



**In re Estate of Njigua Nderi alias Julius Njigua Nderi (Deceased) (Succession Cause 16 of 2002) [2024] KEHC 11211 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11211 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 16 OF 2002  
DKN MAGARE, J  
SEPTEMBER 26, 2024  
IN THE MATTER OF THE ESTATE OF NJIGUA  
NDERI ALIAS JULIUS NJIGUA NDERI (DECEASE**

**BETWEEN**

**GRACE NDUTA MARIGI ..... APPLICANT**

**AND**

**LAWRENCE MACHARIA NJIGUA ..... RESPONDENT**

**JUDGMENT**

1. This Judgment is in respect of the Summons for Rectification of Grant dated 19/9/2023 and filed by the Applicant.
2. The Summons seeks for the following reliefs:
  - a. Spent
  - b. Spent
  - c. A Grant of Letters of Administration Intestate to the estate of the late Njigua Nderi alias Julius Njigua Nderi to Lawrence Macharia Njigua on 15<sup>th</sup> April, 2002 and confirmed on 1<sup>st</sup> August, 2002 be revoked.
  - d. Upon revocation of the said Grant, the court do issue an order directing the Land Registrar Nyeri to rectify the register by cancelling any subdivision and or dealing on the parcel of land known as Thegenge/Karia/691 after the death of the deceased and the title to revert to the deceased for purposes of distribution.
  - e. The costs be provided for.
3. The Summons is supported by the Affidavit of the Applicant sworn on 19/9/2023.



4. It is deposed that the Applicant is the widow of one Samuel Nderi Njigua, a beneficiary in the estate but who is now deceased.
5. It was her further deposition that she did not know or recognize David Njuguna or Allan Mwangi Wanjohi as beneficiaries even though they had erroneously been allocated 0.25 acres of land.
6. The Applicant further deposed that her husband, the late Samuel Nderi Njigua had mental issues and so the Respondent took advantage and denied the said Samuel Nderi Njigua his rightful share in the estate. Therefore, it was deposed in material as follows:
  - a. That the grant was obtained through fraudulent misrepresentation and concealment of material facts.
  - b. The proceedings leading to the grant were defective.
7. The Respondent filed a Relying Affidavit dated 28/6/2024 and sworn by the Respondent as follows:
  - a. The deceased Samuel Nderi Njigua was during his lifetime present in court when the Grant was confirmed on 1/8/2002 and approved the proceedings.
  - b. The Applicant could not have been involved in the succession as her husband was alive.
  - c. The deceased Samuel Nderi was of sound mind and working with the Kenya Airports Authority.
  - d. The Application was filed as afterthought 4 years after the demise of Samuel Nderi.
8. The parties took directions for the Summons to proceed by way of submissions.

### **Submissions**

9. The Applicant filed submissions on 8/7/2024. It was submitted that the Grant issued on 1/8/2002 should be revoked. Reliance was placed on Section 76 of the *Law of Succession Act*. In this regard, it was submitted that the proceedings were marred with fraud, misrepresentation and concealment of material facts.
10. Reliance was also placed on *Jamleck Maina Njoroge v Mary Wanjiru Mwangi (2015) eKLR* to canvass the submission that a false statement or concealment of a material fact would lead to the revocation of the grant.
11. The Applicant also submitted that the proceedings were commenced without knowledge and consent of the beneficiaries. They cited *Anthony Karugenya Njeru v Thomas M Njeru (2014) eKLR*. It was also in this regard submitted that under Rule 26 of the Probate and Administration Rules, a grant could not have been granted without notice to every other entitled person.
12. On the part of the Respondent, they filed submissions 28/6/2024. It was their submission that the Applicant had no locus to file these proceedings as the letters of administration ad litem was only limited to substitution and the Applicant had not been substituted in this case.
13. It was also submitted that all beneficiaries including the late Samuel Nderi Njigua were present in court and approved the confirmation of Grant and as there was no evidence of mental illness, the application was not supported.



14. Reliance was placed on the case of *In the Estate of Benjamin Kire Genyi Muri (2022) eKLR* to submit that the Applicant had not satisfied the conditions for revocation of a grant under Section 76 of the *Law of Succession Act*.

### **Analysis**

15. 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 Respondent.
16. 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.
17. Before I venture into the merits of this case, the court notes that Respondent laments that the Applicant had no authority to bring these proceedings since she only assumed locus standi following a grant of letters ad litem which did not grant her the powers to file this application.
18. I do not think the submission by the Respondent is correct. The Applicant as the widow of a deceased beneficiary had outright authority to challenge the Grant and did not require to be substituted in the proceedings before assuming such powers. She is a beneficiary having stepped into the shoes of the husband. There is no need to carry out succession in respect of one’s estate to prove one as a beneficiary.
19. The power to seek revocation of 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.



20. Consequently, any interested party has legal standing to apply for revocation or annulment of grant on the basis of grounds as was also held in *Matheka and Another v Matheka* (2005) EA 251. Therefore, the *Law of Succession Act* does not limit standing to apply to a beneficiary, administrator, survivor, dependent, and/or creditor of the estate of the deceased. The party needs to show relationship with the deceased. If they have none and are claiming as creditors, on behalf of another deceased, then and only then do they require letters of administration.
21. On the merits, the main ground cited by the Applicant for seeking revocation of the Grant herein is that confirmation of the grant was obtained through concealment of material facts, namely through the omission of the Applicant in the distribution of the estate, given that the Applicant's spouse one Samuel Nderi Njigua (now deceased) was at the time of the confirmation of the grant mentally ill and unable to make a reasonable proposal as to his rightful share of the estate.
22. On the other hand, the Respondent contends that the said Samuel Nderi Njigua was in fact present at the time of the confirmation of the grant and was not mentally ill as alleged and therefore being present and alive, there is no way the Applicant as his wife would have been an independent beneficiary as she would only inherit through her spouse.
23. I understand the case of the Applicant to challenge the award that was made to the deceased beneficiary, Samuel Nderi Njigua. In the view of the Applicant, the deceased was not given his rightful share in the estate. The Applicant contends in her Supporting Affidavit that the rightful share was 1 acre. However, I note that Applicant was given 0.8875 acres.
24. In my analysis, the Applicant's allegation that her deceased Spouse, Samuel Nderi Njigua was mentally ill was not supported. I say so because the grant was confirmed on 1<sup>st</sup> August, 2002 and the said Samuel Nderi Njigua died on 17<sup>th</sup> October, 2019. The registration of titles was carried out in 2003.
25. The sons of Samuel Nderi Njigua had a caution lodged as the beneficiaries in 2004 as against the title of Lawrence Macharia Njigua. The issue of the estate being concluded was known in 2004. Nothing was done until 20 years later.
26. Therefore, the deceased survived for more than 17 years following the issuance of the confirmed Grant and personally raised no objection thereto. There is no evidence that any complaint was made during the time of the deceased or that the Applicant, deceased or any of her children raised any issue with the Grant.
27. This application was filed on 21<sup>st</sup> September 2023, 4 years after the demise of the deceased. Clearly, the Applicant in this case is merely attempting a second bite at the cherry. 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.”



28. The estate has been concluded and titles issued. The Court of Appeal in *Mary Wambui Kibunya –vs- Peter Kariuki & Another* (ELD CA 308 of 2019) stated that;-

As already stated, the 1st deceased's estate was only made up of LR No. Muguga/Kahuho/428, which had been transferred to third parties by the time the application for revocation of the grant was being made. In the circumstances, even if we allow the application for substitution and appoint the respondents and Teresiah Mukuhi Muriithi as the administrators and administratrix of the estate of the 1st deceased, we shall be appointing them to manage a shell estate as there is nothing left of the estate to be administered. As correctly held by the learned Judge, the appellant's application had been overtaken by events. Although courts have a duty to render substantive justice, sometimes parties arrive in court when it is too late for the courts to assist them. We therefore do not find fault in the learned Judge's declination of the application for substitution. It is apparent from the record that the 2nd deceased had fully administered the estate of the 1st deceased.

29. The Applicant's case therefore fails. Further, there is no evidence of fraud, concealment of material fact or misrepresentation of facts on the part of the Respondent. The court also notes that the Applicant has failed to establish that the share of 0.8875 acres given to Samuel Nderi Njigua was not the rightful share as alleged.
30. A perusal of the schedule of distribution demonstrates and clearly shows that the said Samuel Nderi Njigua could have gotten the largest share of all the beneficiaries since the share of Lawrence Macharia Njigua, the Respondent herein of 1.2375 acres and life interest were jointly held with Rahab Njeri Njigua. He also got the same share as Karaya Njigua Nderi. He is not a child of a lesser god.
31. It is my sincere hope that parties must learn to know when the chips have fallen. The estate is fully administered and closed.
32. Consequently, I reject the contention by the Applicant that merely because the Deceased's name did not appear in the list of beneficiaries for the purpose of consent should make the Grant a nullity. The conduct of the late Samuel Nderi Njigua signified approval of the disposition under the grant as no objection thereto was made and more so, the Applicant failed to rebut the deposition by the Respondent that in fact Samuel Nderi Njigua was present and approved the Grant during the proceedings leading to the confirmation of the Grant.
33. There was tendered reliable evidence that the late Samuel Nderi Njigua had no mental issues and in fact worked with the Kenya Airports Authority prior to his demise. A person is presumed to be mentally fit until cogent evidence is adduced.
34. The court is unable to exercise discretion to revoke the grant based on the material placed before me. In the case of *Albert Imbuga Kisigwa v Recho Kawai 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.”



35. The Applicant therefore has failed to prove 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.
36. The application has also been brought after a lapse of 20 years since they has knowledge that the grant was confirmed. This is outside the actual knowledge they may have had in 2002 when the grant was confirmed.
37. The Applicant therefore, failed to prove her case to the required standard. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of *Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others, SC Petition No. 4 of 2012*; [2014] eKLR, as follows: -
- “(18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.
38. The Summons for revocation of the Grant dated 19/9/2023 is accordingly dismissed with costs of 15,000/= to the Respondent.

#### **Determination**

39. In the upshot, I make the following orders:
- i. The Summons for revocation of grant dated 19/9/2023 lacks merit and is dismissed in limine.
  - ii. Costs of 15,000/= to the Respondent payable within 30 days, in default execution to issue.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

Represented by: -

Karanja Maina & Co. Advocates for the Applicant

Wahome Gikonyo & Co. Advocates for the Respondent



