



REPUBLIC OF KENYA



**In re Estate of Silas Ndwiga Isaac (Deceased) (Succession Cause 1122 of 2015)
[2023] KEHC 21816 (KLR) (Family) (28 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21816 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 1122 OF 2015

PM NYAUNDI, J

JULY 28, 2023

**IN THE MATTER OF THE ESTATE SILAS NDWIGA ISAAC
(DECEASED)**

BETWEEN

GLORIOUS ANITA NYAKIO 1ST APPLICANT

JANESELLA WANJA AMOS 2ND APPLICANT

AND

MARY IGANDU NJAGI RESPONDENT

JUDGMENT

1. By Summons dated April 27, 2023 presented under Sections 35,40,47, 76(a),(b) and (c) of the [Law of Succession Act](#), Rules 44 and 73 , [Probate and administration Rules](#) the Applicants herein seek for orders that
 - a. Spent
 - b. Spent
 - c. That the grant of Letters of Administration made to Mary Igandu Njagi on the 25th of January 2022 and the Certificate of Confirmation of Grant issued on November 23, 2022 be revoked and annulled under the provisions of Section 76 (b) and (c) on the basis that the same was obtained fraudulently and by concealment of material facts to court relating to the estate.
 - d. Grant and which may have changed the assets of the estate subject of this application be declared a nullity in law. (sic)



- e. That the Court does declare that the beneficiary being the 2nd Applicant herein who was left out in the application for the grant as beneficiary to the estate and is entitled to share the assets of the estate.
 - f. That the Court remove the beneficiaries named by the Respondent being Pauline Makena Ndwiga, Dennis Murimi Ndegwa and Victor Macharia Ndwiga as beneficiaries to the estate as they were fraudulently included as beneficiaries.
 - g. That the costs of this Application be in the cause.
2. The Application is Supported by the Affidavit of the 2nd Applicant sworn on the April 27, 2023. The Summons is opposed and the Respondent has sworn an affidavit of opposition dated June 15, 2023.
 3. The Court directed that the matter proceeds by way of written submissions. Both the Applicants' and Respondent's submissions are dated June 30, 2023.

Summary of applicants' submissions

4. The Applicants seek the revocation of the grant of letters of Administration and certificate of Confirmation of grant. The 1st and 2nd Applicant aver that they are the daughter and wife of the deceased and protest that they were not involved in the proceedings related to obtaining the grant.
5. The Applicants frame the following as the issues for determination
 - a. Whether the proceedings to obtain the grant were defective
 - b. Whether 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
6. The Applicants contend that to the extent that the Respondent failed to involve them in the process of obtaining and confirming the grant the process was incurably defective and runs afoul of Section 76 of the *Law of Succession Act*.
7. They are aggrieved that on account of their non-participation the 1st Applicant was denied her fair share of the Estate and the 2nd Applicant was disinherited.

Summary of respondent's submissions

8. The Respondent frames the issue for determination to be –
 - i. Whether the Certificate of Confirmation of grant issued to the Respondent should be revoked
9. The Respondent submits that the Application is incompetent as it seeks to revoke a confirmation of grant
10. Further the Respondent avers that the matter has history as the Court on 19th August 2016 had annulled letters colligenda bona defuncti issued to the 2nd Applicant. It is contended that the Applicants have always been aware of the matter but have been uncooperative and non responsive.
11. That the matter had stalled as the Applicants refused to acknowledge 2 of the Children of the Respondent as dependants of the deceased.



12. It is the Respondent's assertion that the 2nd Applicant having deserted her marriage with the deceased, cannot stake a claim to the estate. The Respondent acknowledges that the 1st Applicant did not participate in the proceedings but avers no prejudice was suffered as she was provided for in the distribution of the estate.

Analysis and determination

13. Having carefully reviewed the pleadings, rival submissions along with the authorities cited and the applicable law, I discern the following as the issue for determination.

- a. Whether the grant of Letters of Administration made to Mary Igandu Njagi on the 25th of January 2022 ought to be revoked
- b. Whether the Certificate of Confirmation of Grant issued on November 23, 2022 ought to be revoked
- c. Who should pay costs

14. Section 76 provides;

"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..."

15. It is clear therefore that Section 76 relates to Grant of Letters of Administration and not Certificates of Confirmation of Grant. Courts in previous decisions have had occasion to interpret this Section and have struck out summons that seek to revoke Certificates of Confirmation.

16. I concur with the decision of Musyoka J *in re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where he held that;

12. As stated above, the principal concern of the applicant is the confirmation of the grant. What he seeks principally is revocation of the certificate of confirmation of grant. The question then that arises is whether a certificate of confirmation of a grant is in fact a grant of representation intestate or the equivalent of a grant, to be revoked or annulled through section 76 of the *Law of Succession Act*. The answer to that question, appears to me, to be that a certificate of confirmation of grant is not a grant of representation.

13. Grants of representation take the form stated in sections 53 and 54 of the *Law of Succession Act*. They are either a grant of probate or of letters of administration intestate or of letters of administration with will annexed or limited grants. A certificate of confirmation of grant does not take any of those forms, and it cannot possibly, therefore, be a grant of representation. It is a document extracted from the orders that a court makes after confirmation of a grant under section 71 of the *Law of Succession Act*, as evidence the fact that a grant of representation has been confirmed. It should be emphasized that the confirmation process does not produce another grant. The grant sought to be confirmed, through that process, remains intact, after confirmation. Quite clearly, therefore, a certificate of confirmation of grant is not a grant of representation, and for that reason it is not available for revocation under section 76 of the *Law of Succession Act*.

17. On that ground I would agree with the Respondents that the Court cannot revoke a certificate of confirmation of grant.



18. Regarding the Grant of Letters of Administration, the parties are agreed that the Applicants did not participate in the process. It is also not in dispute that they are the daughter and wife of the Deceased. Section 76 provides that

"A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an 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 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
- e. 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 has ordered or allowed; 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 has produced any such inventory or account which is false in any material particular; or
- f. The grant has become useless and inoperative through subsequent circumstances."

19. I find that the failure to involve the Applicants makes the grant revocable. The power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the persuasive decision of [*Albert Imbuga Kisigwa vs Recho Kawai Kisigwa*](#) Succession Cause No 158 of 2000 where Mwita J stated: -

"Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice."



20. In the instant case I find that it is in the interest of justice to make the following orders
- a. The grant of Letters of Administration made to Mary Igandu Njagi on the 25th of January 2022 is revoked and all consequential orders including the Certificate of Confirmation of Grant are set aside
 - b. A Fresh Grant of letters of Administration issue jointly to Mary Igandu Njagi and Jane Sella Wanja Amos
 - c. Administrators to file summons for confirmation of Grant within 60 days in the event they are unable to agree either can proceed to file Summons for Confirmation and the other party will be at liberty to file affidavit of protest.
 - d. The matter to be mentioned on November 21, 2023 to confirm compliance and take further directions
 - e. Each party will bear their costs.

It is so ordered.

SIGNED, DATED AND DELIVERED IN VIRTUAL COURT THIS 28TH DAY OF JULY, 2023.

P. NYAUNDI

JUDGE

