



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Gichobi Mundia (Deceased) (Succession Cause
13 of 2022) [2025] KEHC 2188 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 2188 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 13 OF 2022
RM MWONGO, J
JANUARY 30, 2025
IN THE MATTER OF THE ESTATE OF LATE GICHOBI MUNDIA**

BETWEEN

ALICE MUTHONI GICHOBI APPLICANT

AND

MUNENE GICHOBI RESPONDENT

AND

FREDRICK MURITHI KABUTHI INTERESTED PARTY

JANE WAWIRA GICHOBI INTERESTED PARTY

JOSEPHINE WANJA GICHOBI INTERESTED PARTY

JANE WAMIRU KATHEE INTERESTED PARTY

MILLICENT WAMBUI MUCIRA INTERESTED PARTY

**JMG (SUED ON HIS OWN BEHALF AND ON BEHALF OF EWG -
MINOR) INTERESTED PARTY**

NANCY WAMUYU GICHOBI INTERESTED PARTY

RULING

Background

1. The deceased died on 3/10/1999. His wife Alice Muthoni Gichobi obtained grant of letters of administration in the High Court in Nairobi on 20th June 2000 and confirmed on 13th July 2000. Various distributive transactions took place, and following a string of litigation, a confirmed grant issued on 27th February 2004, was revoked.



2. The applicant filed amended Summons dated 20th December, 2017 seeking the following orders:
 1. Spent.
 2. Spent.
 3. That this honourable court be pleased to issue inhibition orders inhibiting the registration of any dealings in the register of land parcel numbers Baragwe/Thumaita/2788, 2789, 2790 & 2791 and Baragwe/Thumaita/2865 & 2866, Baragwe/Thumaita/1364, Baragwe/Thumaita/1366, Baragwe/Thumaita/ 1866, 1867 and 1868 and Baragwe/Gauma/1164, 1165, 1166 and 1167 pending the hearing and determination of this application.
 4. That this Honourble Court be pleased to issue an Order annulling the distribution of the Estate of Gichobi Mundia deceased and/or all transactions involving the said Estate pursuant to the Certificate of Confirmation of Grant confirmed on 27th February, 2004 and that the transfer of Land Parcels Numbers Baragwe/Thumaita/1364 and 1366 and Baragwe/Guama/1164, 1165, 1166 and 1167 be cancelled and that the sub-divisions of Land Parcel Number Baragwe/Thumaita/1362 into Baragwe/Thumaita/2788, 2789, 2790 and 2971, Land Parcel Number Baragwe/Thumaita/ 1363 into Baragwe/Thumaita/ 2865 and 2866 and Land Parcel Number Baragwe/Thumaita/1365 into Baragwe/Thumaita/1866,1867 and 1868 be and their subsequent transfers be cancelled and the same do revert to their original Numbers in the name of Gichobi Mundia deceased to enable distribution of the Estate of the deceased to the rightful beneficiaries.
 5. That the costs of this application be provided for.
3. The application is supported by the annexed affidavit of Alice Muthoni Gichobi wherein she made the following major averments:
 1. That the Estate of the Gichobi Mundia deceased comprised of Land Parcels Numbers Baragwe/Thumaita/1 which was sub-divided into Land Parcels Numbers Baragwe/Thumaita/1362, 1363, 1364,1365 and 1366 and Baragwe/Guama/758 which was sub-divided into Baragwe/Guama/1164,1165,1166 and 1167.
 2. That the Grant herein was confirmed on 27th February, 2004 and a Certificate of Confirmation of Grant issued.
 3. That some beneficiaries of the Estate of the deceased had been left out of this Succession Cause and as a result the Grant was revoked on 11th June, 2015.
 4. That some Parcels of Land belonging to the Estate of the deceased were not also included in the Grant and they were Land Parcels Numbers Baragwe/Thumaita/1364, 1365 and 1366 and Baragwe/Guama/1166 and 1167.
 5. That the Parcels of Land have since mutated as follows;
 - a. Land Parcel Number Baragwe/Thumaita/1362 sub-divided into Land Parcels Numbers Baragwe/Thumaita/2788, 2789, 2790 and 2971.
 - b. Land Parcel Number Baragwe/Thumaita/1363 sub-divided into Land Parcels Numbers Baragwe/Thumaita/2865 and 2866.
 - c. Land Parcel Number Baragwe/Thumaita/1365 sub-divided into Land Parcels Numbers Baragwe/Thumaita/1866,1867 and 1868.



6. That at the time the Grant was being revoked, the same had already been implemented and the Estate of the deceased had been distributed according to the said Grant.
 7. That when the Honourable Judge revoke the Grant confirmed on 27th February, 2004 he did not issue orders annulling the distribution of the Estate of the deceased which had been done pursuant to the Grant.
 8. That after revocation of the Grant, the beneficiaries of the Estate of the deceased who had been left out of the Grant were to be included in these Succession proceeding and they ought to get shares out of the Estate of the deceased.
 9. That the distribution of the Estate of the deceased ought to have been annulled and an order issued that the resultant sub-divisions of the various parcels of land be cancelled and that the said sub-divisions revert back to their original numbers to enable distribution of the Estate of the deceased to the rightful beneficiaries.
 10. That at present, the Parcels of Land which belonged to the Estate of the deceased have been distributed and the beneficiaries who were included in this Cause after revocation of Grant do not have shares that they can inherit.
 11. That the distribution of the Estate of the deceased pursuant to the Grant confirmed on 27th February, 2004 is annulled and the resultant sub-divisions of the various parcels of Land be cancelled and the said sub-divisions revert back to their original Numbers to enable distribution of the Estate of the deceased to all the beneficiaries as will be agreed upon by the said beneficiaries.
4. The Respondent deposed a Replying affidavit with the following major averments:
1. That the deceased herein Gichobi Mundia, died on 3/10/1999.
 2. That he had given me as a gift inter vivos land parcel number Baragwe/Guama/1167 which was registered in my name on 21/6/1993.
 3. That parcel number Baragwe/Thumaita/1366 had been given to me by the deceased on 7/5/1993.
 4. That land parcel number Baragwe/Guama/1166 is registered in the name of my brother Michael Njoka Gichobi. He's not a party in these proceedings yet the orders sought are adverse to his interests.
 5. That land parcel number Baragwe/Thumaita /1364 is also registered in the name of my brother Michael Nioka Gichobi.
 6. That the parcels of land given to me during the lifetime of the deceased cannot in any way form part of the estate of the deceased.
 7. That the applicant ought to identify the properties which only form part of the estate of the deceased and not to include even those properties which had already been given out as a gift while the deceased was alive.
5. The 4th Interested party/Respondent deposed a Replying affidavit with the following major averments:
1. That I have been authorized by Millicent Wambui Mucira the Fifth Respondent to make this affidavit on my behalf and on her behalf.



2. That I was not served with the summons for revocation of grant and I would have opposed the revocation of the grant as confirmed on 27th February, 2004.
3. That upon revocation of the grant dated 13th July, 2004 this Honourable court ordered that the family of the deceased to appoint 2 administrators one from each house to be the administrators of the estate of the late Gichobi Mundia.
4. That I was not consulted on the appointment of the Applicant as the administrator of the estate of the deceased, though I am the widow of Samuel Mucira Gicobi who was a son of Stella Karia first wife of the deceased herein.
6. The 6th Interested party/Respondent deposed a Replying affidavit with the following major averments:
 1. That I make this affidavit on my behalf and on behalf of my younger brother Eric Wambugu (Minor) mentioned herein.
 2. That I was not served with the summons for revocation of grant and I would have opposed the revocation of the grant as confirmed on 27th February, 2004.
 3. That I and my younger brother Eric Wambugu (Minor) are the registered proprietors of land parcel Baragwe/Thumaita/2866 which was transferred to us by our father Lawrence Gitarikiura on 2nd December, 2009.
 4. That my father in an affidavit sworn on 19th August, 2016 has explained in detail how he acquired land parcel Baragwe/Thumaita/2866 for value and without notice from one Samuel Mucira Gicobi.
 5. That my title to land parcel Baragwe/Thumaita/2866 is protected by Section 93(1) of the *Law of Succession Act*.
 6. That the Applicant lacks the requisite capacity to seek the cancellation of my title to land parcel Baragwe/Thumaita/2866.
 7. That the Applicant has not given any explanation as to why she elected not to involve me in her application for revocation of grant and conveniently concealed from the court the identity of persons who would be affected by her application to revoke the grant.
7. The parties canvassed the application through written submissions.

Applicant's submissions

8. The Applicant submits that the consequence of the revocation of the Grant was that the beneficiaries of the deceased who had been left out were now supposed to be included in these succession proceedings and were supposed to get shares out of the Estate of the deceased. However, by the time the Grant was being revoked, the same had been implemented and the beneficiaries who had been awarded Land in the Grant were given their shares.
9. When the Learned Judge revoked the Grant, he did not issue Orders amending/annulling the distribution of the Estate of the deceased which had been done pursuant to the Grant. It was for this reason that the Applicant filed the present application.
10. In the Grant confirmed on 27 February, 2004, it included the following beneficiaries of the deceased:
 - i. Alice Muthoni Gichobi.



- ii. Wanjiku Gichobi
 - iii. Munene Gichobi
 - iv. Nyaga Gichobi
 - v. Michael Njoka
 - vi. Muchira Gichobi
 - vii. Jane Wawira Gichobi
 - vii. Josephine Wanja Gichobi
 - ix. Mary Wamunyu Gichobi.
 - x. Nancy Wamuyu Gichobi
11. According to the applicant, three beneficiaries of the deceased, had been left out. In addition, in the said Grant, some parcels of land belonging to the Estate of the deceased were not included in the Grant. These were Land Parcels Numbers Baragwe/Thumaita/1364, 1365, 1366 and Baragwe/Guama/1166 and 1167. These Parcels of Land have since mutated as follows:
- a. Land Parcel Number Baragwe/Thumaita/1362 sub-divided into Land Parcels Numbers Baragwe/Thumaita/2788, 2789, 2790 and 2971.
 - b. Land Parcel Number Baragwe/Thumaita/1363 sub-divided into Land Parcels Numbers Baragwe/Thumaita/2865 and 2866
 - c. Land Parcel Number Baragwe/Thumaita/1365 sub-divided into Land Parcels Numbers Baragwe/Thumaita/1866,1867 and 1868.
12. Since the Grant had been implemented, it was only fair and just that the distribution of the Estate of the deceased be amended or annulled so that the beneficiaries who had earlier been left out of the succession proceedings would be accommodated. Currently, the three beneficiaries do not have shares that they can inherit yet they are entitled to shares out of the Estate of the deceased.
13. The Applicant herein was the Respondent in the Application for revocation of Grant filed by the intended Interested Party. It was not for the Applicant to effect service of the summons for Revocation of the Grant upon the other intended Interested Parties herein. However, since the Grant has already been revoked, all the beneficiaries of the deceased should be accommodated in the distribution of the Estate.
14. The Applicant appreciates that there are parcels of Land that appear to have been transferred by the deceased to some beneficiaries prior to his death. If it is proved that this was indeed the case, then the said Parcels of Land will not be subject to distribution.

Respondent submissions

15. The respondent submitted that the applicant has annexed only the search certificate for land parcel numbers Baragwe/Thumaita/1364, 1365, 1366, Baragwe/Guama/1166 and 1167. Those are only 5 parcels, yet the parcels of land whose title is sought to be cancelled are eleven. Six search certificates are thus missing.
16. In the replying affidavit of Josephine Wanja Gichobi sworn on 24th May, 2018, she states that parcel number Baragwe/Thumaita/1868 belongs to one Augustine Ngumo Mururi. However, he is not a



- party in this matter, yet the orders sought are adverse to his interests. Equally, this court does not know who are the current registered owners of land parcel number Baragwe/Thumaita/1866, 1867, among the others.
17. As such it is thus not legally possible to order the cancellation of titles for persons who are not parties in this matter, and before they are heard. That is a basic principle of natural justice that no one should be condemned unheard.
 18. According to the respondent, the other problem with the applicant's application is that she has not disclosed accurate facts. For instance, the green card attached to the respondent's replying affidavit sworn on 29th January, 2018 which is a copy of the green card for parcel number Baragwe/Guama/1167, shows that the land was transferred from Gichobi Mundia to the respondent on 21/6/1993. The deceased died on 3/10/1999. Clearly, therefore, parcel number Baragwe/Thumaita/1167 cannot form part of the estate of the deceased, and can be deemed as a gift inter vivos.
 19. The 3rd interested party, Josphine Wanja Gichobi, has equally stated that she was given land parcel number Baragwe/Thumaita/2788 as a gift inter vivos. As at the time of the deceased's death, that land was not registered in the name of the deceased. It would have been necessary for the applicant to clearly state which properties formed part of the estate of the deceased, and provide evidence. It is for he who alleges to prove, and according to the respondent, the applicant has totally failed in this respect.

The 4th, 5th & 6th Interested Parties/ Respondents submissions

Party to the summons for revocation of grant

20. The interested parties submitted that they were not served with the summons for revocation of grant dated 12th August 2014. They state that they were also not notified to attend court on 11th June 2015 when the orders for revocation of grant were made. No explanation has been offered as to why they were not summoned or informed.
21. They further state that this was highly irregular and violated the provisions of Rule 44 of the P&A Rules which require all the interested persons to be notified of the intention to revoke the grant for them to respond by filing an affidavit whether he/she supports or opposes that application and his grounds thereof. Further, they submit that there was collusion between the Applicant herein and the 7th intended interested party who are mother and daughter to obtain ex parte adverse orders against the 4th, 5th and 6th interested parties.

Title Deeds protected by Section 93 of the *Law of Succession Act*

22. It was submitted by the interested parties that the 4th intended interested party in her replying affidavit sworn on 12th August 2016 has identified land parcels Baragwe/Guama/1165 measuring 0.41 hectares and Baragwe/Thumaita/2865 measuring 0.60 hectares as being registered in her name and that of the 5th intended interested parties. She has also deponed that the two parcels were transferred to her and her daughter for value by one Samuel Mucira Gicobi. From the affidavit of the 4th intended interested party the deceased Gichobi Mundia had transferred to each of his sons, 3 acres, including Samuel Mucira Gicobi from either of his land parcels Baragwe/Guama/758 measuring 5.962 acres and Baragwe/Thumaita/1 measuring 10.30 acres.
23. The transfer parcels Baragwe/Guama/1165 and Baragwe/Thumaita/2865 to the said Samuel Mucira Gicobi was done lawfully and regularly. According to annexure JWK 7(a) attached to the affidavit of the 4th intended interested party sworn on 12th August 2016, land parcel Baragwe/Thumaita/1363 from which Baragwe/Thumaita/2865 was hived was registered in the name of the said Samuel Mucira



Gicobi on 8th January, 2007 which is a period of more than 10 years to the time the revocation of grant was made. Land parcel Baragwe/Guama/1165 was transferred to Samuel Mucira Gicobi on 5.12.06 as per annexure JWK 7(b). There is a period of 12 years between then and now.

24. On his part, the 6th intended interested party deponed in his replying affidavit sworn on 19th August 2016 that he and his younger brother Eric Wambu Gitari are the registered proprietors of land parcel Baragwe/Thumaita/2866. The above parcel of land had been transferred to the two by their father Lawrence Gitari Kiura on 2.12.09, a period of 9 years between then and now.
25. Their father Lawrence Gitari Kiura has himself sworn an affidavit on 19th August, 2016 in which he explains how he bought the said land parcel BARAGWE/THUMAITA/2866 from Samuel Mucira Gichobi which he thereafter caused to be registered in the names of his sons John Murimi Gitari and Eric Wambugu Gitari. He has attached to his affidavit an agreement of sale annexure LGK 1(a), an acknowledgement slip for payment of purchase price annexure LGK 1(b) and letter of consent annexure LGK 2 as proof of purchase of the suit land parcel Baragwe/Thumaita/2866.
26. The Applicant who was the administrator of the estate of the deceased has submitted that the only reason they seek annulment and cancellation of the title is to enable them to bring on board certain parcels of land which had been omitted and also share assets to 2 beneficiaries who were left out. It is the submission of the 4th, 5th and 6th intended interested parties that the Applicant can bring on board the omitted assets and also share them among the two beneficiaries without disturbing the titles of the 4th, 5th and 6th intended interested parties which are protected by section 93 (1) of the [Law of Succession Act](#) which provides:

“ A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act. ”

Issue for Determination

27. The core issue for determination is whether in the circumstances the titles should be cancelled, consolidated and be redistributed.

Analysis and Determination

28. The applicant seeks annulment of the distribution of the Estate of the deceased carried out pursuant to the Grant confirmed on 27th February, 2004; further that the resultant sub-divisions of the various parcels of Land be cancelled; and that the said sub-divisions do revert back to their original title Numbers to enable distribution of the Estate of the deceased to all the beneficiaries as will be agreed upon by the said beneficiaries.
29. The basis of the application is premised on the fact that some beneficiaries of the Estate of the deceased had been left out of the Succession Cause and as a result the Grant was revoked on 11th June, 2015. Further, that some Parcels of Land belonging to the Estate of the deceased were not included in the Grant and these included Land Parcels Numbers Baragwe/Thumaita/1364, 1365 and 1366 and Baragwe/Guama/1166 and 1167.



Gifts Inter vivos

30. The respondent deposed that the applicant ought to identify the properties which only form part of the estate of the deceased and not to include even those properties which had already been given out as a gift while the deceased was alive.
31. He averred that that the green card for parcel number Baragwe/Guama/1167, shows that the land was transferred from Gichobi Mundia to the respondent on 21/6/93. The deceased died on 3/10/1999. The land cannot form part of the estate of the deceased. It was a gift inter vivos.
32. The 3rd interested party, Josphine Wanja Gichobi, has equally stated that she was given land parcel number Baragwe/Thumaita/2788 as a gift inter vivos. As at the time of death, that land was not registered in the name of the deceased.
33. Gifts made inter vivos must be granted by a deed as was well stated in Re Estate of the Late Gedion Manthi Nzioka (Deceased)(2015)eKLR where Nyamwea J (as she then was) stated:

“In law, gifts are of two types, there are gifts made between the living persons (gifts intervivos) and gifts made in contemplation of death (gift mortis causa). For gifts inter vivos, the requirement of the law is that the said gifts may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trust or the presumption of gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by declaration of Trust in writing. Gifts inter vivos must be complete for the same to be valid.
34. The Applicant submitted that there are parcels of Land that appear to have been transferred by the deceased to some beneficiaries prior to his death.

Title Deeds protected by Section 93 of the Law of Succession Act

35. It was the submission of the 4th, 5th and 6th interested parties that the Applicant can bring on board the omitted assets and also share them among the two beneficiaries without disturbing the titles of the 4th, 5th and 6th intended interested parties which are protected by section 93 (1) of the Law of Succession Act which provides:

“A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act. ”
36. In the case of Simon Kamundi vs Tabitha Gatiria Maingi & 3 Others [2016] eKLR Gikonyo J opined that:

“...the circumstances of this case are that the purchasers herein bought the estate property from the personal representative of the estate. Such purchasers are entitled to defend their acquisitions in this cause especially now that revocation of the grant of representation pursuant to which they were sold the land has been sought and their acquisitions are being challenged too. Accordingly, although Section 93 of the Law of Succession Act has been invoked before it is appropriately applicable, but its purport is indicative that, a purchaser of the property of the estate from a person to whom representation has been granted should, of necessity, be a party in the cause where revocation is sought and transfers of estate



property to him is being questioned. A decision on revocation application will invariably be a matter of direct concern to a purchaser of a property of the estate from a person to whom representation has been granted. As a matter of substantive justice, anything short of the above will be great injustice to confront a purchaser for value of the estate property with a decree which takes away his rights without his participation. It bears repeating that each case should be decided on its merit rather than making a hard and fast rule that all claims by third parties must be litigated in separate proceedings."

37. The 4th interested party deposed that land parcels Baragwe/Guama/1165 measuring 0.41 hectares and Baragwe/Thumaita/2865 measuring 0.60 hectares are registered in her name and that of the 5th intended interested parties. She has also averred that the two parcels were transferred to her and her daughter for value by one Samuel Mucira Gicobi.
38. The 6th interested party deposes that he and his younger brother Eric Wambu Gitari are the registered proprietors of land parcel Baragwe/Thumaita/ 2866. The above parcel of land had been transferred to the two by their father Lawrence Gitari Kiura on 2.12.2009, a period of 9 years between then and now. Thus, the title deeds of the 4th , 5th , and 6th interested parties being purchasers for value are protected by section 93 (1)and (2)of the *Law of Succession Act*. They cannot be invalidated notwithstanding any subsequent revocation of the grant.
39. Finally, the applicant has not distinguished between the properties that form the free estate of the deceased and those that had been transferred to beneficiaries by way of gift inter vivos.

Disposition

40. In light of the foregoing I am of the view that the application cannot not succeed. Accordingly, the application fails and is hereby dismissed.
41. This being a family matter, each party shall bear its own costs.
42. Orders accordingly.

DATED AND DELIVERED VIRTUALLY AT KERUGOYA HIGH COURT THIS 30TH JANUARY 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Mshindi holding brief for Wandaka for the applicant.
2. Mwagiru holding brief for Kagio for the Respondent.
3. Muchira for 4th – 6th interested Parties.

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