



REPUBLIC OF KENYA



In re Estate of Simon Njogu Wahinya (Deceased) (Succession Cause 578 of 2008) [2023] KEHC 25834 (KLR) (22 November 2023) (Judgment)

Neutral citation: [2023] KEHC 25834 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 578 OF 2008
FN MUCHEMI, J
NOVEMBER 22, 2023
IN THE MATTER OF THE ESTATE OF SIMON NJOGU WAHINYA (DECEASED)**

BETWEEN

**SALOME NJERI NJOGU 1ST APPLICANT
HANNAH WANJIRU NJOGU 2ND APPLICANT
JOSEPH MUHIA NJOGU 3RD APPLICANT
AGNES GATHONI NJOGU 4TH APPLICANT**

AND

**GEORGE WAWERU NJOGU 1ST RESPONDENT
JOSPHAT KIIRU NJOGU 2ND RESPONDENT**

JUDGMENT

Brief facts

1. These Sumons for determination dated 1st April 2019 brought under Section 26, 45, 47, 49, 71 (c) & (d), 72, 76 (a), (b) & (c), 95 of the *Law of Succession Act* and Rules 7, 49, 64 and 73 of the *Probate & Administration Rules* seeks for orders of revocation of the grant issued on 15th September 2009 and confirmed on 2nd July 2010.
2. The 2nd respondent opposed the application and filed a replying affidavit dated 20th June 2019.
3. The matter proceeded by way of viva voce evidence.



The Applicants' case

4. PW1 a daughter of the deceased testified that the 2nd applicant is her mother whereas the other applicants and the respondents are her siblings. Further that the respondents filed these succession proceedings without the knowledge or consent of the applicants and sold part of the estate of the deceased. She further stated that her mother the 2nd applicant herein does not know how to read or write and was not in a position to have filed the petition for letters of administration and obtain grant on her own as it appears to have been done herein.
5. PW1 further testified that she came to learn of the respondents' fraudulent actions in February 2019 when she stumbled upon a copy of the certificate of confirmation of grant dated 2/7/2010 in the 2nd respondent's home and discovered that the estate of the deceased had been illegally and fraudulently distributed to the 2nd applicant solely. PW1 further stated that upon confronting the respondents, they became violent and the 2nd respondent brought some title deeds in respect of land parcels that he had already sub divided and threw them at the 2nd applicant.
6. The witness stated that she conducted a search at the Lands Registry in respect of the land parcels owned by the deceased and discovered that they were registered in the 2nd applicant's names. The witness further stated that she then perused the court file and found that the respondents had prepared and filed petition for letters of administration dated 28/7/2008 without notifying the applicants. PW1 stated that upon consulting the 2nd applicant to establish whether she had been involved in these succession proceedings, the 2nd applicant stated that she was not involved in the proceedings but could only remember at one time the respondents had fraudulently tricked and misled her to append her thumb print on documents which they informed her were to correct a boundary dispute between the deceased's land and their neighbour. The witness testified that they concluded that the respondents had forged their signatures in a bid to mislead the court that they had consented to the filing of the petition for letters of administration. Accordingly, the witness stated that the grant issued on 2/7/2010 was obtained fraudulently without the knowledge of other beneficiaries who never attended court on 2/7/2010 to confirm their consent to the mode of distribution. As such, the grant ought to be revoked.
7. PW1 further testified that the respondents upon obtaining the grant, subdivided the estate of the deceased and fraudulently impersonated the 2nd applicant as the seller following which they sold and transferred the estate of the deceased to third parties thereby disinheriting the applicants.

The Respondent's Case

8. DW1, Josphat Kiiru Njogu, testified that the 2nd applicant filed the succession cause and distributed the estate to herself but gave Beatrice Nyaguthii, her co-wife a share of the estate when she filed summons for revocation of grant. The witness further stated that the 2nd applicant gave the other applicants shares in the estate.
9. On cross examination, DW1 stated that Beatrice was give 2 acres in LR No. Kirinyaga/Gathigiriri/1288 after the family held a meeting whereby the 1st, 2nd & 4th applicants and the 1st respondent were present.
10. The witness testified that the 2nd applicant is 85 years old and she can read but she cannot write and that he and the 1st respondent were allocated each $\frac{3}{4}$ of an acre at Mwea Tebere, 2 acres at Gathigiriri. The 1st and 4th applicants were each allocated $\frac{3}{4}$ of an acre at Mwea Tebere. The witness further testified that in 2008, he attended court for the Confirmation of grant and it was agreed that the entire estate be distributed to the 2nd applicant. He further stated that he recalls that he and the 1st respondent signed the petition in their advocate's office in Kerugoya.



11. DW2, Beatrice Nyaguthii Njogu, testified that she was the 2nd wife of the deceased and that the 2nd applicant filed the succession cause without informing her. Later, that DW2 filed Summons for revocation of grant whereupon the 2nd applicant gave her 2 acres of land. On cross examination, the witness stated that she abandoned her Summons for Revocation of grant upon being allocated the 2 acres of land. DW1 further testified that the 3rd & 4th applicants were present in the said meeting together with the respondents. The witness testified that the 1st applicant was not present in the meeting that resolved to give the two (2) acre portion of land.

The Applicants' Submissions.

12. The applicants submit that they never participated in the proceedings relating to the petition for letters of administration and summons for confirmation but instead the respondents filed for letters of administration by impersonating the 2nd applicant. This fact was admitted by the 1st respondent in his affidavit dated 9/10/2019 where he averred that the 2nd respondent fraudulently petitioned for grant of letters of administration and subsequently obtained the certificate of grant by impersonating their mother, the 2nd applicant. The applicants argue that the 2nd respondent did not rebut that evidence and therefore it remains binding.
13. The applicants rely on Section 76 of the [Law of Succession Act](#) and submit that the grant was fraudulently obtained as the 2nd respondent impersonated the 2nd applicant and further ricked her into appending her thumbprint on documents that she thought related to a boundary dispute. Furthermore, the applicants argue that the 2nd respondent forged the signatures of the 1st, 3rd and 4th applicants in a bid to mislead the court that they had consented to the filing of the petition for letters of administration and consented to the confirmation of the grant together with the mode of distribution of the estate.
14. The applicants further submit that owing to the fraudulent nature of the proceedings to obtain the grant, the 2nd applicant was never duly appointed as an administrator of the estate as she neither knew about the existence of the succession cause nor did she participate in the same. Although DW2, Beatrice Nyaguthii Njogu alleged during the hearing that the 2nd applicant commenced succession proceedings to her exclusion compelling her to file a case at Kerugoya Law Courts, the applicants strongly oppose those sentiments as the witness did not produce any document to prove that she filed a case at Kerugoya law Courts. The case before this court was filed in Nyeri igh Court.
15. The applicants submit that the 2nd applicant has never exercised or performed any duties accorded to her as an administrator or sole beneficiary of the estate of the deceased. She has never sold any portion of her husband's estate to third parties, never executed any sale agreement, received money therefrom or even executed transfer forms to effect transfer of her husband's estate to third parties. In the event the court holds that the 2nd applicant was an administrator of the deceased's estate, the applicants argue that she did not have authority to transfer or sell any assets of the estate of the deceased without the leave of the court pursuant to Section 35(2) of the [Law of Succession Act](#). To support their contentions, the applicants rely on the case of [Re Estate of Mbui Kabugi \(Deceased\)](#) [2019] eKLR and submit that the 2nd applicant only had life interest and thus had no capacity to dispose of any part of the estate. Consequently, the applicants argue that any purported sale or transfer of the estate of the deceased to third parties was illegal and fraudulent. Moreover, the applicants rely on the case of [Morris Mwiti Mburugu v Dennis Kimathi M'Mburugu](#) (2016) eKLR and urge the court to revoke the grant and all the subsequent sales emanating from the said grant. The applicants reiterate that the respondents intermeddled with the estate of the deceased and thus all transactions conducted by them arising from the grant confirmed on 2/7/2010 were therefore illegal, fraudulent and ought to be revoked.



The Respondents' Submissions.

16. The respondents submit that they are beneficiaries of the estate and not administrators and therefore the applicants have no cause of action against them. The respondents therefore submit that the application is an abuse of the court process as the applicants have not advanced any reasons to warrant the revocation of the grant.

The Law

Whether the applicant has presented sufficient evidence to warrant revocation or annulment of the grant.

17. Section 76 of the *Law of Succession Act* gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It states 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 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
 - iv) The grant has become useless and inoperative through subsequent circumstances.
18. The deceased died on 10th April 2008 and was survived by two widows each with five children according to area chief's letter dated 6th August 2012. The record shows that the petition for letters of administration was filed on 17th October 2008 by the 2nd applicant. A grant of letters of administration intestate was issued on 15th September 2009 followed by the 2nd applicant filing Summons for Confirmation of grant on 3rd May 2010. The grant was confirmed on 2nd July 2010 distributing the assets of the deceased. The applicants argue that although the petition for letters of administration and summons for confirmation indicate that the 2nd applicant filed the application, the 2nd applicant had no knowledge of the said proceedings and nor did she participate in these succession proceedings. The



applicants further argue that the respondents fraudulently filed this succession cause, duped their aged and illiterate mother into appending her thumb print under the pretence that the papers involved a boundary dispute with a neighbour. Later the respondents forged the signature of their siblings in the consent for distribution of the estate. The applicants further state that they had no knowledge of the proceedings and never have they attended court for Confirmation of the grant.

19. I have perused the court record which shows that the petition for letters of administration was filed by the 2nd applicant and a grant of letters of administration issued in her favour on 15th September 2009. Similarly the Summons for Confirmation seems to have been filed by the 2nd applicant. Annexed to the said summons is a consent to the confirmation of grant purportedly signed by all the beneficiaries. However, it is noteworthy that there is no consent to the mode of distribution of the estate. Furthermore, the court record shows that on 2/7/2010, when the grant was coming up for confirmation, the only person present in court was the petitioner. This position corroborates what the applicants said that during the confirmation of the grant, they were absent from court. This is further contrary to what the 2nd respondent told the court that the applicants were present in court for the confirmation of grant and they agreed that the 2nd applicant should be allocated all the properties comprising of the estate. If the applicants were present in court, the court would have put that on record. The averments of the 2nd respondent are far from the truth
20. On further perusal of the court record, it is noted that the 1st respondent filed an affidavit in support of the Summons for Revocation of the grant, dated 9th October 2009. The 1st respondent was not called as a witness by the applicants. However, the averments in his affidavit are corroborated by the testimonies of the 1st applicant and the 2nd respondent. The 1st respondent averred in his affidavit that the 2nd respondent fraudulently petitioned for grant of letters of administration and subsequently obtained the certificate of Confirmation of grant by impersonating the 2nd applicant. It is the evidence of the 1st respondent that 2nd respondent impersonated the 2nd applicant and caused sub divisions and transfer of the estate to the 2nd applicant without her knowledge and proceeded to sell some portions of the land to third parties. This evidence was were corroborated by the testimony of the 1st applicant who testified that the grant was obtained fraudulently as their mother as well as the 3rd and 4th applicants did not participate in the succession proceedings and neither did they attend court for the confirmation of the grant as alleged by the 2nd respondent. Furthermore, the 1st applicant testified that the respondents forged the documents and signatures of the 1st, 3rd and 4th applicants. As such, the 2nd respondent did not seek their consent to obtain the grant of letters of administration.
21. The 1st respondent further averred in his affidavit that the 2nd respondent issued him with a title deed in respect of LR. No. Mwea/Tebere/B/4778 and Kirinyaga/Gathigiriri/2479 which fact was confirmed by the 2nd respondent during cross examination when he testified that the 1st respondent and himself were each allocated $\frac{3}{4}$ of an acre of land at Mwea Tebere and 2 acres each at Gathigiriri. It is noteworthy that the respondents are the only ones who inherited from the estate of the deceased. Indeed, the acts of respondents is evident of fraud and non-disclosure of facts material to this cause. The 2nd respondent further testified that the 1st and 4th applicants were each allocated $\frac{3}{4}$ of an acre at Mwea Tebere but this averment was not supported by the grant confirmed on 2nd July 2020. The 1st, 3rd and 4th applicants who are children of the deceased were indeed disinherited.
22. It is my considered view that the grant in this case and its confirmation thereof was obtained fraudulently and with non-disclosure of facts material to the cause. It is evident and the 2nd respondent took advantage of their illiterate and aged mother, the 2nd applicant and obtained her thumbprints in crucial documents that led to the final grant that disinherited three of the children of the deceased. For



these reasons, I find that the applicants have demonstrated fraud on part of the 2nd respondent under Section 76 of the Act.

23. Consequently, the Summons for Revocation of grant dated 1st April 2019 is hereby allowed in the following terms:-

- A) That the grant issued on 15th September 2009 and confirmed on 2nd July 2010 is hereby revoked.
- B) That the 1st, Applicant Salome Njeri Njogu, the 3rd Applicant Joseph Muhia Njogu are hereby appointed the administrators of the estate.
- C) That the titles issued or subdivided under the revoked grant are hereby revoked and the said parcels of the land named herein shall revert to the names of the deceased.
 - a) Land parcel No. Mwea/Tebere B/277 subdivided into four (4) parcels:-
 - i. Land parcel No. Mwea/Tebere B/4773
 - ii. Land parcel No. Mwea/Tebere B/4774
 - iii. Land parcel No. Mwea/Tebere B/4775
 - iv. Land parcel No. Mwea/Tebere B/4776
 - b) Land parcel No. Mwea/Tebere B/4777 subdivided into five (5) parcels:-
 - i. Land parcel No. Mwea/Tebere B/5058
 - ii. Land parcel No. Mwea/Tebere B/5059
 - iii. Land parcel No. Mwea/Tebere B/5060
 - iv. Land parcel No. Mwea/Tebere B/5061
 - v. Land parcel No. Mwea/Tebere B/5062
 - c) Land parcel No. Mwea/Tebere B/4778 subdivided into four (4) parcels:-
 - i. Land parcel No. Mwea/Tebere B4964
 - ii. Land parcel No. Mwea/Tebere B4965
 - iii. Land parcel No. Mwea/Tebere B4966
 - iv. Land parcel No. Mwea/Tebere B4967
 - d) Land parcel No. Kirinyaga/Gathigiriri/288 subdivided into six (6) parcels
 - i. Land parcel No. Kirinyaga/Gathigiriri/2478
 - ii. Land parcel No. Kirinyaga/Gathigiriri/2479
 - iii. Land parcel No. Kirinyaga/Gathigiriri/2280
 - iv. Land parcel No. Kirinyaga/Gathigiriri/2481, 82 and 83
 - v. Land parcel No. Kirinyaga/Gathigiriri/2482
 - vi. Land parcel No. Kirinyaga/Gathigiriri/2483



D) That the administrators jointly or separately are hereby directed to file Summons for Confirmation of grant within sixty (60) days in consultation with the other beneficiaries of the estate.

24. That this being a succession cause, each party will meet their own costs.

26. It is hereby so ordered.

DATED AND SIGNED AT NYERI THIS 22ND DAY OF NOVEMBER, 2023.

F. MUCHEMI

JUDGE

