



**Kang'onga v Mbugua & 2 others (Succession Cause 5 of 1997)
[2024] KEHC 16282 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16282 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 5 OF 1997**

AC MRIMA, J

DECEMBER 19, 2024

IN THE MATTER OF THE ESTATE OF DANSON KANG'ONG'A (DECEASED)

BETWEEN

JENIPHER NYAKIYO KANG'ONGA APPLICANT

AND

DAVID MBUGUA 1ST RESPONDENT

JOSEPH MBUGUA 2ND RESPONDENT

FRED NDUNG'U 3RD RESPONDENT

RULING

1. The Summons subject of this ruling is dated 24th October 2023. It was lodged by Jenipher Nyakio Kang'ong'a, the Applicant herein, pursuant to the provisions of Section 47 of the *Law of Succession Act* and Rules 49 and 73 of the *Probate and Administration Rules*. It is supported by her two Affidavits deposed to on 24th October 2023 and 2nd February 2024 respectively.
2. The application seeks to have the following properties issued to Salome Wanjiku Kang'ong'a (now dead) in execution of a Rectified Certificate of Confirmation of Grant dated 13th December 2001 be cancelled on the basis that this Court revoked the Grant on 3rd May 2023: -
 - i. The title deed of Trans-NzoiaCherangani70,
 - ii. The title deed of KimininiKapkoi Sisal Block 1Wamuini "A"18,
 - iii. The title Deed of Kitale Municipality Block3313,
 - iv. The tile deed of Kitale Municipality Block 4182.
 - v. Title deed of Kitale Municipality Block 485,



- vi. The Certificate of Lease of Plot No Kitale Municipality Block 3313,
 - vii. The Certificate of Lease of Kitale Municipality Block 4334,
 - viii. The Title Deed in GatamaiyuKamburu1300
 - ix. The Certificate of Lease of plot No Ruiru EastJuja East Block 22360
 - x. The Certificate of Lease of plot No Nakuru Municipality Block 2199
 - xi. The Certificate of Lease of Plot No KajiadoOlchoroonyore28706
3. The Applicant further prayed that David Mbugua, the 1st Respondent herein, produces in Court the title deed of land known as L.R. No Trans NzoiaKimila52Kwanza Division. She prayed further that the said Respondent produces in Court the Share Certificates held by Danson Kang'ong'a (the deceased) and his first wife, Julia Njoki (deceased) in British America Tobacco, Kenya Breweries Limited, I.C.D.C Investments Co. Ltd, Kenya Cooperative Creameries, Kenya Grain Grower Co-op Union, Hill Barret & Co. ltd, Brook Bond Liebig (K) Ltd, East Africa Breweries Ltd, Kenya Commercial Bank, Ithethe Farmers' Cooperative Ltd Ballot, Tumaini Self-help Group, Kabage Company ltd, Kitale Tyres Ltd, Jubilee Holdings, Sibiru Tea Factory, Standard Bank of Kenya, Barclays Bank of Kenya, Mageria Transporters, Geovas Williams Tea Estate of Kenya, West Farmers Ltd Plot No 190 & 509 and the Yamumbi-land Certificate 230.
 4. In addition to the foregoing, the Applicant prayed for an order directing the 1st Respondent to produce in Court detailed account statements of Account No 8XXX at Absa, B.A.T Kenya PLC Account No 166 as well as CDSC Account B09B00XXXXXXXXX.
 5. In her written submissions dated 7th February 2024, the Applicant drew support from the case *In Re Estate of the late Epharus Nyambura Nduati (deceased)* 2021 eKLR, where the Court revoked and set aside the Certificate of confirmation of grant, cancelled the titles and ordered that it reverts to the name of the deceased awaiting parties to agree on the mode of distribution.
 6. The Applicant urged the Court not to admit the photocopy of the share certificate marked DM 2 and letter dated 10th August 2018 marked DM6 since they failed the admissibility test set out in section 67 of the *Evidence Act*.
 7. It was the Applicant's case that the Respondents have not controverted in their Replying Affidavit the fact that they are in possession of the title documents in question.
 8. The Applicant further submitted that the claim by the Respondents that she was paid shares indicated in the Certificate of Confirmation of Grant was an unsupported allegation which ought to be disregarded by this Court.
 9. The Applicant submitted that the Respondent have never produced in Court a full and accurate account of the completed administration in compliance with section 83(g) of the Succession Act and as such, it would be prudent if the instant summons is allowed.
 10. The Respondents challenged the Summons through the Replying Affidavit of David Mbugua deposed to on 21st November 2023.
 11. From the outset, it was his case that the Applicant is a beneficiary from the 1st House of Julia Njoki who was also part of the succession cause and gave consent during administration and distribution of the estate. He, therefore, deposed that the application was not made in good faith since the Applicant, a beneficiary of the 1st House of the deceased, wants to cancel properties granted to the 2nd house. He



- was categoric that the Applicant avoided mentioning properties granted to the 1st house. He referred to inventory of assets allocated to the 2nd house.
12. He deposed further that the property Ruiru East/Juja East block 22360 and Ithite Farmers' Cooperative Ltd, are exclusively the property of the late Salome Kang'ong'a and that title No Kajiado/Olchoroonyore/28706 is the exclusive property of Sawanka Estate which Salome Kang'ong'a was a director.
 13. In reference to Plot No Trans/Nzoia/Kimila/52 Kwanza Division, it was his deposition that the property is not known to him, he only holds an agreement. He also deposed that the shares Certificates in British America Tobacco, Kenya Breweries, ICDC Investment Co. Ltd, KCC, Hill Barret & Co. Ltd, Brook bond Liebig (k) Ltd, KCB, Tumaini self-help group, Jubilee Holdings Ltd, Kitale Tyres Consumers, Siburua Tea Factory, Standard Bank of Kenya, Mageria Transporters, Geovas Williams Tea Estate Kenya, West farmers Company and Yamumbi Land Certificate were given to the first house and as such is not in possession of such certificates.
 14. It was his case that the account held in Barclays Bank of Kenya 003XXXXXXX was solely in the name of the late Salome Wanjiku Kang'ong'a.
 15. As regards Succession Case No 204 of 2005, it was his case that he was an Administrator since the properties that were in the joint names of Salome Wanjiku Kang'ong'a and Danson Kang'ong'a had to be shared by both houses.
 16. He concluded by asserting that the application was lodged with the purpose of delaying the expeditious determination of the succession cause and ought to be dismissed with costs.
 17. The Respondent filed written submissions dated 18th April 2024. He reiterated his depositions and prayed that the application be dismissed.
 18. In order to effectually deal with the Application before this Court, a brief historical account the events in this Cause will suffice.
 19. On 13th December 2001, the then Grant was confirmed and a Certificate of confirmation was issued. According to distribution list, the estate of the deceased devolved to the 1st Housewife [Julia Njoki and her children] and to the 2nd Housewife Salome Wanjiku and her children].
 20. On 3rd May 2023, this Court considered an application, revoked the then Grant and the Certificate of Confirmation of Grant and in its place, it issued a fresh Grant to Joseph, Mbugua, Fred Ndungu, David Mbugua and Jenipher Nyakiyo, the Applicant herein and directed that the Administrators file for confirmation of the grant.
 21. Subsequent upon the foregoing, the Applicant herein lodged the instant application seeking to have the properties that had devolved to Salome Wanjiku Kang'ong'a cancelled because this Court revoked the Grant.
 22. The application seems to be a straight-forward one. I say so because as of 3rd May 2023, when this Court revoked the Grant and the resultant confirmation certificate, then all the properties therein reverted to be the deceased's estate thereby paving way for the fresh confirmation of the grant. Therefore, the reversion of the properties to the estate was not limited to the properties from one house, but both.
 23. As regards the contention that some of the properties do not belong to the estate, such ought to be dealt with during the confirmation stage. This shall apply to all the other issues raised by the parties. Let all contested issues be addressed during the confirmation hearing.



24. As I come to the end of this ruling, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and subsequently elected into the Judicial Service Commission thereby mostly being away from the station. Apologies galore.
25. In the circumstances, therefore, for fair administration of the deceased's estate and pursuant to the revocation by Court of 3rd May 2023, and in view of the age of this matter, the following Orders hereby issue;
- a. The Summons dated 24th October partly succeeds to the extent that it seeks a recall of the properties of the deceased. For clarity, all the properties forming the estate of Danson Kang'ong'a [Deceased] are hereby vested in the name of the deceased.
 - b. The directions given on 3rd May 2023 on filing of a confirmation application by the Administrators or any of them, shall be implemented.
 - c. Matter is hereby fixed for directions on 25022025.
 - d. Being a family matter, there shall be no order as to costs.
26. It is so o ordered.

DELIVERED, DATED AND SIGNED AT KITALE THIS 19TH DAY OF DECEMBER, 2024.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr Kimani for Miss. Mwemeke, Learned Counsel for the Applicant.

No appearance for Mr. Nakitare, Learned Counsel for the Respondents.

Chemosop Duke – Court Assistants.

