

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
(CORAM: R. MWONGO, J.)

SUCCESSION CAUSE NO.143 OF 2009

IN THE MATTER OF THE ESTATE OF FRANCIS NJUE GIAKANU alias NJUE

GIAKANU (DECEASED)

NEWTON	GITONGA	NJUE.....1 ST
APPLICANT/BENEFICIARY		
JOSEPH	KARIUKI	MUGO.....2 ND
APPLICANT/ADMINISTRATOR		

-VERSUS-

SIMION	MUGO
NJUE.....ADMINISTRATOR/RESPONDENT	

R U L I N G

Summons for Revocation of Grant

1. The applicants filed summons for revocation of grant dated 06th May 2025 through which they seek the following orders:
 - a) That the letters of administration made out to Simion Mugo Njue and Joseph Kariuki Mugo on 27th August 2009 and the amended partial Certificate of confirmation of grant issued on 23rd February 2024 be revoked and/or annulled;
 - b) That the land parcel nos. Gaturi/Nembure/1082, Gaturi/Nembure/996, Gaturi/Nembure/4750 and KCB shares (331553 and 540784) be restored in the names of the deceased; and
 - c) That costs of this application be granted to the applicants.
2. The application was premised on the grounds that the grant and certificate of confirmation were procured without the knowledge of the applicants. That at the point of confirming the grant, the court was misled as to who the beneficiaries of the estate were. That included the fact that a part of the estate was distributed to strangers viz: Pentecostal Gospel Center Churches and Mission of East Africa and Kiarie Giekanu.
3. Through the supporting affidavit to the summons for revocation, the applicants proposed a different mode of distribution of the estate of the deceased. That estate as noted comprises land parcel nos. Gaturi/Nembure/1082, Gaturi/Nembure/996, Gaturi/Nembure/4750 and KCB shares (331553 and 540784). They also prayed

that once the existing certificate of confirmation is set aside, the named assets be reverted to the name of the deceased for redistribution.

Preliminary Objection

4. The respondent filed a preliminary objection dated 19th June 2025 on grounds that the matter was *res judicata*, because the issues raised through the summons for revocation had already been raised in a summons for revocation dated 03rd April 2024 which was determined by this Court's judgment.

Parties' Submissions

5. The applicants submitted relying on the averments made in the supporting affidavit to the summons for revocation of grant and rehashing them. They stated that if the amended certificate of confirmation of grant is not revoked, then they will suffer loss and remain landless. Further, they proposed a fresh mode of distribution, but did not submit on the preliminary objection.
6. On the other hand, the respondent stated that the exact issues raised in the summons were determined by the court through a judgment delivered on 30th April 2025, and they are *res judicata* now. That the amended certificate of confirmation of grant espouses the position reached in 3 different mediation settlement agreements which were adopted as orders of the court, finally resolving the administration of the estate.

Issue for Determination

7. The issue for determination is whether there is merit in the preliminary objection and or the summons for revocation.

Analysis and Determination

8. A preliminary objection must raise a point of law which, once determined, has the ability to determine the whole suit. This was established in **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696** thus:

"....A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."

9. The main ground of the preliminary objection is that the applicants are seeking orders arising from issues that were determined on merit by this court. The

summons for revocation of grant herein is identical to the one dated 03rd April 2024. The only difference is that the very same facts are being deposed by different beneficiaries of the same estate which still has the same administrators. The court, through a judgment delivered on 30th April 2025 determined these issues and dismissed the summons for revocation of grant, giving its detailed reasons.

10. It is noted that all the applicants herein were included as beneficiaries in the amended Partial Certificate of Confirmation of Grant dated 23rd February, 2024 that emanated from three Mediation Settlement Agreements. These agreements were adopted as orders of the court, and have not been set aside or challenged on an appeal. Indeed, one of the present applicants Joseph Kariuki Mugo is a co-administrator with the Respondent herein.

11. *Res judicata* is a matter of law anchored in Section 7 of the Civil Procedure Act which provides as follows:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.” [Emphasis added]

12. Similarly, in the case of ***The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others, [2017] eKLR***), it was held that:

“For the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;

a) The suit or issue was directly and substantially in issue in the former suit.

b) That former suit was between the same parties or parties under whom they or any of them claim.

c) Those parties were litigating under the same title.

d) The issue was heard and finally determined in the former suit.

e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.” [Emphasis added]

Conclusion and Disposition

13. Having carefully considered the issues herein, I have no doubt that in essence, the jurisdiction of this court is exhausted, the court having pronounced itself on the issues raised in the present summons for revocation of grant. This was done through a detailed judgment dated 30th April, 2025. It is also worth noting that the summons for revocation is fatally defective because the impugned amended certificate of confirmation of grant was drawn from Mediation Settlement Agreements which were adopted by the court and remain unchallenged to date.
14. In the result, the preliminary objection has merit and is hereby allowed. Accordingly, the summons for revocation of grant dated 06th May 2025 is hereby dismissed in its entirety. The issues raised therein were determined by this court through the judgment delivered on 30th April 2025.
15. The file is hereby closed.
16. Orders accordingly.

Delivered, dated and signed at Embu High Court this 29th day of April, 2026.

**R. MWONGO
JUDGE**

Delivered in the presence of:

1. Ms. Njagi holding brief for Kathungu for Administrator/Respondent
2. No Representation for Joseph Kariuki M.
3. No Representation for Newton Njue – 2nd Applicant
4. Francis Munyao - Court Assistant