



REPUBLIC OF KENYA



**In re Estate of Kimani Gachuya (Deceased) (Probate & Administration Appeal  
E014 of 2023) [2025] KEHC 4097 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4097 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
PROBATE & ADMINISTRATION APPEAL E014 OF 2023**

**CW GITHUA, J**

**MARCH 26, 2025**

**IN THE MATTER OF THE ESTATE OF KIMANI GACHUYA (DECEASED)**

**BETWEEN**

**PETER KAMAU KIMANI ..... APPELLANT**

**AND**

**ANTHONY MUIRU MAINA ..... RESPONDENT**

*(Being an appeal against the ruling of Hon. J. Irura (S.P.M) delivered in Kigumo Senior  
Principal Magistrate's court succession cause no. 58 of 2017 dated the 13th of July 2023)*

**JUDGMENT**

1. This appeal arises from the ruling of the trial court in Kigumo Succession Cause No.58 of 2017 in which the trial court revoked the grant of letters of administration issued to the appellant which was confirmed on 9<sup>th</sup> January 2020. The court also restrained the appellant from interfering, selling, alienating or in any way dealing with land LR No.LOC.18/Kirere/995 (the suit land) or harassing, evicting or in any way interfering with the respondent's possession or developments in the suit land.
2. In addition, the court declared all transactions, transfers or any dealings related to the suit land pursuant to the grant confirmed on 9<sup>th</sup> January 2020 null and void and revoked title issued to the appellant ordering that the title should revert to its rightful owner, the late Mwangi Githanda.
3. The appellant was aggrieved by the trial court's decision hence this appeal. In his memorandum of appeal filed on 27<sup>th</sup> July 2023, the appellant advanced ten grounds of appeal which are reproduced verbatim hereunder;
  - (a) The learned magistrate misapplied the law on principles governing revocation and/or annulment of grant - Section 76 of the Law of Succession Act Cap 160 and therefore arrived at a wrong conclusion.



- (b) The learned magistrate erred in both law and facts by making a finding that the proceedings to obtain grant were defective and illegal in substance, the Appellant's application was tainted with falsehood and concealment from court of material facts in obtaining the grant of letters of administration on 9<sup>th</sup> January 2020.
  - (c) The learned trial magistrate erred in both facts and law by making a finding that land parcel number LOC.18/Kirere/995 did not form part of the estate of Kimani Gachuya – deceased before, during and after his demise.
  - (d) The learned magistrate erred in both law and fact by undermining the authority and orders of the High Court at Nairobi issued in High Court Succession Cause No.1542 Of 2010 – *In The Matter Of The Estate Of Mwangi Githanda – Deceased*, overturned its decision and occasioned a grave injustice to the Appellant contrary to the legal principle of stare decisis.
  - (e) The learned magistrate erred in law and fact in failing to peruse and consider all the pleadings and documents filed by the appellant in opposition to the summons for Revocation/ Annulment of grant application dated 29<sup>th</sup> September 2022 thereby making a decision not supported by the pleadings.
  - (f) The learned magistrate erred in law and in fact in failing to consider all the issues presented before her to enable her make an informed decision.
  - (g) The learned magistrate erred in law and in fact in putting more weight on the Respondent's submissions than the Appellants' to the detriment of the appellant and which is clearly demonstrated in the lopsided Ruling.
  - (h) The learned magistrate erred in both law and facts by granting the prayer/remedies sought by the Respondent thereby condemning some disclosed third parties unheard, disinheriting the rightful beneficiaries of the deceased's Estate and occasioning a miscarriage of justice.
  - (i) The learned magistrate misapprehended the law and facts by considering extraneous matters which were not in issue.
  - (j) The learned magistrate erred in both law and fact by ruling the way she did.
4. The background to this appeal is an intricate web of succession causes filed both in the lower court and in the High Court by different parties including the parties to this appeal. The succession causes were in respect of two different estates; namely; the Estate of Mwangi Githanda and the Estate of Kimani Gachuya. This appeal relates to the Estate of Kimani Gachuya, the appellants late father.
  5. The record shows that the suit land was initially owned and registered in the name of Mwangi Githanda who died intestate on 21<sup>st</sup> September, 1993. Upon his demise, since he was not survived by a wife or children, the late Kimani Gachuya, the appellant's father, petitioned for grant of letters of administration to his Estate. A grant was issued in his favour on 16<sup>th</sup> August 1994 in Murang'a Succession Cause No.279 of 1993 and it was confirmed on 8th March 1995. The suit land was the only asset in the deceased's Estate and it was transmitted to the late Kimani Gachoya as the sole proprietor. A title was issued in his name on 22<sup>nd</sup> March 1995.
  6. It is apparent from the record that the same Estate of Mwangi Githanda was subject to two other Succession Causes filed in the High Court namely, Succession Cause No.1654 of 1995 and 1542 of 2010.



In Succession cause No.1654 of 1995, the respondent's father, the late Maina Muiru Umwe who had sought and obtained a grant of letters of administration to the same Estate in SPM'S Thika Succ. Cause No. 239 of 1993 filed a summons seeking revocation of the grant issued to the appellant's father in Murang'a Succession Cause No.279 of 1993.

7. On 2<sup>nd</sup> November 1995 and by consent of the parties, the High Court (Hon. Githinji J as he then was) ordered that the grants issued to Maina Muiru Umwe (Respondent's father) in Thika SPM's Succession Cause No.239 of 1993 and the one issued to Kimani Gachoya in Murang'a SRM's Court Succession Cause No.279 of 1993 be revoked and a fresh grant be issued to both Kamau Gachoya and Maina Muiru Umwe. The court further directed both parties to file a summons for confirmation of grant in Murang'a Succession Cause No. 279 of 1993 and that all disputes relating to distribution of the Estate of Mwangi Githanda be determined in that cause.
8. There is evidence from the exhibit marked E annexed to the appellant's replying affidavit filed in the trial court that pursuant to the orders issued by the High court in Succession Cause No.1654 of 1995, the appellant's father filed a summons for confirmation of grant in Murang'a Succession Cause No. 279 of 1993 which was contested by the respondent's father; a hearing took place which resulted in a judgement delivered by the trial court on 16<sup>th</sup> October 2001.
9. . In the judgement, the grant issued to the appellant's father was confirmed and the court ordered that the suit land be registered in his name. A certificate of confirmation of grant to that effect was issued on 18<sup>th</sup> July 2002.
10. Regarding High Court Succession Cause No. 1542 of 2010, the record shows that the respondent and his mother petitioned for letters of administration to the Estate of Mwangi Githanda without disclosing existence of Succession Cause No. 279 of 1993 in which a grant had been issued and confirmed in favour of the appellant's father. This was discovered by the appellant after his father, Kimani Gachuya, passed on and he was in the process of administering his Estate following grant of letters of administration issued in Kigumo Succession Cause No.58 of 2017. This is when he discovered that the suit land had been subdivided into three parcels of land being LOC.18 / Kirere /1773, 1774 and 1775 pursuant to orders issued in HCC Succession Cause No.1542 of 2010.
11. After the above discovery, the appellant filed a summons seeking revocation of the grant issued to the respondent and his mother in the above cause which application was compromised by consent of the parties. The consent was adopted as an order of the court on 19<sup>th</sup> December 2018 as a result of which the grant issued to the respondent and his mother was revoked. The titles issued in respect of LR Block 18 / Kirere /1773, 1774 and 1775 were also cancelled and the court ordered that ownership of the suit land be reverted to its registered owner, the appellant's father. The court further ordered that all other proceedings related to the Estate of Mwangi Githanda be entertained and determined in Kigumo PM's Succession Cause No. 58 of 2017.
12. Thereafter, on 9<sup>th</sup> January 2010, the grant issued to the appellant in respect of his father's Estate in Kigumo Succession Cause No. 58 of 2017 was confirmed and the suit land was distributed to the deceased's beneficiaries who included the appellant. The respondent filed a summons seeking revocation of the said grant which resulted to the impugned ruling.
13. I have taken the trouble and effort to reproduce what in my understanding is the background against which this appeal was filed because it offers in my view important insights into the context in which the respondents summons for revocation of grant was filed and the validity or otherwise of the trial court's determination.



15. Having carefully considered the grounds of appeal, the rival written submissions filed on behalf of both parties by their advocates on record namely, Ms. Mbue Ndegwa & Co. Advocates for the appellant and Ms. Irungu Mwangi Nganga T.T. Company Advocates for the respondent and all the authorities cited as well as the trial court's record, I find that the only issue arising for my determination is whether given the evidence on record, the learned trial magistrate erred in allowing the respondent's summons for revocation of grant dated 29<sup>th</sup> September 2022 and in making the orders attendant thereto.
16. In addressing the above issue, the starting point is the law that governs revocation of grants which is set out in Section 76 of the *Law of Succession Act* which provides as follows;
- “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.”
17. In her ruling dated 13<sup>th</sup> July 2023, the learned trial Magistrate made a finding of fact that when obtaining the grant of letters of administration to his father's Estate and when seeking confirmation of the said grant, the appellant and members of his family concealed material facts to the court. According to the trial court, the facts which the appellant had concealed to the court was that his late father and the late Maina Muiru Umwe had failed to abide by the terms made in the orders issued by the High Court in Succession Cause No.1654 of 1995 which inter alia required them to obtain joint letters of administration to the Estate of Kimani Githanda and have the grant confirmed in Murang'a Succession Cause No.279 of 1993.
18. As correctly submitted by Mr. Ndegwa, learned counsel for the appellant, the above finding was a serious misdirection by the learned trial magistrate since it was not supported by the evidence on record. The evidence which was presented to the trial court by the appellant in his replying affidavit to the summons clearly demonstrated the opposite. The evidence, as indicated earlier, proved that pursuant to the consent order made by the High Court in the aforesaid Succession Cause, a hearing took place



in Murang'a Succession Cause No.279 of 1993 regarding distribution of the Estate of the late Mwangi Githanda; that the trial court determined in its judgement dated 16<sup>th</sup> October 2021 that the appellant's father was the sole beneficiary of the deceased's Estate and that the suit land should be registered in his name.

19. From the petition for grant of letters of administration to his father's Estate dated 27<sup>th</sup> April 2017 and the summons for confirmation of grant dated 26<sup>th</sup> November 2019, it is clear that the appellant disclosed all material facts to the trial court as required by the *Probate and Administration Rules* ( P & A rules). The record shows that the appellant even disclosed to the trial court what had transpired in High Court P & A No.1542 of 2010 and why he had filed a summons for revocation of the grant issued therein as well as the orders the court made by consent of the parties.
20. From the record, there's completely no basis for the learned trial magistrates finding that the proceedings to obtain the grant to the appellant's father's Estate were defective and illegal and that they were tainted by falsehood and concealment of material facts. As demonstrated above, the evidence on record proved the contrary.
21. . Another finding made by the trial court was that at the time of his death on 25<sup>th</sup> December 2009, the suit property was registered in the names of the late Mwangi Githanda; that the appellant's father was not the registered owner of the suit land and that therefore, the suit property did not form part of his Estate and was not available for distribution.

This is what the learned trial magistrate said at pages 116-117 of the record;

“ ....It therefore means that there was no time, before, during and even after the death of the deceased herein that land No.LOC.18/Kirere/995 formed part of the estate of the deceased herein hence neither was it available for distribution as an asset forming part of the Estate of the late Kimani Gachuya.”

22. The above finding was another error made by the learned trial magistrate. I say so because my examination of the documentation presented to the trial court does not show that as of December 2009, the suit land was registered in the names of Mwangi Githanda and not the deceased.
23. . Secondly, the certificates of official search issued between the years 2004 to 2007 which were exhibited as annexures to the appellant's replying affidavit show clearly that during this period, the suit land was registered in the names of the deceased, the late Kimani Gachuya. Further, the High Court in its orders dated 19<sup>th</sup> December 2018 issued in HC Succ. Cause 1542 of 2010 recognised the deceased as the legitimate owner of the suit land and directed that the deceased be registered as its owner.
24. The learned trial magistrate apparently either failed to thoroughly interrogate all the evidence placed before her including the orders issued by the High Court in HC Succ. Cause 1542 of 2010 or chose to disregard it because if she had properly evaluated the evidence before her, she would have arrived at a different conclusion.
24. The learned trial magistrate in the above finding also violated the important and much respected doctrine of stare decisis which provides that decisions of higher courts unless they were distinguished or overruled bind all lower courts in similar or like cases – See: The Supreme Court's decision in *Jasbir Singh Rai & 3 others v Tarcholan Singh & 4 others* [2013] eKLR.

I say so because the finding went against the finding and orders of the High Court in Succession Cause No.1542 of 2010 which, inter alia recognized the deceased, the late Kimani Gachuya as the owner of the suit land and directed that the same be registered in his name. There was no evidence placed before the trial court to show that the High Court's order had subsequently been varied, set aside or



overturned on appeal. The trial court was therefore bound by the orders issued by the High Court in the above Succession Cause and should have followed them in arriving at her decision. Her finding to the contrary contravened the doctrine of stare decisis and amounted to an error of law.

25. For all the foregoing reasons, I find merit in the applicant's appeal and it is hereby allowed. The trial court's ruling dated 13<sup>th</sup> July 2023 and all consequential orders are accordingly set aside. They are substituted with this court's order dismissing the respondent's summons for revocation of the grant dated 29<sup>th</sup> September 2022 with costs to the appellant.
26. Costs follow the event and are at the discretion of the court. The order that best commends itself to me on costs is that each party shall bear its own costs of the appeal.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 26<sup>TH</sup> MARCH 2025.**

**HON. C. W. GITHUA**

**JUDGE**

In the Presence of:

Mr. Kimari holding brief for Mr. Mwangi for the Respondent

Ms Mbue Ndegwa for the appellant

Ms. Susan Waiganjo, Court Assistant

