



In re Estate of the Late Wambui Njeru (Deceased) (Succession Cause 38 of 2007) [2025] KEHC 669 (KLR) (31 January 2025) (Ruling)

Neutral citation: [2025] KEHC 669 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 38 OF 2007
SM MOHOCHI, J
JANUARY 31, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE WAMBUI NJERU (DECEASED)

BETWEEN

MICHEAL MUCHOKI NJERU ADMINISTRATOR

AND

FRANCIS KOIYA NDIRANGU OBJECTOR

RULING

1. The Applicant by way of Summons for Review of Grant dated 3rd June, 2024, seeks a review of the Certificate of Grant issued on 28th November, 2023 and the same be rectified in the following terms in the following terms:-
 - a. A portion of quarter ($\frac{1}{4}$) Acre out of LR No. NYandarua/Oljero-orok Salient/1328 be sold and the proceeds thereof be used to cater for legal costs and estate administration expenses;
 - b. A portion of ($\frac{1}{2}$) Acre out of LR No. Nyandarua/Oljero-orok Salient/1328 be registered in the names of Nicholas Kariuki Njeru in trust for the deceased family;
 - c. The remaining land be shared out among the estate beneficiaries as follows;
 - i. Peter Kariuki Mwatha.....1 Acre
 - ii. Monicah Nyokabi Macharia.....($\frac{3}{4}$) Acre
 - iii. Jane Wanjiru Githogori.....($\frac{3}{4}$) Acre
 - iv. Micheal Muchoki Njeru.....1 Acre
 - v. Susan Watetu Gichuki.....($\frac{3}{4}$) Acre
 - vi. Joyce Muthoni Macharia.....1 Acre



- d. That the costs be borne by the estate
2. The Application was supported by the annexed Affidavit of Michael Muchoki Njeru and a consent signed by the beneficiaries listed in (c) above all dated on the same date.
 3. Through Grounds of Opposition dated 3rd July 2024 the Objector Francis Koiya Ndirangu opposed the Application on the grounds that it was misconceived and meant to disenfranchise and defeat his interest having purchased land measuring three (3) Acres from John Macharia Njeru (Deceased). That the portion belonging to John Macharia Njeru, as per the Certificate of Confirmation of grant dated 28th November, 2023 is not available for division as the said portion had been sold to the Objector.
 4. He added that the Application in effect seeks to reallocate the division of the property of Mr. John Macharia Njeru to the detriment of the objector thereby defeating any chance of Objector benefiting from the said land. He argued that he had previously bought a portion of the land L.R No. Nyandarua/Ol Joro-orok Salient/1328 from John Macharia Njeru which title was cancelled by this Court and the register of land rectified as per the Court's order.
 5. That having purchased the said portion of land, he has both legal and equitable interest in the portion of land allowing the application would in effect sanction an illegality to defeat his interest.
 6. The Applicant in the Supplementary Affidavit sworn on 23rd July 2024 deponed that objector is not a beneficiary of the estate of the deceased herein and therefore not entitled to any direct share or participation or distribution. That the Objector lacks locus standi and that the claim ought to be instituted against the estate of John Macharia Njeru (deceased) who illegally sold the claimed portion to the objector.
 7. He further deponed that the Objector's claim was successfully challenged where the order of cancellation of titles was issued pursuant to the fraudulent sale by the said John Macharia Njeru (deceased). The Court of Appeal in Civil Appeal No. 107 of 2017 upheld the Court's decision of 18th November, 2022.
 8. It was further the Applicant's case that the Objector's case is res judicata and the Court is functus officio having previously dealt with it.

Applicant's Submissions

9. It was the Applicants' submission that the Objector's claim having previously been heard and determined it is Res Judicata. Reference was placed in the Supreme Court's decision in John Florence Maritime Services Limited & Another vs Cabinet Secretary Transport and Infrastructure & 3 Others [2021] eKLR with emphasis to paragraphs 58 and 59 to submit that the claim cannot be litigated a fresh.

Analysis and Determination

10. The Applicant is the administrator of the estate of Wambui Njeru (deceased) who died intestate on 15th August, 1975 leaving behind an estate constituting of property known as Oljor Orok Salient Scheme Nayandrua now Nyandarua/Ol joro-orok Salient/1328. The Letters of administration were confirmed on 28th November, 2023 with a Certificate of Confirmation of Grant issued to the effect. The Applicant is seeking review of the Certificate of Confirmation issued.
11. On the other hand, the Objector is opposed to the Application for the reason that he bought a portion of the estate parcel of land and would be disenfranchised if the Court allows the Application.



Whether this Court may review the Certificate of Confirmation of Grant

12. Upon Confirmation of a Grant, the process that follows thereafter, is execution of the orders in the Certificate of Confirmation of Grant. The Applicant is seeking review of the Orders in the Certificate of Confirmation of Grant in the manner set out in paragraph 3 of his Supporting Affidavit.
13. Review of grant is not a procedure set out in the Probate and Administration Rules. The Application is nonetheless brought under the provisions of Sections 47, 74 and 82(a) of the Law of Succession Act and Rules 49, 63 and 73 of the Probate and Administration Rules.
14. Rule 49 of the Probate and Administration Rules, provides thus:-

“A person desiring to make an application to the Court relating to the estate of a deceased person for which no provision is made elsewhere in these rules shall file a summons supported if necessary by affidavit.”
15. Rule 73 of the Probate and Administration Rules, further provides that :-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”
16. Rule 63 of the Probate and Administration Rules provides for the importation of provisions of the Civil Procedure Rules in Succession matters. Order 45 of the Civil Procedure Rules is one of those provisions and it provides for review which then confers this Court with jurisdiction to entertain an application for review. . Order 45 Rule 1 of the Civil Procedure Rules provides that for the Applicant’s Application for review to succeed there must be:-
 - i. Discovery of new and important matter of evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the Order made; or
 - ii. Mistake or error apparent on the face of the record; or
 - iii. Any other sufficient reason which may make the court to review its order.
17. The Applicant’s Affidavit in Support of the review does not have any reasons whatsoever advanced on why he is seeking the review. Nothing has been deponed to suggest discovery of new issues or an error on the face of the record. As a matter of fact, the Applicant has only spelled out the manner in which he wishes to have the Certificate of Grant reviewed and attached a consent signed by the individuals he has referred to as beneficiaries of the estate which reproduced his Supporting Affidavit in verbatim. Even the submissions have not brought out the grounds for the seeking the said orders. He has focused on the Objectors claim.
18. The Applicant is seeking orders which are not supported by any reasons. None whatsoever. He does not advance any argument why this Court should review the Certificate of Confirmation of Grant according to his proposal. There is nothing to assist this Court to consider his prayer.
19. The other issue that is worth mentioning is that there are new names that is; Joyce Muthoni Macharia, Susan Watetu Gichuki and Jane Wanjiku Githongori included without an explanation. Serah Wahito Njeru has been omitted and the reason for the omission has not been explained. What happens to John Macharia Njeru’s share now that he is deceased? Are the new named individuals beneficiaries of the



persons omitted in the current proposal? Does the estate of John Macharia Njeru's take over his share? There are more questions which the Applicant has not provided answers to.

20. The Certificate of Confirmation of Grant was issued on 28th November, 2024, the instant Application was filed on 7th June, 2024. That makes it about six (6) months of delay. The delay has not been explained at all and it is unreasonable.
21. I opine that the Applicant has failed to meet the legal requirements required to be established in order for an application for orders of review to succeed. I must therefore decline to grant the said orders.

Whether the issues being by the Objector are 'Res Judicata'

22. The Objector claims that he is a liability to the estate having purchased 3 acres of the subject property from John Macharia Njeru (deceased) and insisted that the portion allocated to John Macharia Njeru in the Confirmed Grant is not available for division. The Applicant has however insisted that the Objector has no claim in the estate and any claim should be pursued in the estate of John Macharia Njeru. Further that the Objector's claim cannot be entertained by this Court as the Court became functus officio on the matter hence it is res judicata.
23. Section 7 of the *Civil Procedure Act* is the substantive law on res judicata which provides that:-

“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”
24. I have carefully perused the Ruling delivered on 22nd February, 2022 that was affirmed by the Court of Appeal on 18th December, 2022 in Nakuru Civil Appeal No 107 of 2017. The issue of the Objector's claim to the estate property was dealt with in length and this Court correctly found that the property formed part of the estate of the deceased, revoked the Grant issued to John Macharia Njeru and issued an order to the Registrar for the cancellation of the titles that emanated from the fraudulent sale.
25. The Court noted that, for John Macharia Njeru to sell property that did not belong to him amounted to fraud and by the time of sale of the suit property, the estate had already been wound-up and the Objector and the other Interested Parties could not get the protection afforded under Section 93 of the *Law of Succession Act*.
26. Indeed, I concur with the Applicant that, this is a matter that had already been conclusively dealt with by this Court and even by the Court of Appeal. The question of whether the Objector had a legitimate claim to the estate of the Deceased was considered and determined exhaustively. To raise the same issue again before the High Court through his Grounds of Opposition renders it res-judicata.
27. The Objector is neither a beneficiary nor a dependant of the Deceased, and therefore has no legal claim whatsoever to the estate. His proprietary interests were extinguished the minute the sale and transfers were declared fraudulent and titles cancelled. If he feels aggrieved his recourse would be to follow up with the Estate of John Macharia Njeru for compensation or otherwise. Even if he wants to pursue the portion allocated to Jonh Macharia Njeru, against any reallocation, he lacks locus standi to do so.



28. In the case of *Isanya Masira Momanyi vs Daniel Omwoyo & Another* [2017] eKLR the court held that:-

“It is trite law that the estate of a deceased person can only be represented in any legal proceedings by a person who is duly authorized to do so on behalf of the estate. Only a person who has been issued a grant of letters of Administration has capacity to represent the estate of a deceased person”

29. I therefore, find no merit in the Applicants’ Summons for Review of Grant dated June 3, 2024, and the Objector’s claim as framed in the grounds of opposition. The Summons for Review of Grant dated June 3, 2024 and the Objectors claim are hereby dismissed. Each party shall bear their own costs.

RULING DATED SIGNED AND DELIVERED ON THIS 31ST DAY OF JANUARY 2025

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MOHOCHI S.M

JUDGE

