



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CIVIL APPEAL NO. E038 OF 2025

GITHU KIBUNJA.....1ST APPELLANT
 GACHIRIGWA NDII.....2ND APPELLANT
 JOSEPH MURIGI NGANGA.....3RD APPELLANT

VERSUS

GLADYS WANGITHI MAINA.....1ST RESPONDENT
 BERNARD KIRONJO MUTUTI.....2ND RESPONDENT
 JEREMIAH MAINA.....3RD RESPONDENT
 EUNICE WAITHIRA.....4TH RESPONDENT
 SAMUEL GATHUMBI.....5TH RESPONDENT
 PERIS MUTHONI.....6TH RESPONDENT
 SELIVA NJERI.....7TH RESPONDENT

*(Being an appeal from the Ruling of Hon. S. M. Nyaga (P.M) in Baricho Succession Cause
 No. 93 of 2017 delivered on 27/2/2025)*

JUDGMENT

[1] Upon the withdrawal of the Summons for Revocation of Grant dated 15/9/2022 filed by the **1st Appellant** on 3/11/2022, the **1st Respondent** herein filed another application dated 20/1/2023 seeking the revocation of the Grant issued to the 1st Appellant on 22/10/2002 and amended on 7/7/2022 on the grounds that **it was obtained fraudulently by making a false statement and/or concealment from the court of something material to the case.**

[2] The 1st Appellant swore a replying affidavit on 7/2/2023 in opposition to the application. He urged that the application for revocation of the Grant had been overtaken by events as the transmission had been effected and the land subdivided.

- [3] Leah Nyanguthii Gachurio swore a Replying Affidavit on 22/2/2023 urging that the grant was issued by the court properly and openly to all the beneficiaries.
- [4] Peris Muthoni, Eunice Waithira, Samuel Gathumbi, Bernard Kironjo Mututi and Jeremiah Maina filed statements dated 10/8/2023 in support of the application.
- [5] Leah Nyanguthii Gachurio and Anthony Kabiru Kabuku filed witness statements dated 12/6/2024 in opposition to the application.
- [6] Upon *inter partes* hearing of the application, the trial court revoked the Grant of Letters of Administration and proceeded to distribute the estate afresh.

The Appeal

- [7] On appeal, the Appellants filed their Memorandum of Appeal dated 26/3/2025 raising five (5) grounds as follows:
1. *The learned Magistrate erred in allowing the Summons for Revocation of Grant which was filed more than 34 years after the cause was filed in court, the court thus appearing to assist the indolent as the same has been in the public domain for all this time.*
 2. *The learned Magistrate erred in blaming the first appellant entirely for not including the respondents in the succession proceedings without equally questioning the respondents' inertia and yet they come from the same locality and they have been passively following the proceedings.*
 3. *The learned Magistrate erred in law and in fact in not appointing a new administrator after revoking the grant that was issued to the first appellant. In fact the learned Magistrate did not issue a fresh grant to any administrator.*
 4. *The learned Magistrate erred in law and in fact in confirming a non-existent grant immediately after revoking the existing one notwithstanding the statutory period.*
 5. *The learned Magistrate erred in law and fact by holding that the 2nd appellant's entitlement was due to fraud yet there was evidence produced during trial that he bought land from the deceased and has been living therein since 1979, his claim was as a creditor not a beneficiary.*

Duty of the Court

[8] This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle v Associated Motor Boat Co. & others [1968] E.A. 123*).

Oral Evidence

[9] **AW1 Gladys Wangithi Maina**, the 1st Respondent herein and the Applicant in the trial court testified that, *“I am a daughter to the deceased. 1st respondent is my brother. 2nd respondent - nephew. 3rd respondent – purchasers. 4th respondent – purchasers, 5th respondent - Wife to my brother’s wife, 2nd respondent - is my nephew, 3rd, 4th, 5th, 6th are my nephew/nieces. 7th applicant was married by my nephew. Meaning 2nd to 7th applicants are children of my sister Francisca Wanjiku. I was not involved in the Succession. I have authority to act for the other applicants. I wish to rely on affidavit and annexures to my summons of 20/01/2023. I also seek to rely on further affidavit filed on 22/2/2023. I deny having been involved in the Succession process. I pray to get my share and children of Franciscas.”*

[10] On cross examination by counsel for the Appellants, she stated that, *“We are 5 siblings. Myself, Githu, Francisca, Jane and Gilbert. I was not involved in the Succession. 3rd respondent bought part of 463 from my father. He lives and built in the two acres. 1st respondent - Son stays in 463. 2nd respondent mother is Jane Wambui. My sister she was buried therein. I attended the burial. I did not fence off her grave. 5th respondent live in 463 with her children. I do not know when the succession was filed. I have been visiting land 463. I would even spend there while visiting to cultivate my piece. I never attended any meeting. I do not know if deceased is registered owner of 463 and 876.”*

[11] On cross examination by counsel for Leah Nyanguthi, she stated that, *“I am a beneficiary. I was married in 1979 a short distance away. Dad died in 1981. I only attended burial. I never visit again until 1988 when I attended mum’s burial. I used to visit mum between 1981-1988. Jane Wambui my sister in 2019. I would visit her at Thika. She never told me about the Succession. They concealed the process. I never attended D.O's meeting. My sister Francisca did not tell whether she was called to any meeting.*

The 1st respondent told me to pay for the succession in 2021. I visited him in September, 2023. He told me the land had been subdivided. I then filed this application. I had no money. Franscisca was married and lived in suit land. The applicants are children of my sister Franscisca. They live and have land with their father. I want them to get a share of their mother Francisca. I do not know if they have letters from court to follow up their mothers right. I have no such letters. I am not aware of gazettelement process and its purpose I was not invited at the chief meeting. I had a portion in 463. I stopped in 1983 when they demolished my parents house and destroyed my bed. 5th respondent has no house in the suit land. She has 7 children. She had another land and sold. I have no evidence; my dad not shared his land before death. He had no WILL. He had no WISHES before death. This is not an afterthought.”

[12] In re-examination, she stated that, *“I never attended any meeting anywhere. I believed my dad’s two parcels are intact. 3rd respondent is a bonafide purchaser of 2 acres. 1st and 5th respondent demolished my late parents house. I then stopped cultivating my piece given by my parents. I am pursuing Franscisca’s and my share on the two parcels. We are both disinherited. Jane Wambui - died and her son 2nd respondent was given land.”*

[13] **RW1 Githu Wa Jeremiah of Rukanga**, a son to deceased and the 1st Appellant herein adopted his replying affidavit sworn on 07/2/2023 as his evidence in chief. He went on to state that, *“I did not involve the applicants in the Succession.”*

[14] On cross examination by counsel for the 1st Respondent, he stated that, *“I would not have gone to look for the applicants (rudely responds). My dad had shared the land before death. I was the Petitioner in the Succession case. I only expressed the wishes of the deceased. Dad had subdivided the land. There was no WILL. The land was subdivided on the ground. My advocate has all the documents. That is why I did not inform Gladys and Franscisca. I could not have gone to look for them (rude). I did not apply to amend the grant. (The witnesses have vehemently denied amendment of grant). I gave 4th respondent one acre. He was helping in the Succession. We would fuel his car. I have not given him any land (contract). The amended grant is a mistake. It is court that allowed the amended grant. Where was the mistake? (rude) I could not go looking for Gladys and Fransisca (rude). I would not go to look for them at their home (??) rude.”*

[15] On cross examination by counsel for Leah Nyanguthi, he stated that, *“I filed a replying affidavit. I rely on content. I share the land as per our dad's wishes. 1st applicant was married before dad's demise. Francisca Wanjiku was living on suit land. She was given 3 acres. She (Francisca) was not given any land by dad. She had been married. I strictly relied on deceased wishes. We to date live in that formula. 1st applicant did not follow up. Matter until now. We never met with Gladys during Succession. I took only due beneficiaries to the chief.”*

[16] In re-examination, he stated that, *“I strictly pursued my fathers wishes. 4th respondent was our driver during Succession. We gave him one acre in appreciation. He was helping us.”*

[17] **RW1 Leah Nyaguthii**, the 5th Respondent in the trial court adopted her replying affidavit of 22/2/2023 and witness statements dated 02/6/2024 as her evidence in chief. She went on to state that, *“I am wife to Gilbert Gacheru late son to deceased. We live in suit land. We built therein. We involved all the siblings to the family. That was at chief's office. Gladys is married nearby. She never wanted the land. That is same case to Francisca. They used to visit home-suit land. The 2nd to 7th respondent live with their father Dickson. She died about two years ago. I seek dismissal of application. We expressed deceased's wish.”*

[18] On cross examination by counsel for the Appellants, she stated that, *“The court process began about 1993. We informed Gladys & Francisca. Jane is the one who led to errors in the 1st grant since she did not know my dad's wishes. 3rd defendant is a bonafide buyer. He lives therein. 4th respondent was given land by consent of all of us. We live on suit land with 1st respondent son.”*

[19] On cross examination by counsel for the 1st Respondent, she stated that, *“We involved Gladys and Francisca. Githu was the petitioner. I should be believed. Githu was the petitioner. There was no written WILL. Josphat is now deceased. He was present in a meeting. No minutes Githu was present. I do not know why he failed to mention it in court. Jane was given 3 acres to hold in case in trust for the other two sisters in case they come back home. Kinyeki son of Jane was given some land - 3 acres. That land was for the daughters. That land should be shared equally among the three daughters. Titles can be revoked. I do not know why the other two girls were not involved. I believed they were involved. The three girls were in discussions. The other two ladies did not participate in*

the court process. They attended prior meetings. I amended grant. I was given seven (7) acres. It was deceased Wishes. 4th respondent was given one acre by entire family since he conducted the Succession process. We did not imagine the applicants would turn around.”

[20] **RW2 Anthony Kabuku**, adopted his witness statement of 12/6/2024 as his evidence on chief.

[21] On cross examination by counsel for the Appellants, he stated that, *“Jane was given 3 acres. Deceased left his wishes. 3rd respondent had bought 3 acres.”*

[22] On cross examination by counsel for the 1st Respondent, he stated that, *“Deceased was my uncle. The deceased told me his wishes. He noted in a book. Jane took over the title and that book/record. She did not return them. I do not know if matter was reported. Gladys was informed by Githu but he ignored. He failed to attend. I was then working in Nairobi (how did he know Githu called Gladys). This case began in 1993. The daughters visited each other and Jane and Gladys would attend court together. I did not record it in my statement. Deceased had 3 daughters Gladys, Jane and Francisca. Deceased gave Jane land. Mother to 2nd respondent Jane had separated with her husband. He was given bigger land since the husband gave the deceased Kshs. 6,000/=. That land was not for the three daughters but the family committee said it should be held for the 3 daughters. Now it belongs to her son only 2nd respondent was given the land by consent of all his siblings. The others daughters have land from where they are married. Jane was holding in trust for the two other sisters. The father was against giving land to Married daughters.”*

Submissions

[23] The Appellants fault the trial court for entertaining an application tainted with laches and aiding indolence contrary to established equity. They urge that the Respondents cannot sit back for years, watch property devolve and then claim exclusion, by dint of the doctrine of acquiescence. They maintain that the 2nd Appellant was a *bona fide* purchaser for value, and cite **Re Estate of Musau Kitavi (Deceased) [2022] KEHC 15474 (KLR)**.

[24] The Respondents urge that the Grant was obtained by concealing material facts and omission of 2 beneficiaries, and cite **Wangigi Kamiti (DCS) (2022) KEHC 3078**

(KLR) and Khisa & Another v Nalika & Another (Family Appeal E008 OF 2023 (2015) KEHC 5797.

Analysis and Determination

[25] From the grounds of appeal, the singular issue for determination is whether the revocation of the grant of letters of administration and the subsequent distribution of the estate was grounded in law.

[26] Section 76 of the Law of Succession Act sets out the requirements for revocation or annulment of grant as follows:-

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;***
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;***
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;***
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—***
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or***
 - (ii) to proceed diligently with the administration of the estate; or***
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or***
- (e) that the grant has become useless and inoperative through subsequent circumstances.”***

[27] The Court in re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR), (W. Musyoka J) considered the scope of the court's authority under section 76 of the Law of Succession Act, as follows:

“8. 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.”

[28] It is apparent from the record that the 1st Respondent, Franscisca, Lucy and the Appellant, are daughters and a daughter-in-law respectively of the deceased. It is discernable from the testimonies of the witnesses that the daughters of the deceased were discriminated upon on the basis of their gender and marital status. Anthony Kabuku stated on cross examination that, **“Deceased had 3 daughters Gladys, Jane and**

Francisca. Deceased gave Jane land. The father was against giving land to Married daughters.”

[29] The 1st Respondent herein testified that, ***“I am a daughter to the deceased. 1st respondent is my brother. 2nd respondent - nephew. 3rd respondent – purchasers. 4th respondent – purchasers, 5th respondent - Wife to my brother’s wife, 2nd respondent - is my nephew, 3rd, 4th, 5th, 6th are my nephew/nieces. 7th applicant was married by my nephew. Meaning 2nd to 7th applicants are children of my sister Francisca Wanjiku. I was not involved in the Succession. I pray to get my share and children of Franciscas. Franciscas was married and lived in suit land. The applicants are children of my sister Franciscas. My dad not shared his land before death. He had no WILL. He had no WISHES before death.”***

[30] The Appellant acknowledged on cross examination that, ***“I would not have gone to look for the applicants. My dad had shared the land before death. I only expressed the wishes of the deceased. Dad had subdivided the land. There was no WILL. The land was subdivided on the ground. That is why I did not inform Gladys and Franciscas. I share the land as per our dad’s wishes. 1st applicant was married before dad’s demise. Franciscas Wanjiku was living on suit land. She was given 3 acres. She (Franciscas) was not given any land by dad. She had been married. I strictly relied on deceased wishes.”*** In re-examination, he acknowledged that, ***“4th respondent was our driver during Succession. We gave him one acre in appreciation. He was helping us.”***

[31] The evidence on record, taken cumulatively reveals that the Appellant, the 1st Respondent and Franciscas (now deceased) were children of the deceased and thus beneficially entitled to inherit from his estate.

[32] The Petitioner conceded that he had shared out part of the estate with purchasers, who were in the strict sense of it, strangers to the estate, at the expense of the rightful beneficiaries.

[33] The sale by the 1st Appellant before the confirmation of the Grant, transcend the limited scope of a succession court, which is confined to ascertaining the assets of the deceased, the persons beneficially entitled thereto and the corresponding distribution thereof. As properly held in ***Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR***, the court (W. Musyoka J.):-

“The Law of Succession Act, and the Rules made hereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the Civil Procedure Act and Rules, which have elaborate rules on suits by and against executors and administrators.”

[34] This court is, therefore, satisfied that the Grant could not stand and was properly revoked pursuant to the provisions of section 76 of the Law of Succession Act despite passage of time since confirmation. The appeal must fail in that respect.

[35] However, as properly urged by the Appellants, the trial court revoked the Grant without appointing a new administrator. In order to finally put this matter to rest, the 1st Appellant and the 1st Respondent will be appointed as administrators. The distribution of the estate shall remain as decreed by the trial court.

ORDERS

[36] Accordingly, for the reasons set out above, the appeal is allowed to the extent only that the trial court erred in failing to appoint new administrator(s) to the estate.

[37] The Court appoints the 1st Appellant and the 1st Respondent as co-administrators to the Estate of the Deceased for distribution of the estate as decreed by the trial court.

[38] There shall be no order as to costs in the succession matter.

Orders accordingly.

DATED AND DELIVERED THIS 30TH DAY OF APRIL 2026.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Kebuka with Ms. Maina for the Appellant.

Mr. Igati Mwai for Respondent.