



REPUBLIC OF KENYA



**In re Estate of Benjamin Kibuka Michuki (Deceased) (Succession Cause 672 of 2013) [2024] KEHC 13046 (KLR) (25 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13046 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 672 OF 2013  
MA ODERO, J  
OCTOBER 25, 2024  
ESTATE OF BENJAMIN KIBUKA MICHUKI (DECEASED)**

**JUDGMENT**

1. Before this Court for determination is the Summons for Revocation/Annulment of Grant dated 21<sup>st</sup> December 2023 by which the Applicant/Objector Kenneth Kingori Kibuka Alias Kenneth Kingori Ngatia seeks the following orders;-
  - “ 1. Spent
  2. Spent
  3. That this Honourable court may be pleased to revoke annul/cancel the Grant of letters of Administration intestate (P & A. 41) and which this Honourable court confirmed subsequently on 24<sup>th</sup> July 2020, on the ground that it was obtained fraudulently by the making of a false statement and/or by the concealment of the court of something material to the cause.
  4. That this Honourable Court may issue a fresh Grant of letters of Administration Intestate to the Petitioner and Applicant jointly.
  5. That the Honourable Court may be pleased to make an order on the costs of this application.
2. The application was supported by the Affidavit of even date as well as the Supplementary Affidavit dated 26<sup>th</sup> February 2024 both sworn by the Objector.
3. The Respondent/Administrator Teresa Wambui Githinji filed a Replying Affidavit dated 22<sup>nd</sup> January 2024 in which she opposed the Summons.
4. The matter was canvassed by way of written submissions. The Objector filed written submissions which were undated, whilst the Respondents relied upon her written submissions dated 23<sup>rd</sup> July 2024.



## Background

5. This Succession Cause relates to the estate of the late Benjamin Kibuka Muchuki who died intestate on 22<sup>nd</sup> March 2010. A copy of the Death Certificate Serial Number 296620 was filed in Court on 10<sup>th</sup> February 2014.
6. The Deceased was said to have been survived by the following persons;-
  1. Teresa Wambui Githinji - Widow
  2. John Githinji Kibuka - Son
  3. Grace Wamucii Githinji - Daughter
  4. Joyce Wacheke Kibuka - Daughter
  5. Lucy Wangari Karangi - Daughter
  6. George Gitahi Kibuka - Son
  7. Peter Wachira Kibuka - Son
  8. Grace Wamuchii Karoki - Daughter
  9. Michael Kinyua Kibuka - Son
  10. Jane Muthoni Munyoro - Daughter
  11. Margaret Wangari Ngatua - Daughter
  12. Kenneth Kingori Kibuka - Son
7. The Deceased left behind only one asset being the parcel land known as LR Number Nyeri/Mweiga/1049 comprising 1.3 Hectares.
8. Following the demise of the Deceased no family member applied for a Grant of letters of Administration, to the estate.
9. Accordingly the widow Teresa Wambui Githinji filed a citation dated 1<sup>st</sup> October 2013 directing the sons and daughter of the Deceased to take out letters of Administration .
10. The citees did not file any response to the citation and on 15<sup>th</sup> April 2014 the Court issued the Respondent (widow) with Grant of letters of Administrations Intestate.
11. The Respondent then proceeded to file a Summons for confirmation of Grant dated 16<sup>th</sup> October 2014 indicating that the estate property devolve to herself absolutely.
12. At that point one George Gitahi Kibuka a child from the 1<sup>st</sup> House filed the Affidavit of Protest dated 13<sup>th</sup> March 2015 in which he alleged that the Respondent had separated from the Deceased and further alleged that the Deceased left behind a written will dated 5<sup>th</sup> August 2009.
13. That protest was heard by way of Vive Voce evidence and vide a judgment delivered on 24<sup>th</sup> July 2020, Hon. Justice Ngaah dismissed the Protest and directed that the Grant which had been issued to the Respondent on 15<sup>th</sup> April 2014 be confirmed. The Court further directed that Title Number Nyeri/Mweiga.1049 be divided equally between the two houses with the 1<sup>st</sup> House getting 0.6055 acres and the Applicant was to get 2.6055 acres.



14. Following this judgment a certificate of Confirmed Grant dated 24<sup>th</sup> July 2020 was issued in the name of the Respondent Teresa Wambui Githinji. The Respondent proceeded to execute the Grant and Obtained a Title to her portion of the estate in her own name. The Objectors and their siblings declined to execute the required documents for transmission of the estate forcing the Respondent to file an application seeking to have the documents executed by the Hon. Deputy Registrar of the High Court. Vide a ruling delivered on 17<sup>th</sup> August 2022, Hon. Lady Justice F. Muchemi allowed this application.
15. The Respondent then issued a notice to the family members asking them to vacate the portion of the land which land been allocated to her.  
  
At this point the two objectors filed this Summons seeking to have the Grant which had been issued to the Respondent revoked.
16. As stated earlier the summons seeking to revoke the Grant was opposed by the Respondent.

### **Analysis And Determination**

17. I have carefully considered the Summons before this Court, the reply filed thereto as well as the written submissions filed by both parties.
18. The first question I would ask is why the Objector did not file this summons for revocation earlier. If he genuinely held the belief that the Grant was obtained fraudulently then the objector ought to have filed a Summons seeking to revoke the Grant before even filing a Protest contesting the mode of distribution of the estate. Indeed this Summons seeking to revoke the Grant was filed only after the Objector had been issued with an eviction notice. It is my view that this Summons is clearly an afterthought.
19. The Grounds upon which a Grant may be revoked are clearly set out in Section 76 of the *Law of Succession Act* Cap 160 laws of Kenya as follows:-  
  
“ A grant of representation whether or not confirmed may at time be revoked or annulled if the court decides either on application by any interested party of its own motion -
  - i. that the proceedings to obtain the grant were defective in substance;
  - ii. 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;
  - iii. that the grant was obtained by means of an untrue allegation of a fact essential in point in law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
  - iv. 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 r 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



- iv. that the grant has become useless and inoperative through subsequent circumstances.

20. In the case of Albert Imbuga Kisigwa vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000 Mwita J stated as follows:-

“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.” [Own emphasis]

21. The Objectors claim that the Respondent failed to consult and/or include them when filing the Petition for Grant. Nothing could further from the truth. The record clearly shows that the Respondent caused a citation to be issued to all the surviving beneficiaries of the estate. The fact that the citation was duly served upon the citees is evidenced by the Affidavit of Service sworn by Simon Gibson Gichuki a licenced process server dated 4<sup>th</sup> October 2013.

22. Moreover one of the citees George Gitahi Kibuka entered appearance in response to the citation but took no further action thereafter. Notice of the Petition filed by the Respondent was also contained in the Kenya Gazette of 14<sup>th</sup> March 2014 being Gazette Notice Number 672 of 2013. The purpose of placing such notices in the Kenya Gazette is to notify all persons of the existence of a petition in respect to the estate of a Deceased person.

23. Further I note that in the application dated 14<sup>th</sup> September 2014 which was heard and determined by Hon. Lady Justice Muchemi, the Objector was one of the Respondents named therein. The Honourable Judge in her ruling noted that the application was served on all the Respondents (including the objector herein) but they did not oppose the same (save for the 1<sup>st</sup> Respondent who filed a Replying Affidavit).

24. The Objector was probably hoping that by refusing/failing to respond to any applications he could later feign ignorance about the Succession Cause. However I find that the Objector was fully aware of this Succession Cause. He simply chose not to act. I therefore reject the Objectors claim that he was unaware of the Petition filed by the Respondent.

25. In his Summons the Objector claims that in obtaining the Grant the Respondent committed fraud and concealed material information. The manner of fraud which was allegedly committed by the Respondent was not been revealed.

26. Fraud is an allegation which must be specifically proved. In Christopher Ndaru Kagina -vs- Esther Mbandi Kagina [2016] eKLR the court pronounced itself as follows;-

“It is trite law that he who alleges fraud must prove fraud.”

27. Blacks Law Dictionary 11<sup>th</sup> Edition defines fraud as:-

“A knowing misrepresentation or knowing concealment of material facts made to induce another to act to his or her detriment.”



28. It is the law that allegations of fraud must be specifically pleaded and strictly proved. In the case of *Vijay Marjaria -vs- Nansingh Madhusingh Dabar & Another* [2000] eKLR the Court of Appeal stated as follows

“It is well established that fraud must be specifically pleaded and the particulars of fraud alleged must be stated on the face of the pleading. The act alleged to be fraudulent must of course be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved and it is not allowable to leave fraud to be inferred from the facts.

29. The standard of proof required for claims based on fraud has been held by the courts to be higher than that required in ordinary civil cases. In *Koinange & 13 others -vs- Charles Karuga Koinange* [1986] KLR the Court stated as follows:-

“when fraud is alleged by the plaintiff, the onus is on the plaintiffs to discharge the burden of proof. Allegations of fraud must be strictly proved, although the standard of proof may not be so heavy as to require proof beyond a reasonable doubt, something more than a balance of probabilities is required.”

30. The Objector herein has merely made a blanket allegation of fraud. No particulars have been given and no proof of said fraud has been tendered to the court. As such I dismiss this allegation of fraudulent conduct by the Respondent.

31. The Objector further accuses that the Respondent of concealing material facts - he has not stated precisely what facts the Respondent concealed from the Court. The very fact that the Respondent filed a citation naming all the beneficiaries to the estate is proof enough that she was open and above board in her petition. The Respondent did not conceal the identities of any of the beneficiaries neither did she conceal any of the assets left behind by the Deceased. The Objectors Summons consists of a series of unsubstantiated allegations.

32. The Objector in his Supporting Affidavit claims that the portion of land allocated to the Respondent includes what he terms as his inheritance. The Objector is in a roundabout way seeking to re-open the issue of distribution of the estate. This is an issue which is now ‘Res Judicata’ as the question of distribution of the land left behind by the Deceased was exhaustively considered and determined by Hon. Justice Ngaah in the Judgement delivered on 24<sup>th</sup> July 2020.

33. This court being a court of concurrent jurisdiction cannot revisit the issue as that would be tantamount to sitting in appeal over the decision of fellow High Court Judge. The only avenue open to the Objector would be to appeal the judgment of 24<sup>th</sup> July 2020.

34. Further in his written submissions the Objector states that his late Father (the Deceased) left a written will detailing how he wished his estate to be distributed. No copy of this alleged written will was produced in court. The estate has all along been dealt with as an Intestate cause. The date of this alleged will is not given nor are the names of the Executor(s) indicated. These are all left blank in the Objectors written submissions. I find that the Deceased did not leave behind a written will but that he died intestate.

35. On the whole I find that this summon is nothing more than an abuse of Court process. The history of this cause reveals that the objector and his siblings have been very unco-operative and have tried by all means to scuttle the implementation by the Respondent of the confirmed Grant which was issued to her.



36. The Objector has failed to satisfactorily prove any of the grounds set out in Section 76 for revocation of a Grant. I find no merit in this Summons. The same is hereby dismissed in its entirety. Costs will be borne by the Objector.

**DATED IN NYERI THIS 25<sup>TH</sup> DAY OF OCTOBER, 2024.**

**MAUREEN A. ODERO**

**JUDGE**

