 74 of 2001, and the deceased herein was Mwangi Komu and not Mbuthia Komu. He was also a minor. Lastly, the suit filed in LEC confirms that the applicant and his siblings are in possession of the suit land. I was alive to the fact that even as a subject matter of another cause, the court must be careful in how in-depth it goes into the sharing.
12. I will thus deal with three questions before giving my final determination. The question whether the deceased Mwangi Komu was the registered owner or whether it was the father, Mbuthia Komu. The first issue is whether, as of 1966, land could be registered in a minor's name.
13. The land was registered under Section 113 of the Registered Land Act, Cap 300(repealed) of the said act provides as follows:

113. (1) For the avoidance of doubt, it is declared that the name of a person under the age of twenty-one

years may be entered in the register either on first registration or as a transferee or on transmission.

(2) Nothing in this section enables any such person to deal with land or any interest in land by virtue of such registration, and, where to his knowledge a minor is registered, the Registrar shall enter a restriction accordingly.

(3) Where a disposition by a minor whose minority has not been disclosed to the Registrar has been registered, that disposition may not be set aside only on the grounds of minority.

14. The land, having been registered in a name without indicating that the owner is a minor, then the land can only belong to an adult.

15. The last issue is the root of the title. The land was given to Mbuthia Komu as a first registered owner. How will an 11-year-old child be registered without showing where he got the land from? The title belongs to an adult Mbuthia Komu. He died in the year 2000. There is a succession cause that the land in question is a subject.

16. The court is satisfied that the land belongs to Mbuthia Komu and not the deceased minor Mwangi Komu.

17. Knowing that there is an estate of Mbuthia Komu that was already filed in 2001, the applicant went ahead and filled this cause. This was fraudulent. The same was a nullity

since the applicant is using a death certificate of Mwangi Komu to start succession of Mbuthia Komu. Having been started without a base, then the proceedings are all a nullity. In **Macfoy vs. United Africa Co. Ltd [1961] 3 All E.R. 1169**, Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

18. The proceedings were a nullity *ab initio*. There is nothing to salvage. They were fraudulently instituted. They are therefore set aside. Setting aside is not enough as their effect remains. None benefits from fraud. Consequently, all transfers to the deceased's land parcel are hereby reversed. The land registrar, Murang'a County, shall delete all entries in land parcel number Loc.14/Gakurwe/600 measuring 1.2 acres (0.48 ha) and revert the title to the names of the deceased.

19. The minor did not have any asset except the assets of the late Joseph Mbuthia Komu. There is thus nothing to succeed. The entire cause is struck out. I shall, in the determination, make auxiliary orders to effect this order.

20. The net effect is that the application for revocation/annulment is allowed as aforesaid. This leaves the issue of costs, which 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 is 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.

21. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of **Rai & 3 others v Rai & 4 others** [2014] KESC 31 (KLR), 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.

22. Costs follow the event. The applicant has been subjected to an unnecessary expense. Costs of Ksh. 45,000/= shall suffice.

### **Determination**

23. In the upshot, I make the following Orders:

- a. The application dated 14.11.2025 is allowed. The proceedings herein were a nullity *ab inito*. Grant of

letters of administration made to Muthoni Komu the petitioner herein and confirmed on 27.11.2009 is hereby revoked /annulled.

- b. The land registrar, Murang'a County, shall delete all entries in **Land Parcel Number Loc.14/Gakurwe/600** measuring 1.2 acres (0.48 ha) and revert the title to the names of the deceased Mbuthia Komu (Deceased).
- c. The applicant shall have costs of Ksh 45,000/= payable within 30 days in default execution do issue.
- d. The petitioner to surrender the title deed to **Land Parcel Number Loc.14/Gakurwe/600** within 14 days.
- e. The matter will be mentioned before the Deputy Registrar on 8/4/2026 to confirm receipt of the said title for onward transmission to the land registrar for cancellation.

**DELIVERED, DATED and SIGNED** at **NYERI** on this **19<sup>th</sup>** day of **March, 2026**. Judgment delivered through Microsoft Teams Online Platform.



**KIZITO MAGARE**

**JUDGE**

**In the presence of: -**

Mr. Isindu for the Applicant

Ms. Macharia for the Respondent

Court Assistant - Michael/Martin

ORIGINAL