



REPUBLIC OF KENYA



**Mungania & 2 others v Kagendo & 2 others (Succession Cause
518 of 2001) [2023] KEHC 25799 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 518 OF 2001
TW CHERERE, J
NOVEMBER 23, 2023
IN THE MATTER OF THE ESTATE OF SOLOMON MWENDA
MUNGANIA (DECEASED)
IN THE MATTER OF APPLICATION FOR REVOCATION OF THE
GRANT**

BETWEEN

**ISAAC MURANGIRI MUNGANIA 1ST PETITIONER
JULIA KARIMI MUNGANIA 2ND PETITIONER
KIRAITU MURUNGI 3RD PETITIONER**

AND

**MERCY FRIDAH KAGENDO 1ST APPLICANT
ZIDANE MURIITHI 2ND APPLICANT
DOREEN KANANA 3RD APPLICANT**

RULING

Background

1. Solomon Mwenda Mungania (Deceased) died sometimes on 04th April, 2014.
2. His brother Isaac Murangiri Mungania (Petitioner) was on 29th October, 2015 issued with Letters of Administration Intestate. By a Certificate of Confirmation of Grant issued on 13th November, 2017, deceased's estate in Nyaki/Kithoka/4274 (suit property) was distributed to his sister Julia Karimi Mungania (2nd Respondent) and she was issued with a title deed dated 19th March, 2018.



3. Subsequently, by a sale agreement dated 23rd October, 2018, Julia Karimi Mungania (2nd Respondent) sold the suit property to Kiraitu Murungi (3rd Respondent).
4. This is the 2nd stab at revocation of the grant in this estate the first by Dorcas Mwari M'naituri, wife to deceased's half –brother was considered and dismissed on 04th November, 2021.
5. Mercy Kagwiria (deceased) who is mother to Mercy Fridah Kagendo and Zidane Muriithi (1st and 2nd Interested Parties) was sister to the deceased and the 1st and 2nd Respondents. Zipporah Gacheri (deceased) who is mother to Doreen Kanana (3rd Interested Party) was also sister to the deceased and the 1st and 2nd Respondents.
6. By summons for revocation dated 22nd November, 2022 filed on 23rd November, 2022 and supported by an affidavit sworn by Mercy Fridah Kagendo (1st Interested Party) on 22nd November, 2022 and filed on 23rd November, 2022, 23rd November, 2022, the Interested Parties seek revocation of the grant on the ground that although the family agreed that the estate be disposed off and the proceeds be shared among the beneficiaries, they did not get their intended share of the proceeds of sale. They alternatively pray that the proceeds of sale be shared equally among the beneficiaries.
7. Isaac Murangiri Mungania (Petitioner/1st Respondent) by his replying affidavit sworn on 26th April, 2023 and filed on 09th June, 2023 opposed the application on the ground that the estate was distributed wholly to the 2nd Respondent with the consent of all the parties including the Applicants herein. He additionally avers that there was no consent that the estate would be sold and the proceeds shared between the deceased's siblings or with their children where they are deceased.
8. Julia Karimi Mungania (2nd Respondent) did not file any response to this application.
9. Kiraitu Murungi (3rd Respondent) by grounds of opposition dated 18th May, 2023 and filed on 19th May, 2023 contends that he is not a party to the deceased's family's squabbles over the proceeds of sale that he paid to Julia Karimi who was the beneficiary of deceased's estate.

Analysis and Determination

10. Having considered the evidence on record and submissions filed on behalf of the Applicants and the 3rd Respondent, I have deduced two issues for determination
 1. Whether the grant in respect of deceased's estate in LR. Nyaki/Kithoka/4274 ought to be revoked
 2. Whether an order for sharing of proceeds of sale of LR. Nyaki/Kithoka/4274 by 2nd Respondent to 3rd Respondent ought to be shared with the Applicants
11. It is on record that deceased's parents are deceased and he had no wife nor children. It is undisputed that the Applicants are nieces and nephew to the deceased, the 1st and the 2nd Respondents.
12. The law concerning benefits by siblings is to be found under Section 39 of the Act which provides:
 - (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



- c. brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
 - d. half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
 - e. the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.
- (2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.
13. It is certain that 1st and 2nd Respondents who are deceased's siblings together with the Applicants are in the fourth degree of consanguinity to the deceased entitled to deceased's estate in that order.
 14. The court record reveals that by summons dated 09th December, 2016, Isaac Murangiri Mungania (Petitioner/1st Respondent) applied for confirmation of the grant and distribution of deceased's estate in LR. Nyaki/Kithoka/4274 wholly to Julia Karimi Mungania (2nd Respondent). In the application in support, Petitioner/1st Respondent listed the beneficiaries of the deceased to include the Applicants herein. To the said affidavit, Petitioner/1st Respondent annexed a consent to the mode of distribution signed by all the beneficiaries including the Applicants herein.
 15. The record reveals that the parties appeared before the court for confirmation on 13th November, 2017 and the court having satisfied itself as to the presence of all the beneficiaries including the Applicants herein and there being no objection confirmed the grant wholly in favour of the 2nd Respondent.
 16. Subsequently on the same date 13th November, 2017, a Certificate of Confirmation of Grant was issued in the sole name of the 2nd Respondent.
 17. From the material placed before the court, it has not been demonstrated that the deceased was holding LR. Nyaki/Kithoka/4274 in trust for himself and his siblings Mercy Kagwiria (deceased) who is mother to Mercy Fridah Kagendo and Zidane Muriithi (1st and 2nd Interested Parties) and Zipporah Gacheri (deceased) who is mother to Doreen Kanana (3rd Interested Party)
 18. Similarly, the Certificate of Confirmation of Grant issued in the sole name of the 2nd Respondent does not reveal that Julia Karimi Mungania (2nd Respondent) was to hold LR. Nyaki/Kithoka/4274 in trust for herself and her nieces and nephew, the Interested Parties herein.
 19. Evidence that Julia Karimi Mungania (2nd Respondent) was to share the proceeds of LR. Nyaki/Kithoka/4274 received from 3rd Respondent with the Interested Parties has also not been placed before the court.
 20. Section 76 of the *Law of Succession Act* (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 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 allegation 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 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 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.”

21. From the evidence on record, I find that Applicants have not demonstrated existence of any of the grounds for revocation set out in the foregoing section.

22. Consequently, the summons for revocation dated 22nd November, 2022 and filed on 23rd November, 2022 is found to have no merit and it is dismissed. Each party shall bear its own costs.

DATED AT MERU THIS 23RD DAY OF NOVEMBER 2023

WAMAE. T. CHERERE

JUDGE

For I. Parties/ Applicants - Ms. Otieno for Otieno. A & Co. Advocates

For 1st & 2nd Respondents - N/A for Charles Kariuki & Kiome Associates

For 3rd Respondent - Mr. Muriuki for Mbogo & Muriuki Advocates

