



REPUBLIC OF KENYA



**In re Estate of Samuel Kariuki Kiragu (Deceased) (Succession Cause
78 of 2017) [2023] KEHC 26573 (KLR) (Family) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26573 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
FAMILY
SUCCESSION CAUSE 78 OF 2017
CM KARIUKI, J
DECEMBER 15, 2023
IN THE MATTER OF THE ESTATE OF SAMUEL KARIUKI KIRAGU (DECEASED)**

BETWEEN

JAMES MURIITHI MUTAHI APPLICANT

AND

ALFRED MWANGI MUTAHI RESPONDENT

RULING

1. The Applicant filed the summons of revocation of dated February 28, 2018 seeking orders that: -
 - I. The certificate of confirmation of grant to Lucy Wambui Mutahi be revoked.
 - II. All property be returned to the estate.
 - III. Titles issued under the grant be revoked therewith.
 - IV. That I be granted fresh letters of administration to the estate of the late Samuel Kariuki Kiragu.
 - V. The cost of the suit be borne by the Respondent.
 - VI. Which application is premised on the grounds set out on the face of the application and supported by the affidavit sworn by James Muriithi Mutahi and that: -
 - VII. That the grant has become inoperative and useless through the death of the sole administrator Lucy Wambui Mutahi on 26th June 2012.
 - VIII. That the grant was obtained fraudulently by making false statements and concealment from the court of facts material to the case.



- IX. Some of the beneficiaries were left out and thus disinherited.
 - X. Non-beneficiaries have benefited from the estate leaving out rightful beneficiaries.
 - XI. That he has consent of all beneficiaries of the estate to apply for fresh grant of letters of administration.
2. The application was further supported by the Applicant's further affidavit dated 23rd February 2023.
 3. In response, the Respondent opposed the summons vide the replying affidavit of Alfred Mwangi Mutahi dated 10th June 2019 and the further affidavits of Simon Gachii Karuri dated 16th October 2019, Philisina Waigumo Mwangi dated 17th October 2019 and John Gitonga Mutahi dated 17th October 2019.

Applicant's Submissions

4. The Applicant submitted that Lucy Wambui Mutahi, the administrator hereinafter was the sole administrator of the estate and having died on 26th June 2012, the grant issued to her has become inoperative and ought to be revoked.
5. Further, that the grant was obtained fraudulently by making false statements and concealment from the court of facts material to the case contrary to section 76 of the Law of Succession Act and rule 44 of the Probate and Administration Rules. It was averred that in the P & A5, the Lucy Wambui Mutahi, the petitioner listed dependents of Samuel Kariuki Kiragu, the deceased hereinafter as follows:
 - Lucy Wambui Mutahi – Wife – Adult - Petitioner
 - James Mureithi Mutahi – Son - Adult
 - Philip Kiragu Mutahi – Son- Adult
 - Alfred Mwangi Mutahi – Son- Adult
 - John Gitonga Mutahi – Son- Adult
 - Perishina Waigumo Mutahi – Daughter – Married
6. That it is not in dispute that Alfred Mwangi Mutahi was not a son of the deceased. It is therefore their submission that the grant was obtained fraudulently by making a false statement that the Respondent herein was a son of the deceased. Further, it was alleged that the petitioner failed to disclose the name of Francisah Wanjiru Mwangi who is a daughter of the deceased. That the fact that some of the beneficiaries were left out yet they were not cited to wither consent or renounce their rights should justify the revocation of the grant.
7. The Applicant averred that from the certificate of confirmation of grant issued in the lower court dated 31st July 1999, the administrator was to hold the plot no. Marmanet Scheme/38 in trust for herself and her children yet the same was registered in the joint names of the administrator and Mwangi Alfred Mutahi, who was not a child of the deceased and a title deed issued as evidenced by the greencard extract attached to the Applicant's further affidavit sworn on 23/2/2023.
8. It was argued that the registration was obtained fraudulently and contrary to the certificate of confirmation of grant. That the Respondent has gone to great length to demonstrate that he was bequeathed the said land but whether he was bequeathed the land or not is neither here nor there. That if it was true that the land had been bequeathed to him nothing would have been easier than for him to have applied to have the land devolved to him as the absolute owner during the confirmation of grant.

Respondent's Submissions

9. On whether the summons for revocation of grant dated 28th February 2018 should be allowed, the Respondent contended that the same should be dismissed. It was stated that what is clear from Section 76 is that when the honourable court is determining an application for revocation of grant, it is crucial for it to only consider the process of obtaining the subject grant. That issues touching on the process of



confirmation of grant and distribution of the estate among beneficiaries is beyond what the honourable court should consider per the provision.

10. The Respondent asserted that from the evidence adduced, none of the reasons postulated by the Respondent identified any grounds itemised under section 76 of the [Law of Succession Act](#) to necessitate revocation of the grant confirmed to Lucy Wambui Mutahi on 31st May 1999. That the Applicant is only fuelled by greed and ill motive in his fatally defective efforts to take away from the Respondent his gift from his late grandfather.
11. Reliance was placed on [In re Estate of Prisca Ong'ayo Nanda \(Deceased\)](#) [2020] eKLR, [In re Estate of Kiberenge Mukwa \(Deceased\)](#) [2021] eKLR
12. It was argued that if the Applicant was ever opposed to the confirmation of the said material grant, he ought to have approached under section 71 of the [Law of Succession Act](#) in the manner espoused by rules 40 and 41 of the [Probate and Administration Rules](#). That the Applicant's failure to protest the application in 1999 and waiting for 2018 to being the present suit serves to document an absolute abuse of the court process. That following the confirmation of the grant, the trial court was rendered functus officio in so far as the confirmation process was concerned as was held in [In re Estate of Riungu Nkuuri \(Deceased\)](#) [2021] eKLR
13. The Respondent alleged that the Applicant duped his elderly, ailing and illiterate sister Philisina Waigumo Mwangi to sign the alleged consent to the making of grant to him. That through her affidavit dated 16th October 2019, she narrated how he approached and misled her into believing that signing of the alleged consent to making of the grant to him was to enable the family make money withdrawals from their deceased mother's bank account.
14. It was stated that from the summons for confirmation dated 3rd May 1999, paragraph 6 all the parties agreed to the distribution of the estate and no objection was raised by any party including the Applicant during the confirmation of the said grant. Paragraph 6 stated very clearly that all the beneficiaries were agreeable to the subject parcel of land going to the Respondent.
15. The Respondent stated that the Applicant's summons was actuated by malice and not evidence as he had even began laying claim on his father's estate trying to disinherit his siblings. That after the deceased's passing he alleged to own Nyandarua/Ol Joro Orok Salient/1089 where his parents had been residing and where they were buried. That he fraudulently transferred the parcel of land into his names despite the deceased having purchased the parcel of land and he even began despoiling off the parcel of land including developments caused by his brother John Gitahi.

Analysis and Determination

16. The issue for determination herein is whether the Applicant's application meets the threshold for the revocation of a grant within the meaning of Section 76 of the [Law of Succession Act](#).
17. For avoidance of doubt, section 76 of the [Law of Succession Act](#) states 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 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.”

18. Likewise, section 76 was clearly expounded on by the court *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where it was stated that:

“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.”

19. The Applicant herein is the son of Samuel Kariuki Kiragu, the deceased herein who died intestate on 15th February 1990. He was survived by his wife, Lucy Wambui Mutahi, now deceased, Philisina Waigumo Mwangi, Philip Karagu Mutahi, Francisah Wanjiru Mwangi, John Gitonga Mutahi and James Muriithi Mutahi. The deceased’s wife was granted letters of administration dated 31st May 1999 by the Principal Magistrates Court at Nyahururu. The grant was then confirmed on 31st May 1999.
20. The Applicant sought the revocation of the certificate of grant issued to the administrator. He elaborated that the grant had become inoperative and useless through the administrator’s death on 26th June 2012. He also stated that the grant was obtained fraudulently by making false statements and concealment from the court of facts material to the case in that the Respondent who was not the deceased’s son had been fraudulently included as one and as a beneficiary to the estate. Additionally, he stated that some beneficiaries were left out and that he has consent of all the beneficiaries of the estate to apply for fresh grant of letters of administration.
21. From the evidence placed before this court, it appears that the Respondent was the deceased’s grandson and not son. That he was the son of Philisina Waigumo Mwangi who left him under his parent’s care. It was stated that he had been brought up and educated by the deceased and his wife and later he took care of his grandparents until their demise. The fact that the Respondent was not the deceased’s son does not appear to have been a fact that was hidden to the other beneficiaries including the Applicant when the grant was issued back in 1999. The same was not objected then and even upon confirmation. Notably, during the administrator’s lifetime, the Applicant did not seek revocation of the grant and only purported to do so after her death i.e. almost 20 years later.
22. According to the affidavit in support of the application for confirmation of grant dated 3rd May 1999. The administrator in paragraph 6 prayed that this honourable court confirm the said grant in the name of Alfred Mwangi Mutahi one of the beneficiaries as agreed by others who are before this court and the grant was then confirmed.
23. Further, according to the Applicant’s sibling’s John Gitonga Mutahi and Philisina Waigumo Mutahi, deponed through their affidavit dated 16th October 2019 that they were duped to sign the consent by being misled to believe that it was to enable them to make money withdrawals from their deceased mother’s bank accounts. They also averred that LR No. Laikipia/Marmanet/38 (extension), the suit parcel herein was bequeathed to the Respondent on or about 1984. It was stated that all the family members were involved in this process and none of the raised any issue during the deceased’s lifetime or even his grandmother’s lifetime. That the Applicant had settled on the land by the deceased’s assistance from then to date. They also stated that it was not true that it was the only property that the deceased had left upon his demise.
24. From the record, I am inclined to believe that the deceased had indeed bequeathed the Respondent the suit parcel. There is no indication that the Applicant disputed the deceased’s action to bequeath the Respondent during his lifetime and the fact that the Respondent had been in occupation of the same with no opposition from the Respondent is indicative of the same. I also find it very interesting that the suit parcel was transferred to the Respondent during the Applicant’s mother lifetime and he did not raise an issue then, only to bring it up years after her death. It is clear to me that the Applicant’s intention is to drag a matter that was already settled 20 years ago for his own personal gain and to rob



the Respondent of what he was legally bequeathed by the deceased. In the case of *Tirus Mwaniki Njiru Vs Jane Igandu* (2021) eKLR, Njuguna J. held that:-

“These grounds ought to be proved with evidence as the power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds but not to be exercised whimsically or capriciously.”

25. Accordingly, it is my considered view that the Applicant’s averment that the grant was obtained fraudulently by making false statements and concealment from the court of facts material to the case is baseless and lacks merit.
26. In any case, the Applicant’s prayer is that the certificate of confirmation of grant be revoked. However, section 76 of the *Law of Succession Act* does not provide for the revocation of the certificate of confirmation of grant unless where the same is not sought or obtained within one year of the making of the grant. A person who is aggrieved by the orders made with respect to a confirmation application, which are encapsulated in the certificate of confirmation of grant, has no remedy under section 76 of the *Law of Succession Act*, for that provision does not envisage revocation of certificates of confirmation of grants.
27. Additionally, I agree with the reasoning of Musyoka J in the case of *Re Estate of Joel Cheruiyot Rono* [2016] eKLR, that revocation of a certificate of confirmation is not a viable option. He aptly stated that:-

“A certificate of confirmation of a grant is not a grant representation, but a certificate to the effect that the grant had been confirmed by the court. The discretion given to the court by the provisions in section 76 of the *Law of Succession Act* is for revocation of grants of representation, not certificates that confirm those grants. There is therefore no power in those provisions for the court to revoke a certificate of confirmation of grant. As can be seen from the outset, the said application stands on shaky ground.

The reasons given for the application are that the Applicant had not been notified of the hearing of the confirmation application, hence there was no attendance on his part, and the hearing proceeded to his detriment. He urges that the certificate be revoked.

I am being invited to revoke a certificate of confirmation of grant. The certificate is not an order of the court. A certificate is not a judicial order. It is an extract from a court order made in the confirmation proceedings. The certificate is generated from the court order. It is important for the parties to differentiate between the character of a grant of representation and a certificate of confirmation of the grant. A grant is a court order; it is a judicial pronouncement to the effect that some person has been appointed as administrator and granted the power to act as such. The certificate of confirmation of grant on the other side merely certifies that orders have been made to confirm the grant. The certificate of confirmation of grant is not the order itself.

I wonder whether any purpose would be served by revoking the certificate without touching the orders that gave rise to the certificate. If I revoke the certificate dated 29th February 2012, another certificate can still be generated from the orders of 29th February 2012, for the revocation would leave those orders intact.”

28. Consequently, this court shall therefore, not exercise its mind any further on the aforementioned issue.
29. Considering all the above, it is my view that the application herein lacks merit. Thus, the court makes the orders that;



i. The application is hereby dismissed with costs to the Respondent**.

DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS 15TH DAY OF DECEMBER 2023

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CHARLES KARIUKI

JUDGE

