



In re Estate of David Wang’ang’a Gichuhi (Deceased) (Succession Cause 56 of 1995) [2023] KEHC 21332 (KLR) (Family) (4 August 2023) (Judgment)

Neutral citation: [2023] KEHC 21332 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 56 OF 1995
MA ODERO, J
AUGUST 4, 2023
IN THE MATTER OF THE ESTATE OF DAVID WANG’ANG’A GICHUHI (DECEASED)**

BETWEEN

JACOB GICHUHI WANG’ANG’A APPLICANT

AND

HANNAH WANJIRU WANG’ANG’A RESPONDENT

JUDGMENT

1. Before this Court is the Chamber Summons dated October 9, 2020 by which the Applicant Jacob Gichuhi Wang’ang’a seeks the following orders.

- “1. That the Grant of representation issued to Hannah Wanjiru Wang’ang’a and confirmed on the May 24, 1996, amended on September 25, 1996 and rectified on June 30, 2004 be annulled or revoked.
2. That in the alternative, this Honourable Court be pleased to appoint 2 interim guardians/managers of the Deceased estate and to therefore, access make enquiry, take inventory, take control of all the assets and in addition to take all necessary preservatory measures thereto.
3. Spent.
4. That the said Hannah Wanjiru Wang’ang’a do file inventory and statements of accounts of all monies of the said estate collected to date disclosing the banks in which such monies are deposited with accompanying bank statements.



5. That the Applicant be granted an upkeep allowance of Kshs 200,000/= per month backdated from 2019 June.
 6. That this Honourable Court revokes the ownership of Nairobi/Block 83/4/279 back to the estate.
 7. Spent.
2. The Summons is brought pursuant to Section 48, 71, 76 of the Law of Succession Act, Chapter 160 Laws of Kenya and Rule 44 (1), (2), (3) and (4), 63, 73 of the Probate and Administration Rules and is supported by the Affidavit of the David Wang'ang'a Gichuhi, (a son to the Applicant) dated October 8, 2020.
 3. The Respondent/Administratrix Hannah Wanjiru Wang'ang'a opposed the Summons through her Replying Affidavit dated June 23, 2021.
 4. The matter was canvassed by way of *vive voce* evidence in open court. The hearing of the suit commenced on before Hon. Lady Justice Achode (as she then was). Upon elevation of the of the trial Judge to the Court of Appeal I took over the matter and concluded the hearing.

Background

5. This succession cause relates to the estate of the late David Wang'ang'a Gichuhi (hereinafter 'the Deceased') who died intestate on December 22, 1994. A copy of the Death Certificate Serial Number 54289 is annexed to the Petition for Grant of letters of Administration intestate.
6. The Deceased was survived by the following persons.
 - (i) Hannah Wanjiru Wang'ang'a – widow
 - (ii) Jacob Gichuhi Wang'ang'a – son
 - (iii) Joshua Gitonga Wang'ang'a – son
 - (iv) Isaac Mbuthia Wang'ang'a – son
 - (v) Dorcas Nduta Wang'ang'a – daughter
 - (vi) Esther Wanjiru Wang'ang'a – daughter
 - (vii) John Ruo Wang'ang'a – son
 - (viii) Stephen Mwanki Wang'ang'a – son
 - (ix) Serah Nyambura Wang'ang'a – daughter
7. His estate comprised of the following assets;
 - (a) Plot No. 209/236/53 Nairobi
 - (b) Plot No. 209/223/5 Nairobi
 - (c) Naivasha Mwiciringiri Farm Block 4/640 to 659
 - (d) Escarpment Jet Scheme No.153
 - (e) Baba-Dogo Plot No.336/62 site No.250



- (f) Mai Mahiu Farm
 - (g) Kabati site plot No.112 Naivasha
 - (h) Kijabe Block 1/2538
 - (i) Motor Vehicle No. KRD 310, KUF 606 & KRU 964 Leyland Lorries
 - (j) Volvo St. Wagon KWN 129.
8. Following the demise of the Deceased his widow Hannah Wanjiru Wang'ang'a (the Respondent herein) sought and obtained Grant of letters of Administration intestate which Grant was issued on March 6, 1995.
 9. The Grant was duly confirmed on May 24, 1996 and later rectified on June 30, 2004. Under the terms of the confirmed Grant the entire estate of the Deceased was to devolve to the widow.
 10. The Applicant who is son of the Deceased has now filed this Summons seeking to revoke the Grant issued to the Respondent.

The Evidence

11. PW1 David Wang'ang'a Gichuhi told the court that he was the son of the Applicant Jacob Gichuhi Wang'ang'a who was the eldest son of the Deceased herein. In other words, PW1 is the grandson of the Deceased. PW1 states that he had been Granted a power of Attorney registered on October 17, 2016 P/A 6658711 by his father granting him authority to proceed with the case on behalf of his said father Jacob Gichuhi Wang'ang'a.
12. The Applicant confirms that the entire estate of the Deceased was to devolved the widow but insists that she was to hold the said properties as trustee for the remaining beneficiaries.
13. PW1 alleged that the widow has committed several illegalities in administering the estate of the Deceased in that she sold or caused to be sold several of the assets which make up the estate. That the properties so disposed off include but are not limited to the following:-
 - (a) Baba Dogo Plot Nos. 215, 216, 216R, 217 and 218 comprised in LR No.336/62 Baba Dogo
 - (b) Naivasha Mwiciringiri Farm Block 4/60 to 65
 - (c) Naivasha Mwiciringiri Farm Block 4/2989
 - (d) Naivasha Mwiciringiri Farm Block 4/2967
 - (e) Naivasha Mwiciringiri Farm Block 4/2991
 - (f) Naivasha Mwiciringiri Farm Block 4/2993
 - (g) Mai Mahiu Farm
 - (h) Limuru/Kamirithu/1716
 - (i) Kabati site Plot No.112
 - (j) Motor Vehicle No. KRD 310 Leyland Lorry
 - (k) Motor Vehicle No. KUF 606 Leyland Lorry
 - (l) Motor Vehicle No KRU 964 Leyland Lorry



- (m) Motor Vehicle No KPY 805 Leyland Lorry
14. The Applicant's father accused the Administratrix of the following illegalities: -
- (1) Purchase of Nairobi/Block 83/14/27 in Umoja estate for approximately Kshs 11,000,000/= which property the Respondent later transferred to Issac Mbathia for Kshs 1,000,000/=
 - (a) That the Respondent together with John Ruo on 9th December, 2008 obtained a facility for Kshs 17,500,000/= from Housing Finance Company of Kenya Ltd (HFCK) using as security the Title to LR No.209/223/5 an asset belonging to the estate.
 - (2) That the Respondent together with John Ruo secured a loan of Kshs 17,000,000/= from Consolidated Bank using as security Title to LR No.209/136/53 Kirinyaga Road.
 - (3) Obtaining together with John Ruo a facility of Kshs 6,000,000/= from ECO Bank using as security Title to LR No.209/223/5 and LR 209/136/53.
 - (4) Acquisition of a facilities worth Kshs 20,000,000/= from Southern Credit Bank (now Equatorial Bank) using Title to Nairobi/Block 83/14/279 Umoja Innercore and LR No. 209/12308/111 South 'C' as security.
 - (5) That the Respondent sold Title Number Kiambogo/Miroreni Block 1/44 (Therero) for approximately Kshs 22,000,000/=.
 - (6) Purchased a Toyota Premio Registration KBG 571G currently being utilized by John Ruo.
 - (7) That the Respondent and John Ruo disposed parcels of land in Naivasha Mwiciringiri Block 4/91 without the consent of all the beneficiaries.
15. The Applicant alleges that he was neither consulted nor involved in the sale of the said assets and adds that he did not receive a single cent from the proceeds of sale of the said assets.
16. The Applicant alleges that due to her advanced age the Respondent is suffering from decline in her mental capacity and is no longer capable of administering the estate. That with that realization the Respondent and others formed a company known as Jjidessah Investment Limited (hereinafter referred to as 'Jjidessah') to which the properties known as LR 209/223/5 and LR 209/136/53 were transferred.
17. Applicant claims that though he was not involved in the formation of this company he and the other beneficiaries have been allocated one (1) share each in said company. He complains that the company Directors have never called for an Annual General Meeting and no dividends have ever been declared. That the company's business is controlled by one beneficiaries Issac Mbathia Wang'ang'a and the Advocate of the Administrator. That therefore, the Grant issued to the Respondent has become inoperative and ought to be revoked.
18. The Applicant complains that the Directors of the Company run the same at their own whims and claims that the Administrator is kept holed up in her house in South C and no beneficiary is able to access her in order to discuss issues relating to the estate.
19. The Applicant alleges that the Grant was obtained fraudulently as the fact that one beneficiary was a minor was not revealed to the court. The Applicant claims that the estate realizes a monthly income of approximately Kshs 4-5 million monthly. That the Administrator has allowed some beneficiaries to loot the estate to the detriment of the Applicant who lives a pathetic life without any benefit being derived from the estate.



20. PW1 concludes that it is evident that the Respondent does not have control of the estate due to her deteriorating mental capacity and old age, leading to mismanagement of the estate. He prays that for the above reasons the Grant be revoked.
21. PW2 Jacob Gichuhi Wang'ang'a told the court that he is the first-born son to the Deceased and was the father to PW1. He states that the Respondent is his biological mother.
22. PW2 confirms that it was agreed that the Grant in respect of the estate of their late father be issued to the Respondent who was to hold all the estate assets as trustee for the other beneficiaries. That the Respondent was to manage the estate on behalf of the other beneficiaries.
23. PW2 states that he is diabetic and is therefore unable to work. He states that he has never been given his share of the estate but concedes that the Administrator had since the year 2014 to 2019 been giving him a sum of Kshs 50,000/= monthly to support himself. However, the said payments stopped in the year 2019 The Applicant prays to be paid an amount of Kshs 200,000/= monthly from the income derived from estate property.
24. According to PW2 Jjidesah Company Limited was formed in order to consolidate all the estate assets so they could be disposed in order to clear estate liabilities. He states that his brothers took loans of Kshs 14 million and 17 million using estate property as security. PW2 confirms that he holds one (1) share in 'Jjidesah'. PW2 complains that he has been denied all access to his mother who is the Administratrix of the estate. He prays that the Grant be revoked as the estate is being mismanaged to his detriment.
25. PW3 Samuel Munchai Mucheru told the court that he has been a close friend to PW2 for several years. That in fact he was the chairman of the burial committee following the death of the Deceased. PW3 states that he was fully aware of all developments concerning the estate.
26. PW3 states that when the Grant was issued one of the beneficiaries was a minor thus the Respondent could only hold the estate property as trustee. He states that given her advanced age the Respondent does not have the capacity to manage the estate.
27. PW3 asserts that the Applicant has derived no benefit at all from the estate and that it is he who the Applicant turns to for financial assistance to manage his medical condition. He supports the prayer to have the Grant revoked.
28. PW4 Claire Kimani is the last-born daughter of the Deceased. She states that she has changed her names by Deed Poll from Serah Wang'ang'a to Claire Kimani. She states that she was sixteen (16) years old and therefore a minor when the Deceased died.
29. PW4 states that by mutual agreement the Respondent was to hold the estate properties in trust for the other beneficiaries. She states that she purchased the house in South C for her mother and had the same registered in the name of the Respondent.
30. According to PW4 the Respondent is mentally unstable and forgetful on account of her advanced age. She states that it is her brother Issac Mbuthia who is running the estate and making decisions for the Administrator.
31. PW4 states that to-date twenty-six (26) years after the demise of the Deceased she has not received her share of the estate. She supports the Summons for revocation of Grant filed by the Applicant.
32. As stated earlier the Summons was opposed. The Respondent filed a Replying Affidavit dated 23rd June, 2021 in which she confirmed that Grant of letters of Administration intestate in respect of the



estate of the Deceased were issued to her on 6th March, 1995. That the Grant was confirmed on 24th May, 1996 and later rectified on 30th June, 2004.

33. The Respondent confirms that the Applicant Jacob Gichuhi Wang'ang'a is her eldest son and states that the Applicant has filed numerous applications in this cause demanding to be given a share of the estate to the exclusion of the other beneficiaries.
34. The Respondent states that the estate has been fully distributed and that there remain no assets available for distribution. She states that all the properties belonging to the estate have been transferred into the name of Jjidessah Investment Limited, which is a limited liability company which was formed to hold said assets for the benefits of all the beneficiaries. That all the beneficiaries to the estate have an equal shareholding in the company of one (1) share each.
35. The Respondent explains that out of love and affection she used to give the Applicant a sum of Kshs 50,000/= per month but decided to cease the payments when the Applicant began filing numerous applications in this matter, and she needed the money to pay legal fees to enable her defend the numerous applications filed by the Applicant.
36. The Respondent further states that the current application is a mere regurgitation of the several Applications filed by the Applicant all of which were dismissed by the court. That having already pronounced itself on this matter the High Court is now 'functus officio'. That the present summons in 'Res Judicata' and proper remedy for the Applicant would have been to appeal the earlier decisions if he was dissatisfied not to file yet another application.
37. The Respondent states that although her youngest daughter was Sixteen (16) years old when the Deceased died the said daughter had reached the age of majority when the Grant was confirmed.
38. The Respondent asserts that she is mentally stable and is capable of managing the estate. That the allegation that she is mentally unstable apart from being untrue are only meant to vex and antagonize her.
39. The Respondent argues that the application is therefore, frivolous vexatious and amounts to an abuse of court process. She prays that the same be dismissed in its entirety.
40. DW1 Issac Mbutia Wang'ang'a is a son to the Deceased. He told the court that he lives with his wife and children in the USA. That sometime in the year 2006/2007 he and his wife sent money to their sister Esther Wang'ang'a for the purchase of Nairobi/Block 83/14/279 situated in Umoja Inner Core estate.
41. Since DW1 and his wife were not able to travel immediately to Kenya, they decided to have the Umoja Property registered in the name of their mother (the Respondent). Later on DW1 and his wife travelled back to Kenya and had the property transferred into their names.
42. The witness states that he later developed this Umoja property using a loan of Kshs 11 million acquired on their behalf by his brother John Ruo Wang'ang'a to whom he had issued a power of Attorney. Therefore, according to DW1 this Umoja property was acquired and developed by himself and his wife using their own funds. He asserts that the said property does not form part of the estate of the Deceased and is not available for distribution to the Applicant or to any of the other beneficiaries.
43. DW1 insists that the estate has been fully distributed and further insists that the Applicant has been fully involved in the management of the estate. DW1 states that the Applicant has benefitted from the estate as from the year 2014 to 2019 he was receiving a monthly allowance from the estate. That



in addition the Applicant was given thirteen (13) acres of land in Mbaruk, Nakuru County which he later sold.

44. DW1 told the court that the properties known as Plot No.209/223/5 located along Race Course Road and LR No.209/156/53 located along Kirinyaga Road are now both registered to Jjidesah Investment Limited which is the family company of which the Applicant is a Director. That each member of the family holds shares in the said company.
45. DW1 stated that the company cannot afford to meet the Applicant's demand for a monthly payout of Kshs 200,000/= as it is currently repaying loans taken at the rate of Kshs 500,000/= per month.
46. DW1 admits that his mother is elderly but categorically denies that she is mentally unstable. He insists that the Respondent is perfectly capable of running the estate.
47. DW1 also stated that the Applicant who is his brother has filed numerous applications in this Succession Cause in an attempt to forcefully take over the estate properties. He urges the court to dismiss this Summons entirely.
48. Upon conclusion of the oral evidence the parties were invited to file their final submissions. The Applicant filed the written submissions dated 13th February, 2023 whilst the Respondent relied upon her written submissions dated 22nd March, 2023.

Analysis and Determination

49. I have carefully considered this Summons for revocation of Grant the replies filed in opposition thereto, the evidence adduced by the witnesses as well as the written submissions filed by both parties. The following are the issues which arise for determination.
 - (i) Whether the court should compel the Administrator/Respondent undergo a medical assessment.
 - (ii) Whether Nairobi/Block 83/14/279 is estate property
 - (iii) Whether the Administrator should be ordered to pay the Applicant Kshs 200,000/= per month.
 - (iv) Whether the Grant should be revoked.

i. Whether the Administrator should undergo medical assessment

- . It is common ground that following the demise of the Deceased David Wang'ang'a Gichuhi On December 22, 1994 His Widow Hannah Wairimu Wang'ang'a (the Respondent herein) was on March 6, 1995 issued with letters of Administration intestate in respect of the estate.
50. That Grant was dully confirmed on May 24, 1996 and was later rectified on June 30, 2004. Under the terms of the confirmed Grant the estate was to devolve entirely to the widow.
51. The Applicant accuses the Respondent of having mismanaged and wasted the estate. He alleges that the Administrator is of advanced age ninety (90) years old. The Applicant alleges that the Respondent who is his biological mother suffers dementia and is mentally incompetent to run the affairs of the estate.
52. The Respondent and DW1 whilst conceding that the Respondent is of an advanced age vehemently deny the allegation that she suffers from any mental incapacity and deny that the Respondent is incompetent to manage the estate.



53. It is trite law that “he who alleges must prove”. In law the burden of proof lies upon the party who asserts the existence of a fact or set of facts. Section 107 of the Evidence Act Cap 80 Laws of Kenya provides as follows:-

“ 107 (1) whoever desire any court to give Judgement as to any legal rights on liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person”

54. The Applicant and his witnesses have alleged that the Respondent is mentally incompetent. This is a very serious allegation which under the provisions of Mental Health Act 2022 if proven would have very serious consequences.

55. Surprisingly the Applicant has not tendered any iota of evidence to prove this claim. No medical report prepared by a Psychiatrist in respect of the Respondent has been availed. Similarly, there is no evidence tendered to show that the Respondent has ever been treated for any mental illness.

56. If the Applicant was convinced that the Respondent was mentally incompetent he had the option to commence Guardianship proceedings under the Mental Health Act. He has not done so.

57. Basically, the Applicant has just made sweeping allegations regarding the mental state of his mother without any evidence to back those allegations. The mere fact that the Respondent is an elderly woman does not render her mentally incompetent. There are many elderly people in Kenya and indeed around the World who are successfully managing their affairs despite their advanced age.

58. No sufficient basis has been had to persuade the court to make orders compelling the Respondent to undergo a mental assessment. I find no merit in this prayer and the same is hereby dismissed.

(ii) Whether the Property known as LR No. Nairobi/Block 83/14/279 forms part of the estate

59. The Applicant contends that the property known as LR No. Nairobi/Block 83/14/279 situated at Umoja Inner Core in Nairobi forms part of the estate of the Deceased. He claims that this Umoja Property was purchased by the Respondent on March 9, 2007 using estate funds. That said property was later transferred to Issac Mbuthia Wanganga and his wife Terryanne Wangui Mbuthia without the knowledge and/or involvement of the other beneficiaries. The Applicant complains that all the rental income derived from this Umoja property goes to Issac Mbuthia Wanganga and his wife and that he (the Applicant) has never benefitted from said property.

60. The Applicant alleges further that the Respondent and John Ruo Wanganga later secured a financial facility of Kshs 17,000,000 from Housing Finance Company of Kenya using the estate property as security for the loan. That part of the said loan facility was used to complete construction / development of the Umoja Property which is now registered in the name of Issac Mbuthia Wanganga and his wife. That the other beneficiaries are not deriving any benefit at all from this Umoja Property.

61. On his part DW1 categorically denies that the said property ‘Umoja property’ belongs to the estate. He asserts that he and his wife purchased the property and initially had it registered in the name of their mother (Respondent) as they were at the time residing in the USA. Later when the couple came to Kenya DW1 and his wife facilitated the transfer of the Umoja Property into their own names. He reiterates that his property does not form part of the estate of the Deceased.

62. A careful look at the rectified certificate of confirmation of Grant dated reveals that the properties known as LR No. Nairobi/Block 83/14/279 was not listed as one of the assets belonging to the estate.



- The Applicant has not produced in court any documents to show that the said property was ever at any time registered in the name of the Deceased.
63. It is quite evident that this property was acquired in the year 2007 several years ‘after’ the Deceased passed away. If the widow (Respondent) purchased assets after the death of her husband those assets cannot be deemed to belong to the estate.
 64. The Applicant has made a series of allegation claiming that the Umoja property was acquired using a loan obtained against the security of a property belonging to the estate. He was annexed no documentation to prove these claims.
 65. On the other hand, DW1 was annexed to his Affidavit dated February 9, 2022 a copy of the certificate of Title for LR Nairobi/Block 83/14/279 which Title document indicates that the said property belongs to Issac Mbuthia Wang’ang’a And Terryne Wangui Mbuthia (Annexure INW ‘2’). Similarly, a certificate of official search Annexure IMW 5(c) dated October 3, 2017 indicates that the said property is registered in the name of DW1 and his wife. A certificate of Title is prima facie evidence of ownership.
 66. DW1 has also annexed to his Affidavit documentation showing that he acquired and developed the Umoja property using loans from Kenyan Banks secured on his behalf by his brother John Ruo Wang’ang’a. [Annexure IMW 5(c)] is a letter from Equatorial Commercial bank dated September 14, 2010 confirming the released of the Title for this Umoja Property upon payment of the loan balance of Kshs 15.5 Million. Similarly Annexure IMW 5(b) is a letter dated December 19, 2011 from Kenya Commercial Bank confirming the take over of the loan secured on LR No. Nairobi/Block 83/14/279.
 67. A copy of official search dated 3rd October, 2017 shows that the Umoja property was charged to Kenya Commercial Bank Limited for Kshs 10,000,000/= (Annexure INW 5C). There is no indication of any loan secured by estate property. Annexed to the Affidavit of DW1 is evidence that he had donated to the said John Ruo Wang’ang’a a power of Attorney to enable the latter transact on his behalf in respect of the Umoja property Annexure INW 6 is a copy of the Revocation of Power of Attorney.
 68. DW1 has explained that as he and his wife were out of the country they initially had the Umoja property registered in the name of their mother. Later when they came back to Kenya the property was transferred into their names. The mere fact that the said property was initially registered in the name of the Respondent does not make it estate property. Does the Respondent not have the right to purchase property in her own name?
 69. In any event if the Applicant wishes to pursue his claim that the Umoja Property belongs to the estate of the Deceased and not to DWI and his wife, then the proper forum at which he ought to file suit is the Environment and Land Court (ELC) which is the only court empowered under Article 162 (2) (b) of the *Constitution of Kenya, 2010* to make a determination on issues of ownership use, an occupation of land. The duty of this Probate Court is to oversee the distribution of the estate to the genuine heirs.
 70. All in all, I find no evidence to prove that LR No. Nairobi/Block 83/14/279 ever formed part of the estate of the deceased. All the evidence available demonstrates that the property belongs to DW1 and his wife. The Applicant is merely suffering from “big eye syndrome” Instead of working hard to acquire his own properties he has set his sights on property acquired by his brother I therefore, dismiss the prayer to have the Umoja property reinstated to the estate of the Deceased.

(iii) Whether the Applicant should be paid Kshs 200,000/= monthly

71. The Applicant has asked the court to compel the Respondent an Administrator of the estate to pay him Kshs 200,000/= monthly for his upkeep. He complains that he has not received his share of the estate. The Applicant states that he is unable to work to earn a living as he suffers from diabetes. It is



a fact that many persons who suffer from diabetes are engaged in productive work. This alone is not a reason for the Applicant not to work.

72. The Respondent retorts that the estate has been fully distributed and that there remain no assets available for distribution. She states that the estate assets being Plot No. 209/223/5 located along Race Course Road and LR No.206/156/53 located along Kirinyaga Road are now registered in the name of Jjidessah Investment Limited which is a family company in which all the beneficiaries are shareholders.
73. The Respondent has annexed to his Replying Affidavit dated June 23, 2021 a copy of the certificate of incorporation for the said company dated December 19, 2013 [Annexure 'HWW 1(a)'] as well as a copy of the CR 12 which indicates that the Respondent director holds 990 shares Esther Wanjiku Wang'ang'a the second director holds one (1) share whilst all the other beneficiaries including the Applicant hold one (1) share each in the company, making a total share capital of 998 shares.
74. The Respondent further states that the income derived from those assets is being used to service loans in the amount of Kshs 500,000/= monthly. He explains the Estate has a facility of Kshs 37 Million with Housing Finance Company of Kenya Ltd (HFCK) which is currently being repaid using the rental income from the two properties. Thus the estate cannot afford to pay the Applicant Kshs 200,000/= monthly as demanded.
75. The Applicant stated that he was not involved in the formation of the company and that he has no idea how he came to be allocated a share in the said company. Those are not issues which this Probate Court has jurisdiction to deal with. If the Applicant has any issue with the manner in which the company was formed, failure by the company to call an Annual General Meeting and failure to declare dividends then he ought to pursue these grievances in the Commercial and Tax Division of the High Court.
76. The Applicant's position is the Respondent held the assets of the estate in trust for the other beneficiaries. Once again, I have carefully perused the certificate of confirmed Grant. It clearly indicates that all the estate assets were to devolve wholly and absolutely to the widow. There is no indication in the Grant that the widow was to hold the assets in trust for the other beneficiaries.
77. All the beneficiaries including the Applicant signed a consent to the confirmation of Grant. Even Sarah Nyambura Wang'ang'a who claimed to have been a minor when the Deceased died also signed the consent. The Applicant cannot now claim that the assets were to be held in trust when he made no such condition at the time of signing the consent. I find that the estate properties devolved entirely to the Respondent in terms of the certificate of confirmation of Grant.
78. Having said that Section 83 of the *Law of Succession Act* Cap 160 Laws of Kenya sets out the duties of personal representatives Section 83 (e) provides.

“83 personal representatives share have the following duties:-

- a.
- b.
- c.
- d.
- e. Within six months from the date of the Grant, to produce to the court a full and accurate inventory of the assets and liabilities of the Deceased and a full and accurate account of all dealings therewith upto the date of account”.



79 There is no indication that the Administrator has ever filed Account in respect of this estate. I therefore, direct that the Respondent file within four (4) months a full and accurate accounts of her management of the estate from the time the Grant was issued to her upto 19th December, 2013 when Jjidesah Investment Limited was incorporated.

(iv)) Should the Grant be revoked

80. The grounds upon which a Grant may be revoked are provided for by Section 76 of the Law of Succession Act which provides as follows:-

“

“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 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 an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegations 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”.

81. From the evidence on record the Applicant was fully involved in this Succession Cause. Indeed, by his own admission the Applicant has filed several applications in this matter. The Applicant signed the consent to have the Grant issued in the name of his mother Hannah Wanjiru Wang’ang’a. The said consent is dated 11th January 1995. He has not alleged that his signature on the consent was forged.

82. PW2 further admits under cross examination that he voluntarily signed the consent for confirmation of the Grant. PW2 stated:

“At the time of confirmation Grant I was aged 34 years old and I signed the consent to confirmation of Grant. Thereafter I began to attempt to revoke the Grant. I have been before



other Judges seeking revocation of the Grant. The court did not agree with me. The grant was not revoked.”

83. The allegation that the Respondent has mismanaged the estate has not been proved. The Applicant having fully participated in this Succession Cause cannot now come to court seeking revocation of the same Grant which he consented to in writing.

84. Moreover, as things now stand the estate has been fully distributed. It would be superfluous to revoke a Grant when there are no assets remaining in the estate. In his evidence PW1 David Wang’ang’a concedes that there is no asset remaining in the name of the estate for distribution when he states:

“ At the moment I am not aware of any asset still in the name of the Deceased. All assets have either been sold or are in the name of the limited liability Company.”

85. This is a very old matter which commenced way back in the year 1995. In my view it would be retrogressive to revoke the Grant at this stage when the matter is about to be finalized.

Conclusion

86. Finally, I find no merit in this Summons for revocation of Grant. The court now makes the following orders.

- (i) The Chamber Summons dated October 9, 2020 is dismissed in its entirety.
- (ii) The Administrator to file within four (4) months full and accurate accounts of her management of the estate from May 24, 1996 to December 19, 2013.

This being a family matter each side will bear its own costs.

DATED IN NAIROBI THIS 4TH DAY OF AUGUST, 2023.

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MAUREEN A. ODERO

JUDGE

