

KENYA / JUDGMENT

In re Estate of Kihanya (Deceased)

[2026] KEHC 11577 (KLR)

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COURT

High Court

BEFORE

RA Oganyo

CASE / FILE NUMBER

Probate & Administration 1752 of 2021

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

HCFP&A 1752 OF 2021

IN THE ESTATE OF MARGARET WANJIRU KIHANYA (DECEASED)

PETER KIHANYA MUIRURI.....1ST PETITIONER/ADMINISTRATOR

LUCY NJOKI KIHANYA.....2ND PETITIONER/ADMINISTRATOR

VS

NANCY WAMAITHA WAMBUI.....OBJECTOR/APPLICANT

RULING

1. Before the court for determination is an Application dated 23rd April 2025.
2. The Application seeks the following orders:
3. *Spent*
4. *Spent*
5. *That the grant of letters of administration intestate made on 23rd December 2022 to PETER KIHANYA MUIRURI and LUCY NJOKI KIHANYA and subsequently a certificate of confirmation of grant made on 22nd February 2024 and rectified on 11th April 2024 to be revoked and/ or annulled forthwith.*

6. *That in the alternative to prayer 3 above, the certificate of confirmation of grant made to PETER KIHANYA MUIRURI and LUCY NJOKI KIHANYA on 22nd February 2024 and rectified on 11th April 2024 be reviewed and /or varied by revoking and/or quashing the distribution of LR. 11612/29 and I forthwith be redistributed to NANCY WAMAITHA WAMBUI, the objector herein as a purchaser.*
7. *That the cost of this Application be provided for.*
8. *That such further and /or other orders be issued as this honourable court may deem fit and just to grant.*
9. The Application is supported by an affidavit of Nancy Wamaitha Wambui whose main ground is that:
10. *The grant of letters of administration intestate made on 23rd December 2022 and the certificate of confirmation for grant made on 22nd February 2024 and rectified on 11th April 2024 to the Petitioners/Respondents were obtained fraudulently by concealment of a material fact from this Honorable court and to the exclusion of the Applicant, who is a purchaser for value of Lr. No. 11612/29 which forms part of the estate of the deceased.*
11. The Application is opposed by the Respondent who filed a replying affidavit dated 6th February 2026. Subsequently the Applicant filed a supplementary Affidavit dated 25th February 2026.
12. The Application was canvassed through written Submissions. Both parties did file their submission as was directed by the court.

Applicant's case.

1. The Applicant avers that she is a purchaser for value of LR no. 11612/29 ("the property") having purchased the same from the deceased vide a sale agreement dated 16th October 2018. The Applicant further avers that she paid the full purchase price together with the legal costs to the Deceased's advocates **M/S Nduati & Co. advocates.**
2. The Applicant avers that she kept enquiring from the agent, Mr. Simon Karanja Ngugi who had introduced her to the deceased. That she was not aware of the death of the deceased until sometime in 2024 when she went to the land to enquire the progress of the plots where upon a lady at the site informed her of the said demise.
3. It is the Objector's case that the Petitioners concealed her beneficial interest in the property from this Honourable Court following which the court proceeded to distribute the property to the petitioners herein to hold in trust for other beneficiaries of the estate under the Certificate of confirmation of grant made to the petitioners and rectified on 11th April 2024.
4. For those reasons, the objector humbly urges this Honourable court to revoke the said certificate of confirmation of grant.

Respondent's case.

1. The Respondents are the duly and lawfully appointed Administrators of the estate of the deceased, with the grant of letters having been issued on 23rd December 2022, confirmed on 22nd February 2024 and amended on 11th April 2024. The Respondents have since proceeded with the administration and distribution of the estate strictly in accordance with the confirmed grant.
2. That during the pendency of the succession proceedings, certain claims against the estate were duly brought to the attention of this honourable court and among the objectors was the firm of M/S Nduati & Co. Advocates, who had acted for both the vendor and the alleged purchaser in the impugned transaction, lodged a caveat and subsequently filed a protest opposing the confirmation of the grant.
3. That other objections were raised in respect to the estate notably one was raised by Mr. Simon Karanja Ngugi, who the Respondents avers was in contact with, as far as dealing with the sale of the suit property was concerned. And that in demonstration of good faith and in recognition of the said claims, the petitioners caused twelve (12) titles to be deposited as security, pending the hearing and determination of the respective claims. Thereby ensuring that the interests of the all the alleged claimants were adequately safeguarded.
4. The Respondents on their part filed a replying affidavit sworn by Peter Kihanya Muiruri on 6th February 2026.
5. In the Affidavit the Respondents have contested the jurisdiction of this court to revoke the grant and/or set aside or review the distribution of the suit property on the ground that the Objector's claim is purely a claim in respect of alleged ownership of land and that such dispute does not fall within the purview of this honourable court and that it is the Environment and Land court that is vested with the jurisdiction.
6. That the Applicant herein have actually instituted and is proceeding with a suit before the Environment and Land Court in **Thika MCELC case no. E099 of 2025; Nancy wamaitha Wambui vs Peter Kihanya Muiruri & 2 others** where the Applicant is asserting her purchaser's interest in the suit property.
7. The Respondent also avers that this court is functus officio on grounds that the grant was already confirmed and the estate already distributed and thus the orders sought by the Applicant have been overtaken by events. And that if this court issues the orders prayed for, it will amount to an academic exercise.
8. The Respondent further avers that the payment allegedly made by the Applicant is unsubstantiated. That the Applicant is guilty of laches for having failed to purse her claim against the estate for a period of 7 years.

Issues for determination

1. Having laid out the case of both the Applicant and the Respondent the following issues commend to me for determination:
2. Whether this Court has jurisdiction.
3. Whether the Applicant is guilty of laches.
4. Whether the Applicant has established grounds under section 76 of the Law of Succession Act for revocation of a confirmed/amended grant.
5. Whether implementation of the confirmed grant ought to be stayed in respect of LR No. 11612/29.

Analysis and Determination.

19. a.) **On whether this Court has jurisdiction**, I shall begin with this issue of Jurisdiction, because jurisdiction is everything. Without it the court may not take any single step as was discussed in the classical case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989) (Judgment)**
 1. The Respondents contend that because the Applicant claims to be a purchaser of LR No. 11612/29, the dispute is one relating to ownership of land and therefore falls exclusively within the jurisdiction of the Environment and Land Court.
 2. That submission is only partly correct. Article 162(2)(b) of the Constitution and section 13 of the Environment and Land Court Act indeed confer exclusive jurisdiction upon the Environment and Land Court over disputes relating to title to, occupation of and interests in land.
 3. However, the present Application is not primarily an ownership dispute. The Applicant invokes section 76 of the Law of Succession Act seeking revocation or partial revocation of a confirmed grant on the basis that her alleged purchaser's interest was concealed from the succession court.
 4. This Court undoubtedly retains jurisdiction to determine whether a grant was obtained fraudulently through concealment of material facts. This distinction has repeatedly been recognized. In ***Re Estate of Stone Kathuli Muinde (Deceased) [2016] eKLR***, the Court held that where a purchaser seeks recognition of his interest within succession proceedings, the succession court may determine whether such interest ought to be taken into account in the administration of the estate, although it will not finally determine contested questions of title.
 5. Similarly, in ***In re Estate of M'Marete M'Nthiga (Deceased) [2017] eKLR***, the Court held that where a serious dispute as to ownership exists, that question should be determined by the Environment and Land Court, while the probate court preserves the estate pending such determination.

6. The Court of Appeal reached the same conclusion in ***Trouistik Union International & Another v Jane Mbeyu & Another [1993] eKLR***, where it emphasized that succession proceedings principally concern identification of beneficiaries and administration of the estates rather than adjudication of independent civil claims.
7. Accordingly, this Court possesses the requisite jurisdiction to determine whether there existed concealment sufficient to warrant revocation under section 76 of the Law of Succession Act. However, I will refrain from making a definitive pronouncement as to whether the Applicant acquired valid title to LR No. 11612/29, that issue being properly before the Environment and Land Court. Further more the applicant has indeed instituted a suit before the Environment and Land Court in **Thika MCELC Case no. E099 of 2025; Nancy wamaitha Wambui vs Peter Kihanya Muiruri & 2 others** to determine that fact.
8. **Whether the Applicant is barred by laches**
9. The Respondents contend that the Applicant delayed for approximately seven years before asserting her rights. The Applicant explains that she remained in communication with the agent and only became aware of the deceased's death in 2024 when she visited the property.
10. The doctrine of laches is an equitable defense. It does not arise merely from the passage of time. The Court must consider whether: there was unreasonable delay; the delay was inexcusable; and the delay occasioned prejudice.
11. The Court of Appeal in the case of ***Mbuthia v Jimba Credit Finance Corporation & Another [1988] eKLR*** held that delay alone does not defeat an equitable claim unless it renders enforcement inequitable. The Court must examine whether the Applicant exercised reasonable diligence after becoming aware of the succession proceedings.
12. I have noted that the same Agent whom the Applicant says She was in communication with as far as purchasing the property is concerned, was one of the parties who at one point lodged a caveat against the Estate. This begs the question, why between 2018 when the deceased died and 2024 when she learnt of the decease's death, she did not have communication with the agent. From the pleadings this issue is hazy and not clear.
13. The evidence shows that upon learning of the deceased's death, she instituted proceedings before the Environment and Land Court and thereafter filed the present Application. On those facts, it cannot be said that she slept on her rights after acquiring knowledge of the succession proceedings. Consequently, mere lapse of time cannot, without more, defeat an Application for revocation. And I shall therefore, give the applicant the benefit of the doubt since courts are here to do substantive justice and not poke proceedings based on technicalities.
14. Further, section 76 of the Law of Succession Act contains no limitation period for revocation proceedings. Accordingly, I am not persuaded that the Application is defeated by laches.
15. **Whether sufficient grounds exist under section 76 to revoke the confirmed grant.**

16. Section 76 permits revocation where a grant was obtained: fraudulently; by concealment of material facts; or through untrue allegations essential to obtaining the grant.
17. The Applicant alleges concealment because she was a purchaser for value and her interest was excluded from confirmation.
18. The Respondents, however, have demonstrated that: the alleged transaction was not known to them personally but to other persons who indeed lodged a caveat and protest against the estate; one of them being the advocates who acted in the sale; and other interested persons including the agent whom the Applicant says she was in contact with similarly objected; and subsequently, twelve titles were preserved pending determination of the competing claims.
19. These facts significantly weaken the allegation of concealment. As concealment presupposes suppression of information unknown to the court. Where the Administrators disclosed the existence of competing claims and took steps to preserve disputed assets, it cannot readily be concluded that they acted fraudulently.
20. The Court of Appeal in **Matheka & Another v Matheka [2005] eKLR** held that revocation is not automatic and the applicant bears the burden of proving one of the statutory grounds under section 76.
21. Similarly, **In re Estate of G.K.K. (Deceased) [2017] eKLR** emphasizes that revocation is a drastic remedy and should only be exercised upon strict proof of the statutory grounds.
22. In the present case, the Applicant has not demonstrated that the grant itself was obtained through fraud or deliberate concealment. Her complaint is essentially that she possesses purchaser's rights which ought to be recognized. That complaint does not necessarily invalidate the grant. Further, a revocation process affects the administration of the entire estate. The Applicant's complaint only concerns one parcel of land.
23. Courts have consistently held that revocation should not be ordered where less drastic remedies are available. See **In re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR**, where the Court observed that revocation should not unnecessarily disturb the administration of the entire estate if the complaint relates only to a specific asset.
24. Accordingly, complete revocation would be disproportionate. And I therefore decline that prayer.
25. **Whether implementation of the confirmed grant ought to be stayed in respect of LR No. 11612/29.**
26. The Respondents have exhibited that the Applicant has already instituted Thika MCELC Case No. E099 of 2025 regarding the same property. That is significant. The Environment and Land Court is already seized of the central issue, namely whether the Applicant lawfully acquired purchaser's rights.

27. Any determination by this Court regarding ownership would risk conflicting findings. And as I already determined I do not have jurisdiction to take one more step in determining issues of contracts, and land interest as well as ownership.
28. The prudent course is therefore to preserve the disputed property pending determination by the ELC. This approach aligns with holding in ***Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR***, where the Court held that succession proceedings should preserve disputed property while ownership is determined by the proper forum.
29. In the circumstances the Applicant has failed to establish any of the statutory grounds under section 76 of the Law of Succession Act to warrant revocation of the grant. The material before the Court demonstrates that the alleged purchaser's claim was not concealed from the court by the administrators or from the succession proceedings. Rather, it formed part of the competing claims against the estate, prompting the preservation of titles pending resolution. Consequently, fraud or concealment has not been proved to the required standard.
30. Equally, this Court declines to determine the validity of the alleged sale agreement or whether the Applicant acquired an enforceable proprietary interest in LR No. 11612/29. Those issues fall squarely within the jurisdiction of the Environment and Land Court, where proceedings are already pending.
31. Nevertheless, the Court recognizes that the Applicant's claim is not frivolous. To safeguard the subject matter and avoid rendering the pending ELC proceedings nugatory, it is appropriate that implementation of the confirmed grant be stayed only in respect of **LR No. 11612/29** until the Environment and Land Court finally determines the Applicant's purchaser's claim. Such an order adequately balances the rights of the beneficiaries with those of the Applicant while preserving the authority of the court constitutionally mandated to determine disputes relating to interests in land.

Disposition.

1. The upshot is that; -
2. The prayer for revocation of the grant is declined.
3. The alternative prayer for redistribution is declined at this stage.
4. There shall be a stay of implementation of the confirmed grant only in respect of **LR No. 11612/29** pending the hearing and determination of **Thika MCELC Case No. E099 of 2025** or any other competent proceedings determining the Applicant's purchaser's interest.
5. The Administrators shall continue administering the remainder of the estate in accordance with the confirmed grant as well as the rectified grant.

6. Seeing that the Application has succeeded partially, costs shall abide the outcome of the Environment and Land Court proceedings.

It is so ordered.

Right of appeal 28 days.

Dated, Signed and delivered vide TEAMS platform this 28th day of July, 2026.

.....

Hon. R. A. Oganyo, Mrs.

Judge.

In the presence of; -

Court Assistant.... Sana Erastus.

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