



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**SUCCESSION CAUSE NO 1108 OF 2013**  
**IN THE MATTER OF THE ESTATE OF MAIMBA KIURA (DECEASED)**

**NELIA NJERI KANGANGI & 5 OTHERS.....APPLICANTS**  
**VERSUS**  
**JASIEL MAIMBA KANGANGI & 4 OTHERS.....RESPONDENT**

**RULING**

[1] The applicant filed summons dated 25<sup>th</sup> March, 2025 seeking the following orders:

1. That an order do issue for reconstitution of the estate herein be cancellation of the entries noted as duty No. 2 and 3 in the register for the parcel of land L.R NO. MUTIRA/KIANGAI/195 for the same to revert to the name of the deceased MAIMBA KIURA.
2. That costs be provided for.

[2] The application is based on the grounds on the face of the application and the supporting affidavit of Josphat Muriuki Kangangi setting out the applicant's case that prior to the filing of the summons for revocation of grant on record, the suit land L.R o NO. MUTIRA/KIANGAI/195 had already been transmitted to the respondents who now hold it jointly as per the copy of register annexed hereto marked 'J'. It is now necessary for the suit land to revert to the name of the deceased for redistribution as ordered by this court upon revocation of grant on record.

[3] The Respondents deposed to a Replying Affidavit and avers that the court in KERUGOYA ELC CASE NO.143 OF 2015 by a judgement delivered on 7/5/2018 by B. N. OLAO, J. in a suit filed by the applicant against his late brother, the 1<sup>st</sup>

Respondent hereto, that the estate hereto comprised of L.R No .Mutira/Kangai/195 didn't and has never been part of his late father's estate.

- [4] The respondent avers that the Applicant despite being aware of this fact, has always prosecuted this succession cause as if it's their father's estate. The Applicant and 1<sup>st</sup> Respondent hereto occupies 2.9 Acres and 2 Acres respectively of L.R. No. Mutira/Kirimunge /196 which is the only known parcel comprised of his late Father's estate.
- [5] The respondent avers that they have never laid claim in this land although it's their late father's land because they are contented with what they have. Further, the respondent avers that cancelling the title Deeds at this stage while its clear they are the rightful beneficiaries is clear blatant and gross abuse of court process as the court might be forced to undo the same. Lastly, the respondent avers that they have no interest in the land held by the Applicant hereto belonging to their father's estate, but if the Applicant hereto will be deemed as a beneficiary of their late step grand father's estate hereto (L.R No. Mutira/Kangai/195) then they shall equally demand to share in their late father's (Mutira/Kirimunge /196) currently held by the Applicant.

### **Applicant's submissions**

- [6] The applicants submit that the present application is merely procedural and does not touch on the substance of the matter at hand. There is a judgment on record requiring redistribution of the deceased's estate after the grant on record was revoked by that judgment. That order cannot be effected as the grant had already been effected by transmission of the suit land to the respondents.
- [7] The order sought is only for the land to revert to the deceased's estate as envisaged in the judgment. That is the only way that the judgment on record can be complied with. The orders sought are only meant to give effect to that judgment.
- [8] The respondents are arguing on matters that have already been considered by this court in arriving at the judgment on record. They are inviting the court to sit on appeal of its judgment by reconsidering the same. That is an abuse of court process, the applicants submit.
- [9] Section 41 of the Law Succession Act on which this application is premised allows this court to make such orders as may be expedient. The applicants reiterate that the orders sought are merely for expediency to facilitate execution of the terms of the judgment on record, as without those orders the judgment remains vain, whereas it is

trite that a judgment of the court should not be rendered vain unless the same is set aside.

### **Respondent's submissions**

[10] The respondents submit that the application is premature as the estate has not been distributed as yet, the Applicant will have to file an application for confirmation of grant whilst the Respondent may or may not file a protest against it and then this court will have to make a determination of whether, the applicants are beneficiaries of the deceased estate or not. Until such a determination is made, the Respondents remain properly the registered owners.

[11] The court can then order for their cancellation at that stage or uphold their ownership if it upholds their protests. They submit that an order for prohibition and or maintenance of status quo pending the hearing and determination of the dispute on issue of the rightful beneficiaries will suffice as undoing the cancellation if the Respondents are confirmed as the rightful beneficiaries finally might be expensive than maintaining the status quo now.

[12] They further submit that this court dismisses this application and order the entries 2 and 3 of the register to remain until full and final determination of the succession cause and order prohibiting of the Respondent from alienating /transferring the Suit lands to the 3<sup>rd</sup> parties until hearing and determination of the suit to issue.

### **Issues for determination**

[13] The issues for determination are as follows:

- a. Whether this Court has jurisdiction to order cancellation of entries in the register for purposes of giving effect to its judgment.
- b. Whether the application is premature.
- c. Whether the orders sought should issue.

### **Analysis**

#### *Jurisdiction of the Court*

[14] The Court derives its jurisdiction from Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, which grant inherent powers to make such orders as may be necessary for the ends of justice. That the Court retains wide inherent powers to make orders necessary for preservation and

administration of estates. This is the remit of section 47 of the Law of Succession Act and Rules 49 and 73 of the Probate and Administration Rules, under which this application is professedly brought.

[15] This Court considers that it has jurisdiction to order rectification or cancellation of entries where necessary to implement its judgment.

#### **Whether the application is premature**

[16] The Respondents argue that the proper stage to determine ownership is at confirmation of grant. However, the Court has already revoked the grant and ordered redistribution. That decision has not been set aside or appealed against. The present application is not premature as it is aimed at facilitating execution of an existing judgment herein on application for revocation of Grant dated 12/11/2024.

[17] The order sought is facilitative towards the judgment of the Court in this Cause and a natural consequence of the revocation of Grant.

#### **Whether the orders should issue**

[18] It is common ground that the suit property is currently registered in the names of the Respondents following transmission under a grant that has since been revoked. The Court agrees with the Applicants that unless the register is rectified, the judgment on revocation and redistribution will remain incapable of implementation even after the confirmation of Grant. The submission of inconvenience in cancellation of the changes should the respondents finally be adjudged rightful beneficiaries of the parcel of land is not sufficient reason for withholding the lawful consequence of the order for revocation of Grant.

[19] The Court notes that although there is reference to this parcel of land **LR. Mutira/Kiangai/195** in the ELC case No. 143 of 2015, the judgment of the Court of 7/5/2018 only relates to **LR. Mutira/Kirimunge/196** which the Court held was held by the plaintiff Nelia Njeri Kangangi in trust for herself and the defendant Stephen Gichangi Kangangi.

[20] In this Succession Cause, upon revocation of the Grant, the Court (Mwongo, J.) by Judgment of 24/11/2024 ordered as follows:

#### **“Conclusion and Disposition**

***33. Ultimately, the 2nd Respondent's admission that the obtained the grant without***

*disclosing to the court the existence of the respondents who were equal beneficiaries is an admission that invokes the application of Section 76 Law of Succession Act on revocation.*

*34. In light of the foregoing discussion there is no doubt that the grant was obtained by concealment of material facts; namely that the deceased had two houses, each with children.*

*35. Accordingly, the application succeeds and the grant is hereby revoked; and any subdivisions from LR. No. Mutira/Kangail195 are hereby cancelled.*

*36. The applicants and the respondents shall select one person from each house to be administrators of the estate of the deceased to whom a fresh grant shall be issued by the Court.*

[21] The application before the Court sought to give effect to this order of the Court.

#### **ORDERS**

[22] Accordingly, for the reasons set out above, the Court finds merit in the application and it is allowed in terms of Prayer No. 1 of the Summons dated 25/3/2025.

[23] There shall be no orders as to costs.

*Order accordingly.*

**DATED AND DELIVERED THIS 16<sup>TH</sup> DAY OF APRIL 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

#### **Appearances:**

Ms. Nelia Njeri Kangangi.

Mr. Philip Maimba Kangangi.

Mr. Albert Chomba Kangangi.

Mr. C.M. Kingori for the Applicants.

Mr. Chomba for the Respondent.