



REPUBLIC OF KENYA



**In re Estate of Dedan Kariuki Kamau (Deceased) (Succession Cause
145 of 1999) [2022] KEHC 10647 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 10647 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 145 OF 1999**

RB NGETICH, J

MAY 26, 2022

IN THE MATTER OF THE ESTATE OF THE LATE DEDAN KARIUKI KAMAU- DECEASED

BETWEEN

**PETER MUTURI KARIUKI 1ST PETITIONER
LEAH NJERI KARIUKI 2ND PETITIONER**

AND

**MINE WANJIKU KARIUKI 1ST OBJECTOR
GRACE WARUTERE KARIUKI 2ND OBJECTOR
RUTH WAIRIMU KARIUKI 3RD OBJECTOR
ANNE WANJIRU KARIUKI 4TH OBJECTOR**

RULING

1. The matter relates to the estate of the Dedan Kariuki Kimani who died on 22nd June 1993. A grant of letters of administration was issued on 9th February 2000 to the Petitioners Peter Muturi Kariuki and Leah Njeri Kariuki and was confirmed on 26th February 2001. The estate of the deceased was distributed to the petitioners each getting 0.8 acres of Bahati/ Kabatini /Block 1/2685.
2. Thereafter the objectors filed a summons for revocation of grant dated 8th May 2016. The contention was the grant issued to the Petitioners was obtained fraudulently through concealment of material facts; they alleged that the Petitioners have sub-divided the estate of the deceased and sold it to third parties who constantly harass the widow of the deceased Mine Wanjiku Kariuki. The objectors contend the purchasers have demolished the house belonging to the widow.
3. When the parties appeared before the Court, they recorded a consent dated 14th July 2016 which was adopted as the order of the Court. In the consent, the parties agreed to have the grant issued



to the Petitioners be revoked, the estate of the deceased be distributed a fresh and determination on distribution proceeds through viva voce evidence. The Court further allowed the application for the joinder of the interested parties and order stopping any further developments and sale or disposal of the deceased property issued.

4. Further, by consent, the parties appointed Peter Kariuki Muturi and Mary Wahinya Kariuki as the administrators of the estate of the deceased. The Court directed the parties to file affidavits and on the proposed mode of distribution.

Objectors' affidavit on the proposed mode of distribution.

5. Mary Waringa Kariuki swore the affidavit dated 19th September 2017 on her own behalf and on behalf of other objectors. She averred that the property Bahati/Kabatini Block 1/2685 forms part of the estate of Dedan Kariuki Kamau who died intestate on 22nd June 1993 and was survived by 9 beneficiaries. She further averred that after the grant was issued to peter and Leah, they proceeded to subdivide the property into 12 plots and each of them took 6 plots. She averred that that the family homestead is situated in plot no 7379, while the deceased was buried in plot no 7380.
6. The objectors proposed that the mother Mine Wanjiku Kariuki be made the administrator so that she can proceed to distribute the estate to the other beneficiaries.

Petitioners' affidavit on proposed mode of distribution

7. Peter Muturi Kariuki swore affidavit dated 31st March 2021 on his behalf and behalf of his co-petitioner. He listed the assets of the deceased as follows: -
 - a. Bahati/Kabatini Block 1/2685
 - b. Parcel of land in Kiptangwany
8. He further proposes the estates to be shared as follows-
 - a) Bahati/Kabatini Block 1/2685 to Peter Muturi and Leah Njeri
 - b) Parcel in Kiptangwany to their mother.
9. The petitioners further averred that the distribution was agreed by the family members and on the strength of the agreement, he sold a portion of Bahati/Kabatini block 1/2685 to third parties.
10. The parties agreed to dispose of the application for revocation of the grant by way of viva voce evidence and thereafter file submissions in support of their respective arguments.

Objectors' evidence

11. PW1 Mary Waringa Kariuki testified that his brother Francis Kariuki disappeared though he had a wife and children. She further stated that after the demise of the father, the petitioners fraudulently petitioned the Court for a grant of letters of administration and after obtaining grant, they subdivided the property known as Bahati/Kabatini Block 1/2685 and disposed of the property without the knowledge of other beneficiaries. During cross-examination, she stated that she was not aware of the succession cause and only became aware when her mother's house was demolished. She stated that Leah lives in one of the plots.
12. PW2 Grace Waithera Kariuki stated that the petitioners are her brother and sister. She further stated that they were 8 siblings and that she objects to the grant being issued to the petitioner as they have subdivided and disposed of the estate of the deceased.



13. On cross-examination, she confirmed the land has been subdivided and sold to third parties who have constructed houses on the said plots and that she became aware of the succession in the year 2016 when her mother was evicted from her family home and the house demolished
14. PW3 Ann Wanjiru Kariuki testified that she objects to the grant being issued to the petitioners. She testified that the petitioners have subdivided the property known as Bahati/Kabatini Block 1/2685 and disposed of the same. She further stated that she is not aware of any other parcel of land forming part of the deceased estate.
15. On cross-examination, PW3 said that she lives on the plot where the mother was buried and that the petitioners do not live in the plots. She said the plots are 12 in total and some have houses constructed on them. she urged this Court to give them back the land.
16. PW4 Ruth Wairimu stated that the grant was issued to the Petitioners who proceeded to subdivide the land and also dispose of the same.

Petitioners' case

17. DW1 Peter Muturi Kariuki adopted his replying affidavit dated 27th June 2021 and further affidavit dated 31st March 2021 as his evidence. He stated that all beneficiaries were called for a meeting by their father (deceased) together with the chief when the land known as Bahati/Kabatini Block 1/2685 was being subdivided and only Leah Njeri Kariuki attended the meeting. He further stated that the land was subdivided into two parts in the year 1992 before the demise of their father. He said he petitioned for a grant in the year 1999 and only involved Leah as the land was subdivided between the two; his portion and that of Leah. He said he further subdivided the property into 12 plots and sold the plots to 3rd parties and the other siblings did not raise any alarm.
18. The interested party failed to attend court to adduce evidence despite having been given 2 chances to attend Court. Counsel for the interested party was forced to close the interested parties case and directions were taken on filing written submissions.

Objectors' submissions

19. Counsel for the objectors filed submissions dated 25th January 2022. He submitted that Section 36 (1) of the *Law of Succession Act* is clear on who is to be appointed as an administrator where the deceased left behind one spouse. He urges the Court to find the administrator of the estate ought to have been Mine Wanjiku Kariuki the deceased's wife. He further submitted that section 66 gives clarity on the preference when it comes to determining who is to inherit the estate of the deceased and cited the case of *Immaculate Wanagari Munyaga vs Zachary Waweru Ireri* (2016) where the Court held that in a case similar to section 66, an examination of consanguinity and affinity will help in determining the issue.
20. Counsel for the objector further submitted that the grant issued to the petitioners herein ought to be revoked under Section 76 of The *Law of Succession Act* as the petitioners concealed material facts relevant to the case when they acquired the grant of letters of administration.
21. He further submitted that the petitioners used the grant in a manner that harmed the objectors and in a manner that failed to benefit any of the dependants. He urged the Court to revoke the grant.

Petitioners' submissions

22. In submissions dated 28th February 2022, counsel for the petitioners submitted that the land known as Bahati/Kabatini Block 1/2685 has already been sub-divided into 12 plots and sold to third parties



and they cannot be redistributed. He submitted that third parties are protected under Section 93 of The Law of Succession which provide as follows: -

“93(1) all transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this act by a person to whom representation has been granted shall be valid notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this act.”

23. He further submitted that the sub-division was carried out after the grant was issued and any revocation of the grant and the cancellation of the titles would adversely affect the purchasers and added that the Objectors failed to enjoin the purchasers in the suit and as such no adverse orders can be made on a party who is not a party to the suit.
24. The Petitioners urged this court to decline the prayer for the cancellation of the titles to the third parties.

Analysis and determination

25. I have considered the averments herein and submissions filed by parties herein and consider the following as issues for determination: -
 - a. Whether the objectors have demonstrated ground for revocation of grant herein
 - b. What is the proper mode of distribution of the estate of the deceased?

(i) Whether the objectors have demonstrated ground for revocation of grant herein.

26. Section 76 of the *Law of Succession Act*, Cap 160 Laws of Kenya the said provision states as follows: -

“Section 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.”

27. The Court may revoke a grant if any of the grounds listed above are disclosed either on its own motion or on the application by a party. I have looked at the above provisions against the evidence adduced in this case.
28. The objector’s argument is that the grant was obtained through concealment of material facts. I have perused the petition for probate of written will dated 18th March 1999 and note that the petitioners indicate the deceased was survived by only Peter and Leah. They also cited the only estate belonging to the deceased as Bahati/Kabatini Block 1/2685.
29. The Applicant further contends that the deceased died living behind a will which they implemented. I do note Peter averred that before his father passed on, he called a meeting to sub-divide the property and only him and Leah attended prompting the deceased to distribute the property into 2 equal shares.
30. Further, I have looked at the chief’s letter dated 14th September 1999 and note that the same does not indicate the beneficiaries surviving the deceased and only state the property was divided into two parts one for Leah and the other for Peter.
31. The petitioners were duty-bound to disclose to the Court all material facts relating to the estate of the deceased, as per Section 51 (2) (g) of the Law of Succession; they were bound to disclose the existence of the widow and other beneficiaries to the estate. Section 51(2)(g) provides as follows:-
- “in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;”
32. The petitioners failed to disclose to the court the existence of all beneficiaries entitled to the estate of the deceased while obtaining the grant. It is also apparent that the petitioners did not obtain the consent of the beneficiaries while filing the petition for letters of administration.
33. The Court of Appeal in *Jane Gachoka Gathetha v. Priscilla Nyamira Gitungu & another* [2006] eKLR stated as follows: -
- “We think with respect there is a fallacy in invoking and applying the provisions of Section 93(1) of the *Law of Succession Act* and the superior Court fell into error in reliance on it. The section would only be applicable where firstly, there is a transfer of any interest in the immovable or moveable property. Kabitau has no interest in plot 321 or any part thereof and therefore he could not transfer any. A thief acquires no right or interest which is transferable in stolen property. The transaction would be void ab initio and the property is traceable.”
34. In this case, the petitioners have disclosed that they sold their portion to other third parties but only one purchaser Douglas Ngotho filed application dated 27th June 2016 for the joinder of as an interested party to the suit as a purchaser. The application was allowed on 14th July 2016 and the interested party was to present his case as a creditor as per the directions of Hon. J.A.K. Ndungu but after being enjoined, he failed to attend Court to defend his interest. There is no proof that transfer was effected and title deed issued in respect of portions of land sold.



35. It is clear the process of obtaining the grant was marred by irregularities and concealment of material facts; the petitioners did not disclose the existence of other beneficiaries thus misleading the Court.
36. In view of the fact that the petitioners failed to disclose material facts, the grant was therefore fraudulently obtained and the petitioners had no good title to transfer to the purchasers
37. From the foregoing, I find that the petitioners obtained the grant fraudulently and did not therefore acquire a good title to the estate of the deceased and thus their interest cannot stand. I am inclined to revoke the grant issued to the two petitioners.
38. FINAL ORDERS
 1. The grant of letters issued on 9th February 2000 to Peter and Leah and confirmed on 26th February 2001 is hereby revoked.
 2. A representative from the deceased's family to administer the estate of the deceased.
 3. Parties to file their proposed mode of distribution of the deceased's estate for the court to make determination on distribution
 4. Each party to bear own costs.

JUDGMENT DATED, SIGNED AND DELIVERED VIA ZOOM AT KIAMBU THIS 26TH DAY OF MAY, 2022

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RACHEL NGETICH

JUDGE

In the presence of:

Kemboi - Court Assistant

Mr. Machoka holding brief for Githui for Petitioners

Ms. Moenga for Objectors

