



REPUBLIC OF KENYA



**In re Estate of Samson Ngure Gikandi (Deceased) (Succession Cause
9 of 2019) [2024] KEHC 11308 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11308 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 9 OF 2019
DKN MAGARE, J
SEPTEMBER 26, 2024**

IN THE MATTER OF THE ESTATE OF SAMSON NGURE GIKANDI (DECEASED)

**IN THE MATTER OF
PAUL KARUIRU WAMUGUNDA PROSECUTOR
SUING IN HIS CAPACITY AS THE PERSONAL REPRESENTATIVE OF THE
ESTATE OF WAMUGUNDA KABIRU**

JUDGMENT

1. This judgment is in respect of the Summons for Revocation of the Grant dated 17/6/2019 and filed by the Protestor.
2. The Summons seeks for the following reliefs:
 - a. The Grant of Letters of Administration Intestate issued to Nathan Warutere Ngure on 19/12/2014 and confirmed on 13/3/2015 in Karatina SRMC Succession Cause No. 68 of 2014 – In the Matter of the Estate of Samson Ngure Gikandi be revoked or annulled.
 - b. The costs be provided for.
3. The application is premised on the following grounds as appears on the face of the application and the supporting affidavit that:
 - a. The grant was obtained fraudulently by making a false statement.
 - b. The property known as LR. No. Laikipia/Daiga/Umande/Block 4/754 (Nyariginu) was property of Wamugunda Kabiru but the administrator misrepresented that the said property was part of the estate of the late Samson Ngure Gikandi.
 - c. The administrator illegally obtained the title deed to the said land but which was revoked vide the gazette notice dated 29/8/2014.



4. The Administrator was served but failed to file a response to the summons.
5. The parties took directions for the Summons to proceed by way of submissions.

Submissions

6. The Applicant filed submissions on 28/6/2024. It was submitted that the Applicant had satisfied the conditions for revocation of grant under Section 76 of the [Law of Succession Act](#).
7. Reliance was placed on [Re Estate of Epharus Nyambura Nduati](#) [2021] eKLR and [Re Estate of Julius Ndubi Javan](#) [2018] eKLR to submit that the administrator failed to disclose material facts before obtaining the grant and was guilty of nondisclosure.
8. In this regard, it was submitted that the property was not part of the estate of Samson Ngure Gikandi and so the grant ought to be revoked.
9. On the part of the Administrator, no submissions were filed.

Analysis

10. The issue before me for determination is whether there is any lawful ground on which to revoke or annul the grant of letters of administration issued to the Administrator.
11. The grounds for revocation or annulment of grant of Letters of Administration are set out in Section 76 of the [Law of Succession](#) as follows:

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) That the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) To proceed diligently with the administration of the estate; or
 - (iii) To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - (e) That the grant has become useless and inoperative through subsequent circumstances.
12. The power to seek revocation of the grants and for this court to revoke a grant is stipulated in the first part of section 76 of the [Law of Succession Act](#) as doth:

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.



13. The ground cited by the Applicant for seeking revocation of the grant herein is that confirmation of the grant was obtained fraudulently through concealment of material facts, namely by inclusion of Land Registration Number Laikipia/Daiga /Umande/Block 4/754 (Nyariginu) as part of the estate of the late Samson Ngure Gikandi when in fact it was property of the late Wamugunda Kabiru.
14. The Court has considered the Summons of Revocation of grant together with the annexures relied upon by the Protestor/Applicant. The administrator did not oppose the Summons for Revocation of Grant. In the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] eKLR the court discussed circumstances when a grant can be revoked. The court observed:
- “ 11. 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.”
15. The Protestor/Applicant has placed material before this court constituting sufficient evidence that the Administrator concealed material facts as to the ownership of the subject property. Such information was not controverted as the administrator did not file any affidavit to respond to the assertions by the Protestor.
16. I am satisfied that this court is entitled to exercise discretion to revoke the grant based on the material placed before the court. In the case of *Albert Imbuga Kisigwa v Recho Kavai Kisigwa*, Succession Cause No.158 of 2000, the Court stated as follows:
- “(13) Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
17. The Protestor/Applicant therefore has proved as alleged that:
- (a) 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; or
- (c) 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.
18. In *Evans Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR it was held that:
- “As a general preposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as



Section 108 of the Evidence Act provides the burden lies in that person who would fail if no evidence at all were given as either side.”

19. I therefore find and hold that the Protestor has proved his case to the required standard.

Determination

20. In the upshot, I make the following orders:

- a. Grant of Letters of Administration Intestate issued to Nathan Warutere Ngure on 19/12/2014 and confirmed on 13/3/2015 in Karatina SRMC Succession Cause No. 68 of 2014 – in the matter of the estate of Samson Ngure Gikandi be and is hereby revoked.
- b. The Administrator shall pay the cost of this application assessed at Kshs. 85,000/- within 30 days in default of which execution do issue.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 26TH DAY OF SEPTEMBER, 2024.

RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

Represented by: -

Wakarura Irungu & Co. Advocates for the Applicant

Respondent in person – present

Court Assistant – Jedidah

