



REPUBLIC OF KENYA



**In re Estate of Gitari Munyori alias Edijah (Deceased) (Succession Cause 823 of 2010) [2025] KEHC 4001 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4001 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 823 OF 2010  
MA ODERO, J  
MARCH 28, 2025**

**RULING**

1. Before this Court for determination is the Summons for Revocation of Grant dated 26<sup>th</sup> March 2024 by which the Applicant Johnson Gitari Kamata seeks the following orders:-
  - “1. That the Certificate of Confirmation of Grant issued by this court on 18<sup>th</sup> October 2019 to Erastus Munyori Gitari be revoked.
  2. That a fresh grant be re-issued to Johnson Gitari Kamata.
  3. That the costs be in the cause.”
2. The application which was premised upon Section 76 of the *Law of Succession Act* Cap 160 Laws of Kenya and Rule 73 of the *Probate and Administration Rules* and all other enabling provisions of the Law and was supported by the affidavit of even date and the Further Affidavit dated 12<sup>th</sup> November 2024 sworn by the Applicant.
3. The Respondent Erastus Munyori Gitari filed a Replying Affidavit dated 22<sup>nd</sup> July 2024 opposing the application.
4. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated 12<sup>th</sup> November 2024 whilst the Respondent relied upon his written submissions dated 17<sup>th</sup> December 2024.

**Background**

5. This Succession Cause relates to the estate of the late Elijah Gitari Munyori (hereinafter ‘the Deceased’) who passed away on 23<sup>rd</sup> March 1992. A copy of the Death Certificate Serial Number 269165 is annexed to the Summons for Grant of letters of Administration dated 20<sup>th</sup> September 2010.
6. The Deceased was survived by the following persons.
  1. Erastus Munyori Gitari - Son



2. David Mwangi Gitari - Son
3. Mary Njeri Wakahiu - Daughter in-law
4. Patrick Gichuki Gitari - Son
5. Mary Wahu Warutere - Daughter
7. The estate of the Deceased comprised the following assets:-
  - (a) Title No Tetu/Kiriti/15
  - (b) Title No Tetu/Kiriti/16
  - (c) Plot No 54 Kinunga Market (County Council of Nyeri)
  - (d) Plot No 11 Kinunga Market (County Council of Nyeri)
  - (e) Mobile Kiosk at Ihwa Village
  - (f) Shares with Tetu Coffee Growers
8. Following the demise of the Deceased Grant of letters of Administration was on 19<sup>th</sup> January 2011 made to the Respondent Erastus Munyori Gitari. The Grant was duly confirmed on 18<sup>th</sup> October 2019.
9. The Applicant is a son to David Mwangi Gitari who is a son to the Deceased. In other words the Applicant is a grandson to the Deceased.
10. The Applicant now seeks to have the grant revoked on grounds that one of the properties comprising the estate being Plot No 11 Kinunga Market had been illegally sold to a third party by the Administrator. The Applicant also states that the Administrator who is suffering from failing health has failed to act to transmit the estate to the beneficiaries.
11. In opposing the summons for revocation of Grant the Respondent confirms that he is the Administrator of the estate of the Deceased. He further confirms that the Grant issued to him on 16<sup>th</sup> October 2011 was confirmed on 18<sup>th</sup> October 2019.
12. The Respondent denies having disposed off any asset belonging to the estate. He avers that Plot No 11 Kinunga Market is still registered in the name of the Deceased.
13. The Respondent confirmed that the estate was yet to be fully distributed but states that the delay has been occasioned by the death of one of their sisters and the family were still putting their house in order.
14. The Respondent denied that his health would preclude him from concluding the transmission of the estate. He states that in any event the Applicant who is a grandson of the Deceased does not rank in priority over the biological children of the Deceased. The respondent urges the court to dismiss this summons in its entirety.

### **Analysis And Determination**

15. I have carefully considered the summons before this court, the reply filed thereto as well as the written submissions filed by both parties.  
The only issue for determination is whether the Grant issued to the Respondent ought to be revoked.



16. The Grounds upon which a Grant may be revoked are clearly set out in Section 76 of the Law of Succession Act Cap 160 laws of Kenya as follows:-

“A grant of representation whether or not confirmed may at time be revoked or annulled if the court decides either on application by any interested party or its own motion.

- i. that the proceedings to obtain the grant were defective in substance;
- ii. 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;
- iii. that the grant was obtained by means of an untrue allegation of a fact essential in point in law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- iv. 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 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
  - iv. that the grant has become useless and inoperative through subsequent circumstances.

17. In the case of Albert Imbuga Kisigwa v Recho Kawai Kisigwa Succession Cause No 158 of 2000 Mwita J stated as follows:-

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.” [Own emphasis]

18. The Applicant alleges that the Administrator obtained the Grant by way of concealment of material facts. That the Administrator concealed the fact that he had illegally sold Plot No 11 Kinunga Market (County of Nyeri) before the Grant was confirmed.

19. It is common ground that following the demise of the Deceased Grant of letters of Administration Intestate was made to the Respondent. The Grant was duly confirmed on 18<sup>th</sup> October 2019. The certificate of confirmed grant sets out the names of all the heirs to the estate and also sets out the mode of distribution of the estate.

20. There is no dispute regarding the identities of the beneficiaries to the estate. However the Applicant claims that one of the assets listed in the confirmed Grant was already sold by the Administrator to a third party. As such according to the Applicant the said asset is no longer available for distribution.



21. I have carefully perused the Certificate of Confirmed Grant issued on 18<sup>th</sup> October 2019. The asset in question being Plot No 11 Kinunga Market is listed as one of the assets to be distributed. Why would the Administrator list this particular asset for distribution if he had already sold it.
22. It is trite law that he who alleges must prove. Section 107 of the Evidence Act Cap 60, Laws of Kenya places the burden of proof of a particular fact on the person who alleges the existence of said fact or facts.
23. In as much as the Applicant claims that Plot 11, has been sold to a third party he has not tendered proof of any such sale. No Sale Agreement in respect of Plot No 11 was annexed to the Supporting Affidavit. The Applicant alleges that Plot No 11 was sold to one ‘Prof Ndungu’ who has been in occupation of the same for the past ten (10) years. There is no documentary evidence of any such sale and for transfer of the Plot to this Prof Ndungu. Neither has the said Professor Ndungu filed any document in court complaining about the inclusion of the asset as part of the estate of the Deceased.
24. The Administrator in his reply avers that Plot No 11 is still registered in the name of the Deceased. None of the parties annexed an official search of the said property. Thus there is nothing to indicate that the plot No 11 has changed hands. I therefore find that there is no evidence to prove the Applicants claim that Plot No 11 was illegally sold by the Administrator and I therefore dismiss this claim.
25. The Applicant also claim that the Administrator has failed to diligently manage the estate. He complains that since the year 2019 when the Grant was confirmed the Administrator has failed to distribute the estate.
26. The duties of personal representatives to an estate are set out in Section 83 of the Law of Succession Act. Section 83(a) provides that
  - “ Personal representatives shall have the following duties
    - a. within six months from the date of confirmation of the grant, or such longer period as the court may allow to complete the administration of the estate in respect of all matters other than continuing trusts and to produce to the court a full and accurate account of the completed administration.”
27. The Respondent concedes that he has not completed distribution of the estate five (5) years after the Grant was confirmed. He has explained that the delay was occasioned by the demise of one of the daughters of the Deceased who was also a beneficiary of the estate.

That as a result the family required time to mourn and to re-organise themselves.
28. This explanation in my view is not farfetched nor is the same implausible.

The Administrator must now move with haste to distribute the estate in line with the certificate of confirmed Grant and in any event within six (6) months of today’s date.
29. Finally the Applicant claims that the Administrator is elderly and is ailing and is not capable of administering the estate. The Applicant prays that the Grant be revoked and that a fresh grant be issued to the Applicant himself.
30. The Respondent counters that though he is indeed aging he is still capable of discharging his duties as Administrator of the estate. That even if he were incapable of administering the estate then under the law priority ought to go to one of his siblings to take over as Administrator and not the Applicant who being a grandson to the Deceased ranks lower in priority. The first question that arises is whether



the Applicant being a ‘grandson’ of the Deceased has locus standi in this matter and whether he would rank in priority over the children of the Deceased.

31. The Applicant confirmed that he was the son of David Mwangi Gitari who is a son to the Deceased i.e he confirms that he is a grandson to the Deceased. The persons who have proper locus standi in a succession cause are the genuine heirs/beneficiaries to the estate. The Deceased was not survived by a spouse but was survived by several children (as named in the petition). These are the persons who have proper interest in the estate and who are entitled to obtain letters of Administration of the estate.

32. In the case of *Mercy Njoki Irungu v Lucy Wamuyu Maruru* [2016] eKLR the court held as follows:-

“It is a requirement that a party to a probate claim must have an “interest” in the estate. The foundation of title to be a party to a probate or administration action is “interest” - so that whenever it can be shown that it is competent to the Court to make a decree in a suit probate or administration, or for the revocation of probate or of administration, which may affect the interest or possible interest of any person<sup>[9]</sup> such person has a right to be a party to such a suit in the character either of plaintiff, defendant, protestor or intervener....

Interested person” or “person interested in an estate” includes, but is not limited to, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual or a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. The Blacks Law Dictionary<sup>11</sup> defines “interested party” as a party who has a recognizable stake (and therefore standing) in a matter.” [Own emphasis]

33. The Applicant being a grandson of the Deceased may only come in to replace his parent. Therefore the Respondent being a biological child of the Deceased ranks in the 1<sup>st</sup> degree and ranks in priority over the Applicant who is a grandchild of the Deceased.

34. That is not to say that grandchildren can never inherit from the estate of their grandparents. Where the child of a deceased person passes away then the grandchild of that Deceased may step in and inherit the share of the estate due to their deceased parent.

35. *In re Estate of Wabome Njoki Wakagoto* [2013] eKLR it was held:-

“Under Part V, grandchildren have no right to inherit their grandparents who died intestate after 1<sup>st</sup> July 1981.

The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.” [own emphasis]

36. In the case of *Cleopa Amutala Namayi v Judith Were* Succession Cause 457 of 2005 [2015] eKLR Hon. Mrima, J. observed that:-

“Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents..... The argument behind this position is that such grandchildren should



inherit from their own parents. This means that the grandchildren can only inherit from their grandparents indirectly through their own parents.... The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead.... [own emphasis]

37. I therefore find that the Appellant cannot claim a right in priority over the estate of the Deceased for as long as one of the biological children of the Deceased remains alive.
38. The Applicant could only stake a claim to the estate if he was a 'dependant' of the Deceased in terms of Section 29 of the Law of Succession Act. The Applicant has not claimed much less proved that he was dependent on the Deceased immediately prior to his death.
39. The father to the Applicant David Mwangi Gitari is still alive and in fact has sworn an Affidavit dated 22<sup>nd</sup> July 2024 in opposition to this application. I find that in the circumstances the Applicant has no locus standi in this matter. Even if the Grant were to be revoked the other children of the Deceased rank in priority over the Applicant to be issued with the Grant.
40. Indeed the other beneficiaries Mary Njeri Wakahiu and Patrick Gichuhi have also sworn Affidavits (also dated 22<sup>nd</sup> July 2024) opposing this summons for revocation of the Grants. They all state that they have confidence in the Respondent and in the way he has been administering the estate.
41. Finally I find no merit in this summons for revocation of Grant. The same is hereby dismissed in its entirety. This being a family matter each side will bear their own costs.

**DATED IN NYERI THIS 28<sup>TH</sup> DAY OF MARCH 2025.**

.....

**MAUREEN A. ODERO**

**JUDGE**

