



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of James Kinyuru Muongi (Deceased) (Succession Cause  
124 of 2016) [2024] KEHC 13059 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13059 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
SUCCESSION CAUSE 124 OF 2016  
A MSHILA, J  
OCTOBER 25, 2024**

**RULING**

1. Beatrice Wambui Maina, Pauline Wanjiku Kinyuru, Edwin Gitau Kinyuru, Raymond Mbugua Kinyuru and Francis Karugi Kinyuru filed the summons for Revocation of Grant dated 19<sup>th</sup> May, 2023 and brought under Section 76 of the *law of Succession Act* Rule 44(1) of the Probate and Administration Rules, Section 3A of the *Civil Procedure Act* and all other enabling provisions of the law as beneficiaries of the estate of James Kinyuru Muongi who died on the 2<sup>nd</sup> day of February, 2001.
2. The above mentioned beneficiaries sought for an order that the grant of Letters of Administration to Samuel Wairire Kinyuru and Beatrice Wambui Maina issued on the 29<sup>th</sup> day of July, 2008 in Succession Cause No. 25 of 2005 by the High Court in Nairobi and confirmed on 16<sup>th</sup> February 2017 be revoked on the grounds that;-
  - a. The administrators have failed to proceed diligently with the administration of the estate as they are working against each other and there is no co-operation between them.
  - b. The Administrators have failed to safeguard the estate from damage, waste and interference from 3<sup>rd</sup> parties.
  - c. The grant has become inoperative as part of it cannot be implemented as it is, given that the share of distribution for two beneficiaries is impossible to administer as no title can be registered from such subdivision.
  - d. The Administrators have failed to reach a solution in regard to distribution of the estate despite advice from Kiambu District Surveyor on possible ways of resolving the impasse.
3. The application is supported by the affidavit of Beatrice Wambui Maina, Pauline Wanjiku Kinyuru, Edwin Gitau Kinyuru, Raymond Mbugua Kinyuru and Francis Karugi Kinyuru the co-administrators and beneficiaries of the estate of the deceased. It was deposed that the administrators are unable to cooperate with each other in performing their duties. That the share of distribution of Edwin Gitau and Francis Karugi cannot be administered as no title can be registered from such subdivision as such it was impossible for the surveyor to effect the orders of this court. The surveyor provided a proposal



but the same was refused by some beneficiaries and the co-administrator as such the surveyor was not able to proceed thus seeks this courts intervention. Another proposal contrary to the courts has been proposed. The estate is at risk of being damaged, wasted and/or interfered with by 3<sup>rd</sup> parties due to the administrators failure to safeguard the estate.

4. Benson Kinyuru Muongi filed a Replying Affidavit dated 19<sup>th</sup> June, 2023 in opposition to the summons for Revocation of Grant. He deposed that after a full trial vide the ruling of the court which remains unchallenged, Edwin Gitau and Francis Kinyuru were given the share where their houses stand and access thereto only having sold their share of 0.25 hectares each. It is the Applicants who were said to creating hurdles to prevent the beneficiaries from getting their rightful share. The confirmed grant was said to be implementable as per the proposed subdivision by Ngetich. The Applicants were accused of failing to demonstrate how the proceedings were defective and/or fraudulent to warrant Revocation of Grant. The Applicants were urged to await the determination of the applications dated 22/11/2022 and 10/02/2023.
5. The Summons were heard by way of viva voce evidence.
6. Pauline Wanjiku Kinyuru (PW1) testified that the problem with the grant is that the administrators are not getting along. She further mentioned that the surveyor came to the ground and was chased away.
7. Benson Kinyuru Mwangi (DW1) testified that Edwin and Francis were given portions by their father and they sold it and that this fact was taken into consideration by the Judge. Initially Beatrice did not want land but she later changed her mind and was included in the grant. He mentioned that Ngetich visited the land and placed beacons but Beatrice objected to the sub-division vide ELC NO. 486 of 2017-Thika. The proposal was said to be implementable and workable. He stated that the case has been ongoing for the last 22 years and that the Deputy Registrar should execute the documents for everybody to get their titles.
8. The court directed the summons for Revocation of Grant be canvassed by way of written submissions.

### **Applicants' Submissions**

9. The Applicants submit that the fact that the administrators cannot co-operate as they have taken different divides which has led to the wastage of the estate and interference by third parties. Reliance was placed in the case of *In re estate of David Kyuli Kaindi (deceased) (2016) eKLR*. the administrators were said to have failed to distribute the estate the grant having been confirmed on 16/2/2017. The court was urged to revoke the grant as the administrators are unable to diligently discharge their duties.

### **1ST, 3RD & 5TH Respondents' Submissions**

10. The Respondents submitted that the instant application is a disguise of review of the ruling delivered by Lenaola J on 27/1/2012 confirming the grant herein. It was submitted that the Applicants should not be allowed to blow hot and cold as they had sought to have the Deputy Registrar sign transmission documents vide orders of 25/11/2020 and 22/6/2022 and further sought to implement the confirmed grant of 24/5/2022 and now seek to revoke it at the same time. Reliance was placed in the case of *Nduati va Gititha Farm (1987) eKLR*. it was submitted that the ruling of Lenaola J has never been appealed and giving a bigger share to Edwin and Francis as being sought by the Applicants would amount to giving the two a second bite at the cherry which would be unfair and unlawful. The Respondents sought for litigation to come to an end. Reliance was placed in the case of *Muguga Investment Company Limited & 2 others vs Nicholas Kabucho Murimi & 7 others* (2015) eKLR. in conclusion the court was urged to order transmission of the estate as per the grant rectified on 24/5/2022 as per the orders of Kasango J of 28/6/2022 and substitute the administrator for expeditious transmission of the estate.



## Issues For Determination

11. After due consideration of the summons for Revocation of Grant, the replying affidavit and the rival submissions by both parties, the main issue arising for determination is whether the confirmed grant should be revoked.

## Analysis And Determination

12. The *Law of Succession Act* provides for revocation or annulment of grants under Section 76, which states 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. 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.”
13. *In re Estate of Prisca Ong'ayo Nande (Deceased)* (2020) eKLR in expounding Section 76 it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground



is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

14. The Applicants herein seek to revoke the grant of letters of administration issued to Samuel Wairire Kinyuru and Beatrice Wambui Maina on 29/7/2008 and confirmed on 27/01/2012 on the grounds that the administrators have failed to co-operate and administer the estate as such it has become inoperative.
15. The shares of Edwin Gitau and Francis Karugi were said to be impossible to implement as no title can issue from the said sub division.
16. The 1<sup>st</sup> Respondent on the other hand avers that the rectified confirmed grant of 24/5/2022 is implementable and that the Applicants were allocated 0.25 acres each during the deceased’s lifetime which they sold and now want a bigger share than they were allocated by Lenaola J (as he then was).
17. A grant can be revoked for lack of diligence in administering the estate or for becoming in operative or useless.
18. Referred to the cases of In the matter of the estate of Mohamed Mussa Mombasa High Court Succession Cause No. 9 of 1997 and in the matter of the estate of Elizabeth Wamaitha Ngaruiya (deceased) Nairobi Succession Cause 2499 of 2001.
19. This court has keenly perused the record, the matter has been in litigation for a very long time. This court finds that the main issue in contention as between the parties is that the grant as it is cannot be implemented as the shares given to Francis and Edwin cannot be administered as no titles can issue due to their size being 0.25 acres.
20. Of importance to note, is the fact that, the said shares of 0.25 acres to Edwin and Francis were issued by Lenaola J in his ruling dated 27/01/2012 which confirmed the grant. The same has not been appealed and /or reviewed to date.
21. A further perusal of the record, indicates that there has been two proposals from surveyors from the Kiambu District Survey Offices. It is alleged that one Gitonga alleged that it would be difficult to implement the grant as it is. The proposal by Mr. Ngetich was said to be implementable in line with the rectified confirmed grant of 24/5/2022.
22. The Applicants herein contend that the administrators are unable to agree on the mode of distribution. This however, should not be an issue as there is the mode of distribution proposed in the confirmed grant which should be implemented and if the administrators cannot agree then the Deputy Registrar as mandated by Musyoka J and Kasango J on 29<sup>th</sup> November, 2016 and 25<sup>th</sup> November, 2020 respectively can proceed and sign the transmissions documents on behalf of the administrators.
23. Bearing the above, this court opines that the administrators of the deceased’s estate herein are the ones derailing the administration of the deceased’s estate. There exists a clear ruling of the court which gave rise to the confirmed grant. The ruling as it stands is valid as the same has not been appealed. Indeed, litigation must come to an end.
24. The allegation that the grant as it is cannot be implemented cannot stand as Mr. Ngetich a surveyor from the Kiambu Office did indicate that the same is implementable as testified by Benson Kinyuru.



25. In the circumstances, this court is satisfied that the grounds as provided for by the Applicants do not meet the threshold required to revoke a grant; this court is also satisfied that the grant is still operative and implementable as it is.

### **Findings And Determination**

26. For the forgoing reasons this court makes the following findings and determinations;

- i. This court finds the application for Revocation of the Grant to be devoid of merit and it is hereby dismissed.
- ii. The administrators within 30 days to administer the estate as per the rectified confirmed grant of 24/05/2022; in default the Deputy Registrar to execute the transmission documents as per the orders of 25<sup>th</sup> November, 2020 and 22<sup>nd</sup> June 2022.
- iii. This being a family matter there shall be no order as to costs.

Orders Accordingly.

**DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 25<sup>TH</sup> DAY OF OCTOBER, 2024.**

**A. MSHILA**

**JUDGE**

In the presence of;

Mourice – Court Assistant

Njogu for Andrew & Miriam

Mrs. Kimani for the applicant

Waithaka for Benson, Andrew and Pauline

