



**In re Estate of Alfred Liwali Karisa (Deceased) (Succession Cause E089 of 2021) [2024] KEHC 16730 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 16730 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE E089 OF 2021  
G MUTAI, J  
NOVEMBER 28, 2024  
IN THE MATTER OF THE ESTATE OF ALFRED LIWALI KARISA (DECEASED)**

**BETWEEN**

**STEPHANO FURAH KARISSA ..... APPLICANT**

**AND**

**CHICHI WAKATHY KIMANI ..... RESPONDENT**

**JUDGMENT**

1. Before the court is the summons for revocation of grant dated 17<sup>th</sup> March 2022 filed by the Applicant seeking the following orders:-
  - a. Spent;
  - b. That the aforementioned grant of probate/letters of administration issued to Chichi Wakathy Kimani on the 8<sup>th</sup> November 2021, be revoked and/or annulled under the provision of Section 76(b) of Cap 160, Laws of Kenya upon the basis that the same was obtained fraudulently and by concealment from court of material facts relating to the estate;
  - c. That all the steps taken by the respondent pursuant to the said order granting the letter of administration and which may have changed the assets of the estate subject of this application be declared nullity in law;
  - d. That the court do declare that the beneficiaries named by the applicant who were left out in the application for the grant and are the true beneficiaries to the estate are entitled to share the assets of the estate; and
  - e. That cost of the application be provided for.



2. The application is based on the grounds stated therein and the supporting affidavit of the applicant sworn on 17<sup>th</sup> March 2022. In the affidavit, the applicant deposed that he was issued a grant of letters of administration intestate in 2021. The grant issued to the respondent, in this case, was brought to his attention by his advocate, who received a letter from Standard Chartered Bank stating that there were two grants of letters of administration in respect of the estate of the deceased. Upon perusal of the court file, his advocate discovered that the respondent had applied for a grant of letters of administration on 9<sup>th</sup> August 2021 as a daughter of the deceased and his only beneficiary.
3. He further stated that the respondent fraudulently obtained the said grant by concealing from the court the fact that the deceased had other beneficiaries and that she is neither a daughter nor a beneficiary of the deceased.
4. In response, the respondent filed a replying affidavit sworn on 26<sup>th</sup> April 2022. In the said affidavit, she stated that her mother, Rahab, cohabited with the deceased as husband and wife, and as a result, she was conceived. Her mother and father separated, and her mother remarried. On reaching maturity, she reached out to her biological father, the deceased herein, who was also in the process of reaching out to her as he had not been blessed with other children. She deposed that she had a very close relationship with the deceased in her adult life. Their father-daughter relationship was not a secret as the deceased introduced her to his family members, including his parents, brothers and sisters, and other family members, including Ephraim Katana Safari, Mapenzi Konde, Kashuru Njole Babu, Kaingu Karisa Njole and many others. She averred that the applicant was not truthful to the court when he stated that she is not a daughter of the deceased nor known to him and other members of the deceased's family.
5. She averred that the deceased was not on good terms with his brothers and sisters during his lifetime and that the circumstances surrounding his death were not clear. She deposed that she was the one who cleared the mortuary bill of Kes.300,000/-. Upon doing so, the applicant and other family members cut off all communication with her, ordered the body of the deceased not to be released to her and made a complaint against her at the Directorate of Criminal Investigations, Urban Division, Mombasa, which was later dropped after the officers found out that the same was meant to deny her inheritance.
6. Further, as the daughter of the deceased herein, she is the one with the original documents of land ownership as well as his other personal documents.
7. Ephraim Katana Safari filed an affidavit sworn on 26<sup>th</sup> April 2022 supporting the respondent. He stated that he is a nephew to the deceased herein and that the respondent is his cousin, whom she has known since she was a young girl as the daughter of the deceased. She was born in 1986 when the deceased was cohabiting with one Rahab Muthoni as husband and wife in Mombasa.
8. He deposed that he worked with the deceased as a manager at Kadungo Ship Contractors situated at the port of Mombasa between 2014 and 2019. He stated that the applicant had never worked for the deceased and that they were not on talking terms for many years before his death.
9. He averred that the deceased was hurriedly buried at a time when there was a dispute between the respondent and the deceased's family.
10. The applicant filed a supplementary affidavit sworn on 22<sup>nd</sup> April 2022, vide which he termed the respondent's replying affidavit as one filed maliciously, in bad faith, to defeat and/or derail the cause of justice. He urged that the same was premised on misrepresentation and deliberate concealment of material facts with the aim of misleading this honourable court into arriving at an unjust decision.



11. He further stated that the respondent has not proved that she is the biological daughter of the deceased herein, as the annexed child health card is under investigation at the CID Urban Division Mombasa for forgery and fabrication. Neither he nor other family members know her as a daughter of the deceased.
12. The applicant averred that the deceased died on 22<sup>nd</sup> November 2020. The cause of death was COVID, TB, and PUD due to respiratory failure due to hypoxia, according to the death certificate, and no allegations had been made by himself. He further stated that the matter was under investigation at CID Urban Division, Mombasa.
13. Due to the nature of the matter, the summons for revocation filed herein was canvassed through viva voce evidence. I shall give a summary of the evidence of each witness below.
14. Although this was a summons for revocation of the grant, the petitioner/respondent testified first.
15. In her evidence in chief, the petitioner /respondent reiterated the averments she made in her affidavits. She testified that the deceased told her he did not have a wife or children, as his wife died during childbirth. The deceased educated her and took good care of her until he died. It was her testimony that she was shown her paternal relatives during her grandmother's burial.
16. She stated that she was struggling to pay the company's debts and was in arrears with respect to some payments. Ms Kimani testified that her alleged father gave her title documents in his name, being Title Number Mombasa/Bombolulu Squatter/240, Mombasa/Bombolulu Squatter/241, Mombasa/Bombolulu Squatter/242.
17. In cross-examination, she told the court that Antony Kimani brought her up as his child; however, she did not know when he married her mother. She denied asking for a refund of the money she had paid at the hospital. She further testified that the deceased had a wife called Sidi, who died during childbirth.
18. In re-examination, she stated that her mother had other children who were listed on the immunization card and that she deleted her father's name. She said that she didn't submit herself for a second the DNA test as it was unlikely to yield different results.
19. Ephraim Katana Safari was the second witness for the petitioner/respondent. Mr Safari testified that the respondent is the daughter of the deceased and the applicant his uncle. It was his evidence that the deceased introduced him to the respondent and that he also told him that she was his sister. He lived with the deceased from 2014 to 2019 and worked for his company, Kadungo Shipping Contactors, as his assistant.
20. He further stated that he heard of the deceased's disappearance in 2020 and was under pressure to follow up as rent was due. In February 2021, he was called and informed that the deceased was at the Coast General Hospital. He was taken to hospital by Mapenzi, who didn't tell them. He reiterated that the deceased was not on good terms with the family members.
21. In re-examination, he stated that he saw the deceased give the respondent the title documents.
22. Despite being given an opportunity to call other witnesses, including the petitioner/respondent's mother, she could not procure the attendance of further witnesses in court. Her case was therefore closed on 4<sup>th</sup> December 2023.
23. The applicant, Stephano Karisa Furaha, testified on 11<sup>th</sup> March 2024 as the first witness of the applicant. He testified that the deceased was his uncle. It was his evidence that the deceased married a woman called Sidi in 1995, and they were not blessed with any children.



24. He further testified that during the deceased's funeral, no one claiming to be the child of the deceased was present. The respondent did not attend the funeral. It was his evidence that the body of the deceased was obtained from the mortuary at 4 pm and that he was buried at 9 pm as he died from COVID-19. The body of the deceased stayed in the morgue for 3 months. He conceded that the respondent and Mapenzi paid the bill. It was his evidence that he would have no objection if the court found that the respondent was a child of the deceased.
25. During cross-examination, he told the court that he stayed with the deceased for three years after the death of his wife and also worked in his company. He further testified that the deceased had plots in Bombolulu and a beach plot in Watamu and that he only had copies of the title, which he was given by the chief.
26. It was his evidence that the first DNA test was done at Pathcare between himself, Elizabeth and the respondent. The respondent refused to undertake another DNA.
27. In re-examination, he told the court that the respondent sought a refund of the money she paid at the morgue.
28. The second witness for the applicant was Gladys Kahaso Karisa. Ms Karisa told the court that the deceased was her elder brother and if he had a child, he would have known. She said that she got to know of the respondent in court.
29. In cross-examination, she testified that the deceased had a wife who died during pregnancy and that he had no children.
30. Upon the closure of the respondent's case, the court directed parties to file written submissions. The applicant, through his advocates, Lawrence Obonyo Legal Advocates, filed his written submissions dated 9<sup>th</sup> July 2024. Counsel for the applicant submitted on three issues namely, whether the respondent is a beneficiary of the estate of the deceased and whether the respondent shares common paternity with the three acknowledged siblings of the deceased; whether the applicant's application meets the threshold for the revocation of a grant with the meaning of Section 76 of the [Law of Succession Act](#) and lastly, who should bear the cost of application.
31. On the 1<sup>st</sup> issue, counsel submitted that the DNA test proved that the respondent is not a daughter of the deceased and relied on the case of [Wilfred Koinange Gathioni v Joyce Wambui Mutura & Florence Njeri Njoroge Kamau](#) [2016] KEHC 7005 (KLR) to support his position. He urged that the deceased had no surviving spouse or children to succeed him. Counsel urged the court to exercise its discretion provided under Sections 66 and 39 of the [Law of Succession Act](#) in respect of the estate of a deceased person without a surviving spouse or children and appoint the administrators.
32. On the second issue, counsel relied on Section 76 of the [Law of Succession Act](#) and submitted that the respondent obtained the grant by way of concealment of material facts that she is neither the deceased's daughter nor a beneficiary/dependant and, therefore the proceedings to obtain the grant were defective in substance. For that reason, the grant ought to be revoked. It was submitted that the respondent failed to include the applicant and his siblings as beneficiaries in her petition for letters of administration. Counsel urged the court to allow the application as prayed.
33. The respondent, on the other hand, through her advocates Ogoti & Company advocates, filed her written submissions dated 29<sup>th</sup> July 2024. Counsel submitted that the DNA samples were taken from the applicant and his siblings and not the deceased person, and the results being inconclusive to the extent that both parties cannot rely on the same, did not prove or disapprove the paternity. Counsel



relied on section 3(2) of the Law of Succession Act and submitted that the respondent is indeed a child of the deceased.

34. Counsel further relied on Section 29 (b) and submitted that by not listing uncles cannot be misconstrued to be concealment of material facts or fraud. Further, Section 38 vests the estate wholly to the respondent, and therefore, she needed no consent and or approval from the applicant or his siblings at all. The evidence of Ephraim Katana Safari demonstrated that the respondent is a child of the deceased and that he educated her and took care of her prior to his demise.
35. Counsel submitted that the applicant and his siblings are adults with their own families who did not depend on the deceased herein and were not on good terms with the deceased before his death.
36. Counsel submitted that the applicant had not discharged his burden of proof and urged the court to dismiss the application with costs.
37. I have read the Summons and the responses thereto and considered the evidence of the parties as well as the written submissions filed herein.
38. In my view, the issue falling for determination is whether the grant issued herein was lawful. To answer this question, the Court must look at section 76 of the Law of Succession Act, which provides that:-

“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.”
39. This court’s power to revoke grant has been discussed in many decisions of the High Court. I shall refer to a few below.
  40. In the case of *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa* [2016]eKLR 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 wrongdoing 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 the interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

41. The court expounded on the grounds for revocation of a grant under section 76 of the [Law of Succession Act](#) in [In re Estate of Prisca Ong'ayo Nande \(Deceased\)](#) [2020] eKLR, by stating as follows:-

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its 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.”

42. What I discern from the foregoing decisions is that the revocation of a grant is a remedy that should not be given lightly. There must be good grounds for doing so. Secondly, the parameters set out in section 76 of the [Law of Succession Act](#) must be met. Among the grounds for revocation of a grant are defects in the proceedings leading to the issuance of the grant, fraud or the making of false statements or concealment from court of material information or the making of untrue allegation of fact essential to justify the issuance of grant.
43. At the core of the petitioner's case is that she was the daughter of the deceased. Is this contention factual? This is hotly contested by the parties. The Petitioner contends that she is the child of the deceased. In support of her contention she annexed a copy of what she said was her immunisation card, which was marked as exhibit 1, evidence of the payments she made towards settling the medical bills and funeral expenses of the deceased, rent receipts and demand notes from the Kenya Ports Authority and the title documents in her possession.
44. The applicant, on the other hand, relied on the results of the DNA test and his, and his witness's oral testimony that the petitioner wasn't the child of the deceased.
45. Which of these opposing views should the court accept? The DNA report stated that the chance that the applicant and Ms EK Njole were the paternal uncle and aunt of the petitioner was 32.71555%. The report further stated that “the chance that they are not the paternal uncle and aunt, respectively, is 2 times greater than the chance that they are her paternal uncle and aunt.” Given the nature of the results, the Court ordered in paragraph 20 of its ruling of 12<sup>th</sup> May 2023 that the petitioner/respondent



undergo a further DNA test. Sadly, she declined. She contended that she didn't think that a test would yield different results. DNA results are scientific. They do not depend on whim. Her fears cannot, therefore, be said to have been well grounded. Or it could be that she knew a further test would not yield a different result.

46. Whereas it is common ground that the petitioner paid some of the hospital/morgue fees, does that establish a father-daughter relationship? That would ordinarily be evidence of the existence of a familial bond. In this case, however, such action must be analysed, keeping in mind the fact that at some point, in text messages she exchanged with the relatives of the deceased, she appeared to demand to be repaid the money she paid. Would a daughter of a deceased person, even in a fit of anger, do that?
47. In my view, the petitioner/respondent gave contradictory testimony. Her contention that the deceased brought her up and paid for her education was not corroborated. It would have been helpful if her mother testified as she would have explained how it was possible that during the course of her relationship with Mr Kimani, she was somehow able to have a two-year relationship with the deceased that resulted in the birth of the petitioner.
48. In my view, the petitioner/respondent was a business partner of the deceased, and thus, the reason she possessed his title documents. I am not persuaded that she was his child.
49. By alleging in the petition that she was the child of the deceased, the petitioner made an untrue allegation of fact essential in point of law to justify a grant. A grant obtained that way cannot stand and must be revoked.
50. In the circumstances, I revoke the grant issued to the petitioner/respondent on November 8, 2021.
51. Each party shall bear own costs.
52. Orders accordingly.

**DATED AND SIGNED AT MOMBASA THIS 28TH DAY OF NOVEMBER 2024. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Mr Obonyo, for the Applicant;

Mrs Ogoti, for the Respondent; and

Arthur – Court Assistant.

