



REPUBLIC OF KENYA



**In re Estate of Margaret Wangu Kamau (Deceased) (Succession Cause 24 of 2011) [2025] KEHC 1914 (KLR) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1914 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**SUCCESSION CAUSE 24 OF 2011**

**SM MOHOCHI, J**

**FEBRUARY 25, 2025**

**IN THE MATTER OF THE ESTATE OF MARGARET WANGU KAMAU (DECEASED)**

**IN THE MATTER OF**

**ISAAC MAINA WANGU ..... 1<sup>ST</sup> APPLICANT**

**LUCIA GATHONI ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. This Court had scheduled a judgment as it was under the impression that the proceedings being conducted were objector's proceedings, the parties were equally not clear and the Court when commencing the decision-making process discovered judgment having been entered.
2. Before this Court are three (3) separate post-judgment Applications with the judgment having been entered by Hon. Ndungu J on 13<sup>th</sup> December 2018.
3. The 1<sup>st</sup> Application is dated 9<sup>th</sup> December 2019 by Lucia Gathoni seeking substitution of her deceased husband with herself in *Succession Number 24 of 2018*.
4. It equally sought that the Appeal by her deceased husband does proceed and that the Court reinstates the plaintiff's suit.
5. Let me point out from the onset that this case had Ndungu J, expressing himself when delivering judgment on the 13<sup>th</sup> December 2018 that the fact that parties sought to self-represent themselves resulted in irrelevant pleadings being filed and a lot of judicial time being spent in separating the irrelevant issues from the crux of the matter. This situation appears to persist long after judgment.
6. The 2<sup>nd</sup> Application is an Amended Summons for revocation or annulment of grant by Isaac Maina Wangu dated 11<sup>th</sup> May 2021 filed pursuant to Sections 47 and 76 of the *Law of Succession Act* and Rule 44 and 49 of the *Probate and Administration Rules*.
7. The Application inter-alia seeks the following reliefs; -



- a. That, this Honorable Court be pleased to stay execution of the Judgment entered on 13<sup>th</sup> December 2018 pending hearing and determination of this Application.
  - b. That, this Honorable Court be pleased to set aside the Judgment entered on 13<sup>th</sup> December 2018
  - c. That, the grant of letters of administration in respect of the Estate of Margaret Wangu Kamau (deceased) issued to David Rukungu Kamau and Reuben Wachira Kamau on the 24<sup>th</sup> January 2017 be revoked.
  - d. That, consequently to granting prayer (c) above, this Honorable Court be pleased to order a new Grant do issue in the names of Isaac Maina Wangu as the administrator.
  - e. That, costs of this application be provided for.
8. This post judgment application was grounded on the following grounds;
- a. That, a Grant of Letters of Administration in respect of the Estate of Margaret Wangu Kamau (deceased) has been issued to David Rukungu Kamau and Reuben Wachira Kamau on the 24<sup>th</sup> January 2017.
  - b. That, judgment in the matter was entered on the 13<sup>th</sup> December 2018 which distributed the deceased estate without the participation and/or involvement of the Applicant herein who was the sole heir and/or ranked 1<sup>st</sup> in priority to inherit the deceased estate.
  - c. That, the said judgment completely disinherited the Applicant by having the deceased estate distributed to the respondents who are strangers to the deceased estate them not being dependants and/or beneficiaries.
  - d. That, the respondents herein have obtained the said grant fraudulently without full disclosure of material facts.
  - e. That, the late Margaret Wangu Kamau is the mother to the Applicant and she passed on the 10<sup>th</sup> June 2010 leaving the Applicant and his sister Beth Mumbi Wangu now deceased as her sole surviving heirs.
  - f. That, the Respondents herein did upon the demise of the Applicant mother collude to obtain letters of administration without notifying the Applicant and neither did they disclose of the Applicant and his sister's existence in the petition for letters of administration even though it was well within their knowledge that the Applicant and the sister were the sole heirs of the Estate of the deceased and ranked 1<sup>st</sup> in priority to petition for the letters of administration.
  - g. That, the Respondents herein are the brothers to the Applicant's mother and are only perpetuated by greed to disinherit the Applicant that which is lawfully his own though they are very much aware of the Applicant's existence.
  - h. That, the Applicant stands to suffer prejudice if the grant is confirmed as the Applicant will be completely disinherited and thrown out of his only known home where the Applicant resided with the deceased.
  - i. That, it is therefore only mete and just that the grant herein be revoked and a fresh one do issue in the name of the Applicant,



9. The 3<sup>rd</sup> Application is dated 21<sup>st</sup> October 2021 by Lucia Gathoni where she seeks the removal of her co-administrator and the appointment of Jane Mumbi Wachira and that any properties registered in the names of David Rukungu Kamau be transferred to herself and Jane Mumbi Wachira.
10. The Applicant relies on the following eight (8) grounds;
- a. That, the information given to Court was false on the basis the alleged plot 15/366 listed as one of the properties to be distributed to the beneficiaries, does not belong to the Estate of the Late Margret Wangu Kamau but it belonged to Reuben Wachira Kamau (who is deceased.)
  - b. That, one of the beneficiaries listed under the list of beneficiaries Beth Mumbi Wangui, is deceased and does not have any dependant, yet she has been listed as one of the beneficiaries.
  - c. That, David Rukungu Kamau, has transferred all the properties in the grant to his name without considering the other co-administrator of the estate.
  - d. That, some of the Deceased properties have been left out such as shares in Kangei Nyakinyua Cooperative Sacco with intention of retaining them for himself.
  - e. That, David Rukungu Kamau is mismanaging the estate and collecting all the proceeds of the estate by himself and keeping it to himself without disclosing or sharing the proceeds to the other beneficiaries.
  - f. That, David Rukungu Kamau is using a revoke grant to swindle the proceeds of the estate of the Deceased without giving regard to his role as the administrator of the estate.
  - g. That, David Rukungu Kamau, is misleading and giving the Court false information with regards to the estate of the deceased, and we have lost trust in him in terms of how he is managing the estate.
  - h. That, David Rukungu Kamau continues to frustrate the other beneficiaries who are 70 years and above with the long Court processes knowing very well that they are unable to follow up on the same.
  - i. That, it is agreed by all the beneficiaries that David Rukungu Kamau be removed from being one of the administrators of the Estate of the late and replace and or substituted by Jane Mumbi Wachira.
  - j. That, David Rukungu Kamau is no longer fit to become an administrator of the Estate of the late.
  - k. That, it is in the best interest of Justice that this application be granted to protect and sustain the interests of the applicant herein and the other beneficiaries therein.
11. The Court noted that the 1<sup>st</sup> and 3<sup>rd</sup> Applications were stealth applications and the Court directed the hearing of all the Applications concurrently by way of viva voce evidence.
12. Having considered the testimonies in evidence, the filed multiple Affidavits and witness statements I am inclined to formulate a solo issue for consideration.

### **Whether the Grant can be Revoked and upon what Basis?**

13. I have considered the multiple applications, multiple affidavits and witness statements of Lucia Gathoni which I would summarize revolve around ownership dispute between Reuben Wachira Kamau (deceased) and her husband and David Rukungu Kamau of the following three properties.



- a. Nyandarua/Kiriita/Mairo Inya Block 2 (Ngaindeithia) 2228
  - b. Nyandarua/Kiriita/Mairo Inya Block 2 (Ngaindeithia) 5302
  - c. Plot no. 15/366.
14. Without spending too much ink, this Court notes that the deceased Reuben Wachira Kamau had filed a Notice of Appeal however it appears he never filed or prosecuted an Appeal.
  15. Secondly it is trite law that, where the question posed in a Succession Court is ownership of or declarations to ownership rights, then such a dispute is best ventilated by the Court with jurisdiction. In other words, ownership disputes are not matters for the determination by a Succession Court.
  16. The Applicant had successfully sought to be substituted for her deceased husband in this succession and she became an administrator and as such rather than seek revocation the law expects her to enforce the judgment of the Court in the absence of an appeal.
  17. The 2<sup>nd</sup> Application is equally interesting in that the Applicant claims to be the son of the deceased who never had any offspring of herself, the deceased never adopted the Applicant who is the son to the deceased's sister.
  18. However, the Applicant describes himself as the son of the deceased whom the deceased had taken in as her son and that the grant was obtained without his participation and/or involvement and that he is the sole heir ranked 1<sup>st</sup> in priority to inherit the deceased estate.
  19. That, the said judgment completely disinherited the Applicant by having the deceased estate distributed to the respondents who are strangers to the deceased estate them not being dependants and/or beneficiaries.
  20. Dependency is provided for under Section 29 of the [Law of Succession Act](#) as follows; -
    - Section 29(a) provides that a dependants means wife (s), former wife(s) and children whether or not they were being maintained by the deceased prior to death.
    - Section 29(b) further provides that dependants include, deceased's parents, step parents, grandparents, grandchildren, step children, children whom the deceased had taken into his family as his own, brothers and sisters and half-brothers and half-sisters as were being maintained by the deceased immediately, prior to his death
    - Section (c) provides that where the deceased was a woman, the husband if he was being maintained by her prior to her death
  21. Section 29 illustrates that only the wife/wives and children of the deceased are out rightly entitled to the deceased's estate. All other relations (Section 29b and c) need to prove that they were being maintained by the deceased. Upon proving that you are dependant, you are required to apply to Court for provision out of the net estate.
  22. In [re-Estate of MMuthania Mwendwa \(Deceased\)](#) (2016) eKLR the petitioner (son of the deceased) sought to include his children as dependants of the deceased estate. However, he did not provide any evidence that his children, the deceased's grandchildren were being maintained by him prior to his death. Consequently, the Court held that it is not the mere relationship that matters but proof of dependency".
  23. In this instance I have keenly considered the Applicant's solo evidence where he states that, "he was given to the deceased" by his father who was brother to the deceased and that his father told him this



and that the deceased catered for all his needs educational, health and clothing and that he lived with the deceased at Kanyi estate and that when he got of age the deceased advised him to obtain a National ID with her name.

24. It is noteworthy that the Applicant is son to Solomon Muriuki Kamau, a brother to the deceased who was never called to testify. The Applicants mother was alive at the time of trial she too was never called to testify. The evidence of the Applicant falls short of the standards envisioned under Section 29 (b) of the [Law of Succession Act](#).
25. The Applicant has failed to present cogent evidence that the deceased person had accepted him as her child? When was this? Was there a ceremony was there an adoption?
26. The Applicant has equally failed to demonstrate the second limb that immediately before her demise the deceased maintained the Applicant. The Applicants evidence was foggy, however by the time of the demise of the deceased the Applicant was an adult and one then would wonder why the deceased was maintaining an adult man. I however find that no evidence of such maintenance has been laid.
27. The other aspect of this Application worthy of my comment is that the Applicant was an adult at the time of demise of the deceased, he lived in the deceased home, claims to have been unaware, kept in the dark for eight years and only emerged after judgment. The parties herein are all related and the Applicant never offered any persuasive evidence as to why the delay in moving Court.
28. The ongoing litigation is post-judgment and as such cannot relitigate issues determined, and the most the proceedings can be maintained should be on enforcement of the unchallenged judgment.
29. Any application to review and set aside judgment must be made in a timely fashion and the principals that shall guide the Court emanate from Order 45 of the [Civil Procedure Rules](#) which provides for three circumstances under which an order for review can be made.
30. To be successful, the Applicant must demonstrate to the Court that, there has been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. A party may successfully apply for review,
31. Secondly, if he can demonstrate to the Court that there has been some mistake or error apparent on the face of the record.
32. The third ground for review is worded broadly: an application for review can be made for any other sufficient reason.
33. The Parties have engaged in an intensive post judgment litigation ignoring the judgment, rearguing settled matters which is not only irregular but show cases the level of abuse of the judicial process.
34. The deceased never had a child of her own and she left behind an estate that the brothers and sisters of the deceased have been fighting for. The crown of the jewel was Plot No. 15/366 which Lucia Gathoni claims never formed part of the estate of the deceased, belonged to her deceased husband and Isaac Maina Wangu who claims to be the deceased son, sole heir demanding the entire estate to himself. In essence the parties herein are transactional.
35. Lucia Gathoni was by the time of her testimony not a legal representative to the estate of her deceased husband Reuben Wachira Kamau, she had not commenced to the succession of her husband years after his demise while vibrantly being embroiled in a succession of her sister in law. One wonders why this reenergized interest in this estate if not only for the Plot No. 15/366.



36. The 2<sup>nd</sup> Application fails for not showing any new and important discovery by the Applicant that was after exercise of due diligence was not within his knowledge when judgment was entered or could not be produced by him at that time for any particular reason.
37. The 2<sup>nd</sup> Application fails for failure to show any mistake(s) or error(s) on the face of the judgment dated 13<sup>th</sup> December 2018.
38. Finally, I cannot find any other sufficient reason that would warrant review of judgment.
39. The 3<sup>rd</sup> Application for revocation of grant and replacement of the Administrator is without basis, the Applicant is a co-administrator seeking revocation of grant, and hand picking a substitute co-administrator, she ignores the fact that there is a judgment for enforcement, she re-litigates issues settled in judgment, thereby offending the res judicata rule and I thus find no basis to entertain the same.
40. I am thus inclined to issue the final resultant orders;
  - i. The Application dated December 9, 2019, is without merit and the same is dismissed.
  - ii. The Application dated May 11, 2021 is without merit and the same is dismissed.
  - iii. The Application dated October 21, 2021 is without merit and the same is dismissed.
  - iv. This Court shall assign a mention date after six (6) months to confirm execution of the transmission forms, distribution settlement of the estate and mark the probate as closed.
  - v. Parties shall bear their own costs.

It is so ordered.

**SIGNED, DATED AND DELIVERED ON THIS 25<sup>TH</sup> DAY OF FEBRUARY 2025**

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**MOHOCHI S.M**

**JUDGE**

