



REPUBLIC OF KENYA



**In re Estate of Ngugi Njoroge (Deceased) (Succession Cause 46 of 2012)
[2025] KEHC 1877 (KLR) (Family) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1877 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 46 OF 2012
EKO OGOLA, J
FEBRUARY 25, 2025
IN THE MATTER OF THE ESTATE OF NGUGI NJOROGE (DECEASED)**

BETWEEN

**HENRY MAINA MWANGI 1ST APPLICANT
JOSEPH NGUGI MWANGI 2ND APPLICANT
JULIUS KAMAU MWANGI 3RD APPLICANT
PATRICK NJOROGE MWANGI 4TH APPLICANT**

AND

MILKA WANJIRU NGUGI RESPONDENT

RULING

1. The Summons for revocation before this court is dated 17th May 2021. The applicants pray for the following orders:-
 - a. That the grant of letters of administration issued to Milka Wanjiru Ngugi, confirmed on the 17th April 2013 and rectified on the 17th June 2014 be revoked and/or annulled.
 - b. That the registration to Land Parcel number LOC. 3/Mukuria/1578, a combination of land parcels LOC. 3/Mukuria/1243 and LOC. 3/Mukuria/1244 effected pursuant to the confirmation of grant made on the 17th April 2013 and rectified on 17th June 2014 be revoked and/or otherwise deleted from the register.
2. The summons was based on the grounds set out therein and the applicants' supporting affidavits. According to the applicants, the grant of letters of administration issued to Milka Wanjiru Ngugi was



fraudulently obtained since the said Milka, Stephen Gakuya, Samuel Njoroge and Francis Gachunga failed to disclose all the names of the beneficiaries of the estate.

3. The applicants deposed that land parcel LOC 3/Mukuria/110 was held by the deceased in trust for himself and their father, Mwangi Njoroge. The applicants further deposed that the deceased applied for the subdivision of the land and that the Land Control Board consented to the subdivision. Two parcels of land were to come out from the subdivision, LOC. 3/Mukuria/1243 and LOC. 3/Mukuria/1244. The applicants deposed that the deceased was to get LOC. 3/Mukuria/1244 whilst their father Mwangi Njoroge was to get LOC. 3/Mukuria/1243. Therefore, the applicants aver that they are beneficiaries of the deceased estate by virtue of being the sons of Mwangi Njoroge. It is for these reasons that the applicants pray that these proceedings should be revoked and the titles to revert to the deceased for redistribution.
4. The respondent deposed that the deceased never indicated an intention to transfer any of his property to his late brother, Mwangi Njoroge. Furthermore, there is no indication that the land was being subdivided to transfer the property to Mwangi Njoroge. According to the respondent, the deceased was the registered owner of LOC 3/Mukuria/110 and he was not holding the said property in trust for anyone. Hence, according to the respondent, the applicants are not beneficiaries of the deceased estate.
5. The summons were canvassed by way of submissions which I have considered.

Determination

6. The issue for determination herein is whether the applicants' Summons meet the threshold for the revocation of a grant within the meaning of Section 76 of the *Law of Succession Act*.

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.”



7. The applicants claim that the respondent concealed from the court the fact that they were beneficiaries of the estate of the deceased. The applicants averred that they were beneficiaries of the estate because LOC 3/Mukuria/110 that was registered in the name of the deceased, was held in trust for himself and their father Mwangi Njoroge.
8. The applicants have not brought sufficient evidence before this court to prove that LOC 3/ Mukuria/110 was held in trust for Mwangi Njoroge. Be that as it may, even if there was material establishing that there was such a trust, I doubt that the resolution of this issue would be a matter of the probate court. The mandate of the probate court under the *Law of Succession Act* is limited. It does not extend to determining issues of ownership of property and declaration of trusts. It is not a matter of the probate court being incompetent to deal with such issues but rather the provisions of the *Law of Succession Act* and the relevant subsidiary legislation do not provide a convenient mechanism for determination of such issues. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land Court.
9. Consequently, and for the reasons stated above, I must find and hold that this court has no jurisdiction to resolve the proprietary interest on land based on the alleged trust. The only path legally open to the applicants is to institute separate proceedings to articulate their claim/rights in the right forum, which is the Environment and Land Court.
10. The upshot is that the Summons for the revocation of grant dated May 17, 2021 is dismissed. Costs be in the cause.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF FEBRUARY 2025

E.K. OGOLA

JUDGE

In the presence of:

.....for the Applicants

.....for the Respondents

Gisiele Muthoni Court Assistant

