



**In re Estate of Maingi Gakuu Ndenge alias Jacob Maingi Gakuu (Deceased)
(Succession Cause 403 of 2014) [2024] KEHC 3340 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3340 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 403 OF 2014**

RM MWONGO, J

MARCH 20, 2024

**IN THE MATTER OF THE ESTATE OF LATE MAINGI GAKUU
NDENGE ALIAS JACOB MAINGI GAKUU (DECEASED)**

BETWEEN

SIMON MURIUKI MAINGI APPLICANT

AND

GEOFFREY MUGWERU MAINGI RESPONDENT

AND

MARY WANGECHI MAINGI INTERESTED PARTY

MARGARET WAMUYU MAINGI INTERESTED PARTY

EVANS IRUNGU MUTUGI INTERESTED PARTY

DAVID NGARI MWANGI INTERESTED PARTY

RULING

(ERRATUM - CORRECTION)

1. By Ruling delivered on 20th March 2024 in this matter the court stated in Paragraph 40 thereof as follows:

“Accordingly, the grant issued to the respondent is hereby revoked. I find that the share of the property Mwerua/Kagio/1712 given to the respondent should have been shared in equal portions with the applicant.”

2. The paragraph inadvertently omitted any mention of Margaret Wamuyu Maingi, the 2nd Interested Party, who was mentioned in the Confirmed Grant.



3. Upon noting the error, the Court held a mention on 22nd July 2024 at which the error was pointed out to the parties and correction indicated under the Slip Rule.
4. Accordingly, paragraph 40 of the said ruling now reads as follows:

“Accordingly, the grant issued to the respondent is hereby revoked. I find that the share of the property Mwerua/Kagio/1712 given to the respondent and Margaret Wamuyu Maingi should have been shared in equal portions with the applicant.”
5. Orders accordingly.

RULING DATED 20TH DAY OF MARCH, 2024

1. The deceased Maingi Gakuu Ndenge alias Jacob Maingi Gakuu died on 30.6.2013 aged about 90 years. He was survived by his wife Margaret Wamuyu Maingi, and son Geoffrey Mugweru Maingi. His son, who is the Respondent herein, filed a petition for letter of administration and a grant was issued on 12th November 2014.
2. The grant was confirmed on 16th June 2016 and distributed the deceased’s land Mwerua/Kagio/1712 measuring 0.95 hectares (2.34 Acres), as follows:

Mary Wangeci Maingi ½ Acre
Margaret Wamuyu Maingi, and To share the remaining portion
Geoffrey Mugweru Maingi equally
3. The applicant filed summons for revocation of grant dated 26th October, 2018 seeking the following orders:
 1. That the confirmed Grant of Letters of Administration issued to Geoffrey Mugweru Maingi on 16th June 2016 be revoked.
 2. That the costs of this application be provided for.
4. The applicant contends that he is the son of the deceased’s first wife Gladys Wangari Maingi, who is deceased, a fact not disclosed by the respondent.
5. The Application is premised on the following grounds:
 - 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 untrue allegation in respect of material facts.
 - iv. That the grant was obtained fraudulently by the concealment from the court of facts material to the case and which ought to have been disclosed before the grant was made.
 - v. That the applicant was a son of the deceased and was not provided for.
6. The applicant filed a supporting affidavit with the following major averments:
 - i. That the above-named Maingi Gakuu Ndenge alias Jacob Maingi Gakuu died on 30th June 2014 at Mwea Hospital and letters of administration intestate was made to Geoffrey Mugweru Maingi by this Honourable Court on 12th November 2014 and confirmed on 9th June, 2016.



- ii. That the grant was obtained by means of untrue allegations in respect of material facts as I was not provided for and was a dependant of the deceased.
 - iii. That the deceased herein had two wives. Gladys Wangari Maingi (Deceased) and Margaret Wamuyu Maingi.
 - iv. That Gladys Wangari Maingi was my biological mother who is deceased and Margaret Wamuyu Maingi is my step mother who is still alive.
 - v. THAT the only portion of land that the deceased left was Mwerua/Kagio/1712 which was registered in the name of the deceased Maingi Gakuu Ndenge.
 - vi. That the grant has now been confirmed in favour of Geoffrey Mugweru Maingi as follows:
 - a. Mary Wangechi Maingi ½ acre out of Mwerua/Kagio/1712.
 - b. Maragret W. Maingi & Geoffrey Mugweru Maingi to share the remaining share of Mwerua/Kagio/1712 equally.
 - vii. That the distribution does not provide for all the beneficiaries of the estate as there was concealment from court of facts material to the case in that I am a son of the deceased and was left out and not provided for as a child and dependant of the deceased herein.
7. The respondent deposed a replying affidavit in which he admits that the applicant is his brother, but denies that he left him out of the grant fraudulently. Instead, he says the applicant had been gifted another portion of land by the deceased, namely Mwerua/Kagio/1710. The affidavit has the following major averments, that:
- i. The applicant is my brother and was always aware of the proceedings to do with the succession of Mwerua/Kagio/1712 and it is not true that he was not aware of the proceedings as before the case started, we had appeared before the chief who clearly understood our case and wrote a letter in the presence of all interested parties introducing to court her parties to inherit this Portion.
 - ii. Even though this plot had to be transferred through Succession the same had long been litigated upon during the life time of my father and a Decree issued which clearly declared the same to be shared among the three persons as follows:
 - a. 0.5 acres be in the name of Jacob Maingi Gakuu and Mary Wangechi Maingi.
 - b. The remaining portion be divided into two equal portions one in the name of Margaret Wamuyu Maingi and the other one Gladys Wangari Maingi (deceased) whereby Geoffrey Mugweru Maingi who is myself will be written instead of my deceased mother (Gladys Wangari Maingi).
 - iii. The Decree was as a result of a case I filed before the Ndia Division Land Dispute Tribunal who heard the case and made the Ruling.
 - iv. The applicant was present during the Tribunal Proceedings and even participated but my father was very categorical that he had given him a portion of land being Mwerua/Kagio/1710 which was a subdivision of 1181 which he had sold as a result of which he was not entitled to any other share.
 - v. The confirmation of this Succession Cause was also done as per the Decree when I brought the attention of the Honourable Judge to it when the matter came for confirmation.



- vi. The applicant has no claim whatsoever to the portion of land known as Mwerua/Kagio/1712 and or any resultant title after the Subdivision.
 - vii. Before he passed away my father had bequeathed his property.
8. The 3rd & 4th Interested parties deposed a replying affidavit with the following major averments:
- i. That they lawfully purchased land parcel Mwerua/Kagio/8483 for valuable consideration without notice of any defect and subdivided the same to result to land parcels number Mwerua/Kagio/9280 to 9285.
 - ii. That they should not be involved in the dispute between the applicant, the respondent and the 1st & 2nd Interested parties.

Applicant's Submissions

9. The applicant's submissions is that the bone of contention is the share given to the administrator/respondent now known as Mwerua/Kagio/8482 and previously known as Mwerua/Kagio/1712. This parcel measuring 0.29 Ha is now registered in the name of the administrator/respondent.
10. The applicant states that this portion of 0.29 Ha, was given to the administrator/respondent vide the proceedings before the Baricho Land Disputes Tribunal Case No.8 of 2006. In that case, the deceased gave the portion to the respondent herein as their mother was deceased at that time.
11. The ruling of the tribunal is clear that the respondent herein was being written instead of Gladys Wangari Maingi. The share is therefore not the respondent's own, but the family's share. This is particularly so because, both the applicant and respondent had been given land in equal shares prior to the demise of the deceased herein.
12. The deceased was polygamous. The only remaining portion he had Mwerua/Kagio/1712 he subdivided into 3 portions. He left 0.5 acres for himself and his daughter Mary Wangechi, and the other two acres equally between his two homes. Margaret Wamuyu got one portion and the other was given to Geoffrey Mugweru as their mother Gladys Wangari, together with the applicant herein was deceased by then.
13. The applicant therefore prays that the grant be revoked to the extent that the portion of Mwerua/Kagio/1712 now registered in the name of the respondent be shared out between the two.
14. Rules 26(1) and (2) of the Probate and Administration Rules which requires that all persons entitled to benefit from the estate of the deceased be notified.
15. Further, the applicant relies on Section 76 of the Law of Succession Act which sets out the grounds upon which a Grant can be revoked. In the case of *Re Estate of Julius Mwai Wahome (Deceased)* [2020] eKLR where it was held:

“This court finds that the 1st respondent acted contrary to the provisions of Section 76 of the Act and Rules 26 of the Probate Rules; and I am satisfied that the applicant application has met the threshold for the revocation of the Grant.”

Respondent's Submissions

16. The respondent submits that the court adopted the decision of the Baricho Land Disputes Tribunal Case No.8 of 2006. This decree was given by the court on 28th day of August 2006 and since then the applicant failed or neglected to make an appeal of the decision. Thus, the Respondent submits that the



Application before the court is Resjudicata and it should not be entertained by the honourable court since it was heard and determined before the District Tribunal and a decree entered by the Resident Magistrate's Court.

17. The Respondent further submits that applicant being the child of the deceased, had been bequeathed a share of the father's estate which is Mwerua /Kagio/1710, 1.2 acres during the lifetime of their father. He sold the land and since then the father did not wish to bequeath him any other share of his estate. The applicant now comes to court with unclean hands to try and sabotage the rightful share of the Respondent.
18. The Respondent admits that he was bequeathed a part of the estate of the deceased estate which include the suit parcel and Mwerua/Kagio 1711 measuring 1.2 and the father also bequeathed him a share of Mwerua/Kagio/1712 which is the suit property. The applicant is an elder brother to the respondent. In their house there is another brother and a sister who had been bequeathed different properties of the deceased during his lifetime. The Respondent being the last born and also being the one who took care of the late father and his mentally handicapped daughter was bequeathed the land under suit today by the deceased father.
19. Finally, the respondent submits that he did not know the applicant's claim the estate was under succession is unfounded and untruthful since he was present at a meeting that the Respondent had been summoned too, by the chief. This was in presence of the interested parties herein. The respondent argues that this is supported by the words of Gitari J, in a ruling made on 28th March 2019, where the honourable Judge stated "it was not in dispute that the applicant is the brother of the Respondent and during the lifetime of the Deceased the Estate had been distributed to the respective dependents which distribution was adopted in the succession proceedings by consent.
20. The Respondent through an Affidavit was able to show that the applicant was given a portion of the land. The proceedings before the tribunal related to land which belonged to the Deceased. At the time of hearing of the case in the tribunal the Applicant was present and he did not raise an objection to the bequeathing of the estate under question to the respondent.

Issues for Determination

21. The issues that arise for determination are as follows:
 1. Whether the Respondent misinterpreted the decree of the Baricho Court.
 2. Whether the grant should be revoked.

Analysis and Determination

22. The applicant seeks that the confirmed Grant of Letters of Administration issued to Geoffrey Mugweru Maingi on 16th June 2016 be revoked.
23. The deceased Maingi Gakuu Ndenge alias Jacob Maingi Gakuu to whom this cause relates died on 30th June 2013 at Mwea Hospital. Letters of administration intestate was made to Geoffrey Mugweru Maingi by this Court on 12th November 2014 and confirmed on 9th June, 2016.
24. The grant has now been confirmed as follows:
 - a. Mary Wangechi Maingi ½ acre out of Mwerua/Kagio/1712.
 - b. Maragret W. Maingi & Geoffrey Mugweru Maingi to share the remaining share of Mwerua/Kagio/1712 equally.



25. The applicant deposed that the distribution did not provide for all the beneficiaries of the estate as there was concealment from court of facts material to the case in that as a son of the deceased he was not provided for by the estate.
26. The respondent submits that the court adopted the decision of the Baricho Land Disputes Tribunal Case No.8 of 2006. This decree was given by the court on 28th day of August, 2006, and since then the applicant failed or neglected to make an appeal of the decision.
Distribution of Mwerua/Kagio/1712
27. The applicant testified that he was not involved in the Baricho Land Disputes Tribunal Case No.8 of 2006.
28. The tribunal noted that the applicant and the respondent had received their shares as follows:
 - i. Mwerua/ Kagio/ 1710- 1.2 acres to Simon Muriuki
 - ii. Mwerua/ Kagio/ 1711- 1.2 acres to Geoffrey Mugweru
 The tribunal decided that land parcel Mwerua/Kagio/1712 be divided into three as follows:
 - a. 0.5 acres be in the name of Jacob Maingi Gakuu and Mary Wangechi Maingi.
 - b. The remaining portion be divided into two equal portions one in the name of Margaret Wamuyu Maingi and the other one Gladys Wangari Maingi (deceased) Geoffrey Mugweru Maingi to be written instead of his deceased mother (Gladys Wangari Maingi).
29. He prays that the share allocated to his deceased mother should be given jointly to the respondent and him.
30. The respondent confirmed on cross-examination that he did not involve the applicant in the succession cause number 403 of 2014.

Whether the grant was obtained fraudulently by concealment from court of something material to the case

31. The respondent confirmed in court that he did not involve the applicant in the succession cause number 403 of 2014. The surviving beneficiaries of the deceased estate are listed as follows: Margaret Wamuyu Maingi, Mary, Wangechi Maingi and Geoffrey Mugweru Maingi. In his defence, he stated that he was abiding by the ruling of the decision of the Baricho Land Disputes Tribunal Case No.8 of 2006.
32. Rules 26(1) and (2) of the Probate and Administration Rules requires that all persons entitled to benefit from the estate of the deceased be notified: The provision is as follows;
 - “26(1) Letters of Administration shall not be granted to any applicant without notice to every other person entitled in the same degree or in priority to the applicant.
 - (2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any person shall in default of renunciation, or written consent in form 38 or 39, by all persons so entitled in equally or priority, be supported by an affidavit of the applicant and such other evidence as the court may require”.
33. The applicant stated that he was not involved in the above proceedings and hence was not aware of the tribunal’s decision. Hence, he did not appeal the decision of the tribunal.



34. Section 76 of the Law of Succession Act sets out the grounds upon which a Grant can be revoked which are as follows;

“Section 76

- 76 “A grant of representation whether or not confirmed may at any time be revoked or annulled if the court decides, either on application by interested party or its own motion:
- (a) The proceedings to obtain the grant were defective on substance.
 - (b) The grant was obtained fraudulently by the making of false statements or concealment of something material the case.
 - (c) 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.
 - (d) The persons to whom the grant was made have failed after due notice and without reasonable cause either;
 - (i) To apply for confirmation within one year of such longer time as the court may allow,
 - (ii) To proceed diligently with the administration of the estate,
 - (iii) To produce to the court such inventory or account of Administration as required under section 83(e) and 83(g) of the act or has produced false accounts.
 - (e) The grant has become useless and inoperative through subsequent circumstances.”

35. In the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* (2015) eKLR, the court stated as follows: -

“The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

Conclusions and Disposition

36. From the evidence adduced and the documents availed I am persuaded by the applicant’s arguments.
37. Ultimately, I make findings as follows:
1. The applicant is one of the 5 children of the late Gladys Wangari Maingi. He is a dependant and a beneficiary of her share in land parcel Mwerua/Kagio/1712.
 2. The letter from the area assistant chief dated 4th April, 2014 misinterpreted the decree of the Baricho Land Dispute Tribunal Case No.8 of 2006 dated 5th September, 2006.



3. There is no indication of any written renunciation by the applicant or his other siblings of their intention to inherit the deceased's estate.
38. I am therefore satisfied that the respondent obtained the grant by concealing material facts regarding notice to the applicant and disclosure of his beneficial interest.
39. I am satisfied that the applicant met the threshold for revocation of the grant. I would adopt the finding in the case of *Re Estate of Julius Mwai Wahome (Deceased)* [2020] eKLR where it was held:
- “This court finds that the 1st respondent acted contrary to the provisions of Section 76 of the Act and Rules 26 of the Probate Rules; and I am satisfied that the applicant application has met the threshold for the revocation of the Grant.”
40. Accordingly, the grant issued to the respondent is hereby revoked. I find that the share of the property Mwerua/Kagio/1712 given to the respondent should have been shared in equal portions with the applicant.
41. Orders accordingly.

DATED AT KERUGOYA THIS 20TH DAY OF MARCH, 2024

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R. MWONGO

JUDGE

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Delivered in the presence of:

1. Kimani - for Applicant
2. No representation - Mwangi for Respondent
3. Geoffrey Mugweru Maingi - Respondent in person
4. Murage, Court Assistant

