



REPUBLIC OF KENYA



**In re Estate of Musungu Werichina (Deceased) (Succession Cause
299 of 2001) [2025] KEHC 5597 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5597 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 299 OF 2001
SC CHIRCHIR, J
APRIL 29, 2025**

BETWEEN

**ISAAC JUMA 1ST PETITIONER
ENOCK PONDI MUFOYA 2ND PETITIONER
ENOS WANJALA 3RD PETITIONER**

AND

AGNES WATORA KULOVA OBJECTOR

AND

**ANNE KHAVERE MUSUNGU BENEFICIARY
LENAH SHILMA MUSUNGU BENEFICIARY
RASOA ALICE MUSUNGU (DECEASED) BENEFICIARY
MARGARET LICHEYI BENEFICIARY**

JUDGMENT

1. The proceedings herein relate to the estate of Musungu Werichina (Deceased) who died on 1651985. Upon his demise, Elizabeth Mukochelani Musungu, Enos Wanjala and Isaac Juma applied for and were granted letter of administration Intestate. The Grant was confirmed on 1362003 with the only asset of the Estate being KakamegaSurungai34 being shared equally between the 1st and 2nd respondents.
2. On 2432021, the Applicant herein, Agnes Watora Kulova, filed the summons dated 2332021 seeking for inter alia revocation of Grant and reinstatement of the ownership of the suit property in the name of the deceased.



The Applicant's case

3. It is the Applicants' case that the Grant was obtained fraudulently in that the Petitioners concealed from the court the fact the deceased was survived by other beneficiaries including herself. Thus, it is stated the proceedings to obtain the Grant were improper, irregular and defective in substance.
4. It is further stated that the property of the estate was transferred to people who were not beneficiaries; that it has come to her attention that the suit property's is in the process of being transferred to one Enock Pondi Mutoyoa , the 3rd Party respondent , pursuant to proceedings arising from Kakamega CMMisc MCL & E No. 542019.

The Respondents' case.

5. The respondent filed their affidavits in response. The 1st respondent state that the Grant was obtained without any objection from the Applicant and her siblings; that it is their deceased grand mother and fellow Administrator, who listed them as beneficiaries and that he has been using the land since. He states that the deceased was his grand father and father of the Applicant and her siblings. The 2nd respondent swore an affidavit along the same line.
6. The 3rd respondent also swore an affidavit in response. He states that the suit property was bought by his father one Pondi Mufoya from the deceased ,by way of an agreement dated 1771974.
7. He states that the deceased failed to transfer the land to his father and his father sued the 1st and 2nd respondents vide Kakamega HC Civil Suit No. 982003 and obtained orders for the land to be transferred to him;. He further states that on the basis of the findings in Kakamega ELC No. 4362017, he obtained orders directing the Deputy Registrar of that court to sign transfer documents in place of the two respondents. That there was no appeal against both decisions.

The Evidence.

8. The hearing proceeded by way of oral evidence.
9. PW1 was the applicant. She stated that the 1st and 2nd respondents are grand children of the deceased, that her father had 5 girls. She was not informed when proceedings were started. She only came to know the 3rd respondent in court. She denied any sale of land to the 3rd respondent.
10. PW2 was the sister to the Applicant; She stated that they were five daughters of the deceased but one has since died. She denied that she knew the 3rd respondent . She wants the respondents to get out of the land. On cross examination she stated that she does not know the 3rd respondent and all she wants is for Enos and Juma to get out of the land. She named her sisters as Diana, Margaret, Agnes & Alice (Deceased).

The respondent's case.

11. The 1st defence witness was the 1st respondent. He told the court that the deceased was his grand father and his mother was Lenah Shilima. He is in support of the protestor's proposal stating that he is not opposed to it since the Applicants are deceased's children while he is a grandchild. On cross-examination, he stated that he had involved the Applicants when he petitioned for the Grant. He denied knowing the 3rd respondent; or the 3rd Respondent's dealings with the deceased. He further told the court that it was his grandmother, the mother of the Applicants ,who had chosen them as Administrators of the Estate. He denied knowing the 3rd respondent insisting that he only saw him in court.



12. PW2 was the 2nd respondent. He told the court that the deceased was his grand- father and was a child of Margaret Lucheyi, the deceased's daughter. He is not opposed to the Applicants' prayer. On cross- examination he denied knowing the 3rd respondent or the selling of the land by the deceased. He further stated that he was not aware of any claim based on purchase.
13. On further cross- examination, he stated that when they petitioned for the grant, there was no one in occupation of the suit property. He stated that his grandmother told them to register the property in their names as his daughters, the Applicants herein, used to live far.
14. The 3rd witness was the 3rd respondent. He adopted his affidavit sworn on 4102021 as his evidence- in- chief. He told the court that his father bought the land from the deceased in the year 1974. That it was in the year 2003, that he learnt that the land had been transferred to the 1st and 2nd respondents, as administrators of the deceased estate
15. He further testified that his father filed suit No. Kakamega HCC No. 98 of 2003 against the 1st and 2nd respondents and on the basis of the outcome in that case he got back the suit property . In 2016, the Environment and Land Court ordered the Registrar to sign the transfer documents and currently he has the title to the property.
16. On cross examination he stated that he was not aware about the succession proceedings; that he is now in occupation of the land and he has the title document.
17. The parties have filed submissions which I have considered.

Analysis & Determination.

18. I have considered the pleadings, the oral evidence and parties' submissions. In my view the following issues lend themselves for determination;
 1. Whether the 3rd respondent is a creditor to the Estate?
 2. Whether the Grant should be revoked?
 3. Whether the 3rd Respondent is a creditor to the Estate
19. The 3rd Respondent's case is that his father purchased the Suit property in 1974; that by judgment delivered on 2322012 in Kakamega High Court Civil Case No. 982003, the deceased was ordered to transfer the property to his father; that his father died in 2014 before the process could be completed; and finally that through Kakamega ELC Case No. 4362017, he obtained an order, authorizing the Deputy Registrar of that court to sign the transfer forms in places of the 1st and 2nd respondents who had refused to sign the transfer form.
20. I have perused the case file in Kakamega ELC 4362017. on 942019, Justice N.A Matheka directed the Deputy Registrar of ELC Court to sign the transfer forms in favour of the 3rd respondent in his capacity as the legal representative of his father's estate. As part of the record in ELC 4362017, is a judgment by Mr Justice Isaac Lenaola delivered on 1022011 in HCCC NO. 98 2003, in which the court declared that the 3rd respondent's father was entitled to six acres out of the suit property. By way of an application dated 6112011 the 3rd respondent's father sought for a review of the judgment and on 722012 the review was allowed and it was to the effect that the 3rd respondent's father was entitled to the entire parcel.
21. There is no evidence that there was an Appeal against any of the above stated decisions. Indeed during the hearing the 3rd respondent informed the court that he now had the title deed to the land



22. The record of ELC No. 436 2017 show that in the HCCC No. 982003, the 3rd respondents had sued the 1st and 2nd respondent for failing to provide for his share in the deceased estate.
23. In effect the subsisting position is that the 3rd respondent has a title to the suit property or in the process of obtaining it pursuant to previous order (s) of the court. Those two decisions were giving effect to the 3rd respondent's right which had crystallized prior to the deceased's death. There is no evidence that any appeals were filed against the two decisions.
24. Consequently, I do find that the 3rd respondent was a creditor to the estate and not a stranger as claimed by the Applicants, and the 1st and 2nd respondents.

Whether the Grant should be revoked

25. Section 76 of the *Law of Succession Act* sets out grounds for annulment or revocation of a Grant. It is the Applicant's case that the 1st and 2nd Administrators obtained the Grant through concealment of material fact namely, that there were heirs of the estate. The petitioners were the 1st and 2nd respondent and their grandmother and widow to the deceased. The Applicant is the maternal Aunt to the 1st and 2nd respondents and these same respondents are children of Lenah Shilima and Margaret Licheyi respectively, whose mothers are in support of the revocation. I have perused the petition and noted that indeed the Applicant and her (4) four sisters were not listed in the petition and that would be a ground of revocation.
26. However, revoking the Grant will serve no purpose unless there were other Assets requiring Administration. The ownership of the only property of the Estate has since changed hands by way of an order of a court of competent jurisdiction. Indeed, when the Kakamega ELC Court ordered the Deputy transfer of that court to sign the transfer forms, the transmission process was taken out of the hands of the Administrators. There is nothing more for them to do and hence nullifying the Grant would have no consequences
27. In view of all the foregoing, the summons for revocation must fail. The summons is hereby dismissed. Each party to meet their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO THIS 29TH DAY OF APRIL, 2025.

S. CHIRCHIR

JUDGE.

