



In re Estate of Cephas Kihanya Nathan (Deceased) (Succession Cause 122 of 2015) [2024] KEHC 16636 (KLR) (19 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16636 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
SUCCESSION CAUSE 122 OF 2015
CW GITHUA, J
DECEMBER 19, 2024**

IN THE MATTER OF THE ESTATE OF CEPHAS KIHANYA NATHAN (DECEASED)

BETWEEN

STEPHEN NGONJO KIHANYA 1ST APPLICANT

SAMUEL NDIRANGU KIHANYA 2ND APPLICANT

JANE WANJIKU MUCHENE 3RD APPLICANT

AND

IRENE WANJIRU KIHANYA RESPONDENT

RULING

1. This ruling is in respect of the summons dated 3rd March 2021 in which the applicants seek among other orders, revocation of grant of letters of administration issued to the respondent on 27th July 2015.

Prayer 1 and 3 which sought interim reliefs are now spent.

What is pending this courts determination are the prayers replicated below;

- a. That the grant of letters of administration issued on the 27th of July, 2015, be revoked since it was obtained through fraud and forgeries;
- b. That the administrator be compelled to account for Kshs. 2, 500,000 received as rent from Thika Municipality 5551/169, Thika Municipality 5555/134 and Thika Municipality 5558/84 for over eight years, from 27th of July, 2015 to date;
- c. That the following accounts numbers which were operated by the late Cephas Kihanya Nathan before his demise be frozen forthwith and the administrator be compelled to account for the money in those accounts from 27th July 2015 to date.



- i. ABSA Bank account number 0311xxxxxx (Thika Branch);
 - ii. NIC Bank account number 2370xxxxxx (Thika Branch);
 - iii. Cooperative Bank account number 01136xxxxxxxx (Thika Branch);
 - iv. Cooperative Bank haba/haba account number 01109xxxxxxxx (Thika Branch);
 - v. Murata Sacco Kigumo account number 02841xxxxxxxx, Thika Branch;
 - vi. Murata sacco (Amica) account number 01009xxxxxxxx, Kigumo Branch;
 - vii. Account number 2000xxxxxx (HFCK) Bank, Thika Branch.
- d. Costs be provided for.
2. The summons is based on grounds that the deceased, Cephas Kihanya Nathan died intestate and at the time of his death, he had ten children, four from his first wife Ruth Jacinta Wanjiru who included the three applicants and six from the respondent, his second wife.
 3. In the supporting and supplementary affidavits sworn by the 3rd applicant Jane Wanjiku Muchene on her own behalf and on behalf of the 1st and 2nd applicants, the applicants contended that though aware that the deceased was survived by ten children, the respondent when petitioning for grant of letters of administration to their late father's Estate failed to involve them in any way and only listed herself and her six children as the beneficiaries of the deceased. They also claimed that when petitioning for grant of representation to the deceased's Estate, the respondent forged the signature of one of her sons one Peter Kariuki Kihanya in the consent dated 6th February 2015 filed together with the petition for grant of letters of administration.
 4. The applicants further asserted that after obtaining the grant, the respondent isolated other beneficiaries more so children of the first family and chose to administer the Estate with only two of her sons namely, Elijah Karagu Kihanya and Mungai Cephas Kihanya and together, they secretly opened a joint bank account at Co-operative Bank Thika Branch A/C No 01148xxxxxxxx where all rental income from the Estate had been diverted.
 5. In addition, the applicants avowed that the respondent and her two sons had been collecting Kshs 2,500,000 monthly as rental income from the Estate for the last eight years which monies they had squandered by living flashy lifestyles while the other beneficiaries were left destitute; that they have also sold all motor vehicles which were owned by the deceased and have failed to account for the sale proceeds.
 6. Lastly, the applicants averred that in her quest to continue misappropriating income belonging to the Estate, the respondent opened a personal account in Mathare-in Co-operative Society to which all proceeds of three coffee farms in land known as Loc.18/Githima/1044; Loc.18/Githima/2583 and Location 18/Githima/2584 was deposited which monies she had also not accounted for.
 7. It is the applicants case that the grant of representation to the deceased's Estate having been obtained through fraud and concealment of material facts ought to be revoked; that having failed to render any account regarding management of the deceased's Estate for seven years, the respondent was unfit to be the Estate's administrator and she should not be re-appointed; that the eldest children in the two families, namely, the 3rd applicant and Peter Kariuki Kihanya ought to be appointed as joint administrators of the Estate in her place.



8. In her lengthy replying affidavit sworn on 28th April 2021, the respondent deposed that she was the deceased's only surviving spouse and that only eight children and not ten as alleged by the applicants survived the deceased.

She named the eight surviving children in paragraph 3 of her affidavit. She excluded the 2nd respondent Samuel Ndirangu from the list of beneficiaries claiming that he was neither a son nor a dependant of the deceased since he was born four years after his mother (deceased's first wife) and the deceased divorced and ceased cohabitation. She also excluded the late Rosemary njeri Kihanya, another child who had passed on but was survived by four Children.

9. The respondent contended that in her capacity as the only surviving spouse of the deceased, she petitioned for and was lawfully granted letters of administration of the deceased's Estate on 27th July 2015. She denied the applicants' claim that she filed the petition secretly noting that a notice inviting objections was published in the Kenya Gazette as required by the law. She also denied having forged her son's signature as alleged. She did not however expressly deny the applicant's claim that when petitioning for grant of letters of administration to the deceased's Estate, she deliberately omitted the children of the first wife from the list of the deceased's beneficiaries.
10. Regarding the allegations of mismanagement, wastage and misappropriation of the Estate's assets and income, the respondent denied that she has been collecting a monthly rental income of Kshs. 2,500,000 for the last eight years. She also denied the applicants claim that together with her two sons, she had sold motor vehicles belonging to the deceased contending that at the time of his death, the deceased did not own any vehicle.
11. According to the respondent, contrary to the applicant's claim that she had mismanaged the Estate, she had instead grown and increased the value of the Estate by increasing the number of rental houses in the building at Section 9 Thika to 52 from the 30 houses existing at the time of the deceased's death. She had also improved and undertaken renovation of other buildings at Makongeni and Biafra Estates also in Thika.
12. The respondent further denied that rental income belonging to the Estate was being deposited in Co-operative bank account No. 01148xxxxxxxxx; that she holds an account at Mathare-ini co-operative society as alleged by the applicant. She claimed that the only account she held was with Thangani Farmers Co-operative Society Limited which she opened on 4th July 1981 and was thus not a new account as alleged by the applicants.

According to the respondent, all bank and Saco accounts which used to be operated by the deceased prior to his demise had been frozen at her instance and she was therefore unable to account for any funds held therein.

13. It was the respondent's contention that the instant summons was motivated by malice and bad faith with the aim of delaying distribution of the Estate as proposed in her summons for confirmation of grant dated 26th September 2019; that since the 2nd and 3rd applicants have filed protests to the summons, they should await distribution of the Estate after determination of the contested summons. She advanced the view that since she was the deceased's only surviving spouse, she ranked higher in priority to grant of letters of administration of his Estate than his children and she should therefore be allowed to continue being the Estate's sole administrator pending the courts decision on distribution.
14. The application was canvassed by both written and oral submissions. The applicants filed their written submissions through their advocates Ms. Ochoki & Ochoki Advocates on 20th July 2021. Those of the respondent were filed on her behalf by Ms. Harit Sheith Advocates on 3rd August 2021.



15. The court record shows that the submissions were initially highlighted before Kimondo J on 27th October 2021 and ruling was slated on 9th December 2021. The ruling was however not delivered as scheduled as the applicants filed an application asking the Hon. Judge to recuse himself from further handling the matter. For reasons that are on record, the application had not been prosecuted by the time Kimondo J was transferred to another station. I took over hearing of the application on 18th March 2024 and the submissions were highlighted afresh before me on 11th June 2024.
16. I have carefully considered the application, the affidavits on record and the rival written and oral submissions made on behalf of the parties. Having done so, I find that the key issues arising for my determination are two-fold, namely:
- i. Whether the applicants have established grounds warranting revocation of the grant of letters of administration issued to the respondent.
 - ii. Whether the respondent should render accounts regarding her administration of the deceased's Estate from the date of her appointment.
17. The grounds upon which a grant may be revoked are stipulated in Section 76 of the [Law of Succession Act](#) (the Act) which provides 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) 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.”



18. I totally agree with the interpretation and summary of Section 76 of the Act as espoused by Musyoka J in re Estate of Prisca Ong'ayo Nande (Deceased)[2020] KEHC 6553(KLR) when he expressed himself thus:

“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.”

19. In this case, the main ground advanced by the applicants in seeking to have the grant issued to the respondent revoked is that the process of obtaining the grant was defective as it was marred by fraud and misrepresentation and concealment of material facts in that the respondent allegedly forged the signature of one of her sons Peter Kahuki Kihanya in the consent filed together with the petition for the grant and she also failed to disclose all the beneficiaries of the deceased.
20. After studying the material placed before me, I agree with the respondent's submissions that the applicants failed to prove their allegation of forgery of Peter Kahuki's signature since they did not adduce any evidence to substantiate their claim.
- They did not avail a forensic report confirming the authenticity or otherwise of the signature alleged to have been forged or evidence that they had lodged a complaint of the alleged forgery to the relevant authorities.
21. It is also noteworthy that the said Peter Kariuki did not swear an affidavit in support of the instant application and although the court record shows that he had filed an application on 1st March 2017 seeking revocation of the grant issued to the respondent on grounds inter alia, that in petitioning for the grant, the respondent had forged his signature, the application had not been prosecuted to date.
22. Regarding the claim that the grant was fraudulently obtained through misrepresentation or concealment of material facts, the applicants asserted that the respondent, though aware that the deceased had four children with his former wife, she failed to disclose their existence to the court and listed herself and her six sons as the only survivors of the deceased.
23. As stated earlier, the respondent did not specifically deny this claim in her replying affidavit. This is presumably because it represented the true position of the matter given the content of the affidavit



sworn by the respondent on 6th February 2015 in support of her petition for grant of letters of administration to the deceased's Estate (See Form P&A 5).

A reading of the affidavit clearly shows that the children of the deceased's first wife were omitted from the list of beneficiaries who had survived the deceased.

24. It is important to note that under Section 51(2) (g) of the Act, the identities and contact details of all surviving spouses and children of a deceased person are some of the material facts that must be disclosed in a petition for grant of letters of administration intestate.

I have used the word must deliberately because the provision is coached in mandatory terms.

25. From the record, it is clear that when petitioning for the grant, the respondent was aware of existence of the deceased's first family and even if there is evidence that at the time of his death, the deceased had divorced his first wife and the respondent was his only surviving spouse as held by Waweru J in his judgment dated 29th March 2019, the children of his first wife were beneficially entitled to his Estate and should have been included in the list of persons who had survived the deceased. In failing to disclose the existence of children of the deceased's first family in her petition for the grant, the respondent fraudulently concealed material facts to the court which were crucial to the determination of her petition and the entire succession cause.

26. Although the respondent has disputed that the 2nd applicant, Samuel Ndirangu Kihanya was a child of the deceased claiming that he was born four years after the deceased and his first wife parted ways, there is evidence from a copy of the 2nd applicant's identity card which is annexed to the 3rd applicant's supplementary affidavit proving that he was born on 9th October 1968.

27. It is evident from the court record that the marriage between the deceased and his first wife was finally dissolved on 22nd July 1983 about 15 years later. The respondent has not adduced any evidence to prove the date or time that the deceased and his first wife ceased cohabitation. In the absence of such evidence and taking into account the 2nd applicants birth date and surname, I find no basis for the respondents' claim that he was not a child of the deceased.

I instead find from the material placed before me that the 2nd applicant was a child of the deceased and he ought to have been included together with all his siblings in the list of beneficiaries in Form P & A 5 sworn by the respondent in support of her petition for the grant.

28. A reading of Section 76 of the Act discloses that a grant whether or not confirmed can be revoked by the court either on its own motion or upon application by an interested party if any of the grounds set out therein was proved to the satisfaction of the court. In order to succeed, an applicant need not prove multiple or several of the grounds specified therein. Proof of only one ground is sufficient to succeed in an application for revocation of a grant.

29. In this case, I am satisfied that the applicants have met the threshold set in Section 76 of the Act for revocation of grants since they have proved that the process of obtaining the grant was defective as the respondent deliberately failed to comply with the mandatory requirements of Section 51(2)(g) of the Act and fraudulently concealed material facts to the court. She failed to disclose that children of the deceased's former wife also survived the deceased in addition to the respondent and her six sons.

30. That said, I have taken note of the respondents submission that she ought to be allowed to remain as the Estate's sole administrator pending distribution arguing that being the deceased's surviving spouse, she ranked higher in priority than the other beneficiaries and that joint administration with children of the first wife would be problematic given their alleged bad blood. She also claimed, without providing



any evidence, that the 3rd applicant suffered from an undisclosed mental illness and was not fit to be appointed as an administrator.

This claim was denied by the 3rd applicant in paragraph 21 of her supplementary affidavit. The matter was put to rest by the annexure to the affidavit marked JWM 2, which is a medical report certifying that the 3rd applicant was of sound mind.

31. It is apposite to state that whereas Section 66 (a) of the Act gives preference to grant of letters of administration to surviving spouses with or without association with other beneficiaries, the order of preference set out in the entire section is not binding on the court. Section 66 in its clear and plain language gives a court the final discretion in determining to whom a grant of letters of administration would be issued but in making its decision, the court should be guided by the best interest of all concerned parties.
32. Drawing from the foregoing, I am satisfied that the grant issued to the respondent ought to be revoked and a decision made, in the court's discretion and in the interest of all the beneficiaries, who should be appointed to henceforth administer the deceased's Estate.
33. Having resolved the first issue, I now turn to address the other issue regarding whether or not the respondent should be directed to render an account of the rental income received on behalf of the deceased's Estate and an account of funds in seven (7) bank/Sacco accounts which were being operated by the deceased prior to his demise.
34. Starting with the funds in the seven bank/sacco accounts, the respondent in her replying affidavit deposed that at an undisclosed date, she had ordered the freezing of the bank accounts to prevent fraudulent activities in the accounts.

She did not however avail any evidence to substantiate this claim. If in fact the seven bank/sacco accounts were frozen at the respondent's instance, that was a good step in the right direction but since there is no evidence to prove that this was in fact done, in order to ensure preservation of the monies that may still be in the said accounts, I hereby exercise my inherent powers under Section 47 of the Act and order freezing of the said accounts pending further orders from this court. For purposes of clarity, the said bank/ Sacco accounts are as follows:

- i. ABSA Bank account number 0311xxxxxx (Thika Branch);
 - ii. NIC Bank account number 2370xxxxxx (Thika Branch);
 - iii. Cooperative Bank account number 01136xxxxxxxx (Thika Branch);
 - iv. Cooperative Bank haba/haba account number 01109xxxxxxxx (Thika Branch);
 - v. Murata Sacco Kigumo account number 02841xxxxxxxx, Thika Branch;
 - vi. Murata sacco (Amica) account number 01009xxxxxxxx, Kigumo Branch;
 - vii. Account number 2000xxxxxx (HFCK) Bank, Thika Branch.
35. With respect to the claim that the respondent has been collecting a rental income of Kshs 2,500,000 monthly on behalf of the Estate which she has allegedly either wasted or diverted to her personal account, I agree with the respondent that the applicants have failed to avail evidence to prove that this was the amount of income that was generated by rental buildings owned by the Estate.



36. Having said that, it is pertinent to note that in her replying affidavit, the respondent conceded that there was rental income that accrued to the Estate from rental houses in Thika Section 9 Estate, Makongeni and Biafra Estates also in Thika.

She did not however specify the amount of monthly rent that was being collected from those rental buildings.

37. Under Section 83 of the Act which stipulates the duties and responsibilities of administrators of Estates, a personal representative is statutorily obligated to render a full and accurate account of dealings with a deceased's Estate in two main stages. Section 83 (e) provides for the first stage and requires that an administrator should produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith within six months of the date of the grant.

The second stage kicks in after confirmation of the grant. Section 83 (g) obligates a personal representative to render a full and accurate account of the completed administration within a minimum of six months from the date of confirmation of a grant.

38. Bearing the above provisions in mind, I have combed through the court record and I have not come across any indication that the respondent has ever given an account of her administration of the deceased's Estate since she was appointed as the deceased's personal representative over nine years ago.

39. The law empowers this court either on its own motion or on the application of an interested party in a deceased's Estate, to order an administrator to produce a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account – See: Section 83 (h) of the Act.

40. Given the allegations levelled against the respondent concerning wastage and misappropriation of the Estate's income and considering that the respondent conceded that there was some unspecified amount of rental income that accrues to the Estate, I think that it would be in the best interest of justice to order that the respondent produces a full and accurate account of the income she has collected on behalf of the Estate and her dealings with the Estate's assets since her appointment as the deceased's personal representative as required by the law.

41. For all the foregoing reasons, I have come to the conclusion that the summons dated 3rd March 2021 is merited and it is hereby allowed on the following terms;

1. The grant issued to the respondent on 27th July 2015 is hereby revoked. The respondent and the eldest child of the deceased's first family, Jane Wanjiku Macharia are appointed as joint administrators of the deceased's Estate. A fresh grant of letters of administration to the deceased's Estate to issue accordingly.
2. The joint administrators shall either jointly or severally file summons for confirmation of the grant within three months of today's date.
3. The respondent shall file a full and accurate account of the rental income collected on behalf of the Estate from residential buildings in LR. No. Thika Municipality SSS 1/169; SSS /134; SSS 8/84 and SSS 10/265 and any other income received on behalf of the Estate since her appointment as the deceased's personal representative on 27th July 2015 to date.
4. The accounts shall be filed on or before 26th February 2025 when this case will be mentioned to confirm compliance and further orders.



5. The bank/ Sacco Accounts specified in Paragraph 34 of this ruling are hereby frozen pending further orders from this court.
42. On costs, this being a family matter, I shall not make any order as to costs.
43. It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 19TH DAY OF DECEMBER 2024.

HON. C.W. GITHUA

JUDGE

In the presence of:

Mr. Koech for the Administrator/ Respondent

Ms. Mueni for Mr. Waweru Nyambura for Mr. Peter Kihanya

Ms. Kimathi for the Applicants

Ms. Susan Waiganjo, Court Assistant

