



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Mwangi & 3 others (Environment and Land Appeal
E001 of 2021) [2024] KEELC 3488 (KLR) (27 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 3488 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL E001 OF 2021**

AK BOR, J

FEBRUARY 27, 2024

BETWEEN

LUCY WAMBUI MWANGI APPELLANT

AND

MONICA WAMBUI MWANGI 1ST RESPONDENT

BEATRICE WANGUI MWANGI 2ND RESPONDENT

GRACE NJOKI MWANGI 3RD RESPONDENT

ELIZABETH WAITHIRA MWANGI 4TH RESPONDENT

JUDGMENT

1. Being dissatisfied with the judgment of Hon. Ben Mararo, Principal Magistrate, which was delivered in Nanyuki Chief Magistrates ELC Case. No 138 of 2018 on 13/7/2021, the Appellant filed this appeal. The Respondents sued the Appellant claiming that as their stepmother and widow of their late father, Francis Mwangi Eustace (the late Eustace) who died on 20/9/2002, she was appointed sole representative and administrator of his estate vide Nanyuki Chief Magistrates Court Succession Cause No. 2 of 2003. The Respondents claimed that the Appellant had unjustly enriched herself to their exclusion and that she had failed to render a full account of the estate to the beneficiaries.
2. The Respondents further claimed that their late father purchased several properties including Laikipia/Nanyuki/West Timau Block 2/638 (Matanya Marura) which was fully developed and where the Appellant resided; Laikipia/Nanyuki/West Timau Block 2/639 (Matanya Marura) which was developed; Gakawa/Githima Block 1/Burguret/1515 which was undeveloped and two other plots at Matanya, Chuma. They claimed that he also owned Likii Staff Plot No. G3 Nanyuki Town with fourteen rental houses from which the Appellant collected rent. In addition, he owned plot numbers 633 and 665 in Matanya Marura which were undeveloped besides plot No. 3570 Sweetwaters where they claimed their mother was buried. The Respondents claimed that these properties were registered



- in the Appellant's name to hold in trust for their benefit and the other beneficiaries of the estate of their late father. They claimed that the funds from the Public Trustee, Nyeri were also intended for the beneficiaries of the estate of their late father.
3. The Respondent claimed that the Appellant had breached her duty as a trustee by failing to account to the Respondents for the assets comprising the estate of their late father and the income accruing from the estate; by refusing to share the funds received from the Public Trustee and the rental income from the Likii property with the Respondents; by administering the estate in stealth without involving the Respondents; refusing to convey to the Respondents parcel No. 665 (Matanya Marura, 357 Sweet waters and Likii Staff plot No. G3. They claimed that the Appellant had unjustly enriched herself at the expense of the other beneficiaries and that she had failed to properly distribute the estate. Further, that she had refused to surrender the original title for Laikipai/Nanyuki West Timau Block 2/33 (Matanya Marura) to the Respondents yet the land is registered in their joint names.
 4. The Respondent sought various reliefs including a declaration that as the legal representative and administratrix of the estate of Francis Mwangi Eustace (deceased), the Appellant had a duty under law to render a full account of all the assets forming the estate of their late father as well as incoming accruing from it. They sought a declaration that the Appellant held Laikipia/Nanyuki Marura Block 3/3570 (Sweetwaters), Laikipia Nanyuki West Timau Block 2/633 and 665 (Matanya Marura) and Likii staff Plot No. G3 Nanyuki Town, in trust for the Respondents and an order directing the Appellant to convey and transfer those properties to the Respondents. They also sought to have the Appellant directed to surrender the original title for Laikipia/ Nanyuki West Timau Block 2/633 (Matanya Marura) to the Respondents and an order to restrain the Appellant from dealing with those parcels of land before the suit was determined. They sought an order for the Appellant to render a full account of the monies received from the Public Trustee, Nyeri on account of the deceased's estate, rental income derived from Likii Staff No. G3 and the proceeds of sale of motor vehicle registration number KBD 152, motor cycle number EKVY 470, Harambee Cooperative shares, British American shares and funds held in their late father's bank account with Kenya Commercial Bank, Nanyuki.
 5. The Appellant denied the Respondents' claims in her defence filed on 1/2/2016. She averred that she applied for letters of administration to the estate of the late Eustace in Nanyuki Senior Resident Magistrate Court Succession No. 2 of 2003 which in her view, dealt with the issue of probate over the estate of the late conclusively. She pleaded that save for Laikipia/Nanyuki West Timau Block 2/638 which was registered in the name of the late Eustace, she held the other properties in her own right as sole proprietor and they were not subject to any trust because it was not the intention of the deceased to confer the properties to her subject to any trust. She maintained that she had not received any money on behalf of the estate from the Public Trustee while elaborating that she enjoyed the income from the Likii Plot in her own right as proprietor.
 6. The Appellant denied being in any fiduciary relationship with the Respondents and added that the Respondents voluntarily surrendered the title deed for Laikipia/Nanyuki West Timau Block 2/633 (Matanya Marura) to her on 24/11/2004 because they had coerced her into transferring that parcel of land to them and so they merely retransferring it back to her.
 7. The Appellant claimed that the suit was res judicata Nanyuki Senior Resident Magistrate Court Succession 2 of 2003, which was where their claim should have been raised, canvassed and determined. She concluded that the court lacked jurisdiction owing to the fact that the matters raised were succession issues and should have been raised in the appropriate court.
 8. The matter proceeded for hearing before Hon. Njeri Thuku on 27/11/2018 when Monica Wambui Mwangi gave evidence. She told the court that the other Respondents were her sisters and the Appellant



was their stepmother. Their mother and father separated in 1982 following which their father married the Appellant. She confirmed that before the demise of their father, they related well with their stepmother such that their father transferred some of his properties to her to hold in trust for them. That it was only after their father died, that they started having conflicts because the Appellant refused to share the properties left by their father. She claimed that the Appellant filed Nanyuki Succession Cause No. 2 of 2003 without involving them as his daughters and that she caused all the assets registered in their father's name to be transferred to her. She confirmed that there were attempts to resolve the dispute and added that the other relatives pleaded with the Appellant to allow them to inherit their late father's property but the Appellant refused.

9. She explained that during their father's lifetime, he purchased the following properties; Laikipia/Nanyuki West Timau Block 2/638 (Matanya Marura) which was fully developed and where the Appellant resides; Laikipia Nanyuki West Timau Block 2/639 (Matanya Marura) which was fully developed and the Appellant resided thereon; Gakawa/Gitima Block 1/Barguret 1515, two plots at Matanya/Chuma, Likii Staff No G3, Laikipia/Nanyuki West Timau Block 2/633 and 665 (Matanya Marura) and Laikipia/Nanyuki West Timau Block 3/3570 (Sweetwaters) where the Respondents' mother was buried. She claimed that the Appellant was solely enjoying the rental income and the proceeds from the sale of the motor vehicle and motor cycle as well as the funds held in the account and the shares.
10. She urged the court to direct the Appellant to transfer parcel numbers Laikipia/Nanyuki West Timau Block 2/665 (Matanya Marura) and Laikipia/Nanyuki West Timau Block 3/3570 (Sweetwaters) where the Respondents' mother was buried to the Respondents. They also wished to have the title for Laikipia/Nanyuki West Timau Block 2/633 (Matanya Marura) surrendered to them since they are the registered owners. They sought to collect rent from the Likii property and to have the Appellant render a full account of all the monies received from the Public Trustee, rental income and the proceeds of sale.
11. She claimed that their late father transferred the land known as Laikipia/Nanyuki West Timau Block 2/665 (Matanya Marura) to the Appellant to hold in trust for them as the children. She explained that the Likii plot had fourteen houses and that the Appellant was to transfer seven of these houses to them. She told the court that she used to collect rent and lived on the Likii plot but was chased away after her father died. She contended that the Appellant was holding Block 2/638 in trust for them.
12. On cross-examination, the 1st Respondent conceded that there was no mention of trust in the land registers. She claimed that they did not know about the grant and only learnt of it later despite the fact that they signed the consent for the grant. She stated that parcel number 633 was registered in her name and her sisters following a meeting held at their grandmother's place. She maintained that the Appellant voluntarily transferred the land to them, only for her to incessantly harass them later until she was forced to give her the title. She clarified that Likii Plot G3 which had rental houses erected on it was not registered in the Appellant's name.
13. She produced a copies of green cards showing that parcel No. 633 was transferred to the Respondents on 27/11/2002; parcel No. 665 was transferred to the Appellant on 7/6/2002; and parcel No. 639 was transferred to the Appellant on 7/6/2002. The card for parcel No. 3570 indicated the proprietors as Rose Wanjiru Mugereki and Esther Wachira Kiruthi. She also produced a copy of the affidavit in support of the petition for letters of administration intestate which the court notes included the names of the Respondents. She also produced what appears to be minutes of a meeting signed by the District Clerk, which are not legible. She produced a demand letter dated 23/12/2003 from Mwirigi M'Inoti and Co. Advocates addressed to the District Commissioner complaining about the Appellant filing the succession cause without informing the Respondents.



14. On cross-examination, Miss. Wambui confirmed to the court that all her siblings were adults. She maintained that the Appellant was obligated to give half of the plot with the houses to them. She clarified that the money held by the Public Trustee was given to them equally and that she was not claiming any shares or money held in the account. Further, she clarified that the land and the assets which they were now claiming were not part of the succession cause because they were not registered in their father's name. Their father died on 20/9/2002.
15. In her evidence before Hon. B. Mararo tendered on 2/12/2020, the 2nd Respondent conceded that there was no indication on the green cards that the Appellant held the property in trust for them. She reiterated that they had a right to inherit the money as beneficiaries and that the Appellant got shambas from their late father which she was to distribute as part of the estate.
16. The 3rd Respondent similarly gave evidence and reiterated that the parcels of land belonged to their late father. The explanation she gave was that their father gave the land to the Appellant because he had been interdicted but that he later died. She relied on the letter dated 6/9/1980. She clarified that the contested property was not part of the estate of the late Eustace. She stated that some of the property was in their father's name while he had transferred others to their stepmother during his lifetime. She relied on the document written by their late father which stated that they were to distribute the land as they pleased.
17. When the 1st Respondent was recalled to give evidence, she told the court they were involved in the succession cause where the Appellant was appointed administrator. She confirmed that the properties they seek did not form part of the deceased's estate and that Summons for Confirmation of Grant were issued and the Respondents gave their consent. She confirmed that the succession proceedings had been concluded. The Respondent produced a copy of the official search for the Sweetwaters property.
18. The Appellant gave evidence and told the court that she was the surviving widow of the late Eustace. She told the court that she only held parcel No. 638 Matanya Marura in trust for the Respondents. She added that her late husband was an enlightened person having been a Chief and that he would have transferred his property to her with an unequivocal expression of trust in the register had that been his intention. She emphasised that the Respondents were fully aware of the succession proceedings to the extent that they influenced the District Commissioner to blackmail her to transfer parcel No. 633 Matanya Marura to them as a condition for getting the letter confirming the heirs of the deceased. She stated that the Respondents were all adults who had set up families and residences elsewhere. She added that they were not her late husband's dependants at the time of his death.
19. It was the Appellant's evidence that the Respondents consented to the confirmation of the grant and distribution of the assets of the estate of the deceased vide which two parcels of land and shares at Standard Bank were given to her. She claimed that parcel no. 638 belonged to her husband while parcel nos. 639, 633 and 265 were hers as well as the Likii Plot. Further, that the two plots in Matanya were hers and that parcel no. 1815 was transferred to her. She explained that she transferred parcel No. 633 Matanya to the Respondents after they threatened her with the District Commissioner's Clerk and her brother-in-law but that the land was later returned to her. She maintained that there was nothing to show that she held the property in trust because she was to hold the properties on behalf of her children. She did not put the parcels of land in the list because they belonged to her. She added that the pension funds were shared amongst them and that she retained the sale proceeds from the motor vehicle for the young children. She reiterated that the Likii plot as well as parcel numbers 635, 636 and 3570 belonged to her.
20. On cross-examination, she conceded that plot no. 633 was still registered in the Respondents' name even though she claimed the land was hers. She explained that she sold the second plot due to her



- children's needs and added that she did not know that she required the consent of the Respondents to do that. They went to the District Clerk to try and resolve the matter and claimed that she was threatened by the Clerk. According to her, her husband transferred plot no. 665 Matanya Marura to her because she nurtured his children. Plot 659 was also hers as was number 3570. She stated that her husband changed the title deeds. She stated that she did not list all the properties in the succession matter and expounded that there were three properties at Matanya which were in her name. She maintained that she was coerced to transfer plot no. 635 but added that 3.2 acres were to be transferred to the Respondents.
21. In considering the matter, the Learned Magistrate adverted to the letter written by the deceased on 6/9/1998 to the effect that his estate would be inherited by his sons and daughters and the Appellant. The Learned Magistrate observed that from the evidence on record and the admission of the Appellants, not all the assets of the deceased were listed in the succession cause where the Appellant was the administrator. The Learned Magistrate indicated in the judgment that he would restrain himself to Laikipia/Nanyuki Marura Block 3/3570 (Sweetwaters), Laikipai/Nanyuki West Timau Block 2/633 (Matanya Marura) and Likii Staff Plot No. G3 Nanyuki Town.
 22. The trial court noted that parcel numbers 665 and 639 were transferred to the Appellant by the deceased on 7/6/1998 while parcel No. 638 and Burguret 1515 were the only parcels listed as part of the estate of the deceased and that the Appellant had disposed of the second parcel without the consent of the Respondents. The court observed that that was in bad faith and the Appellant was not acting in the best interest of the beneficiaries of the estate of her late husband. Further, the Learned Magistrate stated that under African custom, the Respondents should have been left to take care of the land where their mother was buried. Regarding the Likii plot, the court observed that the 1st Respondent testified that she used to stay there and collected rent. The court went ahead to direct that the rent proceeds from that property should be shared between the Respondents and the Appellant. Additionally, the court was of the view that since parcel no. 633 was registered in the Respondents' name, the original title should have been returned to them.
 23. The Learned Magistrate issued a declaration that the Appellant as the legal representative and administrator of the estate of the deceased had a duty to render a full account of all the assets which comprised the estate of the deceased and any income accruing from that estate. Further, the court issued a declaration that Laikipia/Nanyuki Marura Block 3/3570 (Sweetwaters), Laikipia West Timau Block 2/633 (Matanya Marura), Laikipia/Nanyuki West Timau Block 2/665 (Matanya Marura and Likii plot No. G3 were held in trust for the Respondents. The court directed the Appellant to surrender the original title deed for Laikipia/Nanyuki West Timau Block 2/633 (Matanya Marura) to the Respondents. The court also required the Appellant to render a full account of the monies received from the Public Trustee on account of the deceased, rent and income from the Likii plot, proceeds from the sale of motor vehicle, Harambee Cooperative Shares, British American insurance shares and monies from the bank account of the deceased.
 24. The Appellant filed the Memorandum of Appeal which she amended on 23/2/2023. The main grounds of appeal are that the Learned Magistrate erred in holding that the Appellant was not entitled to hold the Likii staff plot in Nanyuki town as her property and to receive income as its absolute registered owner; and that the court erred in finding that the motor vehicle, motorcycle, money held in the deceased's bank account at KCB Nanyuki as well as the shares held in British American insurance and Harambee Cooperative were not her property. She also took issue with the Learned Magistrate's failure to hold that Laikipia/Marura Block 3/3570 Sweetwaters, Gakawa/Githima Block Burguret 1515 and Laikipia Nanyuki Marura Block 3570 Sweetwaters as well as Laikipia/Nanyuki West Timau Block 2/633, 638, 639 and 665 Matanya Marura were her property alone.



25. In addition, she faulted the Learned Magistrate for failing to find that the estate of her late husband had been distributed with finality through Nanyuki SRM Succession Cause No. 2 of 2003 and that the suit before the trial court was therefore *res judicata*. Further, she faulted the Learned Magistrate for ordering her to account for funds without any evidence to show that she had received money from the Public Trustee, who she contended was not joined as a party to the suit. The Appellant was also aggrieved by the court's finding that she was in breach of trust and the fiduciary duty yet in her view the Respondents voluntarily consented to the distribution of the three properties that formed the estate of the deceased, being Laikipia/Nanyuki West Timau/638 Matanya Marura/Burguret 1515 and the shares in Standard Chartered Bank through Nanyuki SRM Succession Cause No. 2 of 2003 and for ordering the transfer of parcel no. Block 2/633 Matanya Marura.
26. The court gave directions that the appeal would be canvassed through written submissions. Parties filed submissions which the court considered. The Appellant submitted that this being a first appeal, it had to be decided on facts and the law, and that a court of first appeal could appreciate the entire evidence and come to a different conclusion. The Appellant submitted that she was the sole owner of Likii plot no. G3. She claimed that the previous owner Jane Wanjiku Wachira, transferred the land to her vide the transfer dated 3/6/1991 and the letter dated 11/8/1995. She contended that there was no evidence to show that this parcel of land belonged to the deceased. She urged that there was no basis for construing any trust in that property. Further, she contended that the Learned Magistrate made a determination on matters which were outside the jurisdiction of that court including the orders directing her to give a full account of the funds received. She argued that this could only be pursued in the probate proceedings by the court which dealt with the succession cause. The Appellant relied on Article 162 (2) of *the Constitution* and pointed out that that jurisdiction only extended to matters relating to the environment and the use, occupation and title to land. She also cited Section 13 of the *Environment and Land Court Act*.
27. The Appellant submitted that Laikipia/Marura Block 3/3270 Sweetwaters was registered in her name and adverted to the mutation for parcel no. 1693 claiming that it bore her name. She clarified that this land was subdivided to create parcel numbers 3568 to 3570 and that at no time were any of these parcels of land registered in the deceased's name. She emphasised that she had her own property and pointed out that Laikipia/Nanyuki West Timau Block 3/633 Matanya Marura was transferred to her name in 1994. She claimed that she transferred this land to the Respondents when they threatened her but that they later returned the title to her. Regarding the two plots in Chuma, she pointed out that there were no documents produced to prove that those plots existed.
28. She submitted that the deceased transferred and registered Laikipia/Nanyuki West Timau Block 2/639 and 665 (Matanya Marura) on 7/6/2002 during his lifetime and contended that there was no evidence presented to show that the deceased was of unsound mind. She asserted that the plots were an outright gift to her. She relied on Section 2 of the *Law of Succession Act* and the definition of the estate and free property. She urged that from the inventory of assets, the free property of the deceased only comprised of Laikipia/Nanyuki/West Timau Block 2 (Matanya Marura)/638 and Gakawa Githima Block 1/Burguret 1515, which formed the subject matter of the succession cause. She maintained that the Respondents failed to address that issue during the succession proceedings by requiring an account of gifts *inter vivos* that the Appellant was entitled to before the estate was distributed.
29. The Appellant submitted that the position in law regarding gifts *inter vivos* was that such gifts were complete and irrevocable if certain elements were satisfied in the lifetime of the deceased. She relied on *Twalib Hayatam & Another v Said Saggar Ahmed Al-Herdy & 5 Others* [2015] eKLR in support of this point.



30. The Appellant urged the court to be guided by Sections 24, 25 and 26 of the *Land Registration Act* on the rights of a registered owner of property. She reiterated that the two parcels of land were registered in her name as gifts inter vivos during the lifetime of her late husband and that there was no express trust created by the deceased in favour of the Respondents. She emphasized that the intention of the deceased in her favour could not be ascertained and that a resulting trust could not be inferred from the circumstances. She maintained that the assets which formed part of the estate of the deceased were those listed in succession matter which was finalised.
31. The Respondents submitted that parcel numbers 665, 639 and as well as two other properties were transferred by the deceased to the Appellant on 17/6/2002 which was three months before his death and they therefore contended that she was to hold them in trust for herself and the children of her late husband. The Respondents argued that the existence of a trust can be inferred from the conduct and intention of parties at the time of transfer. They relied on the note dated 6/11/1985 vide which the deceased stated that his property belonged to his sons, daughters and the Appellant to share as they chose. They argued that the intention of their late father while transferring the two properties was for the Appellant to hold them in trust. The Respondents relied on *Charles Mohorai & 3 others v Joseph Mwita Mogeno & another* [2016] eKLR in support of their argument that there was no requirement in law for the particulars of the trust to be noted in the register.
32. The Respondents submitted that it was not controverted in evidence that when their mother died in 1997, she was buried on parcel 3570. Their late father transferred this property to the Appellant but they argued that the court rightfully found that the Appellant held that land in trust. On the Likii plot, the Respondents referred the court to the minutes and resolution of the meeting held in the DCs which stated that the 1st Respondent was to continue collecting rent. They deduced that had this property belonged to the Appellant solely then the 1st Respondent would not have been permitted to collect rent from it.
33. They faulted the Appellant for selling two of the plots listed in the Confirmation of Grant which she held in trust for her children without the consent of the court or the Respondents. They contended that the trust was not discharged through a court order before the sale and to that extent the trial court correctly found that the Appellant breached the trust.
34. The Respondents contended that the principle of res judicata did not apply because plot No. G3 Nanyuki town was not part of the estate in the succession cause and that the issue of the Appellant holding that property in trust for the Respondents was not an issue in the succession cause. Further that, the jurisdiction of the probate court was limited to the distribution of the estate and did not include determination of disputes over ownership. The Respondents relied on *In Re Estate of Mbae Wainaina (Deceased)* [2015] eKLR where the court observed that the mandate of the probate court under the *Law of Succession Act* did not extend to determining issues of ownership of property and the declarations of trust, which were the preserve of the Environment and Land Court. They also relied on *Pacific Frontier Seas Ltd v Kyengo & another* [2022] KECA 396 (KLR) on the question of the jurisdiction of the probate court.
35. The Respondents conceded in their submissions that this court lacked jurisdiction to entertain the dispute relating to the monies held by the Public Trustee, shares, and the funds held in the bank account based on Article 162 (2) of *the Constitution* and Section 13 of the Environment and Land Court. They urged the court to dismiss the appeal.
36. The issue for determination is whether the court should grant the orders sought in the amended memorandum of appeal and set aside the judgment of the Learned Magistrate. The gist of the Respondents claim before the trial court was that the Appellant failed to list some of the assets



- which belonged to their late father in the succession cause and that the Appellant held the properties enumerated in the suit in trust for the Respondents.
37. The first prayer sought among the reliefs was a declaration that the Appellant as the legal representative and administratrix of the estate of the deceased had a duty under law to render a full account of all the assets forming the estate of the deceased and any income accruing from the estate. This prayer could not properly be sought and granted by the Environment and Land Court based on the jurisdiction conferred upon this court by *the Constitution* and the law. The same position would apply to prayer (e) which sought to have the Appellant directed to render a full account of the monies received from the Public Trustee, rental income from the Likii Staff plot and the sale proceeds arising from the sale of motor vehicles and shares.
 38. It is not in dispute that Laikipia/Nanyuki West Timau Block 2/633 (Matanya Marura) is registered in the Respondents names. The Respondents sought an order for the Appellant to surrender the title over this parcel of land to them. Despite the Appellant's contention that she was forced to transfer this land to the Respondents, she did not counterclaim this land or seek to have the title held by the Respondents cancelled. As the registered proprietors of this parcel of land, the 1st, 2nd and 4th Respondents enjoy the rights of a registered proprietor of land under the *Land Registration Act*.
 39. If indeed the 1st Respondent lived in the Likii Staff plot and collected rent from it during the deceased's lifetime as she claimed, then the Respondents should have applied before the probate court to have this property included among the assets of the deceased. The court notes that the parcels of land known as Laikipia/Nanyuki West Timau Block 2/639 and 665 were registered in the deceased's name on 7/6/94 and 28/10/98 respectively. From the copies of the green card produced by the Respondents, it would seem that they were both transferred to the Appellant on 24/10/2002 even though that date is crossed out and 7/6/2002 written over it. The deceased died on 20/9/2002. A determination ought to have been made by the probate court as to what comprised the assets of the deceased and what constituted his free property.
 40. The *Law of Succession Act* constitutes the law of Kenya in respect of and has universal application to all cases of intestate or testamentary succession to estates of persons who died after the commencement of the Act. The Act deals with the administration of the estates of those persons. This is the law applicable to the administration and distribution of the assets of the deceased in this case. This Act gives the powers and duties of the legal representatives and also requires an applicant for grant of representation to give a full inventory of the assets and liabilities of the deceased under Section 51. Section 76 of the Act allows the probate court to revoke or annul grants of representation obtained fraudulently by the making of false statements or concealment from the court of something material to the case. The grant may also be revoked where the person to whom the grant was made fails after due notice and without reasonable cause to produce to the court the inventory or account of administration required under the Act or who fails to administer the estate diligently.
 41. Having reviewed the evidence that was adduced before the trial court and taking into account the totality of the facts in this matter as well as the law, this court, just like the trial court which sat as an ELC, lacks the jurisdiction to entertain the dispute relating to the monies held by the Public Trustee, the stocks and shares which the late Eustace owned, the claim relating to the sale of the motor vehicle and motorcycle as well as the funds held in the bank account. Those claims fell within the purview of the court which handled the probate matter and distribution of the assets of the Estate of the late Eustace, which is Nanyuki SRMC Succession Cause No. 2 of 2003.
 42. Save for prayer (c) of reliefs sought in the plaint dated 29/2/2016, the proper court seized of the jurisdiction to deal with the claims is the court that handled the succession cause being Nanyuki SRMC



Succession Cause No. 2 of 2003. That is the court to make a determination as to what assets belonged to the late Francis Mwangi Eustace and were available for distribution among the beneficiaries of his estate. It is that court that can determine whether there was intermeddling with the assets of the deceased and whether the Appellant failed to give a full inventory of all the assets of the deceased as required by Section 51 (2) (h) of the [Law of Succession Act](#).

43. The appeal is partially allowed. The decision of the trial court is set aside except the order directing the Appellant to surrender the original title deed for Laikipia/ Nanyuki West Timau Block 2/633 (Matanya Marura to the Respondents.
44. This being a family dispute, each party will bear its costs.

DELIVERED VIRTUALLY AT NYAHURURU THIS 27TH DAY OF FEBRUARY 2024.

K. BOR

JUDGE

In the presence of: -

Mr. Wabandi Gacheru for the Appellant

Ms. Joyce Nduta for the Respondents

