



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Francis Njue Giakanu alias Njue Giakanu (Deceased) (Succession Cause 143 of 2009) [2025] KEHC 5537 (KLR) (30 April 2025) (Judgment)

Neutral citation: [2025] KEHC 5537 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 143 OF 2009
RM MWONGO, J
APRIL 30, 2025**

BETWEEN

PETER FRANCIS NJAGI 1ST APPLICANT

JOSPHAT NJIRU NJUE 2ND APPLICANT

AND

SIMION MUGO NJUE ADMINISTRATOR

JUDGMENT

1. The deceased died intestate on 2nd November, 2007. His son Simion Mugo Njue, filed a petition for grant of letters of administration in this Court on 23rd March, 2009. A grant was issued on 27th August, 2009. In November 2015, he applied for confirmation of the grant. Following a protest, the matter was referred to mediation and a settlement was reached in which, inter alia, Joseph Kariuki Mugo was added as a co-administrator.
2. The applicants filed summons for revocation of grant dated 03rd April 2024 through which they seek the following orders:
 - a. That the letters of administration made out to Simion Mugo Njue and Joseph Kariuki Mugo on 27th August 2009 and the amended partial Certificate of confirmation of grant issued on 23rd February 2024 be revoked and/or annulled;
 - b. That the land parcel nos. Gaturi/Nembure/1082, Gaturi/Nembure/996, Gaturi/Nembure/4750 and KCB shares (331553 and 540784) be restored in the names of the deceased; and
 - c. That costs of this application be granted to the applicants.
3. The application was premised on the grounds that the grant and certificate of confirmation were procured without the knowledge of the applicants. That at the point of confirming the grant, the court



was misled as to who the beneficiaries of the estate were; that a part of the estate was distributed to strangers, namely Pentecostal Gospel Center Churches and Mission of East Africa and Kiarie Giekanu.

4. Through the supporting affidavit to the summons for revocation, the applicants proposed a different mode of distribution of the estate of the deceased comprising in land Parcel Nos. Gaturi/Nembure/1082, Gaturi/Nembure/996, Gaturi/ Nembure/4750 and KCB shares (331553 and 540784). They also prayed that once the existing certificate of confirmation is set aside, the named assets be reverted in the name of the deceased for redistribution.

Replying Affidavits

5. In his replying affidavit, the respondent, a son of the deceased and one of the administrators, stated that the applicants were aware of the succession proceedings and they even signed the consent Form P&A 38 in support of the petition. They were named as survivors of the deceased and they attended court throughout the proceedings. At the point of confirmation of the grant, the 1st applicant filed an affidavit of protest which was resolved through mediation where 3 separate partial mediation agreements were reached and were all adopted as court orders.
6. A certificate of confirmation of grant was issued reflecting the position reached in the mediation settlement agreements. He stated that through the application herein, it appears that the applicants want to set aside the mediation agreements through the backdoor. That the issue of revocation of grant has not been proved and the mediation agreements cannot be set aside since an application has not been made. He urged the court to dismiss the application with costs.
7. In support of the respondent's case, Jemima Njoka Njue and Mary Muthanje Njue, wife and daughter of the deceased, swore a joint replying affidavit in which they deposed that prior to his death, the deceased sold parcel number Gaturi/Nembure/4750 to Pentecostal Gospel Center Churches and Mission of East Africa.
8. They stated that land parcel numbers Gaturi/Nembure/996 and 1082 were being held by the deceased's brother known as Kiarie Giekanu who was holding them in trust for himself and the deceased. That Kiarie Giekanu has been living on parcels numbers Gaturi/Nembure/1082 and half of 996, but that he was also entitled to a part of the estate in the manner agreed in the certificate of confirmation of grant.
9. Alois Nthiga Ndwiga of Pentecostal Gospel Center Churches and Mission of East Africa swore a replying affidavit stating that the church was rightly included as a beneficiary of parcel number Gaturi/Nembure/4750 because prior to his death, the deceased sold the land to the church. The deceased, who was a leader in that church, died before effecting transfer of the said land into the name of the church even though the consent to transfer had already been obtained. This position was appreciated by the administrators of the estate of the deceased and that is why it was captured in the amended certificate of confirmation at their behest. He stated that the church has been occupying the said land since the year 1990.

Parties' Submissions

10. This appeal was canvassed by way of written submissions.
11. The applicants submitted that the distribution of a part of the estate of the deceased to Pentecostal Gospel Center Churches and Mission of East Africa and Kiarie Giekanu was erroneous. As a result, the certificate of confirmation of grant should be revoked and the contentious properties should be returned in the names of the deceased and then redistributed in the manner proposed by the applicants.



It was their case that if the orders sought are not granted, some of the beneficiaries will be disinherited and a great loss will be occasioned.

12. The respondent submitted that the Pentecostal Gospel Center Churches and Mission of East Africa was included as a beneficiary of Gaturi/Nembure/4750 following a mediation settlement agreement dated 21st June 2022 which was adopted as an order of this Court. He relied on Rule 39 of the Civil Procedure (Court Annexed Mediation) Rules 2022 and stated that there are no vitiating factors to warrant setting aside of the mediation agreement. He also relied on the case of *Odaria Wanja v Charles Kinyua Njoka* [2021] KEHC 2295 (KLR) where it was held that a certificate of confirmation of grant cannot be revoked but can only be set aside. He urged the court to find that the application lacks merit.

Issues for Determination

13. The core issue for determination is whether the application has merit.

Analysis and Determination

14. The applicants have asked the court to revoke the grant issued to the respondent and Joseph Kariuki Mugo and set aside the amended partial certificate of confirmation of grant issued. The grounds for revoking a grant are set out under section 76 of the *Law of Succession Act* 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.”

15. The applicants assert that the succession proceedings were conducted in secrecy and without their involvement as beneficiaries. A close perusal of the proceedings, reveals that the applicants were actively involved in the matter since its inception. They signed the necessary documents that needed to be signed and they did not object to appointment of the administrators. From their pleadings, none of the grounds for revocation of the grant under section 76 of the *Law of Succession Act* have been disclosed. The applicants have a bigger issue with distribution of the estate and not the grant itself.



16. The supporting affidavit to the summons for revocation reveals the applicants' dissatisfaction with the manner in which the estate was distributed. At the point of confirmation of the grant, the matter was referred to mediation, where partial agreements were reached and adopted as orders of this Court. In fact, at the hearing of the application, counsel for the respondent stated that there was no need to file witness statements since the issues arising had been partly resolved during the mediation.
17. There are 3 mediation settlements. The First one is a Partial mediation settlement agreement dated 15th June 2022 which was adopted as an order of the court. It was signed by the applicants and the respondent herein among others. In that agreement, regarding the contentious properties, it was agreed that the deceased made a gift inter vivos to his brother Kiarie Giakanu in the following manner: 3.5 acres out of the 7-acre property namely Gatari/Nembure/1082; and 2 acres out of the 10-acre property namely Gatari Nembure/996.
18. The same partial agreement also stated that the parties had agreed that the property Gatari/Nembure/4750 measuring $\frac{1}{4}$ acre would be sold and the proceeds shared equally among the beneficiaries.
19. The Second Partial mediation agreement is dated 21st June 2022 and it was also adopted as order of the court. It stated that the remaining portions of Gatari/Nembure/1082 and 996 (after removal of the portions held by Kiarie Giakanu) would be distributed in equal shares amongst 7 beneficiaries including the applicants and the respondent herein. In that agreement, the parties agree that the Kenya Commercial bank shares under certificate numbers 331553 and 540784 would be held by Many Muthanje Njue to facilitate the deceased's widow Jemima Njoka Njue's upkeep and medical expenses. This agreement was also signed by the applicants and the respondent herein among others.
20. The Third Mediation settlement agreement is dated 19th September 2022 and it is an addendum to the first partial mediation settlement agreement. This addendum reiterated that it was agreed that 3.5 acres out of the 7-acre property namely Gatari/Nembure/1082 and 2 acres out of the 10-acre property namely Gatari Nembure/996 were given to Kiarie Giakanu as gifts inter vivos. It also provides that the $\frac{1}{4}$ acre parcel number Gatari/Nembure/4750 should be transferred to Pentecostal Gospel Center Churches and Mission of East Africa and the said land does not form the residuary estate of the deceased. this addendum was also adopted as an order of the court.
21. None of these Partial Mediation agreements were challenged for purposes of setting aside under the provisions of the Civil Procedure (Court Annexed Mediation) Rules, 2022. All the uncontested mediation settlement agreements culminated into the amended partial certificate of confirmation of grant dated 23rd February 2024 which captures the distribution as agreed in the 3 mediation settlement agreements which were adopted as orders of this Court.
22. Consequently, it is clear that the only way to set aside the amended partial certificate of confirmation of grant is by invoking the setting aside provisions of Rule 39 of the *Civil Procedure (Court Annexed Mediation) Rules*, 2022 which provides:
 1. No application for setting aside of an order or decree arising from a mediation settlement agreement shall be filed except with the leave of court.
 2. An application for leave under sub-rule (1) shall be supported by an affidavit detailing the grounds upon which the applicant intends to rely in setting aside the order or decree.
 3. The following shall constitute the grounds upon which an application to set aside an order or decree arising from a mediation settlement agreement—



- a. misconduct, fraud, or a fundamental mistake by the mediator as relates to the mediation proceedings that goes to the core of the matter:
Provided that the misconduct, fraud or mistake should not have been known by the applying party at the time of execution of the settlement agreement and should be one which affected the process and outcome of the mediation in such a way that it would be unfair and inequitable to enforce it in its form;
 - b. fraud, collusion, or misrepresentation by any party to the mediation (other than the party applying) or any witness or person who took part in the proceedings and whose participation materially affected the outcome;
 - c. a fundamental mistake by any or all of the parties to the mediation as to the existence or state of the subject matter, person or thing; or to any set of facts that materially affected the parties' decision to enter into the subject agreement and which has rendered such agreement unfair and inequitable;
 - d. where a party was, at the time of the making of the agreement, under some legal incapacity to take part in the subject mediation proceedings or to conclude and execute a binding settlement; or
 - e. where the settlement agreement is invalid under Kenyan or international law, or is or has become incapable of enforcement under Kenyan law.
4. At the hearing of an application to set aside an order or decree, no party shall, without leave of court, be allowed to canvass any other ground in support of the application other than the grounds specified in sub-rule (3).
 5. The court shall hear and determine an application under this on priority basis within thirty days after filing."

Conclusion and Disposition

23. Further, no basis was laid by the applicant for revoking the grant or setting aside the amended partial certificate of confirmation of grant. The summons for revocation of grant must therefore fail and be struck out with no order as to costs given the relationship between the parties.
24. There are clearly three Mediation settlement agreements entered into by the parties and adopted by the Court. Having been so adopted and not set aside, and there being an application to set them aside, the agreements continue to be deemed as orders of the Court.
25. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 30TH DAY OF APRIL, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

Ms. Njagi holding brief for Mr. Kathungu for Respondent

Peter F. Njagi – 1st Applicant



Josphat Njiru Njue – 2nd Respondent

Francis Munyao - Court Assistant

