



REPUBLIC OF KENYA



**In re Estate of Late Gerald Theuri Kanyugo (Deceased) (Succession Cause 685 of 2014) [2024] KEHC 13531 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13531 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 685 OF 2014  
HI ONG'UDI, J  
OCTOBER 31, 2024**

**IN THE MATTER OF THE ESTATE OF LATE GERALD THEURI KANYUGO (DECEASED)**

**BETWEEN**

**JEDIDAH WANJIRU THEURI ..... OBJECTOR**

**AND**

**GEORGE MWANGI KANYUGO ..... RESPONDENT**

**RULING**

1. The objector/applicant herein filed summons dated 30<sup>th</sup> September 2020 pursuant to the Provisions of Sections 29, 71 and 76 *Succession Act* and Rules 44, 63(1), 72-73 of the *Probate and Administration* requesting for the following orders;
  - i. That the Grant of probate (or letters of administration) issued to George Mwangi on 2<sup>nd</sup> December 2014 and confirmed on 14<sup>th</sup> August 2015 by this honourable Court be revoked forthwith.
  - ii. That an inhibition order be issued inhibiting any dealings in Land Parcel No. Nakuru Municipality Block 29/126 (Rhonda) until this matter is heard and determined.
  - iii. That there be an immediate restriction on any transfers or sub-division of the Title No. Nakuru Municipality Block 29/126 (Rhonda) or other further sub-division thereto pending the hearing and determination of this application and suit.
  - iv. That an Order do issue to the Land Registrar Nakuru to cancel the Title No. Nakuru Municipality Block 29/126 (Rhonda) and the same to revert to Gerald Theuri Kanyugo (Deceased).



- v. That an Order do issue to the Land Registrar-Nakuru to issue the objector/applicant herein with all copies of transfer documents on Title No Nakuru municipality Block 29/126 (Rhonda).
  - vi. That such further or other orders be granted as the Court deems fit to grant.
  - vii. That the applicant be granted costs of the application.
2. The summons for revocation of grant is supported by an affidavit sworn by the objector/applicant on even date. She deposed that the deceased was her husband and they got married under the Kikuyu customary law. Further, that grant of probate/letters of administration was issued to the respondent on 2<sup>nd</sup> December 2014 and confirmed on 14<sup>th</sup> August 2015 by this Court without her knowledge. She added that the same ought to be revoked on grounds that they were unlawfully obtained as per the laws of succession.
  3. She deposed further that the Certificate of Confirmation was obtained fraudulently by concealment to the Court of the material facts. That there was need for the court to issue an urgent injunction order restraining the respondents, their agents, servants, transferees or anybody from any interference with the subject title. She stated that it was only fair and just that the grant be revoked and the petition heard a fresh.
  4. In response to the summons for the revocation the respondent filed a replying affidavit dated 21<sup>st</sup> April 2023. He averred that the deceased was his brother and prior to his demise he had not married or sired a child. Further, that their mother requested him to apply for Letters of Administration in respect of the estate of the deceased on her behalf. He filed the necessary documents and his application was published in the Kenya Gazette under Gazette Notice No. 7446 dated 17 October, 2014.
  5. He further averred that there were no objections to his appointment as administrator of deceased's estate and the Court proceeded to issue him with Letters of Administration dated 2<sup>nd</sup> December, 2014. That it was clear that the objector's allegation that he obtained the Letters of Administration herein secretly was utterly misplaced and false.
  6. Additionally, that there was no relationship between the objector/applicant and the deceased and he was not aware of her existence and could therefore not involve her in this cause. He stated that the present application was an afterthought and an illegal scheme hatched by the objector/applicant and others best known to her, to present a falsified claim in the hope of obtaining inheritance where it was not due. He urged the Court not to countenance the unlawful tactics at play.
  7. The objector/applicant filed a further affidavit dated 30<sup>th</sup> April 2023 in opposing the respondent's replying affidavit. She reiterated that she was married to the deceased and out of their union they sired two children. Further, that they never divorced and that she only left her matrimonial home due to the hostility by the respondent and his family. Further, that the chief had written a letter to the court explaining how the respondent had misled him.
  8. The application was disposed off by way of written submissions.

### **Objector/Applicant's Submissions**

9. These were filed by Muthoni & company advocates and are dated 7<sup>th</sup> June, 2024. Counsel identified one issue for determination which is whether the objector has locus standi to challenge the grant issued



to the administrator and confirmed on 14<sup>th</sup> August 2015. Counsel submitted in the affirmative and cited section 29 (a) of the [Law of Succession](#) which provides as follows;

“For the purposes of this Part, “dependant” means-

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death,
- (b) such of the deceased's parents, step-parents, grand-parents, grandchildren, [Ste] children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained. by the deceased immediately prior to his death; and (where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

10. She further submitted that the respondent was aware that the deceased had a wife and child who had priority to his estate. However, he proceeded to obtain a grant fraudulently by making a false statement and concealment from the court of the family of the deceased. He also proceeded to even change the names on the title deed of the deceased to his names.
11. The court's attention was drawn to the case of [re Estate of Gaitbo Kimani \(Deceased\)](#) [2021] eKLR, where C Meoli J in upholding the decisions in [Matbeka & Anor v Matbeka](#) (2005) 2KLR, 445 regarding the guiding principles on revocation of a grant, and also [Milka Anyango Otieno & Anor vs Kenneddy Otieno Odeny](#) [2014] eKLR held that:

“The exclusion of the applicants from the succession cause in the lower court was erroneous and vitiates the said proceedings. The proceedings were defective in substance. In addition, the grant was obtained through the non-disclosure of facts material to the cause, namely the existence of the applicants as children of the deceased who also survived him.”

“In the circumstances, the court is satisfied that the grant issued to the respondents cannot stand, The grant, as subsequently confirmed is hereby revoked. A fresh grant will henceforth issue in the joint names of the 1<sup>st</sup> Respondent and Margaret Wanjiru, the 1<sup>st</sup> Applicant. They are at liberty to file an application to confirm the grant before the expiry of six months identifying all the children of the deceased and where deceased their surviving spouse/child and their respective shares.

### **Respondent's Submissions**

12. These were filed by Gatonye & Gatonye advocates and are dated 26<sup>th</sup> July, 2024. Counsel identified three issues for determination.
13. The first issue is whether the objector has proved marriage to the deceased. He submitted in the negative and cited the case of the [Re Estate Of Musyoka Muli \(Deceased\)](#) (Succession Cause 352 of 2013) [2023] KEHC 20439 (KLR) the Court found as follows;

“The objector did not also adduce any evidence to show that the alleged ceremony ever took place, further the objector did not call any witnesses who was present during the alleged ceremony. The objector also conceded that no dowry was ever paid. With the foregoing in mind it is clear that apart from what the objector stated herein, there is no evidence to prove that a marriage whether customary or otherwise was contracted between the deceased and the objector in the year 2013 or any other year. Most likely than not, she was his girlfriend



or lady friend or secret lover or an unmarried partner with whom he may have or have not sired children out of wedlock.”

14. The second issue is whether the objector has locus standi to seek revocation/annulment of the grant. He submitted in the negative while citing section 29 of the *Law of Succession Act*. He also placed reliance on the case of *Re Estate Of Stephen Kimotho Karanja Deceased* [2022] eKLR where the court held as follows;

“Looking at the applicant’s pleadings there was no evidence to link him to the estate of the deceased or anything to prove that he was a dependant of the deceased. He has not explained his interest in the properties of the deceased and as such he should not prevent the respondents from administering the estate of the deceased.....The applicant has not satisfied me that he is a dependant of the deceased..... Entertaining the applicant in the proceeding herein will serve no useful purpose other than to convolute the matter. The applicant has not satisfied this court that he merits the orders he is seeking as he lacks locus standi.”

15. The third issue is whether due process was followed in the appointment of the respondent as an administrator in the estate of the deceased. He submitted in the affirmative and added that the objector/applicant had failed to meet the threshold set out in section 76 of the *Law of Succession Act* for annulment/revocation of a grant. He urged the court to dismiss the application with costs to the respondent.

### **Analysis and Determination**

16. I have carefully considered the application, the affidavits, and the submissions by both parties and in my opinion the main issue arising for determination is whether the objector/applicant has established a case for the revocation of the grant of letters of administration issued on 2<sup>nd</sup> December 2014 to the respondent.

17. In addressing the said issue, section 76 of the *Law of Succession Act* which provides for revocation and annulment of grant and the same provides as follows:

76. Revocation or annulment of grant

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 has ordered or allowed; 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.

18. On the other hand, Rule 44 of the [Probate and Administration Rules](#) provides as follows:

44. Revocation or annulment of grant

(1) Where any person interested in the estate of the deceased seeks pursuant to the provisions of section 76 of the Act to have a grant revoked or annulled he shall, save where the court otherwise directs, apply to the High Court for such relief by summons in Form 107 and, where the grant was issued through the High Court, such application shall be made through the registry to which and in the cause in which the grant was issued or, where the grant was issued by a resident magistrate, through the High Court registry situated nearest to that resident magistrate's registry.

(2) There shall be filed with the summons an affidavit of the applicant in Form 14 for revocation or annulment identifying the cause and the grant and containing the following particulars so far as they are known to him—

(a) whether the applicant seeks to have the grant revoked or annulled and the grounds and facts upon which the application is based; and

(b) the extent to which the estate of the deceased has been or is believed to have been administered or to remain un-administered, together with any other material information.

(3) The summons and affidavit shall without delay be placed by the registrar before the High Court on notice in Form 70 to the applicant for the giving of directions as to what persons (if any) shall be served by the applicant with a copy of the summons and affidavit and as to the manner of effecting service; and the applicant, upon the giving of directions, shall serve each of the persons so directed to be served with a notice in Form 68, and every person so served may file an affidavit stating whether he supports or opposes the application and his grounds therefor.

(4) When the persons (if any) so directed to be served (or such of them as the applicant has been able to serve) have been served with a copy of the proceedings, the matter shall be placed before the High Court on notice by the court to the applicant and to every person so served, and the court may either proceed to determine the application or make such other order as it sees fit.

(5) Where the High Court requires that notice shall be given to any person of its intention of its own motion to revoke or annul a grant on any of the grounds set out in section 76 of the Act the notice shall be in Form 69 and shall be served on such persons as the court may direct.”

19. By virtue of Section 76 of the [Law of Succession Act](#), a grant of representation is liable to revocation on the grounds of concealment of material information from the court and for misrepresentation. Defective proceedings may lead to such revocation. Further under the said section 76, revocation of a grant may be on the courts' own motion or on an application by a party. In the Matter of the Estate



of Esther Wanjiru Mucheru (deceased), Nairobi High Court Succession Cause No.1996 of 1999, the court noted that Section 76 of the Law of Succession Act was discretionary in that the court had discretion whether to revoke or annul a grant. Further, in Kennedy Opiche Olela v William Ogida Ochuodho & another [2014] eKLR, the court was of the view that it is the duty of the applicant to prove that any of the grounds set out under Section 76 had been committed before the court can revoke a grant already issued.

20. In the present application, the objector/applicant pegs her application for revocation of grant on several sections of the law among them Section 76 of the Law of Succession Act, Rule 44 of Probate and Administration Rules, on grounds that the respondent unlawfully took out letters of administration without consulting other family members and especially herself since she was married to the deceased. Further, that in obtaining the said Letters of Administration and grant there was concealment of material facts from the court and particularly that the deceased did not leave behind any wife or children.
21. The information that should be carried in an application for grant is set out in Section 51(2) of the Law of Succession Act. The relevant provision is Section 51 (2) (g) of the said Act. It states as follows: -  

“ 51(2) An application shall include information as to –

  - (g) in cases of total or partial intestacy, the names and addresses of all previous spouses, children, parents, brothers and sisters of the deceased and of the children of any child of his or hers then deceased...”
22. Having perused the court records, I note that the application for Letters of Administration in this cause for the estate of the deceased took the form of a petition filed on 22<sup>nd</sup> September 2014. The affidavit in support of the application discloses names of the deceased’s mother (Serah Muthoni Kanyugo) and the respondent herein as the survivors. The said petition was not contested and the grant was subsequently confirmed on 14<sup>th</sup> August 2015. The DNA report dated 5<sup>th</sup> October 2023 indicates that there was strong evidence that the respondent is the paternal uncle to the objector/applicant’s daughter Loise Muthoni.
23. Further, the chief’s letter dated 14<sup>th</sup> September 2020 as annexed in the affidavit in support of the application, indicates that the respondent together with his mother (now deceased) gave misrepresented information as to the dependants of the deceased herein. The respondent on his part did not adduce any evidence to the contrary. There is no doubt that the particulars set out in the petition did not conform with the prerequisites of section 51(2)(g).
24. From the annexed birth certificate Loise Muthoni was born on 18<sup>th</sup> May, 1992 and is now aged 32 years.
25. My finding is that the respondent indeed concealed information from the court while obtaining the Grant of Letters of Administration Intestate issued to him on 2<sup>nd</sup> December 2014 and confirmed on 14<sup>th</sup> August, 2015. The same is hereby revoked pursuant to the provisions of section 76 of the Law of Succession Act. The following orders to issue:
  - i. A fresh grant to be issued in the names of (i) Loise Muthoni and (ii) George Mwangi Kanyugo
  - ii. There shall be no further dealings, transfers and sub divisions on land parcel No. Nakuru Municipality Block 29/126 (Rhonda) until this matter is heard and determined.
  - iii. The Land Registrar Nakuru to revert the name of Gerald Theuri Kanyugo (deceased) to the title in Parcel No Nakuru Municipality Block 29/126 (Rhonda).



- iv. The Land Registrar Nakuru to forward to this court (Deputy Registrar) all copies of transfer documents on Title No. Nakuru Municipality Block 29/126 (Rhonda), within 30 days.
- v. There shall be no order as to costs

Orders accordingly.

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 31<sup>ST</sup> DAY OF OCTOBER, 2024 IN OPEN COURT.**

**H. I. ONG'UDI**

**JUDGE**

