



**In re Estate of Laaria M'Mugambi alias Mugambi Laaria alias M'Mugambi Laaria (Deceased)
(Succession Cause 101 of 2014) [2023] KEHC 27208 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27208 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 101 OF 2014
EM MURIITHI, J
DECEMBER 20, 2023**

**IN THE MATTER OF THE ESTATE OF LAARIA M'MUGAMBI ALIAS
MUGAMBI LAARIA ALIAS M'MUGAMBI LAARIA (DECEASED)**

BETWEEN

M'NGARUTHIA M'MUGAMBI PETITIONER

AND

JOSEPH M'ETHARA 1ST OBJECTOR

STEPHEN RUKUNGA 2ND OBJECTOR

KARAMBU AGNES MUTHEYA 3RD OBJECTOR

RULING

1. The Petitioner/Respondent herein filed summons for confirmation of grant dated 15th August, 2014 seeking the confirmation of the grant of Letters of Administration Intestate issued to him on 27th May, 2014 and also sought for the distribution of the deceased's estate as per the proposal contained in his affidavit in support of the said summons for confirmation of grant.
2. On 27th October, 2014, the said grant was confirmed notwithstanding that the statutory period of 6 months had not lapsed. In confirming the grant, the Court noted that all the beneficiaries of the estate had consented to the mode of distribution proposed by the Petitioner.
3. Presently before this Court is the application by the Objectors herein dated 28th October, 2014 which seeks in the main to revoke and/or annul the aforesaid confirmed grant that was issued to the Respondent. The Applicants also sought for the costs of the application to be borne by the Petitioner/Respondent.
4. The instant application is based on the grounds that:



- i. The grant was obtained by concealment from court of something material to the case.
 - ii. The grant was obtained by means of untrue allegations of fact essential in a point of law to justify the grant.
 - iii. The attendant consent obtained was from non-dependants to the estate of the deceased hence the proceedings to obtain the grant were defective in substance.
5. The application was supported by the affidavits of Stephen Rukunga (the 2nd Objector) and Joseph M'Ethara (the 1st Objector) both sworn 29th October, 2014. The 1st and 2nd Objectors deposed that the deceased was survived by four children but that the Petitioner neither mentioned his three siblings in his petition for a grant of letters of representation nor included them in his proposed mode of distribution of the subject estate.
 6. The Petitioner/Respondent opposed the said application vide the Replying Affidavit which he swore on 13th November, 2014 and filed the following day.
 7. Directions were given that the summons application be heard by way of viva voce evidence. The parties called their witnesses, and counsel subsequently filed their respective submissions.
 8. For the Objectors, the first witness was 2nd objector (PW1), Stephen M'Rukunga, told the Court that he was the son of the deceased. He stated adopted his statement dated 29th October, 2014 as he evidence in chief and testified that the deceased had four (4) properties. That the said properties were acquired by the deceased and that the Petitioner did not buy the said properties. According to PW1, all the children of the deceased are entitled to a share of said properties.
 9. PW2, Joseph M'Ethara, and PW3, Silas Gituma M'Marete corroborated the testimonies of PW1 to the extent that the Petitioner was not the only son of the deceased and, therefore, he should not inherit the entire estate of the deceased and disinherit his other children.
 10. The evidence for the Petitioner was that the objectors had no interest in the subject land as the petitioner had bought it and that 1st and 2nd objectors are the ones who had the inherited the deceased's land being 5 acres of the deceased's estate land at Kamakuri as testified by Petitioner's witness no. 1 (PW1) Thurania Kaane the uncle to the petitioner, sister Monica Kathuni PW2 and petitioner's daughter Karambu Agnes Muthea PW3.
 11. The parties then filed their respective submissions. The Petitioner filed his written submissions on 22nd May, 2023 whereas the Objectors filed their written submissions on 2nd June, 2023.

The Submissions

12. It was submitted on behalf of the Applicants/Objectors that the Petitioner in response to the summons application for the revocation of grant did not dispute that the Applicants are his brothers and sister. That the Petitioner did not also dispute the contents of the chief's introductory letter showing that the Applicants were the dependants of the deceased. Further, that the Petitioner did not produce any green cards to show that he had bought the land and from whom he allegedly bought the land.
13. The Applicants thus fault the Petitioner for failing to disclose to court the real beneficiaries of the subject estate, a fact that is material to the Court. It was their prayer, therefore, that the application dated 28th October, 2014 should be allowed. To buttress their submissions they relied on the cases of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR; and *Peter Owino Anino v. John Oriedo Anino* [2021] eKLR.



14. On behalf of the Petitioner/Respondent, it was submitted that the assets that were included in this cause as forming part of the estate of the deceased belonged to the Petitioner. The Petitioner maintained that the said properties were only registered in the names of the deceased because the Petitioner allegedly did not have the capacity to own land during those years. It was further submitted that the objectors have not met the test for revocation of grant and the case of *In re Estate of the Late Epharus Nyambura Nduati (Deceased)* [2021] eKLR was cited to buttress this position. It was thus the Petitioner's submission that the application for revocation of grant dated 28th October, 2014 is devoid of merit and should be dismissed. The Petitioner further urged this Court to allow the Petitioner's summons for confirmation of grant dated 15th August, 2014.

Analysis and Determination

15. I have carefully considered the application for revocation of the grant issued to the Respondent in this cause, the affidavits tendered by both parties in support and in rebuttal of issues herein as well as the as well as their respective submissions. The main issue that arises for determination by this Court is whether the grant issued to the Petitioner/Respondent in this cause should be revoked.
16. The law on revocation of a grant is provided for under Section 76 of *Law of Succession Act* (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. ...”
17. 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.
18. The dispute at hand touches on the distribution of the estate of Laaria M'Mugambi alias Mugambi Laaria alias M'Mugambi Laaria (deceased) who died intestate on 2nd October, 1984. It is not disputed that the deceased was the registered owner of the following four (4) properties:
- i. L.R. No. Uringu III/648;
 - ii. L.R. No. Uringu III/1294;
 - iii. L.R. No. Uringu III/366;
 - iv. L.R. No. Uringu III/498;



19. In his affidavit in support of his summons application for confirmation of grant, the Petitioner proposed at paragraph 3 therein that the estate of the deceased to be confirmed in the following terms:

	Name	Description of Property	Share
i)	Moses Mwiti Mutheya Ngaruthii	Uringu III/648	1 Acre
ii)	Pancras Karithi	-	1 Acre
iii)	Joanna Kairuthi	-	0.40 Acres
iv)	Ann Mwaromo Damuel	-	0.53 Acres
v)	Dorcas Kanyai Mutheya	Uringu III/1294	0.05 Acres
vi)	Regina Kathure Mutheya	-	0.05 Acres
vii)	Karambu Agness Mutheya	Uringu III/366	Whole
viii)	M'Ngaruthi M'Mugambi	Uringu III/498	Whole

20. After the confirmation of the grant as proposed by the Petitioner was, the applicants herein sought to have the confirmed grant be revoked on the grounds aforementioned herein above.
21. I respectfully agree with the court *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR the Court (Musyoka, J.) on the grounds for revocation of grants:

“ 8. Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently



with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

22. As per the introductory letter dated 9th December, 2013 by the chief of Nkomo location, the deceased was survived by the following children:
 - i. Samuel Nagruthi
 - ii. Joseph Ethara
 - iii. Stephen Rukunga
 - iv. Kathuni Laari
23. The Petitioner in this case avers that he bought the subject suit properties but that the same were registered in the name of the deceased as the Petitioner did not have an identity card at the time. In the absence of the Objectors who failed to attend court despite notice as date was taken in the presence of counsel, the Petitioner called 3 witnesses who were therefore not subjected to cross-examination and who testified that the petitioner had bought the suit land and the objectors had inherited own lands from their deceased father and therefore had no claim to the land in question.
24. On the other hand, the Applicant aver that the suit properties belonged to the deceased and not that Petitioner. Further, that the Petitioner has distributed the estate to his wife, children and grandchildren to the exclusion of his siblings and that as such, the grant issued to him ought to be revoked so that the subject estate may be distributed to the children of the deceased first before the beneficiaries can share their portions to their children.
25. The Court has considered the record of proceedings in this cause as well as the rival averments by the parties, and for the reason that the Petitioner only disclosed himself as the only surviving beneficiary of the deceased, the court finds that in obtaining the grant in question, the Petitioner did conceal material facts from this Court by excluding some of the bona fide beneficiaries from the list of beneficiaries.
26. On a balance of probabilities, the court finds the defence by petitioner less likely than not because no evidence of purchase of the subject land by the petitioner was given, no explanation why he had not sought to take his inheritance from his deceased father as with his brothers, the objectors herein, and there was no explanation as to the failure to disclose of the survivorship of the deceased’s sons and daughter as shown in the chief letter. The petitioner should have listed all the survivors of the deceased but lay a claim to the subject land on the ground that the other heirs had already taken the other lands of the estate. The affidavit in support of Petition sworn by the Petitioner on 11/3/2014 indicated that the deceased survived only by the petitioner. The non-disclosure of the material fact of the deceased being survived by the petitioner and the objectors is culpable.
27. The said grant must, therefore, be revoked and annulled under the provisions of Section 76 of the [Law of Succession Act](#).



28. Having found that there was material non-disclosure, the Summons for Revocation/Annulment of Grant dated 28th October, 2014 shall be allowed as prayed. The court shall also afford all the true beneficiaries of the deceased an opportunity to agree on distribution of the estate.

Orders

29. Accordingly, for the reasons set out above, the Court makes the following orders:
1. The Grant of Letter of Administration issued to M'Ngaruthi M'Mugambi on 27th October, 2014 in Meru High Court Succession Cause No. 101 of 2014 is revoked.
 2. A fresh Grant of Letters of Administration Intestate for the deceased's estate shall issue to M'Ngaruthi M'Mugambi; Joseph M'Ethara and Stephen Rukunga.
 3. The administrators or any of them shall thereafter be at liberty to present an application for confirmation of grant before the expiry of the 60 days statutory period from the date hereof and the other administrators and or beneficiaries shall file affidavits of protest as necessary.
 4. There shall be no order as to costs.
30. Directions on 13/3/2024.

Order accordingly.

DATED AND DELIVERED ON THIS 20TH DAY OF DECEMBER, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Maitai Rimita & Co. Advocates for the Petitioner.

M/S Leonard Ondari & Co. Advocates for the Objector.

