



**In re Estate of Nyaga Murunguma (Deceased) (Civil Appeal
E025 of 2024) [2025] KEHC 7456 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7456 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E025 OF 2024
RM MWONGO, J
MAY 28, 2025**

IN THE MATTER OF THE ESTATE OF NYAGA MURUNGUMA (DECEASED)

BETWEEN

**TERESIA RWERU NYAGA 1ST APPELLANT
NANCY NDEGI NYAGA 2ND APPELLANT
AGNES NJERI NJIRU 3RD APPELLANT
JOSEPH NJERU NYAGA 4TH APPELLANT**

AND

**IRENE NJUTHE NYAGA 1ST RESPONDENT
DOMINIC MBOGO 2ND RESPONDENT**

*(Being an appeal arising from the decision of Hon. N. Kahara SRM in
Siakago Succession Cause No. 164 of 2019 delivered on 21st February 2024)*

JUDGMENT

The Memorandum of Appeal

1. The appellants filed a memorandum of appeal dated 19th March 2024 through which they seek the following orders:
 - a) That the Ruling in Siakago Succession Cause No 164 of 2019 delivered on the 21st February 2024 be set aside;
 - b) That the honourable court do allow the summons for revocation of grant dated 15th December 2023; and
 - c) That the costs of the appeal and the lower court be awarded to the appellant.



2. The appeal is premised on grounds that:
 1. The learned Trial Magistrate erred in law and in fact when she dismissed the summons for revocation of grant dated 18th December 2023 filed by the Appellants without according them an opportunity to be heard in court;
 2. The learned trial Magistrate erred in Law and in fact when she dismissed the appellants' summons for revocation of grant whereas the respondent had not obtained the requisite consents to have the estate distributed and to have the grant confirmed;
 3. The Learned trial Magistrate erred in both Law and in fact by relying on false information that the appellants were aware of the date for confirmation of grant and holding that they had previously been notified of court proceedings but refused to attend court;
 4. The Learned trial Magistrate erred in both Law and in fact by disregarding the appellants' affidavit in support of the summons for revocation of grant on the basis that there was no authority to swear the affidavit, whereas the appellants did not dispute the supporting affidavit and did not submit that they didn't give the 1st appellant authority to swear the affidavit;
 5. The Learned trial Magistrate erred in both Law and in fact by failing to find that the deceased Nyaga Murunguma had already given out land parcel no Nthawa/Gitiburi/419 to the 4th appellant, therefore not available for distribution and had already expressed his wishes that land parcel no Nthawa/Gitiburi/509 be inherited by the 3 houses equally; and
 6. The learned trial Magistrate erred in Law and in fact when she dismissed the appellants' summons for revocation of grant and found that the summons did not meet the threshold as per section 76 of the Law of Succession Act whereas the proceedings to obtain the grant were defective in substance and grant was obtained fraudulently by making a false statement and there were concealment of material facts crucial to the case.

Brief Background

3. The deceased died intestate on 10th May, 1995. A petition for grant of letters of administration was filed in Siakago Magistrates Court on 25th August, 2020 by the 1st and 2nd Respondents and the 4th Appellant. A grant was issued to them dated 24th May, 2021. The grant was confirmed and a certificate of confirmation issued on 25th October, 2023.
4. On 18th December, 2023 the appellants filed summons for revocation of the said grant. Through the same summons, they also sought for an order that the 1st and 2nd appellants be restrained from disturbing the estate of the deceased without the knowledge of the other appellants. The application was premised on grounds that the grant was obtained fraudulently by making of a false statement or concealment from the court of a material fact.
5. They stated that the deceased had 3 wives, and that it was his wish that the estate be distributed equally amongst the 3 wives. In the supporting affidavit to the application, they named all the wives and their children. It was the appellants' argument that the respondents petitioned for the grant without their knowledge and they never gave their consent to have the grant issued. That they have transferred the land to themselves excluding the other beneficiaries.
6. The respondents filed a replying affidavit terming the application as frivolous, vexatious and misleading. They stated that the appellants were part of a mediation settlement process that culminated into a partial settlement agreement dated 17th June 2022. That the succession cause proceeded as the



grant was confirmed, and the property of the deceased was thereby distributed. They argued that the summons is targeted at disinheriting some of the beneficiaries, and urged the court to dismiss the application.

Findings of the Trial Court

7. The trial court, in its ruling, noted that at the time of petitioning for the grant, all the petitioners being the 4th appellant and the respondents, signed the necessary consents. There was proof of service of court processes to all the parties throughout the proceedings. However, on several occasions the 1st, 2nd and 4th appellants refused to attend court. The trial court found no reason to revoke the grant, therefore it dismissed the application.

Submissions on the Appeal

8. The appeal herein was canvassed by way of written submissions.
9. The appellants submitted that the trial court's finding that the 1st appellant lacked authority to plead on behalf of the other appellants, was a technicality that it ought to have overlooked. They relied on the cases of *Judicial Service Commission v Speaker of the National Assembly & another* [2013] KEHC 911 (KLR), *Republic v Daniel Kinyanjui Wainaina* [2020] KEHC 1741 (KLR) and *Abdirahman Abdi v Safi Petroleum Products Ltd & 6 others* [2011] KECA 183 (KLR).
10. The appellants relied on section 76 of the *Law of Succession Act*, Rule 26 of the Probate & Administration Rules and the cases of *Mercy Irungu v. Lucy Wamuyu Maruru* (2016) eKLR and *In re Estate of Isaac Kireru Njuguna (Deceased)* [2024] KEHC 13668 (KLR). It was their argument that the necessary consents were not obtained from the beneficiaries, and that the respondents completed the process and distributed the estate without the input of the appellants. That without the consent of the beneficiaries, the grant was fraudulently obtained.
11. On the issue of concealment of a material fact, the appellants argued that the respondents failed to inform the court that the deceased had intended to have his estate distributed amongst his 3 wives. They relied on the cases of *In Re Estate of Mwaura Mutungi alias Mwaura Gichigo Mbura alias Mwaura Mbura (deceased)* (NBR HC Succession Cause No. 935 of 2003) and *Samuel Wafula Wasike v Hudson Simiyu Wafula Civil Appeal No. 161 of 1993*.
12. They argued that the respondents made an untrue allegation of fact essential in point of law by stating that all the beneficiaries had agreed to the proposed mode of distribution. For this argument, they relied on the case of *In re Estate of Njuguna Mwathi (Deceased)* [2019] KEHC 8821 (KLR).
13. It was also their submission that the proceedings were defective in substance and they cited the case of *HWM v KM* (2017) eKLR. It was their case that they were denied the right to a fair hearing as provided under Article 50(1) of *the Constitution* and they relied on the case of *Mbuthika Titus v. Jackline Mutindi* (2020) eKLR.
14. On their part, the 1st respondent submitted that the application did not meet the requirements for revocation of a grant. He relied on Rule 22(1) of the Probate and Administration Rules and the case of *In re Estate of Juma Shitseswa Linani (Deceased) (Succession Cause 26 of 1999)* [2023] KEHC 2701 (KLR) He stated that 2 out of the 3 administrators signed the consent form required. That the law does not require all the administrators to sign the consent forms.
15. Further, he submitted that the 1st, 2nd and 4th appellants were duly notified of the proceedings but they refused to attend court. He stated that the trial court found no reason to revoke the grant and urged this court to uphold that finding. He relied on the cases of *Nanzala v Mulunda* [2023] KEHC 2829



(KLR) and stated that there is no proof of concealment of a material fact. It was his argument that the appellants were accorded a fair chance to be heard but they chose to abuse it.

Issue for Determination

16. The core issue for determination is whether the trial court erred in failing to revoke the grant issued to the respondents and the 4th appellant.

Analysis and Determination

17. On a first appeal, this court is required to re-examine the evidence adduced at trial in determining the appeal herein and to make its own findings. This was held in the case of *Selle & Another v Associated Motor Boat Co. Ltd & Others* (1968) EA 123, where it was stated:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

18. From the arguments made before the trial court regarding the summons for revocation, a big part of the issue concerns and focuses on how the estate has been distributed. However, the question before this court is whether the trial court should or should not have revoked the grant and not the question of distribution. The grounds for revocation of a grant are provided for 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.”

19. From a perusal of the summons for revocation filed on 18th December, 2023 and the affidavit in support thereof, the appellants cite the statutory grounds for revocation. They have, however, added to the list of beneficiaries to make it 22 whilst at the point of petitioning, there were 10 beneficiaries. There is no doubt that prior to confirmation, the parties had a back and forth about the distribution of the estate, and the interests of the 4th appellant vis a vis those of the other appellants.
20. From a reading of section 76, issues of distribution of the estate do not have any bearing whatsoever on the process of obtaining the grant. Distribution of the estate is a separate process in the administration of an estate, conducted after a grant is issued. If a party to the proceedings at the stage of confirmation of the grant is disgruntled, they should seek recourse through a protest or objection to confirmation, or seek setting aside the certificate of confirmation of grant, but not through an application seeking revocation of grant.
21. In the case of *In re Estate of Prisca Ong’ayo Nande (Deceased)* [2020] eKLR, W. Musyoka, J. after analyzing section 76 and discussing the meaning of a grant within the provisions of the laws governing succession in Kenya, held thus:

“.....section 76 has nothing to do with the confirmation process, and provides no relief at all to any person unhappy with the confirmation process. In the absence of any provision in the *Law of Succession Act*, for relief or redress for persons aggrieved by such orders, the aggrieved parties have only two recourses under general civil law, that is to say appeal and review, to the extent that the same is permissible under the *Law of Succession Act*. I would believe that one can also apply for the setting aside or vacating of confirmation orders, where the same are obtained through abuse of procedure.”
22. The trial court failed to find any reason within the bounds of Section 76 LSA to revoke the grant. It found that all parties were served with Court Process and informed of the progress of the suit. That, despite being served by the appellants and other beneficiaries, they intentionally refused to attend Court.

Conclusions and Disposition

23. This court has carefully considered all the material before it and also does not find a reason to revoke the grant. The Court has noted from trial court’s ruling, that the appellants were repeatedly served with court processes and there was proof of such service in the court file. They chose not to attend the proceedings; hence this failure cannot be visited upon the respondents or the court. The grounds for revocation were not proved.
24. The petition and the accompanying documents for obtaining the grant are, undoubtedly, above board and the process was not marred by any fraud. It is at the point of distribution of the estate where issues arose as to who are the beneficiaries to the estate and what are they entitled to inherit. That is the issue that is in play herein. However, as noted earlier, the distribution was not challenged before the trial court.
25. The object or purpose of a summons for revocation is to prevent or deal with abuse of the process of obtaining the grant itself. It deals with questions of fraud, misrepresentation, non-disclosure of material facts, and so on. In the present case, there is no legal basis shown to revoke the grant that was issued procedurally.



26. Accordingly, I find that the appeal lacks merit and is hereby dismissed.
27. This being a family matter, there shall be no order as to costs.
28. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 28TH DAY OF MAY, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Teresiah Rweru Nyaga
2. Nancy Ndegi
3. Agnes Njeri Applicants
4. Joseph Njeru
5. Irene Njuthe Nyaga
6. Dominic Mbogo Respondents
7. Francis Munyao - Court Assistant

