



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mwangi Njuguna (Deceased) (Civil Appeal
E036 of 2022) [2024] KEHC 6044 (KLR) (29 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6044 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL E036 OF 2022**

J WAKIAGA, J

MAY 29, 2024

BETWEEN

BENSON NDUATI MWANGI APPELLANT

AND

JANE MUTHONI KARANJA 1ST RESPONDENT

SAMWEL WANYOIKE NGANGA 2ND RESPONDENT

*(Being an appeal from the Ruling of Senior Principal Magistrate at Murang'a
delivered by Honourable E.M. Nyagah dated 14th June 2022 in Succession
Cause No 244 of 2017 in the matter of the estate of Mwangi Njuguna (deceased))*

JUDGMENT

Background

1. The Appellant on 24th April 2017 petitioned the lower Court for the grant of letters of administration in his capacity as a son of the deceased and named Rebecah Njeri, Benson Nduati Mwangi and Samuel Wanyoike Nganga as beneficiaries of the estate and certificate of grant issued on 6th November 2017.
2. On the 2nd day of August 2021 the same applied for confirmation of the said grant, which was issued on 2nd day of November 2021 with the distribution of the estate as follows:

Loc.7/Ichagaki/650 to Benson Nduati Mwangi as sole proprietor.

Loc.Kaharo/679 to be shared equally between Benson Nduati Mwangi, Rebecah Njeri Mwangi and Samuel Wanyoike Nganga.
3. On 8th November 202, one Jane Muthoni Karanja filed summons for revocation or annulment of the grant on the grounds that one Ngugi Karanja (deceased) was a beneficial owner of Loc.7/Ichagaki/650



by virtue of purchase pursuant to an agreement dated 22nd January 1992 and therefore the grant was obtained fraudulently.

4. In response to the said application, the Appellant on 15th December 2021 filed a replying affidavit in which it was deposed that the deceased died on 4th May 1998 while the purported agreement for sale was entered on 22nd day of January 1992 and that there was no one in occupation of the subject land, with the Applicant's father only using it as a licensee. It was contended that he was a stranger of the Succession Cause No 90 of 1993 filed in the High Court at Nairobi.
5. He contended that the Applicant was fraudulently issued with the title to the said land and that the same had not demonstrated that there was fraud in the process of the grant herein being issued.
6. By a Ruling thereon dated 14th day of June 2022 the Court allowed the application and found that the Applicant's father in law was entitled to 0.8 acres out of Loc.7/Ichagaki/650 as a beneficial owner.

Appeal

7. Being aggrieved by the said determination, the Appellant filed this appeal and raised the following grounds of appeal:
 - a. The Court misapplied the law on annulment of grants as provided for under section 76 of the Act.
 - b. The Court erred in purporting to determine the ownership of the subject land beyond the scope of his jurisdiction.
 - c. The Court erred in determination that the 1st Respondents' father in law was a creditor to the deceased estate.
 - d. The Court did not consider the pleadings before it and therefore arrived at a wrong determination.

Submission

8. At the hearing of the appeal, the parties relied upon their submissions before the lower Court and on behalf of the Appellant Mr. Ndegwa submitted that the agreement relied upon by the 1st Respondent in support of her claim was executed in the year 1992 while the deceased died in the year 1989 and that when a Court is sitting as a succession Court, its duty is only to determine the beneficiaries of the estate and the distribution thereto but not to determine the issue of ownership, which belongs to the ELC Court. In support of this contention reference was placed on the case of *Matthew Njenga Njogu & another v Rosemary Muthoni Njue* [2021] eKLR .
9. It was contended that the only Succession Cause in respect of the estate of the deceased was the one filed in the lower Court and that the title issued in the name of the 1st Respondent was a fake one as was discovered at the LDT and that she can only qualify as an intermeddler to the estate under the provisions of Section 45 of the Act .
10. On behalf of the Respondent Mr. Mutua submitted that the Appellant failed to disclose that Ngugi Karanja was claiming an interest in the estate as a purchaser and that he had actual possession of the land and that the issue had been determined at the Land dispute Tribunal involving the same parties, leading to Succession Cause No 90 of 1993 where he was named as a creditor and was not aware of the second petition filed by the Appellant.



Determination

11. From the submissions herein, the only issue for determination on this appeal is whether there were grounds upon which the grant issued to the Appellant was annulled and or revoked.
12. From the material placed before the trial Court, it is clear that there was an earlier petition filed in respect of the same estate being Muranga PMC Succession Cause No 90 of 1993 in which the Appellant consented to the grant being issued to Sarah Wangari Mwangi and in that application the interest of the 1st Respondent's father in law is indicated as that of a purchaser.
13. The Appellant did not deny the existence of the earlier cause and therefore in applying for the grant which was revoked the same did so without material disclosure as there cannot be in existence two Succession Causes relating to one estate.
14. The issue raised by the Appellant is to evidently of the alleged agreement for sale should be raised in Succession Cause No 90 of 1993 and not in a fresh Succession Cause, I take the view that the said issues were res judicata.
15. I therefore find no fault with the trial Court determination herein to the effect that the Appellant's mother was a party to the said Succession Cause and that the interests of the Respondent as a purchaser from the deceased's estate was established in the said Succession Cause and having failed to disclose the existence of the earlier cause the Appellant failed to exercise the principle of utmost good faith as was stated in the case of *Re Estate of Julius Ndubi Javan (deceased)* [2018] eKLR.
16. From the above, it is the finding of this Court and I hold that the appeal herein lacks merit and is hereby dismissed.
17. This being a family related dispute, each party shall bear their own cost and it is ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 29th DAY OF MAY 2024

J. WAKIAGA

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the presence of :

Mr. Muteti for the Respondent

Mr. Ndegwa for the Appellant

Jackline – Court Assistant

