



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Njagi Nguu (Deceased) (Succession Cause
325 of 2002) [2023] KEHC 19297 (KLR) (27 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19297 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 325 OF 2002
LM NJUGUNA, J
JUNE 27, 2023**

BETWEEN

ROSELINE WANJOVI MUSA 1ST APPLICANT

JANE MURANGI NDWIGA 2ND APPLICANT

AND

NDWIGA NGUU RESPONDENT

RULING

1. Before this court is the summons dated May 4, 2015 and which seeks revocation and/or annulment of the grant of letters of administration made to the respondent in relation to the estate of the deceased herein.
2. The said summons is based on the grounds on its face and its supported by the affidavit annexed to the application.
3. In a nutshell, it is the applicant's case that the said grant was obtained by means of untrue allegations of facts, fraudulently by making of a false statement or by concealment from court of something material to the case and the proceedings to obtain the grant being defective in substance. It appears that the applicant's claim is that the grant was defective in nature and substance by concealment to the court the fact that she was disinherited by the respondent herein. It was submitted that the respondent in his affidavit in support of confirmation of grant indicated himself and his brother Patrick Kathee Nguu as the only survivors of the deceased thus leaving out the applicants herein. That the fact that they are married is not a reason in law to disinherit them of their brother's estate. In the end, the applicants urged this court to allow the application herein.
4. The application is opposed by the respondent vide his replying affidavit sworn on July 21, 2015 and wherein he deposed that at the time of the filing of the succession cause herein, the parties had agreed as a family that the applicants would not to be given a share of the estate as they were already married. That



their mother sold one acre out of the estate herein to one Violet Wanjuki Njiru vide a sale agreement dated April 18, 2000 to enable her get finances to file the succession cause. That their mother had not included the name of the applicants herein and yet they did not file any protest; that he had sold his share to one Irene Wambugi Kinyua while Silveria Manu was responsible for providing the finances that their mother required to use for medication. It was his contention that the applicants have ulterior motives and as such, the application herein should be dismissed.

5. Directions were taken that the application be canvassed by way of viva voce evidence and thereafter parties were to file written submissions and all parties complied with the said directions.
6. The applicants submitted that the respondent filed the succession cause leading to the confirmation of the grant being sought to be revoked without disclosing the same to them. That when the respondent applied for confirmation of grant and distributed the deceased's estate, Land Parcel Ngandori/Kirigi/456, he neither involved or informed the applicants nor did he obtain their consent. It was submitted that the respondent in his affidavit in support of confirmation of grant indicated himself and his brother Patrick Kathee Nguu as the only survivors of the deceased thus leaving out the applicants herein. The applicants reiterated that they are equally entitled to inherit the estate herein as the same is an entitlement. That the fact that they are married is not a reason in law to disinherit them from their brother's estate. In the end, the applicants urged this court to allow the application herein.
7. The respondent on the other hand submitted that the proceedings to obtain the amended grant of letters of administration intestate and the subsequent confirmation were not fraudulent. That when Janet Karenga filed for succession proceedings for the estate of the deceased herein, she was the only person entitled to the estate pursuant to section 39(1)(b) of the LSA. That the respondents were aware of the proceedings filed by Janet Karenga but they did not file any protest. It was submitted that the proceedings to obtain the amended grant of letters of administration intestate to the respondent and its confirmation was proper and procedural. That the said proceedings were not fraudulent as alleged by the applicants. Reliance in support his position was placed on the case of *Angelas Maina Vs Rebecca Waiyego Mwangi & another [2006] eKLR*.
8. I have perused the application herein and the response thereto by the respondent and it is my view that this court has been called upon to determine whether the orders sought for revocation of the grant issued to the petitioner/respondent could be granted.
9. As I have already noted, the application herein seeks to revoke the grant made to the petitioner/respondent herein.
10. The circumstances under which a grant of representation may be revoked are provided for under section 76 (a)- (e) of the *Law of Succession Act* and include;
 - a. Where the proceedings to obtain the grant were defective in substance;
 - b. Where 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. Where 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. Where 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. Where the grant has become useless and inoperative through subsequent circumstances.
11. What is clear from the above provision is that when a court is dealing with an application for revocation of grant, it is supposed to consider only the process of obtaining the grant. Such that issues touching on the process of confirmation of the grant and distribution of the estate amongst the beneficiaries is beyond what the court should consider as it is not covered by section 76 and thus cannot form a basis of revoking a grant but ought to be challenged through a review or appeal. *In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR*, W Musyoka, J after analyzing section 76 and discussing the meaning of a grant within the provisions of the laws governing succession in Kenya held thus: -
- ' 17. I have very closely perused through the provisions of the *Law of Succession Act*, and I have not come across any provision that provides a remedy to a person who is aggrieved by confirmation orders. Sections 71, 72 and 73 of the *Law of Succession Act*, which deal with confirmation of grants, do not address the question of redress for parties who are unhappy with the confirmation process, nor do they deal generally with flaws in the confirmation process. As stated above, section 76 has nothing to do with the confirmation process, and provides no relief at all to any person unhappy with the confirmation process. In the absence of any provision in the *Law of Succession Act*, for relief or redress for persons aggrieved by such orders, the aggrieved parties have only two recourses under general civil law, that is to say appeal and review, to the extent that the same is permissible under the *Law of Succession Act*. I would believe that one can also apply for the setting aside or vacating of confirmation orders, where the same are obtained through abuse of procedure.'
12. In the instant case, the applicant's case is that the grant was obtained fraudulently on the basis that the respondent misrepresented to the court that the only beneficiaries of the estate were him and one Patrick Kathee Nguu. I have perused the record herein and I note that indeed the said respondent indicated (in the petition for letters of administration intestate) that the deceased was survived by him and his brother Patrick Kathee Nguu. The applicants stated that the respondent did not disclose to the court that the deceased had sisters who were equally depending on the deceased. That their ranking was equal and as such, it was necessary that their consent be sought before filing of the cause herein.
13. Section 66 of the *Law of Succession Act* bestows this court with the discretion to as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made. The court in exercise of the said discretion is mandated to 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;
 - c. The Public Trustee; and
 - d. Creditors;



14. Section 39 on the other hand stipulates that (1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—
- a. Father; or if dead
 - b. Mother; or if dead
- brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none.
15. Rule 7 of the [Probate and Administration Rules 1980](#) provides that application for grant of representation in relation to an estate of a deceased person to whose estate no grant or no grant other than one under section 49 or a limited grant under section 67 of the Act has been made, the application shall be by petition supported by an affidavit. The said affidavit must contain amongst other details, the names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with section 39(1) of the Act [Rule 17(e)(i)].
16. Similarly, Rule 26 provides that 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. Further that in 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.
17. The effects of the above provisions is that where a person is applying for a grant of letters of administration intestate, he must get consent from persons of equal or lower priority than him. By dint of this section, the consent by the said applicants was mandatory. They are surviving sisters of the deceased herein and thus their consent ought to have been acquired before filing of the succession cause and the substitution of the respondent; they had not renounced their rights to petition for the grant. It follows that the proceedings leading to the grant were defective in substance, and therefore the grant should be revoked. I rely on the persuasive authorities in [Antony Karukenya Njeru Vs Thomas M Njeru \[2014\] eKLR](#) where JA Makau J while revoking a grant on the ground that the consent of a person of equal priority was not obtained held as thus:-

' The respondent was required to file Form 38 as per provisions of Rule 26(2) of the Probate and Administration Rules which mandates a petitioner to obtain consent to the making of the grant of administration intestate to person.

The respondent in Form P&A 80 stated that every person having an equal or prior right to a grant of representation had consented or renounced such right or has been issued with a citation to renounce such right and apply for a grant of representation and not done so. Are the contents of the Form P&A 80 which duly signed by the respondent true? The answer is obvious. The Form has untrue allegation and it is clear the respondent is in breach of Rule 26(2) of the Probate and Administration Rules. He lied to the court to obtain grant of letters of administration of the deceased estate.'

[See also *In the Matter of the Estate of Muriranja Mboro Njiri, Nairobi HC Succ Cause No 890 of 2003*].



18. It is my view, therefore, that the said grant was obtained pursuant to proceedings which were defective in substance. The respondent ought to have obtained consents from the applicants herein or at worst cited the applicants if they had repudiated such a duty. It is clear that all these never happened and as such, I find and hold that the said grant ought to be revoked. In *Antony Karukenya Njeru Vs Thomas M Njeru [2014] eKLR*, a grant of letters of administration was revoked as persons with equal priority did not consent to the petitioners therein applying for grant of letters of administration. [See also In the Matter of the Estate of Muriranja Mboro Njiri, Nairobi HC Succ Cause No 890 of 2003].
19. In view of the foregoing I find that the grant issued to the respondent herein should to be revoked and it is hereby revoked.
20. It is hereby ordered.
21. Each party to bear their own costs of the application.

DELIVERED, DATED AND SIGNED AT EMBU THIS 27TH DAY OF JUNE, 2023.

L. NJUGUNA

JUDGE

.....for the Applicants

.....for the Petitioner/Respondent

