



**Musangi v Masu (Civil Miscellaneous E097 of 2024)  
[2025] KEHC 9434 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 9434 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL MISCELLANEOUS E097 OF 2024**

**TM MATHEKA, J**

**MAY 30, 2025**

**BETWEEN**

**RAPHAEL MWONGELA MUSANGI ..... APPLICANT**

**AND**

**SYLVESTER MUNGUTI MASU ..... RESPONDENT**

**RULING**

1. On 27/3/2024, the learned trial magistrate Hon. Geno Okwengu delivered a ruling in which he allowed the application dated 1/11/2023.
2. The prayers sought in that application are not set out in the ruling – only stating that it was Summons for Revocation of Grant issued to Raphael Mwangela Musangi on 14/3/2023 as the same was “fraudulently obtained.”
3. In that matter the applicant Sylvester Munguti Musau’s case was that he was son, and administrator of the estate of Masu Kamitu (deceased) who had purchased land from Kamenwa Kilonzo Kimanzi (deceased).
4. Raphael Mwangela Musangi the applicant herein had obtained grant, which was confirmed and he became the sole beneficiary of the estate of Kamenwa Kilonzo Kimanzi which is Makueni/ Kisekini/238.
5. The learned trial court determined that Masu Kamitu’s name was registered in the plot no. Makueni/ Kisekini/ 238 to protect the interests of the Masu Kamitu.
6. That Mwangela, the respondent (applicant) herein argued that there was no valid sole agreement between the two deceased persons, no written agreement from the purchase of the said land, no witnesses availed to support the alleged purchase of Kamenwa’s land by Masu.



In addition, there had been no change of record at the land registry in the registration of the said parcel of land, and recent searches ha established that the land was still registered in the Kamenwa.

7. The learned court relied on a decision of elders whose content was not stated in the ruling, to find that Mwongela (the applicant herein) was aware of Masu's interest in Kamenwa'a land and had failed to reveal the same when he applied for the grant and when the same was confirmed. For this reasons the court proceeded to revoke the grant.
8. The applicant herein has come before this court seeking leave to appeal the said ruling out of time as he was not aware of the date of the ruling and only realized that something was up when the respondent Munguti took possession of the said parcel of land. His fear is that he will be completely disinherited if this situation persists.
9. I have carefully considered the application, the submissions by the parties and the ruling that is intended to be appealed against.
10. It is apparent from the ruling that the trail court upon revoking the grant did not give any directions as to what would happen to the estate. With the revocation of the grant the estate remains without an administrator and hence exposed to intermeddling
11. In view of the fact that this is an application from a succession cause, the court is obligated to protect the estate.
12. Section 47 of the LOSA provides that the High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:
13. Rule 73 of the P&A Rules provides for the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
14. The failure by the learned trial court to give directions left the questions unanswered- what did the revocation of the grant mean? Who now became the administrator of the estate of the deceased – what was going to happen to the estate of the deceased. Did the revocation confer proprietary rights upon the applicant on the estate of the deceased?
15. It was not sufficient for the court to revoke the grant- the court was obligated to give directions on how the matter would proceed so as to determine the interest of the parties – whether or not the applicant had established a proprietary right to warrant any share of the estate needed to be determined, and the court was obligated to give directions.
16. According to the ruling, the applicant (Munguti) had only established that the estate of Masu had an interest in the estate of Kamenwa. To revoke the grant and not provide a way forward on how the matter would proceed to determine this interest if at all, left the matter without a determination as the rights of the parties were not determined. It appears to me that the understanding of the applicant is that the court decided in favour of the respondent, making him the sole heir. This has not been determined and to proceed with this appeal would be an exercise that would not determine the real issue. Whether Masu's estate has a share in Kamenwa's estate if so, how much?
17. More importantly the estate is exposed.
18. Due to the foregoing circumstance I find that it is in the interests of justice not to go into the merits of the application at this stage but to allow the parties to litigate the application and for the court to give the proper directions.



19. In the circumstances I find that the most expedient order is to revert the matter to *status quo* ante the ruling of Hon Geno Okwengu SRM delivered of 27th March 2024.
20. The upshot is that the ruling is set aside in its entirety.
21. I order that within 14 days hereof the matter be placed before a different magistrate for hearing and determination of the application for revocation of the grant dated 1st November 2023.
22. Each party will bear its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH MAY 2025**

**MUMBUA T MATHEKA**

**JUDGE**

