



REPUBLIC OF KENYA



**In re Estate of Simon Muteru Wachiuri (Deceased) (Probate & Administration
6 of 2019) [2025] KEHC 4922 (KLR) (25 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4922 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION 6 OF 2019**

MA ODERO, J

APRIL 25, 2025

(FORMERLY NAIROBI H.C SUCCESSION NO. 2014 OF 1999)

**IN THE MATTER OF THE ESTATE OF THE LATE
SIMON MUTERU WACHIURI (DECEASED)**

JUDGMENT

1. The Protestor herein Francis Wanjohi Muteru filed a Summons for Revocation of Grant dated 11th December 2023 seeking orders that the Certificate of Confirmed Grant issued on 1st July 2019 in respect of the estate of the Deceased be revoked. The Summons was supported by the affidavit of even date and the Further Affidavit dated 9th August 2024 both sworn by the Protestor.
2. The Respondent Catherine Wambui Ngugi opposed the Summons through the Replying Affidavit dated 12th July 2024, sworn by one of the beneficiaries Catherine Wambui Ngugi as authorized by all the other beneficiaries save for the Protestor and one Jackson Wachiuri Muteru.
3. Following directions made by the Court, the matter was canvassed by way of written submissions. The Protestor filed the written submissions dated 20th November 2024 whilst the Respondent relied on the written submissions dated 20th August 2024.

Background

4. This succession cause relates to the estate of the late SIMON MUTERU WACHIURI (hereinafter 'the Deceased') who died intestate on 10th April 1999. A copy of the Death Certificate Serial Number 502279 is annexed to the Petition for Grant of Letters of Administration dated 1st September 1999.
5. The Deceased was survived by the following persons.
 - a. Shelmith Wangea Muteri - Wife
 - b. Jackson Wachiuri Muteru - Son
 - c. Francis Wanjohi Muteru - Son



- d. Tim Gitahi Muteru - Son
 - e. Elizabeth Nyokabi Mathu - Son
 - f. Anne Wanjiku Gitahi - Daughter
 - g. Wilson Githu Muteru - Son
 - h. Catherine Wambui Ngugi - Son
 - i. Jane Njeri Muiru - Daughter
 - j. John Karige Muteru - Son
6. The estate left behind by the Deceased comprised the following assets.
- i. Land Parcel Tetu/Ihururu 1
 - ii. Land Parcel Tetu/Kiriti 531
 - iii. Land Parcel Tetu/Kiriti 534
 - iv. Land Parcel Tetu/Kiriti 548
 - v. Land Parcel Evaso Nyiro/Suguroi Block I/1454
 - vi. Land Parcel Gitumba/Muhoteru Block 2/29/Muhotetu
 - vii. Bank Account NO. 0150145529100 – Standard Chartered Bank Ltd
 - viii. Motor vehicle Registration Number KYV 693
- Total Value – Kshs. 3,000,000 (Three million)
7. Following the demise of the Deceased the widow Shelmith Wangeci Muteru filed a Petition seeking to be issued with letters of Administration Intestate in respect of the estate. On 9th November 1999, the High Court issued a Grant to the widow. A Summons for Confirmation of Grant dated 20th March 2019 was filed which summons set out the proposed mode of distribution of the estate. On 1st July 2019 the High Court in Nyeri issued the widow Shelmith Wangeci with a certificate of Confirmed Grant.
8. The Administrator of the estate who was the widow of the Deceased then passed away on 2nd April 2020. Thereafter in December 2023, the Protestor filed this Summons seeking the revocation of the confirmed grant which had been issued to his mother.
9. As stated earlier the Summons was opposed. The other beneficiaries submit that no sufficient grounds have been advanced to warrant the revocation of the Grant.

Analysis and Determination

10. I have considered the Summons for revocation of Grant filed by the protestor, the reply filed thereto as well as the written submissions filed by both parties.
11. It is common ground that the Deceased in this matter died intestate on 10th April, 1999. There is no dispute regarding the names and identities of the beneficiaries to the estate nor is there any dispute regarding the extent of the deceased's estate.



12. 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 –
- v. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order allow; or
- vi. to proceed diligently with the administration of the estate; or
- vii. 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
- viii. that the grant has become useless and inoperative through subsequent circumstances.

13. In the case of *Albert Imbuga Kisigwa vs 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]

14. The Protestor has sought to have the grant revoked on several grounds. Firstly the Protestor claims that the present succession cause is a duplication of a previous matter being Succession cause No. 2014 of 1999 which he claims was heard and determined at the Nairobi High Court.

15. In other words the Protestor submits that the present matter is in fact ‘Res Judicata’ and for that reason the Grant issued and confirmed in this Nyeri file ought to be revoked.

16. Unfortunately the Protestor did not annex to his supporting affidavit copies of this Succession Cause No. 2014 of 1999. However the Respondents in their Replying Affidavit explained that Nairobi High Court Succession Cause No. 2014 of 1999 involved the same deceased person, and that the Nairobi file was merely ‘transferred’ to the High Court in Nyeri since it was noted that the suit property was located in Nyeri County and most of the beneficiaries resided in Nyeri.



17. The Appellants annexed to their Replying Affidavit dated 12th July 2024 a letter dated 23rd May 2019 (Annexure “(WN5”). This letter was written by the Deputy Registrar of the Nyeri High Court to the Deputy Registrar Milimani Law Courts confirming receipt of the Succession Cause No 2014 of 1999 at the Nyeri High Court. The letter confirmed that the said file had been allocated a new number being “Nyeri High Court Succession Cause No. 6 of 2019.” (which is this present file)
18. Based on the above it becomes quite apparent that the protestors claim that succession proceedings relating to the estate of the Deceased were concluded in the High Court in Nairobi is misguided.
19. What actually happened was that the succession cause was initially filed in Nairobi vide Succession cause No. 2014 of 1999. Thereafter the trial judge directed that for convenience of the beneficiaries and ease of hearing the file be ‘transferred’ to Nyeri. This was done. The Nairobi file was sent to Nyeri Court and was allocated a new number being Succession Cause No. 6 of 2019. The two files relate to the same estate with the Nyeri file being merely a continuation of the cause filed in Nairobi. I therefore find that this matter is not Res Judicata. I dismiss this as a grounds to revoke the Grant.
20. The Protestor goes on to allege that the Succession cause was initiated and proceeded for hearing without his knowledge and/or consent yet he was one of the beneficiaries to the estate. That he was not given notice of the orders made on 27th March 2019 fixing the Summons for confirmation of Grant for hearing on 14th May 2019.
21. The claim by the Protestor that he was kept in the dark concerning this succession cause is not entirely true. The protestor indicated that he was fully aware that following the demise of the Deceased his mother Shelmith Wangeci Muteru was appointed as Administrator of the estate. I have perused the consent dated 1st September 1999 by which all the beneficiaries gave their consent to have their mother appointed as Administrator. The Protestor Francis Wanjohi Muteru of I/D Number 0967737 has signed that consent.
22. Further I note there is evidence that the protestor was duly served with the Hearing Notice for the Summons for Confirmation of Grant. Annexed to the Replying Affidavit is an Affidavit of service dated 20th June 2019 (Annexure ‘CWN 6’), sworn by one Wilson Wambua Nguta.
23. In his affidavit the process-server indicates that he travelled to the home of the Administrator in Gathunuka Village Ihururu Sub-Location Nyeri County where he met the Protestor Francis Wanjohi Muteru and his brother Jackson Wachiuri Muteru. That the process-server personally served both with the hearing Notice which they both received but declined to sign his copy indicating that they would not attend court on the hearing date.
24. The evidence of the process-server contained in this affidavit of service has neither been challenged nor controverted. The protestor did not seek to cross-examine the process-server. The protestor in his further Affidavit merely claims that the hearing notice was delivered to the wrong address but he does not indicate the correct address. I am satisfied that the protestor was properly served.
25. If the Protestor had any misgivings and/or objections to the confirmation of Grant and/or the proposed mode of distribution of the estate, he ought to have appeared in court to voice such objections.
26. I have perused the proceedings of 1st July 2019. The Honourable Justice Ngaah noted that all the beneficiaries save for the protestor and Jackson Wachiuri Muteru were present in court and all the beneficiaries save for the two have signed the consent.



27. The Honourable Judge went on to note that he was satisfied that both had been properly served with the hearing notice that neither had filed any formal protest/objection to the summons. The judge proceeded to confirm the Grant. The decision by the Protestor to boycott the hearing of the Summons for confirmation of Grant was his undoing and cannot be blamed on anyone other than himself.
28. I therefore reject the claim by the Protestor that he had no Notice of this Succession cause and that he had no notice of the hearing date for the Summons for confirmation of Grant. I dismiss this grounds of the Summons for revocation of Grant.
29. The Protestor has sought to have the Grant revoked on allegations of fraud. He claims that the signatures appearing on the consent form annexed to the Summons for Confirmation of Grant were all forged.
30. Firstly a look at that consent reveals that it is signed by all the beneficiaries except the Protestor and Jackson Wachiuri Muteru.
31. There is no way the protestor can assert that the signatures of the other beneficiaries are forged. Only the said beneficiaries can make this allegation and none of them has done so.
32. The Protestor can only comment on his own signature which does not appear on the consent dated 20th March 2019. As I had noted earlier the Protestor did sign the consent dated 1st September 1999 indicating that he had no objection to the issuance of letters of Administration to his mother Shelmith Wangeci Muteru. Why would the Protestor wait from 1999 to 2023, a period of twenty four (24) years to raise an allegation that his signature on that consent had been forged.
33. Furthermore the Protestor has not adduced any evidence to prove that his or any other signature had been forged. Forgery is a serious allegation and is made a criminal offence by Section 345 of the [Penal Code](#) Cap 63 - Laws of Kenya.
34. In the case of Christopher Ndaru Kagina -vs- Esther Mbandi Kagina & Another the Court stated as follows;-

“It is trite law that he who alleges fraud must prove fraud. Allegations of fraud must strictly be proved. Great care must be taken in pleading allegations of fraud or dishonesty. In particular, the pleader needs to be sure that there is sufficient evidence to justify the allegations.”
35. Similarly in Re-estate of Thomas Mutua Mukumbu (Deceased) [2014] eKLR the court held that

“Forgery and fraud amount to criminality.....The standard of proof required to establish forgery and fraud is very high. Even in civil cases it is higher than balance of probability.”
36. In Elizabeth Kamene Ndolo -vs- George Matata Ndolo (1995)KLR where a claim of forgery was made in respect of a written will, the Court of Appeal stated that a charge of fraud or forgery is a serious one and that the standard of proof required of the allegor is higher than that in ordinary civil cases although not beyond reasonable doubt.
37. Based on the above authorities it is clear that a mere allegation of forgery will not suffice. The allegor must go ahead and tender concrete evidence to prove that his signature was indeed forged. The protestor has not adduced any such evidence. He made no report to police about the alleged forgery. Neither did the protestor move to engage a document examiner to conduct a forensic analysis of the signatures which he claims were forged. Accordingly I dismiss this allegation of forgery.



38. The Protestor has opposed the mode of distribution of the estate as set out in the certificate of confirmed grant dated 1st July 2019. The protestor in his Further Affidavit dated 9th August 2024 claims that the Deceased died testate and not intestate as claimed by the Administrator. Further the Protestor claims that the entire estate left behind by the deceased was to devolve to him alone by way of a ‘customary trust’ based on heritage rights.
39. Firstly there is no evidence that the deceased left behind a written will.
The document relied upon by the protestor as proof that the deceased died testate are a document of titled “certificate of Receipt” (Annexure FWM ‘3’ to the Further Affidavit) and a copy of the Title Document for the suit land.
40. This ‘Certificate of Receipt’ is not a written will. It is a document authored by the protestor himself in which he states that he has received the Title document to Tetu/Kiriti/534 which was bequeathed to him (the Protestor) during the lifetime of the Deceased.
41. Firstly this document was not authored or signed by the deceased.
Secondly the document was made in May 2021 yet the Deceased died in April 1999, a full twenty-two (22) years before this document was authored. Logically therefore the deceased could not have been consulted and had no input in the Protestors ‘Certificate of Receipt’
42. Thirdly possession of a Title Document does not amount to a bequest of the land in question. The land is still registered in the name of the Deceased a fact which the protestor himself admits.
43. The Protestor claims that the deceased made to him a ‘gift inter vivos’ of the entire suit property. Gift inter vivos is provide for by Section 42 of the *Law of Succession Act* which states as follows:-
“Where
a. An intestate was during his lifetime or by will, paid, given or settled any property to or for the benefit of a child grandchild or house.”
44. The characteristics of a gift intervivos is that the gift is made and settled during the lifetime of the deceased. The requirement in law for such gifts to be valid is that they must have passed from the deceased to the recipient i.e that the gift no longer belongs to the deceased.
45. In Halsburys Laws of England 4th Edition Vol 20(1) at Paragraph 67 it is stated as follows:-
“Where a gift rests merely in promise whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor or those claiming under him to complete and perfect it, except in circumstances where the donors subsequent conduct gives the donee a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property was necessary to be done by him in order to transfer the property and which it was in his power to do” [own emphasis]
46. In this case there was absolutely no action on the part of the deceased to transfer the suit land to the protestor. No transfer forms were signed. No consent from the Land Control Board was applied for. Indeed the deceased did not even handover the Title documents to the Protestor. As such this alleged gift inter vivos‘ is incomplete and imperfect and cannot be recognized or given effect by the court.



47. The protestor has claimed that he is entitled to the entire estate of the deceased based on a customary trust. He has not explained how this customary trust came about. I can only surmise that being one of the sons of the Deceased the protestor feels entitled to the entire estate. The protestor has not explained why the other beneficiaries are not entitled to a share of the estate.
48. Section 38 of the [Law of Succession Act](#) provides for the mode of distribution of an intestate estate as follows:-
- “ 38. Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of the surviving child, if there be only one, or be equally divided among the surviving children.” [own emphasis]
49. This court is sitting as a probate court with mandate to ensure the distribution of the estate to the genuine beneficiaries. If the Protestor wishes to claim the entire estate on the basis of a customary trust then his remedy is to file a suit in the Environment and Land Court which pursuant to Article 162(b) of [the Constitution](#) of Kenya 2010 and Section 13 of the [Environment and Land Court Act](#) is the only court mandated to determine questions of ownership use and occupation of land.
50. This is a matter in which the deceased died in April 1999. The Grant was confirmed on 1st July 2019. The Administrator passed away on 2nd April 2020. The Protestor having deliberately boycotted all the proceedings in this cause wakes up nearly twenty (20) years after the demise of his father to claim the entire estate. It is quite obvious that this summons is a mere afterthought.
51. The Protestor had ample time and opportunity to challenge the Grant. He took no action but waited until the Administrator had passed away and the estate has been distributed to make these outlandish claims. Why did the Protestor not file the Summons while the administrator (his mother) was still alive?
52. Finally I have considered the mode of distribution of the estate as set out in the certificate of confirmed Grant. All the beneficiaries were considered and all were provided for including the protestor who was allocated the parcel of land known as Tetu/Kiriti/534 comprising four (4) acres. This is the very parcel of land which the protestor had claimed was gifted to him by the deceased. It is difficult to understand why the protestor is complaining.
52. I am of the view that the mode of distribution set out in the confirmed grant is fair, just equitable and inclusive as all the beneficiaries have been allocated a share on their late father's estate. The proposal by protestor that he inherits the entire estate alone is selfish unfair and discriminatory not to mention contrary to the provisions of the [law of succession Act](#).
52. In conclusion I find no merit in the summons for revocation of Grant dated 11th December 2023. The same is hereby dismissed in its entirety.
52. This being a family matter I make no orders on costs.

DATED IN NYERI THIS 25TH DAY OF APRIL 2025

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MAUREEN A. ODERO

JUDGE

