



**Kangeri & 2 others v Kangeri & 5 others (Succession Cause  
559 of 2013) [2023] KEHC 2611 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2611 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
SUCCESSION CAUSE 559 OF 2013  
LW GITARI, J  
MARCH 24, 2023**

**BETWEEN**

**ANTHONY GITHINJI KANGERI ..... 1<sup>ST</sup> APPLICANT  
DAVID MUNENE KANG'ERI (SUING AS THE LEGAL REPRESENTATIVE OF  
THE ESTATE OF JANE NYAWIRA KANG'ERI) ..... 2<sup>ND</sup> APPLICANT  
WATSON CHARLES NJAGI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**MILLICENT MUTHONI KANGERI ..... 1<sup>ST</sup> RESPONDENT  
JOHNSTONE MUCHIRA KANGERI ..... 2<sup>ND</sup> RESPONDENT  
MOSES IBRAHIM NJERU KANGERI ..... 3<sup>RD</sup> RESPONDENT  
DICKSON JACOB NJIRU KANGERI ..... 4<sup>TH</sup> RESPONDENT  
PETER JOSIAH MURIUKI ..... 5<sup>TH</sup> RESPONDENT  
KENNEDY GACHOKI KANGERI ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. This is a very old matter having been instituted on February 25, 2009 at the Principal Magistrate's Court Kirinyaga. The matter relates to the estate of the late David Kangeri Kangangi (deceased) who died intestate on July 4, 2005.
2. Vide Summons for Revocation and Annulment the of Confirmed Grant dated May 2, 2013, the applicants herein sought for the revocation and/or annulment of letters of administration granted to the 1<sup>st</sup> Respondent herein on May 21, 2009 and confirmed on June 4, 2010.



3. The application is expressed to be brought under Section 76 of the Law of Succession Act, Chapter 160 of the Laws of Kenya (hereinafter referred to as the “Act”) and Rule 44(1) of the Probate and Administration Rules (hereinafter the “Rules”).
4. The application is based on the grounds that:
  - a. The proceedings that led to the confirmation of grant were defective in substance.
  - b. The grant was obtained fraudulently by making false statements and concealment from court something material to the case.
  - c. The grant was obtained by means of untrue allegations of facts essential in a point of law.
  - d. The 1<sup>st</sup> Respondent failed to disclose to the court all the beneficiaries of the deceased.
  - e. The 1<sup>st</sup> Respondent has since transferred parcels of land forming part of the deceased estate to some children leaving out some.
  - f. The Applicants did not sign the consent to the making of the letters of administration.
5. The application is supported by the affidavit sworn by the 1<sup>st</sup> Applicant on May 2, 2013 on his own behalf and on behalf of his co-applicants. He deponed that the deceased had eleven (11) children. He further deponed that the 1<sup>st</sup> Respondent distributed the whole estate to herself, and transferred some parcels to some of the children leaving out some. The Applicants thus urged this court to revoke the subject grant.
6. In response to the application, the 1<sup>st</sup> Respondent filed a Replying Affidavit sworn by herself on February 25, 2014. She swore the said affidavit on her own behalf on behalf of her co-respondents. She deponed that when the grant was confirmed and the whole estate distributed to her, she distributed different parcels of the land to all her children except the 1<sup>st</sup> Applicant. She explained that the 1<sup>st</sup> Applicant was to be given land somewhere else (Kabare/Ngiroche/611 measuring 1.5 acres) because of his alleged unbecoming behaviour to his siblings. She further deponed that the Applicant was always aware that the matter was in court when the grant was confirmed and that all the family members agreed to the distribution that was proposed. It was her testimony that the 3<sup>rd</sup> Applicant is jointly registered as proprietor of Kabare/Gachigi/684 with other siblings and she had the discretion, as the mother of the Applicants and her co-respondents, to distribute the estate to the children who are of good behaviour towards her. She referred to a ruling delivered in Embu High Court Civil Case No 157 of 2011 in an attempt to show that the 1<sup>st</sup> Applicant’s behaviour was unbecoming. As for the case of the 2<sup>nd</sup> Applicant, the 1<sup>st</sup> Respondent stated that the 2<sup>nd</sup> Applicant opted on her own volition to leave the family and wrote a letter to that effect.
7. The Applicants responded vide a Supplementary Affidavit sworn by the 1<sup>st</sup> Applicant on June 14, 2015. They denied being present when the 1<sup>st</sup> Respondent went to the chief to initiate the succession process. It was their contention that they did not object to the succession proceedings because they were not aware of the gazette notice. He further denied attacking the deceased. He explained that he left the homestead only because the family did not approve of his choice for a wife. He finally stated that he did not know of land parcel no Kabare/Ngiroche/661 and stated that he has never taken possession of the same or utilized it.
8. The application was heard by way of viva voce evidence. PW1 was Anthony Githinji Kang’eri, the 8<sup>th</sup> born of the deceased’s family. Kennedy Gachoki Kang’eri, PW1’s brother, is deceased. He challenges the confirmation of grant on the ground that when his mother, the 1<sup>st</sup> Administrator, was issued the grant, she allegedly failed to distribute the estate to some of the children. PW1 alleges that he never got



a share of the estate and that he is the only one who was disinherited. He further alleges that there was no time that the family met and agreed on the distribution of the estate. That while his name appears on the consent to the making of letters of administration (MMK 2), neither him nor his siblings signed the same. He pointed that the deceased's signature did not appear in the agreement (MMK 11) and that the date on the agreement was before confirmation of the grant. On cross-examination, he stated that he does not live in the estate as he left more than ten years ago as the family was not okay with the woman he married. PW1 stated that he was not aware of any land bought for him as alleged by the 1<sup>st</sup> Respondent. In any case, PW1 maintained that he did not want any other land other than a share from the estate of the deceased as his other siblings. He conceded that he had been taken to court on several occasions on charges of assault and creating disturbance.

9. PW2 was Watson Charles Njagi Kang'eri, the smaller brother to PW1. He adopted the affidavit sworn by PW1 as his evidence. On cross examination, PW2 stated that he was not aware of the grant issued to the 1<sup>st</sup> Respondent until 2014. He stated that he inherited 0.47 Ha from the deceased's estate and that he does not live there. He alleges that upon doing a search, he found that the piece of land distributed to him was smaller than the share given to his other siblings.
10. PW3 was Sr Sgt Phillip Kamau. He produced several OB extracts as exhibits 1 & 2. He stated that he was not able to comment on them as he was seeing them for the first time.
11. PW4 was Jane Nyawira Kang'eri, a daughter of the deceased, but is now also deceased. It was her testimony that she was not aware when her mother, the 1<sup>st</sup> Respondent, filed the instant cause, and that she did not sign any consent prior to these proceedings being instituted. It was further her testimony that she did not get a share of his father's estate after the grant issued to her mother was confirmed. She alleged that she stays on the deceased's estate and has stayed there all along but does not have a title. She stated that she uses about 1 (one) acre on land parcel no Kabare/Gachigi/685. She alleges that although the deceased did not write a will, he had shown all the children the portion of land that they were to settle and utilize. She further stated that she had disagreed with the deceased and written a letter dated May 12, 2013 (MMK 13). She asserted that she has three children and claims that the deceased was supporting them. PW4 further alleges that she was however chased from the land after the deceased died. She thus urged this court to distribute the deceased's estate in accordance with his wishes.
12. DW1 was Millicent Muthoni Kangeri, the deceased's widow. She stated that the applicants and her co-respondents are her children. She adopted as her evidence her affidavit which she swore on February 25, 2014. On cross examination, it was her testimony that each child signed the consent. She contended that the deceased had told her to give each child a share of the land but not the titles as there were some that wanted to sell their shares. She stated that she was now ready to give them their titles. She denied not involving any of the children in these proceedings. She further stated that the deceased stated that the 1<sup>st</sup> Applicant should not get land in the suit land as he had beaten the deceased prior to his demise. She thus contends that she bought for the 1<sup>st</sup> Applicant a one-acre piece of land situated at Kerugoya. The said parcel of land is allegedly in her name and she does not know the name of the person who sold it to her. She further stated that none of the children have received a title deed over their respective share of the suit land. She however stated that she was ready to process the title deeds for them.

## **Analysis**

13. I have considered the instant Application, the affidavits filed in support of and in opposition to the Application and the evidence tendered before this Court. The main issue for this court to determine is whether the grant issued to the 1<sup>st</sup> Respondent on May 21, 2009 and confirmed on June 4, 2010 should be revoked.



14. The law on revocation of a grant is provided under Section 76 of the Act and Rule 44 of the *Probate and Administration Rules*. Section 76 of the *Act* 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 court of something material to the case.
  - c. that the grant was obtained by means of an untrue allegation of the fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.”
15. For the court to order revocation of grant, a party must prove that:
- a. Proceedings to obtain the grant were defective in substance;
  - b. The grant was obtained fraudulently by the making of a false statement or concealment from court of something material to the case;
  - c. That the grant was obtained by means of untrue allegations.
16. A party need not prove all the above matters. Proof of any one of them will lead to the revocation of the grant. In this case, the Applicants contend that the proceedings to obtain the grant herein were defective in substance as the Applicants did not sign the consent to the making of the grant. The 1<sup>st</sup> Respondent is the administrator of the subject estate and instituted these proceedings in her capacity as the widow of the deceased. She disclosed that the estate of the deceased comprised of the properties known as:
- a. Kabare/Gachigi/683 – 2.15 Ha
  - b. Kabare/Gachigi/684 – 2.15 Ha
  - c. Kabare/Gachigi/685 – 1.45 Ha
17. The 1<sup>st</sup> Respondent’s application for a grant of letters of administration intestate to the estate of the deceased was consequently gazetted vide Gazette Notice No. 3713 that is dated March 13, 2009. Subsequently, the 1<sup>st</sup> Respondent applied for confirmation of the grant issued to her vide the summons application dated May 28, 2010.
18. Rule 26 of the *Probate and Administration Rules*, states that;
1. Letters of Administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the Applicant.
  2. An Application for a grant where the Applicant is entitled in a degree equal to or lower than that of any other person shall in default of renunciation or written consent in form 38 or 39 by all persons so entitled in equality or priority be supported by an affidavit of the applicant and such other evidence as the court may require.”



19. Section 66 of the *Law of Succession Act* provides that:

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;”

20. From the above provisions, it follows that the Applicants herein do not rank in the same degree as their mother, the 1<sup>st</sup> Respondent herein. As such, there was no requirement that their consent be sought before the 1<sup>st</sup> Respondent filed these proceedings.

21. However, with regard to the Applicants’ consent during the confirmation of the grant, Rule 40(8) of the *Probate and Administration Rules* provides that:

“Where no affidavit of protest has been filed the summons and affidavit shall without delay be placed by the registrar before the court by which the grant was issued which may, on receipt of the consent in writing in Form 37 of all dependants or other persons who may be beneficially entitled, allow the application without the attendance of any person; but where an affidavit of protest has been filed or any of the persons beneficially entitled has not consented in writing the court shall order that the matter be set down as soon as may be for directions in chambers on notice in Form 74 to the applicant, the protester and to such other persons as the court thinks fit.”

22. In such a case of intestacy as the present one, this Court is enjoined to confirm a grant only upon being satisfied as to the respective identities and shares of all persons beneficially entitled to the estate. The particulars of all dependants must therefore be disclosed before a grant is confirmed.

23. In this case, the 1<sup>st</sup> Respondent disclosed that the deceased had 11 (eleven) children including:

- a. Diana Wanjiku Munyi
- b. Lucy Wanjiku Kangeri
- c. Jane Nyawira Kangeri (now deceased)
- d. Johnston Muchira Kangeri
- e. Peter Josiah Muriuki
- f. Mercy Karimi Kangeri
- g. Kennedy Gachoki Kangeri (now deceased)
- h. Anthony Githinji Kangeri
- i. Charles Watson Njagi Kangeri
- j. Dickson Jacob Njiru Kangeri
- k. Moses Ibrahim Njeru Kangeri



24. It is the Applicants' contention that being the children of the deceased, the 1<sup>st</sup> Respondent, who is the administratrix of the deceased's estate, ought to have notified the Applicants of these proceedings and that the subject grant should not have been confirmed without the consent of all the beneficiaries.
25. Despite naming all her 11 (eleven) children as persons beneficially entitled to the estate of the deceased, the 1<sup>st</sup> Respondent went on to transfer the entire estate to herself. In her testimony, she however indicated that she was now ready to transfer shares of the estate to her children except for the 1<sup>st</sup> Applicant who she claims she has bought parcel no. Kabare/Ngiroche/611 for him. The copies of official search in respect of the 3 (three) properties forming the estate of the deceased indicate that all the 3 land parcels were registered on September 12, 1988 in the name of the deceased as the absolute proprietor. The deceased died on July 4, 2005. It thus follows that the said properties were available for distribution to all the dependants of the deceased at the time of confirmation of grant. This means that the 1<sup>st</sup> Respondent was dishonest by her act of transferring the entire estate of the deceased to herself without distributing the same to the rest of the beneficiaries.

### **Conclusion**

26. The upshot of the above, is that the 1<sup>st</sup> Respondent acted dishonestly when she transferred the entire estate of the deceased to herself in total disregard to the beneficial interest of all the beneficiaries in the estate of the deceased. As such, I opine that the present application is merited.

### **In the circumstances I order as follows:-**

1. I order that the certificate of the confirmed grant is revoked.
2. The 1<sup>st</sup> respondent shall within 30 days from today file a summons for confirmation of grant and distribute the estate to all the beneficiaries entitled to the estate of the deceased.
3. No order as to costs.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 24<sup>TH</sup> DAY OF MARCH 2023.**

**L.W GITARI**

**JUDGE**

**24/3/2023**

The ruling has been read out in open court.

**L.W. GITARI**

**JUDGE**

**24/3/2023**

