



REPUBLIC OF KENYA



KENYA LAW
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**Nguo v Nguo & 4 others (Probate & Administration 491 of 2006)
[2023] KEHC 27263 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27263 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
PROBATE & ADMINISTRATION 491 OF 2006**

G MUTAI, J

DECEMBER 20, 2023

**IN THE MATTER OF THE ESTATE OF JACKSON NGUO NYANGE
(DECEASED)**

BETWEEN

ARTHUR MARINGA NGUO APPLICANT

AND

ROSE WAIRIMU NGUO 1ST RESPONDENT

JOHN GATHUA NYANGE 2ND RESPONDENT

SERA WANGU 3RD RESPONDENT

DORIS WANJA NJERU 4TH RESPONDENT

JANE NDUITA 5TH RESPONDENT

RULING

1. Before this court is a Summons for Revocation of Grant dated 13th September 2023 and a Notice of Motion dated 4th July 2023. The Summons seeks the following orders: -
 - a. That the 2nd respondent, who is one of the joint administrators in the confirmed grant issued on 24th November 2008, by the name of John Gathua Nyange, be substituted by Julius Nyange Nguo;
 - b. That 1st respondent, who is one of the joint administrators in the confirmed grant issued on 24th November 2008, by the name Rose W. Nguo, be substituted by Esther W. Nguo;
 - c. That the confirmed grant be rectified and the name of Elijah M. Nguo, who is deceased without leaving any dependants, be struck off;



- d. That the names Serah W. Nguo, Jane Nduta Nguo and Doris Wanja Njeru, who are not children or dependants of the deceased, and are listed as beneficiaries, be struck off.
 - e. That the land parcel at Mwea Mutithi in Kirinyaga County measuring ½ acres be included in the grant, and the same be shared among the beneficiaries;
 - f. That the order that all the properties and assets of the estate be registered in the names of the names of administrators is removed on the grant and a proper distribution to the individual beneficiaries be granted;
 - g. That a new and or amended confirmed grant of letters of administration be issued and the administration of the estate of the deceased be done as per schedule in the supporting affidavit; and
 - h. That the costs of this application be in the cause.
2. The Summons is supported by the affidavit of the applicant/administrator sworn on 13th September 2023. He stated that together with Rose W. Nguo & John Gathua Nyange, they were issued with a certificate of confirmed grant issued on 24th November 2008. Despite having the grant confirmed, very minimal distribution of the estate of the deceased has taken place due to non-cooperation by Rose W. Nguo, one of the administrators, to the detriment of the beneficiaries. He urged the court to remove her name and substitute her with Esther W. Nguo, a daughter and beneficiary to the deceased. That the 2nd respondent, who is also an administrator, is sickly and cannot discharge his duties as an administrator effectively and urged the court to remove his name and substitute him with Julius Nyange Nguo, a son and beneficiary to the deceased. He also urged the court to remove the name of Elijah M. Nguo who is deceased with no known beneficiaries. Further, the court do remove the names of Serah W. Nguo, Jane Nduta Nguo, and Doris Wanja Njeru, who do not have biological relations with the deceased.
 3. He further urged the court to order Serah. W. Nguo, Jane Nduta Nguo and Doris Wanja Njeru to refund monies received as proceeds from the sale of Plot No. Nyali/812/MN/Sec 1, rent collected from the management of the Kongowea property from the year 2016 to date and part of the monies from consolidated bank a/c no. 0130035106600 as they are not beneficiaries of the estate of the deceased.
 4. He urged the court to include a parcel of land in Mwea Mutithi, Kirinyaga County, in the grant and have the same shared among the beneficiaries and that shares at Barclays Bank and EABL be sold and proceeds shared equally amongst the beneficiaries.
 5. On the Notice of Motion dated 4th July 2023, the applicant in his supporting affidavit dated 13th September 2023, at paragraphs 4 and 5, withdrew the application and any other document filed by his then advocates, Akanga Alera & Associates on his behalf, and stated in place he was filing the summons for revocation herein. Thus I will not delve into the merits of this latter application.
 6. In response, the 4th respondent filed a replying affidavit sworn on 18th October 2023 and stated that the applicant is her stepbrother, who has consistently refused to cooperate to ensure that the distribution of the estate is finalised. She deposed that she is not opposed to the certificate of confirmation grant being revoked. She would wish to have the same revoked on the grounds of abatement as it is 15 years since the grant was confirmed, and no steps have been taken to finalize the distribution of the estate. She urged that the applicant being an administrator of the estate, has never moved the court on the issue of non-cooperation by the other administrators and the application herein has been brought to interfere with the whole process and to delay the case.



7. She further stated that Plot No. Nyali/812/MN/Sec 1 was sold by beneficiaries including the applicant and the proceeds shared equally amongst all beneficiaries and that the applicant is the one who has been collecting rent from the Kongowea property and thus should give an account of the same.
8. She averred that the deceased had two wives and that the applicant is a step brother to her, Serah W. Nguo and Jane Nduta Nguo and thus the applicant cannot claim that they are not beneficiaries of the estate of the deceased. The applicant has never objected to their inclusion as dependants. The court recognized them as legal beneficiaries of the estate of the deceased and included them in the certificate of confirmation of grant.
9. She urged the court to remove the applicant as an administrator as he incapable of carrying out his duties and to also revoke the grant so that fresh summons can be filed and new administrators appointed who are willing to execute their duties.
10. The court directed the parties to file written submissions. Subsequently, the 4th respondent through her advocates R.G. Nyakeriga & Associates Advocates filed written submissions dated 9th November 2023.
11. Counsel submitted that the application is intended to delay the suit for the sole benefit of the applicant and that the applicant is incompetent in discharging his duty as an administrator hence he should be replaced. The allegation that Serah W. Nguo, Jane Nduta and Doris Wanja are not beneficiaries and should be struck off the list of beneficiaries is unfounded and it should have been raised before the confirmation of the grant.
12. Counsel further submitted that it is over 15 years since the certificate of confirmation of grant was issued and contrary to Section 83 of the *Law of Succession Act* no distribution has taken place despite the fact that all administrators are alive. Counsel urged the court to revoke the confirmed grant on the basis of abatement and afresh grant issued with new administrators.
13. I have considered the summons, the response therein and the submissions of the 4th respondent and the issues that emerge for determination are whether the grant should be revoked.
14. On whether this grant should be revoked Section 76 of the *Law of Succession Act* 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 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 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.
15. On the court's power to revoke a grant the court in the case of In *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR stated:-
 - “(13) 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.”
16. In this case both parties have blamed each other. It is clear that the administration of the estate of the deceased person cannot be completed with the current set of administrators. Both parties agree that it would be in the interest of justice to revoke the grant so that new administrators can be appointed.
17. In the circumstances this Court has no choice but to revoke the grant of letters of administration intestate made on 18th September 2007 and confirmed on 14th November 2008 on the ground that the administrators have failed to proceed diligently with the administration of the estate notwithstanding the fact that a period in excess of 14 years has passed since the same was confirmed.
18. Parties are at liberty to agree on the administrators, beneficiaries and properties forming part of the estate of the deceased, in default any party is at liberty to move this court for grant of letters of administration intestate.
19. I make no orders as to costs this being a family matter.
Orders accordingly.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 20TH DAY OF DECEMBER, 2023 VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

The Applicant (person);

Mr. Nyakeriga for the 4th Respondent; and

Arthur – Court Assistant

