



REPUBLIC OF KENYA



**In re Estate of Tezra M’njau M’rwanda alias Ezra Njau Ruanda (Deceased)  
(Succession Cause 9 of 2017) [2023] KEHC 21094 (KLR) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21094 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
SUCCESSION CAUSE 9 OF 2017**

**LW GITARI, J**

**JULY 31, 2023**

**IN THE MATTER OF THE ESTATE OF TEZRA M’NJAU  
M’RWANDA ALIAS EZRA NJAU RUANDA (DECEASED)**

**BETWEEN**

**BRETTAH MUTHONI MUNGAI ..... APPLICANT**

**AND**

**JANE KAGWENI NJOKA ..... 1<sup>ST</sup> RESPONDENT**

**JERIOETH CIARUNCI NYAGA ..... 2<sup>ND</sup> RESPONDENT**

**JOYCE KATHANJE LINUS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is with respect to the application dated November 27, 2020. The brief background of the matter is that it relates to the Estate of Ezra M’Njau M’Rwanda alias Ezra Njau Ruanda (deceased) who died intestate on May 3, 1995.
2. A grant of letters of administration was issued to Jane Kagweni Njoka and Jerioth Ciarunchi Nyaga on November 7, 2018. The grant was later confirmed on December 4, 2018 and the estate was distributed as follows:
  - a. Land Parcel No. Karingani/Ndagani/3271
    - i. Jane Kagweni Njoka – 0.083 Acres
    - ii. Jerioth Ciarunci Nyaga – 0.083 Acres
    - iii. Sylvia Kagendo Akubu – 0.083 Acres



3. Thereafter, vide summons dated November 3, 2020 and filed by Joyce Kathanje Linus, Applicant/ Interested Party, the grant was amended to include Land Parcels No. Karingani/Mugirirwa/1107 and 1108 which belonged to the deceased and were omitted inadvertently when filing the succession cause. The Certificate of Grant was subsequently amended and issued on November 17, 2020 and the two properties were distributed as follows:
  - a. Land Parcel No. Karinga/Mugirirwa/1107  
Margaret Nzula Njau to hold in trust for benefit of herself and her children namely:
    1. Leyla Njeri Njau
    2. Phyllis Muthoni Njeru
    3. Ezra Mugambi Njau
  - b. Land Parcel No. Karingani/Mugirirwa/1108  
Joyce Kathanje Linus to hold in trust for the benefit of herself and her children namely:
    1. Dolly Njeri Kathuni
    2. Mercy Mwendu Kathuni
4. The application pending before this court is the summons for revocation of grant dated November 27, 2020 which was filed on November 30, 2020 by Brettah Muthoni Mungai, the Applicant. It seeks the following orders:
  - a. Spent.
  - b. That the Honourable court be pleased to stay the execution of the order given on November 12, 2020 rectifying the grant issued on December 4, 2018 and confirmed on December 5, 2018 pending the hearing and determination of this Application.
  - c. That the honourable court be pleased to set aside/discharge the orders granted on November 12, 2020.
  - d. That the Grant of Letters of Administration issued to Jane Kagweni Njoka and Jerioth Ciarunci Nyaga on November 17, 2020 and confirmed on December 5, 2018 be revoked.
  - e. That the costs of this application be in cause.
5. The application is based on the following grounds:
  - a. The Applicant is a daughter and beneficiary to the Estate of the Deceased as the first born of the 2<sup>nd</sup> wife, Abishai Cianjoka M'njau (deceased).
  - b. The Deceased had distributed all his Estate and the properties of his three wives Elizabeth Ciamara Abishai Cianjoka and Margret Ciankui and their children before he died on May 3, 1995 and left a will confirming his wishes.
  - c. The deceased had the three wives (houses) running separate throughout his lifetime with his wives and children growing separately in their respective homes as he abhorred quarrels and interferences from respective families.
  - d. The Grant issued on December 4, 2018 was obtained fraudulently by making a false statement and by concealment from the court of something material to the case as in the Application for



letters of administration the Administratrixes/Petitioners concealed the fact of the existence of probate in respect of the Estate of the deceased issued on April 12, 2000 in Nairobi HCCC Succession Cause Number 2815 of 1999.

- e. The grant was obtained by means of untrue allegations of fact essential in a point of law to justify the grant notwithstanding that the allegations were made in ignorance or inadvertently as there existed a probate issued by the High Court in Nairobi which identified all the property of the deceased including Land Reference Numbers Karingani/Mugirirwa/1107 and Karingani/Mugirirwa/1108.
- f. On November 20, 2020, the Applicant received a telephone call from her sister by the name Kezia Kaari, who informed her that the interested party herein Joyce Kathanje Linus was bragging among villagers how she had gone to Court with the assistance of Betrice Ciambaba Kathuni and managed to obtain an Order permitting Jerioth Ciarunci Nyaga, the 2<sup>nd</sup> Administratrix to transfer Land Title Numbers Karingani/Mugirirwa/1108 into her name.
- g. On November 24, 2020, the Applicant travelled to Chuka Law Court and upon perusal of the court file, she discovered that indeed the interested party herein had applied for rectification of the grant of letters of administration to incorporate Land Title Numbers Karingani/Mugirirwa/1107 and Karingani/Mugirirwa/1108 into the grant dated December 4, 2018 and confirmed on December 5, 2018 and the Application has been allowed on the grounds that it was not opposed on November 12, 2020.
- h. The Application was never served upon the Applicant or any of her sibling from the second house where the said Land Parcel fall/belonged as per the wishes of the deceased. Indeed nobody from the 2<sup>nd</sup> house consented to the filing of the application or incorporation of the two properties into the grant issued in this cause which was specifically for the administration of Land Title Number Karingani/Ndagani/3271 falling in the 3<sup>rd</sup> house.
- i. The rectification of the grant dated November 12, 2020 was made fraudulently and with concealment of material particulars in collusion between Joyce Kathanje Linus, a wife to one of the deceased's sons from the 2<sup>nd</sup> house. Betrice Ciambamba Kathuni, a wife to a son of the deceased from the 1<sup>st</sup> house and Jerioth Ciarunci Nyaga, the 2<sup>nd</sup> administratrix and a daughter from the 3<sup>rd</sup> House of the deceased meant to defraud the children of the 2<sup>nd</sup> wife of their inheritance.
- j. The order given on November 12, 2020 rectifying the grant issued herein enabling the petitioners to directly interfere with the administration/distribution of the Land Reference Numbers Karingani/Mugirirwa/1107 and Karingani/Mugirirwa/1108 which belong to the 2<sup>nd</sup> House as per the wishes of the deceased is highly prejudicial as against the beneficiaries and children of the 2<sup>nd</sup> wife as it is tantamount to allowing the children of the 3<sup>rd</sup> house to manage, administer the estate/affairs of the 2<sup>nd</sup> house which was a nullity as the children of the 2<sup>nd</sup> wife who are the main stakeholders and the ones most affected by the order were denied a hearing before the Order was made contrary to the rules of natural justice. , the Constitutional rights under Articles 47 and 50 of the *Constitution* of Kenya and the *Fair Administrative Action* Act.
- k. The Applicant has in her possession the Original Title Deeds in respect of Land reference Number Karingani/Mugirirwa/1107 and Land Reference Numbers Karingani/Mugirirwa/1108 which she has been holding in her custody.



- l. The title to Land Reference Number Karingani/Mugirirwa/1107 was hand over to the Applicant by the Deceased father before he died after the first born son Gibson Micheni (deceased) from the 2<sup>nd</sup> house died and his wife Margret Micheni threatened to sell the same.
  - m. The Title to Land Reference Numbers Karingani/Mugirirwa/1108 was handed over to the Applicant by her Late Brother Edward Kathuni (deceased), the 2<sup>nd</sup> born son from 2<sup>nd</sup> house before he died when the interested party herein who was his wife threatened to sell the parcel to Betrice Kathuni, a wife of the son from the 1<sup>st</sup> House.
  - n. The two title deeds were handed over to the Applicant with strict instructions that they were to be transferred from the deceased's name after the children of her two deceased brothers reach the age of 30 years which commitment the Applicant has kept to date.
  - o. It is not the first time that Betrice Kathuni and Joyce Kathanje Linus have interfered and intermeddled with the estate of the deceased falling in the 2<sup>nd</sup> house as when the Late Edward Kathuni (deceased) died they financed and mobilized goons from Chuka town to stop his burial on Land Reference Numbers Karingani/Mugirirwa/1108 without any Court Order and the burial was stopped and the body which had already been transported from Nairobi for burial was taken at night to Chogoria Hospital mortuary where it stayed more than two weeks and later buried at the intervention of the clan, police and administration.
  - p. That both the Administrixes/Petitioners are not competent to administer the estate that falls within the 2<sup>nd</sup> wife's family as per the wishes of the deceased even with the rectification of grant as both come from the 3<sup>rd</sup> family with no stakes in property of the 2<sup>nd</sup> family.
  - q. The Orders granted on 12<sup>th</sup> November, 202 will have a devastating effect on the family of the 2<sup>nd</sup> house as the 2<sup>nd</sup> Respondent and the interested party have threatened to acquire properties from the 2<sup>nd</sup> house and disinherit all the children of the 2<sup>nd</sup> wife even as they have already completed the distribution of the property meant for the 3<sup>rd</sup> wife to the detriment of the beneficiaries from the 2<sup>nd</sup> house who stand disinherited contrary to the wishes of the deceased.
  - r. That unless an order of stay of execution of the order given on November 12, 2020 issues, the Respondent and the Interested Party will proceed to transfer Land Reference Number Karingani/Mugirirwa/1107 and Land Reference Number Karingani/Mugirirwa /1108 unto themselves in which case the children and beneficiaries of the estate from the 2<sup>nd</sup> wife will suffer irreparable loss.
  - s. It is meet and just that Orders given on November 12, 2020 be set aside.
  - t. It is in the interest of justice that the Grant issued herein be revoked.
6. The application is supported by the affidavit of the Applicant, Brettah Muthoni Mungai sworn on November 27, 2020. In her averments, she has reiterated and expounded the above grounds. The summons is also supported by the affidavit of Laston Mutegi Njau sworn on July 2, 2018.
  7. The said Laston Mutegi Njau has sworn an affidavit in support of the petition for revocation of grant dated July 2, 2018 and he avers that the grant is null and void to the extent that the said Ezra Njau Rwanda did not die intestate as he had distributed all his estate to his three wives Elizabeth Ciamara, Abishagi Cianjoka and Margaret Ciankui and their children before he died on May 3, 1995. That he deceased owned several parcels of land and merely Karingani/Ndagani/3271 which is the subject of this application. He further contends that land Parcel No. Karingani/Ndagani/3271 was legally transferred to one widow to the deceased Margaret Ciankui Njagu now deceased on March 3, 1994



vide Chuka Land Control Board LCR 2549/3/94. That the purported application or the grant is a cover up as the applicant has entered a sale agreement to sell land Parcel No. Karingani/Ndagani/3271. That the siblings of the late Margaret Ciankui are the beneficiaries of Land Parcel No. Karingani/Ndagani/3271. He further avers that the other beneficiaries have no interest in the said land parcel as the deceased had distributed the other land and properties to them

8. The 3<sup>rd</sup> Respondent, Joyce Kathanye Linus opposed the application vide a Replying Affidavit sworn on December 16, 2020. Her contention is that she is a daughter-in-law of the deceased as she is the wife of Edward Kathuni Njau (deceased) who is the son of the deceased in this cause. It is her claim that Land Parcel No. Karingani/Mugirirwa/1108 was bequeathed by the deceased to her late husband though the transfer was not registered in the Lands office to effect the transfer. It is her case that the Applicant took the title deed allegedly to assist her bail out her late husband and has never returned the document to her. She further contends that the deceased had transferred his properties to the houses of his three wives where each house used to live. She has urged the Court to find that the application has no merits.
9. The administratrix, Jane Kagweni Njoka, filed an affidavit in support of the summons for revocation of grant. Her contention is that she was not aware of the summons filed by the interested Joyce Kathanje Linus party to amend the grant and that the interested party was intermeddling with the estate of the deceased. According to her, she had filed the succession cause with respect to land parcel no. Karingani/Mugirirwa/3217 that she had no intention to interfere with the estate of the deceased falling in the house of his second wife. According to her, the siblings in the first house were never served. She urges the Court to set aside the orders of November 12, 2020.

She filed a summons dated March 10, 2021 through her advocates Lumumba Nyaramba and Company Advocates dated March 10, 2021. Seeking an order that the orders granted on November 12, 2020 rectifying the grant issued on December 4, 2018 and confirmed on November 5, 2018 be set aside. Her contention is that herself and the co-administrator are beneficiaries from the house of Margaret Ciankui the 3<sup>rd</sup> wife who is deceased. She avers that they were not approached when the summons for rectification of the grant of letters of administration was made by the applicant. That they are aware that Land Parcel No. Karingani/Mugirirwa/1107 and 1108 belonged to the 2<sup>nd</sup> house as identified to them by the deceased (their late father) before he died. That they did not wish to interfere with the affairs of the 2<sup>nd</sup> house as they had lived separately during the lifetime of the deceased. She further depones that the application for rectification of the grant was an abuse of court process as the administratrixes were not involved and was made through none disclosure of all the material facts and without service to all the beneficiaries who did not give consent to the rectification of grant. They urge the court to revoke the grant.

10. The summons was canvassed by way of written submissions. For the applicant it submitted that the interested party is not a direct beneficiary to the estate of the deceased as she has deponed that she is a wife of Edward Kathuni Njau (deceased) who is a son of deceased in these proceedings. He depones that the application which gave rise to the impugned grant was seeking rectification of grant under Section 74 of the *Law of Succession* Act (to be referred to as the Act)

That such an application could only be presented in court by the administratrixes and not an interested party. He relies on Rule 43(1) of the *Probate and Administration* Rules. He submits that the interested party has no legal capacity or locus standi to file the summons for rectification of grant. The two properties were supposed to be distributed to the beneficiaries of the deceased from the 2<sup>nd</sup> house in equal shares. That the grant issued on November 17, 2020 was a nullity as it provided for rectification of grant confirmed on December 5, 2018 which had expired on June 5, 2019. He relies on Section 83(g) of the Act and Kerugoya Succession Cause No. 36/2013 in *Re Estate of Wilfred Munene Ngumi*. That the applicant submits that the properties were free estate of the deceased and the beneficiaries from the



2<sup>nd</sup> house should have been involved and estate distributed as provided under Section 35 & 40 of the Act. The applicant further submits that there was none disclosure of material facts. That the applicant and the siblings were denied their right to be heard as the applicant misled court that she had served the application and that it was not opposed. He referred to the case of *Vishva Stone Suppliers Company v RSR Stone* (2006) Limited Civil Application 55/20) Court of Appeal where the court stated that “the right to hearing is not only constitutionally entrenched but it is also the corner stone of the rule of law, the right to be heard is a valued right and that the right of a party to be heard before adverse action or decision is taken against such party is so basic that a decision which is arrived at in violation of it will be nullified even if the same decision would have been reached had the party been heard because the violation is considered to be a breach of natural justice.”

He also referred to Chuka High Court Misc Succession Cause No.47/2017 *in the matter of the Estate of M’Imwitha M’Ithanga alias Imwitha Ithanga (deceased)* Esther Kambura & 4 Others v Rose Igoki where it was stated-

“It is important to appreciate that every person has the right to be heard before a decision is made to affect his rights. This natural justice law principle is so important that it found itself enshrined in Article 50 (1) of the Constitution.”

He submits that the beneficiaries from the 2<sup>nd</sup> house who were entitled to the properties in dispute ought to have been given an opportunity to be heard. The applicant submits that the grant issued to the applicant was obtained fraudulently upon concealment and none disclosure of material particulars including the existence of the applicant and her siblings from the second house and their entitlement to equal shares of land parcel the subject matter in the application. That the applicants had not renounced their right to the estate. He prays that the application be allowed and the orders be set aside.

For the first respondent, it is submitted that the applicant has admitted that the properties belonged to his brother- page 4 of the submission. This is not correct and is misleading. What she has stated is that the title deed for parcel No. Karingani/Mugirirwa /1108 was handed over to her by her brother. She has not admitted that it was the property of his brother. The 1<sup>st</sup> respondent submits that she is a dependant of the deceased by virtue of being the wife of his deceased son Edward Kathumi M’Njau. She had obtained letters of administration in the estate of her deceased husband. The 1<sup>st</sup> respondent submits that counsel for the applicants, Basilio Gitonga was served and did not oppose the application. Although the 1<sup>st</sup> respondent submits that the properties in dispute were left out during the succession, of the estate of the deceased, she has not stated why she left out other beneficiaries of the deceased who had jot waived their right to inherit their rightful shares. The 1<sup>st</sup> respondent submits that the summons which led to amended grant was not filed as a rectification under Section 74 of the Act but was filed under Section 47 of the Act which gives the High Court the right to entertain any application under the Act. That the summons does not meet the threshold for revocation of the grant. The second respondent filed her submissions. Her contention is that the deceased had transferred land parcel No. Karingani/Mugirirw/1107 to her husband, now deceased, but did not process the title deed in his name during his lifetime. That the 1<sup>st</sup> respondent application to amend the grant was allowed that the applicant’s advocate and he appeared in court and did not oppose the application. The second respondent has urged the court to find that it lacks jurisdiction to entertain the summons for revocation of grant as it is functus office having confirmed the grant.

The 1<sup>st</sup> and 2<sup>nd</sup> applicant filed further submissions in response to the submissions by the respondents and submits that respondents never attended court and proceedings are being conducted through proxy by cartels. That submissions for 2<sup>nd</sup> respondent appear to have been filed for both respondents who had withdrawn from appearing for the 1<sup>st</sup> respondent. This appear to be the case when one



reads through the submissions. That the heading of the submissions appears to have amended the pleadings without leave of the court. That the 2<sup>nd</sup> respondent did not file a replying affidavit to the application dated March 10, 2021 by replying affidavit or grounds of opposition. He has urged the court to reject the submissions. The second respondent has indeed relied heavily on the affidavit of the 1<sup>st</sup> respondent. This is totally unacceptable as she has not sworn an affidavit and has submitted on matters of fact which amounts to giving evidence in her submissions. That kind of process is not what is envisaged in submissions. The contents of the submissions are misrepresentation of facts not given on Oath, erroneous and misleading and deceptive. I have pointed this out already when analyzing the submissions. It is trite that submissions are not avenues for parties to give evidence.

In a matter where parties have been given an opportunity to file affidavits, their evidence must be presented in the affidavits and not submissions. I agree with the 2<sup>nd</sup> respondent's submissions by the counsel for the applicant that the submissions are misleading, erroneous and a misrepresentation of facts.

I have considered all the averments in the affidavits sworn by the respective parties. I have also considered all the submissions by the parties which were quite lengthy and have summarized them in this Judgment.

I find that there are issues which are not in dispute:

These are-

1. The subject matter of this succession is the estate of Ezra M'Njau M'Rwanda alias Ezra Njau Ruanda (deceased).
2. Land Parcels No. Karingani/Mugirirwa/1107 and 1108 are registered in the name of deceased.
3. The deceased was polygamous and had three wives namely:-Elizabeth CiamaraAbishai CianjokaMargaret Ciankui
4. The applicant Brettah Muthoni Mungai is a daughter of the deceased from the second house.
5. The administratrixes are daughters of the deceased from the 3<sup>rd</sup> house who obtained a grant which was confirmed on December 5, 2018. The issue which arises for determination before me is revocation of grant.

## Analysis

11. The instant application is expressed to have been brought under the provisions of Section 47, 76, and 83(3) of the *Law of Succession* Act as read with Rules 25(5) and 73 of the *Probate and Administration* Rules; Order 22, Rule 22 and Order 10, Rule 11 of the *Civil Procedure* Rules; and Articles 47(1), 48, 50(1) and 159 of the Constitution.
12. The law on revocation of a grant is provided for 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.
  - d. ...
  - e. ...”
13. 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.
14. In this case, it is not in dispute that the deceased had three wives, that is, the late Elizabeth Ciamara (first wife), the late Abishag Cianjoka (second wife), and the late Margaret Ciankui (third wife). From the evidence on record, it is also clear that the deceased had distributed his properties among the three households before his demise. The administratrixes are sisters and come from the third household where their mother was the late Margaret Ciankui. In their application for confirmation of the grant issued to them, administratrixes only identified L.R. No. Karingani/Ndangani/3271 as the only property comprising the estate of the deceased and proceeded to distribute the same amongst the daughters of the deceased’s third wife as per the wishes of the deceased. This was despite having identified all the dependants of the deceased in all the three households.
15. In my view, the application dated November 3, 2020 was brought to this Court by concealment of material facts. Statutory law is quite clear that concealment of material facts from the court is a ground for the revocation of a grant which had been issued to a party in a succession matter. In the persuasive case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] eKLR the court reiterated the grounds upon which a grant can be revoked. It stated as follows:-

The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

The 1<sup>st</sup> respondent had no *Locus Standi* to file the application for amendment of grant as she had not obtained letters of administration in the estate of her deceased husband. Furthermore, it is clear that she did not serve the beneficiaries from the second house who had a right to be heard on the issue of the distribution of estate. The rights of the beneficiaries to be heard cannot be taken away.

Articles 50(1) of the *Constitution* provides that:-

- (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

It calls for the fairness to all the parties. The right to be heard is a cardinal principle of Natural Justice which requires that a party who is likely to be affected by a decision must be given an opportunity to be



heard. Furthermore, right to fair hearing cannot be limited whether or not the party will be successful in the end.

The court has wide discretionary powers to revoke a grant. The discretion of the court must be exercised fairly and judiciously. The party must tender evidence to prove that there exists grounds for revocation of the grant as provided under Section 76 of the Act. The applicant has shown that the grant was obtained through misrepresentation and non-disclosure of material facts. As a result the grant was rectified contrary to the provisions of Section 83 of the Act for the reasons that it was rectified after the lapse of six months from the date of confirmation. On December 5, 2018 rendering it useless and inoperative. Of concern is the fact that the summons to rectify or to amend the grant was filed by the 1<sup>st</sup> respondent who was not a party to the succession cause as she lacked locus standi and the application was not filed by the administrators of the estate who have urged the court to revoke the grant. Secondly there was another succession cause which was filed in Nairobi with regard to the same estate which brings the question whether these proceedings are properly before this court. The estate of the deceased seems to have been distributed in accordance with his wishes. The grant amended by this court cannot be upheld. In the circumstances I find that the summons has merits.

I order that:-

- a. The grant issued by this court on December 4, 2018 and amended and confirmed on November 17, 2020 is revoked.
- b. I appoint Brettah Muthoni Mungai (2<sup>nd</sup> House) and Lacton Mutegi Njau (3<sup>rd</sup> house) as the administrators of the Estate of the deceased. The 1<sup>st</sup> house was not involved in the issues before this court but if they so wish they are at liberty to appoint a representative from their house as an administrator to be appointed by the court.
- c. The administrator to file summons for confirmation of grant within thirty days.
- d. Costs to the applicant payable by the Interested Party Joyce Kathanje.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 31<sup>ST</sup> DAY OF JULY 2023.**

**L.W. GITARI**

**JUDGE**

