



REPUBLIC OF KENYA



KENYA LAW
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**Muthoni v Wanganga (Probate & Administration Appeal
E005 of 2022) [2023] KEHC 17739 (KLR) (24 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17739 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
PROBATE & ADMINISTRATION APPEAL E005 OF 2022**

J WAKIAGA, J

MAY 24, 2023

BETWEEN

NANCY MUTHONI APPELLANT

AND

WILSON NDUNGU WANGANGA RESPONDENT

*(Being an appeal arising from a Ruling in Murang'a Chief Magistrates Court Succession Cause
No 452 of 2016 delivered on 12th May 2022 by Hon. E.M Nyagah – Principal Magistrate)*

JUDGMENT

1. Beatrice Waithera Wanganga applied for Grant of letters of Administration of the estate of Wanganga in which the Appellant and the Respondent were named as beneficiary of the estate and on the May 16, 2019. She applied for Confirmation of the Grant.
2. By an affidavit of protest sworn on June 17, 2019 the Respondent objected to the Applicant on the ground that he was the only surviving son of the deceased who had two wives namely the Petitioner and one Lucia Wanjiru deceased and that the other surviving children of the deceased were the Appellant who was married in the year 1975 and Veronica Njango who was married in the year 1983 and were living in their matrimonial homes as at the time.
3. It was his contention that the Petitioners proposed mode of distribution would disturb the status quo which had existed for three decades and therefore proposed distribution into two equal parts of 2.2 acres into the names of Lucia Wanjiru and Cecilia Wairimu Ndungu jointly and Beatrice Waithira Wanganga and Wilson Ndungu Wanganga jointly.
4. On June 21, 2021 the Appellant applied for substitution and rectification of the Certificate of Grant in respect of the Petitioner having obtained a Limited Grant of letters in respect of her estate, which application was opposed by the Respondent on the ground that the Applicant who is his sister had been married in the year 1975 and was only interested in the estate for commercial purposes.



5. By a Ruling thereon dated October 26, 2021, the said application was dismissed on the ground that the Grant was limited to suing on behalf of the estate and not to substitute the deceased Petitioner.
6. Not deterred, the Appellant on the 3rd of November 2021 filed a fresh application for the revocation of the Grant issued to the Petitioner and a fresh one issued in her name on the ground that the same had become inoperative by operation of law and by a Ruling thereon dated May 22, 2022. The Court revoked the said Grant and ordered the parties to file for fresh Grant.
7. Being dissatisfied by the said ruling the appellante this filed this appeal and raised the following grounds of appeal
 - a. That the Court erred in fact and in law in that after revoking the Grant the Court declined to issue afresh one to the Appellant
 - b. The Court constructively dismissed the entire Succession by directing compliance with Section 51 of the *law of Succession* instead of relying on Rules 43 and 49 of the *P&A* Rules so as to avoid nullifying the Grant as required by Article 159 (a) and (d) of *the Constitution*.

Submissions

8. On behalf of the Appellant it was submitted that the issue for consideration is whether upon revocation of Grant the parties have to start afresh under Section 51 as was stated in the Court of Appeal case of *Florence Okutu Nandwa & another v John Atemba Kojwa* Civil Appeal No 306 of 1998 which was a pre-2010 decision or whether the Court has inherent power to grant fresh letters or appoint another administrator in support of which the following cases were submitted:
 - a. In the *Estate of Agwang Wairo* [2020] eKLR
 - b. *Titus Mwaniki Njiru v Jane Igandu* [2021] eKLR
 - c. *Musa Nyaribari Gekonge & 2 others v Peter Miyiinda & another* [2015] eKLR
 - d. *Re estate of Prisca Ongayo Ndende* [2020] eKLR.
9. On behalf of the Respondent it was submitted that the Grant was revoked because it had become useless upon the death of the administrator and that having been revoked the Court applied correctly Section 51 of the *Act* as was stated in the case *Andrea Ruithibu R Kanyiri v Tesesia Njoki Mbugu* [2016] eKLR.
10. It is not in dispute that the Grant herein was revoked on an application by the Appellant on the basis that it had become useless by virtue of the death of the Administrator and having been revoked there was nothing remaining on it for the Court to substitute the Appellant on as the Appellant had not complied with the requirements of Section 51(2) of the Law.
11. The Court can therefore not be faulted in not substituting the Appellant as she had not placed before the Court any evidence that the beneficiary of the estate had consented to her being substituted in the place of her mother who was the administrator appointed by the Court and therefore the same cannot be appointed without the consent of the rest of the beneficiaries.
12. I therefore find no merit on the Appeal herein which I dismiss.
13. This being a family dispute each party shall bear their own cost.

DATED SIGNED AND DELIVERED AT MURANGA THIS 24TH DAY OF MAY 2023

J. WAKIAGA



JUDGE

In the presence of: -

Mr. Mwaniki for the Applicant

Mr. Chege for Mr. Gichuki for the Respondent

Jackline – Court Assistant

