



REPUBLIC OF KENYA



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**Magecha v Kamau & another (Civil Appeal 52 of 2020)
[2025] KEHC 11759 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 11759 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 52 OF 2020
DO CHEPKWONY, J
MAY 28, 2025**

BETWEEN

JOHN NGINGA MAGECHA APPELLANT

AND

RAPHAEL KINUTHIA KAMAU 1ST RESPONDENT

JAMES THENDU GITAU 2ND RESPONDENT

(Being an Appeal against the Honourable H. M. Ng'ang'a, Senior Resident Magistrate delivered on the 11th day of March, 2020 at Gatundu Chief Magistrate's Court in Succession Case No.44 of 2012 and Succession Case No.253 of 2019 (formerly Gatundu Succession Cause No.43 of 2012))

JUDGMENT

1. This Appeal emanates from the Ruling delivered on 11th March, 2020 by SRM Hon H. M. Nganga in Gatundu CMCC No. 44 of 2012 and Succession Cause No. 253 of 2019 where it dismissed two Summons for Revocation one dated 20th December, 2016 and another dated 26th October, 2015 filed in the two aforementioned cases filed by the Appellant herein.
2. In both Summons, the Appellant is seeking the revocation of the Grant of Letters of Administration Intestate issued to the Respondents on the grounds that:-
 - a. The proceedings to obtain the Grant were defective in substance.
 - b. That the Grant was obtained fraudulently by the making of a false statement and by concealment from the court of something material to court.
 - c. That the Grant was obtained by means of untrue allegations of fact essential in point of law to justify the Grant notwithstanding that the allegation was made in ignorance or inadvertently.
3. The Summons is supported by the affidavit sworn on 20th December, 2016 by the Applicant.



4. The Respondent opposed the Summons vide a Replying Affidavit sworn on 10th June, 2017. The Summons proceeded for hearing by viva voce evidence whereby witnesses filed their statements.
5. Upon considering the application and Supporting Affidavit, Replying Affidavit and submission by either party, the trial court found that the Applicant had not established any ground to warrant the revocation of the Grant that he developed his interest way long after the Grant was confirmed. Also that he had not established that he was entitled to benefit in privity to the 2nd Respondent.
6. Being aggrieved by this ruling, the Appellant lodged the Memorandum of Appeal dated 30th March, 2020 on the following grounds:-
 - a. That the Learned Magistrate erred in law and in fact in making a finding that the appellant was not a beneficiary of the respective deceased persons.
 - b. That the Learned Magistrate erred in law and in fact in dealing with extraneous issues which were not part of the pleadings or relevant to Section 76 of the Law of Succession Act.
7. The Appellant has urged the court to set aside the said Ruling which dismissed the Summons for Revocation of Grant dated 20th December, 2016 and 26th October, 2015 and allow the same as prayed. The Appellant seeks too costs of the appeal.
8. The appeal was admitted for hearing and the court directed the parties to canvass the appeal by way of written submissions whereby the Appellant filed his submissions dated 10th December, 2024 and the Respondent's submissions are dated 27th January, 2025. A reading of the two sets of submissions indicate that the main issue that arise therein is whether the appeal herein has merit to warrant the orders sought to be granted.
9. According to the Appellant there are two succession causes for the Estate of Margaret Njeri Wamwangi and another for Estate of Peter Kamau Kuria. In both causes, the only property in question was Ngenda/ Wamwangi/627 which was jointly owned by the deceased persons as mother and son. That the Respondents herein petitioned for their letters of administration through the 1st Respondent, Raphael Kinuthia Kamau in his capacity as son and grandson of the two deceased persons and the 2nd Respondent James Thendu Gitau as a purchaser of the suit property.
10. As a nephew of the deceased persons, the Appellant filed the Summons for Revocation of Grant in the two suits on the basis of the mode of distribution of the property wherein he was not considered. It is the Appellant's argument that he participated in the filing of the Petition, appeared in the chief's letter and he signed the consent attached to the Summons for confirmation of grant which indicated that the subject property was supposed to be divided between himself and the 2nd Respondent. He holds that the 2nd Respondent is not a beneficiary of the estate but only a purchaser and he relied on the cases of Re Estate of Rodah Wangari Mungokoro (Deceased) [2017] KEHC 9437 (KLR) and Re Estate of John Rennie Carrie Gordon alias Rennie Carries (Deceased) [2024] KEHC 4759 (KLR).
11. According to the Appellant, there are two different certificates of partial confirmation of grant in respect to the same property but with different modes of distribution. He states holds that the grants were obtained fraudulently through the making of false statements which he holds that the trial court failed to consider in the determination of the Summons of Revocation of the Grants and it would be in the interest of justice that the appeal be allowed.
12. In their submissions, the Respondents have deponed that the 1st Respondent is the only surviving son of Peter Kamau Kuria and grandson of Margaret Njeri Mwangi and that the only asset of two deceased persons is Land parcel no Ngenda/ Wamwangi/627. They contend that the Appellant, being a nephew



of the Estate, is excluded from benefitting from the estate and as such the trial court did not make any error in dismissing the summons for revocation. The Respondents contend that the Appellant did not prove the grounds of revocation since he abandoned them and dealt with the alleged trust and yet a claim on trust can only be articulated as land dispute in different forum and not as a succession cause.

13. According to the Respondents, the parcel of land originally belonged to Nyanjua Wanginga but it was transferred to Esther Wambui Nginga and Joseph Kiniu Kanyi, having been apportioned into two parcels, being No. 626 and 627. It is further their contention that the one in question was given to Esther Wambui Nginga, who upon her demise, Margaret Njeri Mwangi and Peter Kamaru Kuria inherited the same through Succession Cause No. 702 of 1997. They hold that neither the Appellant nor his father contested that Succession Cause and thus the Appellant did not establish any trust. They hold that since the Appellant did not prove the grounds of Revocation of Grant, the appeal ought to be dismissed for lack of merit.

Analysis and Determination

14. As a first appeal, this Court is reminded of its duty as enunciated in the case of *Selle & Another –vs- Associated Motor Boat Co. Ltd* [1968] EA 123 that:-

“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 itself and draw its own conclusion though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

15. I have read through the pleadings, application dated 26th October, 2015 and 20th December, 2015, the Replying Affidavit, submission and ruling delivered therein and find the issue for determination being whether the appeal has merit.
16. For Summons for Revocation of Grant case to succeed, the grounds which must be satisfied are set out under Section 76 of the *Law of Succession Act* which states as follows:-

[76]. Revocation or Annulment of Grant

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. or,
- e.”



17. Also in the case of *Re Estate of Mukhobi Namonya (Deceased)* [2020] eKLR, the High Court stated as follows in regard to the grounds required to be satisfied in Summons for Revocation of Grant:-

[11]. Under Section 76 of the Act, a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining the grant was attended by glaring difficulties, such as where the same was defective, say because the person who obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant...”

18. In the instant case, the Appellant’s argument is that he was left out of the estate of the two deceased persons. However, as admitted by himself, the Appellant was aware of the proceedings of the two Succession Causes and the trial court noted that the Appellant was included in the chief’s letter as nephew, listed in the Affidavit in support and he signed the consent in Succession Cause No. 44 of 2012. Equally, in Succession Cause No.253 of 2019, the Appellant was also identified as a nephew in the estate and he signed a consent to the Petition of making the Grant of Administration. He thus cannot claim that the grant was defective since he was aware and was involved in the process.

19. It is also worth-noting that the trial court also addressed the issue raised by the Appellant that the subject land was initially owned by his Father and his late Aunt before it devolved to the deceased persons herein and he has lived on the land for many years. However, the trial court found that the Appellant did not provide any evidence to confirm this position which is contrary to the law under Section 109 of the *Evidence Act* which requires ‘that he who alleges must prove’ the same.

20. On their part, the Respondents demonstrated through Certificate of Confirmation of Grant issued on 8th June, 1998 in Nairobi High Court Succession Cause No. 702 of 1997 in respect to the Estate of Esther Wambui Nginga that the subject parcel of land would devolve to Margaret Njeri Mwangi and Peter Kamau Kuria, who are the deceased persons in the case to share jointly and which neither the Appellant nor his Father applied for revocation of the same.

21. Therefore, given this history, it is trite that the rightful owners of the subject land are Margaret Njeri Mwangi and Peter Kamau Kuria. However, given that they are both deceased, the property now vests in the next dependant in line of consanguinity, who in this case is the 1st Respondent as the grandson and son respectively, so that the Appellant as a nephew cannot be granted priority.

22. For that reasons stated above, this Court finds that the Ruling delivered on 11th March, 2020 was firm and well-reasoned and the trial Court was justified to dismiss both Summons for Revocation of Grants.

23. In the upshot, this Court finds that the Appeal lacks merit and the same is dismissed with costs to the Respondents.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 28TH DAY OF MAY 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:



M/S Muthomi counsel for Respondents

No appearance by Appellant

Court Assistant - Martin

