



REPUBLIC OF KENYA



**In re Estate of Dorcas Wairimu Ngure (Deceased) (Succession Cause
90 of 1998) [2023] KEHC 3876 (KLR) (24 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3876 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 90 OF 1998
RN NYAKUNDI, J
APRIL 24, 2023**

IN THE MATTER OF THE ESTATE OF DORCAS WAIRIMU NGURE (DECEASED)

BETWEEN

DAVID KIBUTHIA NGURE 1ST PETITIONER

SAMUEL IKUNDO NGURE 2ND PETITIONER

AND

GADSON NGURE KAMAU OBJECTOR

RULING

1. The objector filed summons for revocation of grant dated June 24, 2021 seeking the following orders;
 1. The application be certified urgent and service thereof be dispensed in the first instance.
 2. The amended grant of letters of administration intestate issued to David Kinuthia Ngure and Samwel Ikundo Ngure on 1/11/2006, confirmed on 22/5/2007 and amended on 21/7/2014 be and is hereby revoked and/or annulled.
 3. The objector/applicant herein Gadson Ngure Kamau be and is hereby made administrator of the estate of the late Dorcas Wairimu Ngure (deceased).
 4. This honourable court be pleased to order for the protection and preservation of the entire estate of the deceased pending hearing and determination of this cause.
 5. And order to issue restraining and/or stopping the Petitioner/Respondent and/or their agents, assigns and/or servants from evicting, injuncting, wasting, intermeddling, sub-dividing and/or in any manner dealing with the estate of the deceased person and more particularly Land parcel number Uasin Gishu/Burnt Forest/48 measuring 18 Ha or thereabout pending hearing and determination of this cause.



2. The summons is premised on the contents of the affidavit by the objector dated October 6, 2021.

Objector's Case

3. The objector contends that the deceased left behind 5 dependants including Florence Njeri Ngure, the mother of the objector, who unfortunately passed on before the grant was confirmed. Learned counsel for the objector stated that the Applicant obtained letters of administration for his mother and filed an application whose ruling was delivered on June 24, 2004 which ordered that Florence Njeri Ngure be listed as a beneficiary. He contended that her share ought to have devolved to her children upon her demise. When the respondents herein filed summons for confirmation of grant dated December 18, 2006, they truly listed Florence Njeri as a dependant but however failed to give her a share of the estate. He urged that concealing such information meets the grounds set under section 76 of Law of Succession Act for revocation of the grant.
4. Counsel for the objector submitted that the decision by Justice G. Dulu rendered on June 24, 2004 ought to be complied with. The summons for confirmation of grant and subsequently the proposed mode of distribution filed by the Respondents herein left out Florence Njeri and her children despite the fact that the court had made such an order. The acts of omissions therein clearly show that the Petitioners/Respondents were reviewing and/or amending the decision of the honourable court suo moto without filing any application and/or appeal to that effect.
5. Counsel urged that the summons for revocation be allowed as prayed.

1st Respondent's Case

6. The 1st respondent submitted that the 1st Petitioner in his Affidavit in Rejection of Application for Revocation and/or Annulment of Grant dated 8.9.2021 depones that if indeed the Applicant has obtained Grant of representation of the estate of his late mother Florence Njeri Ngure as he alleges then he has not given a copy of the same to the 1st Petitioner. He has also not attached a copy of the said Grant to this Application. That, therefore, remains an unproven fact without evidence of the same.
7. Counsel urged that the ruling dated June 24, 2004 which the applicant is referring to, for Florence Njeri Ngure to be listed as a beneficiary of the estate of Dorcas Wairimu Ngure, the applicant herein has to obtain a Grant of Representation of his mother's (Florence Njeri Ngure) estate and if the applicant has obtained the same he has not provided a copy. He urged that it was the responsibility of the Objector herein to obtain a Grant of Administration of his mother's estate for him to be included as a beneficiary of the estate of Dorcas Wairimu Ngure (Deceased). It was his submission that before the demise of their mother, Dorcas Wairimu Ngure, she had allocated to each one of her children their share of her property. Thus, each one had the discretion of deciding what to do with the piece of land allocated to them.
8. The Petitioners averred that the beneficiaries listed in the Amended Certificate of Confirmation of a Grant dated 30.6.2014 are 98 and not 10 as the Applicant alleges. Further, that the beneficiaries are not strangers because it is the Court that allocated them shares of the estate of the deceased. The petitioners averred that the estate of Dorcas Wairimu Ngure (Deceased) is comprised of only Uasin Gishu/Burnt Forest/48 and all the 98 listed in the Amended Certificate of Confirmation of Grant dated 30.6.2014 are beneficiaries of the said estate.



Issues for determination

9. Whether the Grant of Letters of Administration Intestate issued to the 1st and 2nd Petitioners in respect of the estate of Dorcas Wairimu Ngure (Deceased) confirmed on 22.5.2007 and amended on 21.7.2014 should be revoked
10. Revocation of grant is governed by section 76 of the *Law of Succession Act* which provides;
 76. Revocation or annulment of grant

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.”
11. Before delving into the issue of revocation, the court must first address the arising issue of the objector being the grand child of the deceased. He seeks a portion of the estate that was allegedly supposed to be apportioned to his mother.
12. Being a grandchild of the deceased, in order to determine whether he has locus in this matter, the provisions of sections 28 and 29 of the *Law of Succession Act* provide as follows;
 28. In considering whether any order should be made under this Part, and if so what order, the court shall have regard to-
 - (a) the nature and amount of the deceased's property;
 - (b) any past, present or future capital or income from any source of the dependant;
 29. For the purposes of this Part, "dependant" means-
 - (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;



- (b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
 - (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.
13. The objector has not provided anything to show that he meets any of the above requirements therefore cannot purport to have been excluded as a beneficiary of the estate.
14. As the objector is claiming part of the share of his mothers' estate, the proper procedure would be to obtain a grant of letters of administration of his mothers' estate before approaching this court for a share of the estate that she was allegedly supposed to obtain. I am guided by the decision of W Musyoka, J in the case of *Estate of Veronica Njoki Wakagoto (deceased)* (2013) eKLR where he described the right of a grandchild to stake a claim on the inheritance of their parents in the following terms:
- "...grandchildren can only inherit their grandparents indirectly through their own parents, the children of the deceased. The children inherit first and thereafter the grandchildren inherit from the parents. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents."
15. Whereas I agree with the Learned Judge, such must be clothed with legal powers to do so; he/she must first out seek and obtain letters of administration of their parents' estate. This is when he can claim his/her parents' inheritance from the estate of the deceased. In the instant case the appellants have not demonstrated that they have obtained letters of administration to allow them to stake any claim in the estate of the deceased."
16. A perusal of the ruling by Justice G Dulu delivered on June 24, 2004 reveals that the judge stated that the objector had no locus to apply on behalf of the estate of his mother, Florence Ngure and since then he has not applied to be an administrator for his mothers' estate. In the premises, the summons for revocation of grant is unmerited and dismissed. Each party shall bear its own costs.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 24TH DAY OF APRIL, 2023

R. NYAKUNDI

JUDGE

