



REPUBLIC OF KENYA



**Mwalimu v Mwasi (Civil Appeal E017 of 2022)
[2024] KEHC 6910 (KLR) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 6910 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E017 OF 2022
GMA DULU, J
APRIL 24, 2024**

BETWEEN

DAVIS MACLOUD MWIZANGA MWALIMU APPELLANT

AND

IMMANUEL MWAKABA MWASI RESPONDENT

*(From the Ruling/Order of Hon. A. M. Obura (Mrs.) (CM) dated
14th April 2022 in Succession Cause No. 6 of 2002 at Voi Law Courts)*

JUDGMENT

1. In a ruling delivered on 14th April 2022, the learned trial Magistrate revoked the rectified grant of letters of administration in the estate of Eliphelety Juma Mwasi Mwalimu issued to Davis Macloud Mwizanga Mwalimu on 21st May 2019, and confirmed on 20th May 2019.
2. Dissatisfied with the ruling of the magistrate court, the appellant who was the administrator of the estate has come to this court on appeal through counsel Kamoti Omollo & Company advocates, on the following grounds
 - a. That having regard to the entire facts and circumstances the learned Magistrate erred in revoking the grant issued to the appellant in terms that would likely be construed to shut out the appellant for all times from any right or claim over the property subject of the proceedings
 - b. That the learned Magistrate ought to have considered that given the facts, state of the record, the effect of the revocation order, as couched, would likely have the effect of disinheriting the appellant of his right to what was hereditary family property
 - c. That the learned Magistrate erred in delivering a ruling that was in complete disregard of the appellant's claim and/or without addressing its mind sufficiently to the circumstances in which



the appellant found himself on the land and thereby erred in not making orders as would secure justice for all the parties interested in the suit property.

3. Considering the above three (3) grounds of appeal, the appellant is asking this court to set aside and vary the Magistrate's ruling or order revoking the grant of letters of administration earlier issued to him, and the appellant claims that setting aside will secure the appellant's rights of claim of the portion property known as Werugha/Shigharo/Sungululu/665, allegedly belonging to him.
4. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Kamoti Omollo & Company advocates for the appellant, as well as the submissions filed by Mutinda & Wambura Nthiga advocates for the respondent.
5. This being a first appellate court, I am duty bound to reconsider the evidence adduced before the trial court and re-evaluate it to draw my own independent conclusions. See [*Peter M. Kariuki v Attorney General* \[2014\] eKLR](#).
6. From the evidence on record, the application wherein the ruling emanated dated 17th November 2020 for revocation of grant, was heard viva voce. The applicant Emmanuel Mwasi (now respondent) testified together with Odiliah Mwasi. Their evidence was the appellant herein was a brother to the deceased herein. According to them, he filed succession proceedings without informing the survivors or beneficiaries of the deceased, including the wife Odiliah Mwasi.
7. On their part, the appellant Davis Mwalimu also testified and stated that the deceased was his first born brother and that their father had two (2) wives and had divided the land to the two wives before death. It was his evidence that the subject land was his inheritance, and that the late father divided the land in 1986. He agreed that he pursued the succession cause from 2002, and according to him the deceased herein was trustee in respect to the family land. That was the evidence of the parties.
8. I note that both sides were represented by counsel during the hearing of the application for revocation of grant, and each side filed written submissions, after which the trial Magistrate delivered the above ruling now in contest.
9. Having perused the ruling in contest herein, I note that the trial Magistrate considered the legal grounds upon which a grant of letters of administration, whether or not confirmed, can be revoked by the court under the provisions of section 76 of the [*Laws of Succession Act*](#) (Cap.160). The Magistrate also considered the provisions of section 51 and 66 of the [*Laws of Succession Act*](#) which lists the statutory prioritization of those who can be appointed by the Court to administer estates of deceased persons.
10. The Court noted that though Odiliah the deceased's wife was disclosed in the succession proceedings, she denied having testified or participating in the succession proceedings commenced by the respondent. She testified in the subsequent hearing of the application, that the deceased's children were also not disclosed in the succession pleadings filed by the respondent, as is required by law.
11. Considering the above evidence, the Magistrate's view was that it amounted to material non – disclosure of relevant information. The Magistrate also noted that the appellant went ahead and registered the land property in his name, without even involving even his brothers.
12. In my view, the Magistrate cannot be faulted in finding non–disclosure or concealment of relevant facts and information in the succession proceedings, which under section 76 of the [*Law of Succession Act*](#) (Cap. 160) is a sufficient ground for revoking of letters of administration issued.
13. With regard to the argument by the appellant on appeal herein, that the revocation of grant of letters of administration herein, amounted to his exclusion from inheriting a portion of the subject land, that is not the legal position. All that has happened after the ruling, is that the succession cause herein



has been re–opened and the appellant and even other persons interested in the assets of the estate of the deceased, can and have the right to file the particulars of their claims in the subsequent succession proceedings, before confirmation of grant of letters of administration.

14. I find no merits in the appeal herein, which is hereby dismissed. As this is a matter involving people who are part of the larger family, I order that parties bear their respective costs of the appeal.

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF APRIL 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Mr. Mutinda for respondent

No appearance for appellant

