



**In re Estate of Ndome Karoki (Deceased) (Succession Cause
537 of 2004) [2022] KEHC 10878 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10878 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 537 OF 2004
HK CHEMITEI, J
JUNE 23, 2022**

BETWEEN

WANJIRU NJOROGE WANJUKI 1ST APPLICANT

MONICAH NJOKI NJUKI 2ND APPLICANT

AND

MICHAEL MURIITHI NJOROGE RESPONDENT

RULING

1. The applicant filed a chamber summons application dated 11th February 2021 pursuant to the Provisions of Section 76 *Succession Act*, Rules 44 and 73 *Probate and Administration Rules* and requested for the following orders;
 - a. That this honourable court be pleased to revoke, vary, set-side or annul the grant issued on the 13th July 2005 to the petitioner/respondent namely Michael Muriithi Njoroge in respect of the estate of Ndome Karoki (Deceased).
 - b. That the honourable court be pleased to re-issue a fresh Grant of Letters of Administration to the Applicants namely Wanjiru Njoroge Wanjuku and Monicah Njoki Njuki.
 - c. THAT this honourable court be at liberty to issue such other or further orders as it shall deem just to grant in respect of the estate of Ndome Karoki (deceased).
2. The application is premised on the grounds that grant of letters of administration was issued on 13th July 2005 to the respondent Michael Muriithi Njoroge but it has never been confirmed. That the petitioner/respondent has failed to proceed diligently with the administration of the estate of the late Ndome Karoki that constitutes one parcel of land known as Tetu/Kiriti/317 measuring approximately 4.5 Acres which the respondent has leased out, sold trees growing thereon and kept the proceeds for himself thus intermeddling with the estate.



3. The applicant stated that an unknown person had encroached on the said parcel of land and fenced off a portion it yet the respondent had not taken any remedial action. That the respondent had however prepared a summons for confirmation of grant and consent which he circulated to the beneficiaries for their signatures and it is clear from the said application that he intends to selfishly inherit the whole parcel of land to the exclusion of all the other beneficiaries by taking advantage of their illiteracy and old age. According to the applicant, it is evident that the respondent cannot be trusted and is unfit to administer the estate of the deceased.
4. The summons for revocation of grant is supported by an affidavit sworn by the 1st applicant which reiterates the contents of the summons.
5. The respondent in response to the summons for the revocation/ annulment of grant, filed an affidavit dated 1st November 2021. He deposed that the threshold set under Section 76 of the [Law of Succession Act](#) had not been met to warrant revocation hence the application was brought in utmost bad faith. That he filed summons for the confirmation of grant before notice to revoke grant had been issued by the court and have made proposals on the mode of distribution of the estate of the deceased.
6. He deposed further that the applicants can file protest if they disagree with his proposal because the issue of contention is the distribution aspect. That his earlier application for confirmation of grant was not in bad faith because he did not intend to inherit the whole share for himself as alleged. He went on to depose that he had thought that the grant would be confirmed in favour of the administrator so that the administrator can subdivide the land in favour of fellow beneficiaries. He added that his error out of ignorance was not enough ground to annul or revoke grant because he had sought the approval and consent of the beneficiaries before he filed the same.
7. When the matter came up for directions the court ordered the same to be disposed by way of written submissions.

Applicant Submissions

8. The applicant submitted that under section 71 of the [Law of Succession Act](#) an administrator is required to apply for confirmation of grant after expiration of six months from the date the grant was issued. That in their case the respondent for 16 years had never applied for confirmation of the grant. The applicants submitted further that they have filed an affidavit of protest because the respondent had proposed a mode of distribution which was unacceptable to the beneficiaries and that further, they were not consulted.
8. The applicants went on to submit that it was the respondent's proposal that the parcel of land be subdivided into equal parts and had left out some beneficiaries. That in their affidavit of protest they proposed that the said parcel of land be divided equally among all the beneficiaries. It is the applicants' submission that the conduct of the respondent showed that he could not be trusted to administer the estate.
9. They cited the case of [Re Estate of Agwang Wasiro \(deceased\)](#) [2020] eKLR and urged the court to find that the respondent's conduct does not inspire faith, trust and confidence in his suitability to administer the estate. They further urged the court to exercise its powers conferred by section 76 of the [Law of Succession Act](#) and the inherent powers saved in rule 73 of the Probate and Administration Rules in allowing their application.



Respondent's Submissions

11. The respondent in his application identified the following issues for determination namely, whether section 76 of the Law of Succession has been met to warrant revocation /annulment of grant. While placing reliance to the said section of the law and the case of *Jamleck Maina v Mary Wanjiru Mwangi* [2015] eKLR, the respondent submitted that he has administered the estate of the deceased faithfully and the proceedings to obtain the grant were lawfully and effectively undertaken.
12. On the second issue, whether revocation of grant and re-issuance of fresh grant of letters of administration will be in the interest of justice the respondent draws the court attention to the cases of *Albert Imbuga Kisigwa v Recho Kavai*, Succession Cause No. 158 of 2000 and *Agwang Wasiro alias Achwang Wasiro (deceased)* Succession Case No. 859 of 2015. He submitted that the application dated 11th February 2021 be dismissed for reasons that the application will prolong the case and cause injustice to the parties herein. That further, the quest of the mode of distribution of the estate of the deceased can be addressed via affidavit of protest in order to expedite this matter and ensure the interest of justice is met.
13. In conclusion, he urged the court to be guided by Article 159 of *Constitution of Kenya 2010* and as well as section 1A and 1B *Civil Procedure Act* on substantive justice over any procedural technicalities.

Analysis and Determination

14. I have carefully considered the application, the affidavits tendered by both parties and the main issue arising for determination is whether the application herein has met the threshold for revocation of a grant.
15. In addressing the said issue, section 76 of the *Law of Succession Act* which provides for revocation and annulment of grant and the same 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 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

- e. that the grant has become useless and inoperative through subsequent circumstances.”

16. The Probate and Administration Rules, the subsidiary legislation made under the [Law of Succession Act](#) does define the term, at Rule 2, in the following words:

“grant” means a grant of representation, whether a grant of probate or of letters of administration with or without a will annexed, to the estate of a deceased person.”

17. 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 under section 76 of the [Law of Succession Act](#). 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 of 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.

18. 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.

19. 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.

20. In the instant case, the applicants appear to anchor their cases on the grounds that the respondent who is the administrator upon being appointed failed to apply for confirmation of his grant within the time prescribed and also failed to diligently administer the estate.

21. The issue in my view is clear and straight forward. The administrator though given the permission to administer the estate has failed to have it confirmed within the expiry of the mandatory 6 months. He has taken over 16 years. This is totally unacceptable. It is clear that he was jolted by the actions of the applicants when they filed this application.

22. He cannot purport to feign ignorance. Sixteen years is a lot. At the same time the applicants have also not explained why they waited for the sixteen years to apply to have the grant annulled yet all along they knew that the petitioner had it. The misuse or otherwise of the land in question may be true but they also failed to push the respondent to do what he ought to do. At any rate the court has not been furnished with any material to that effect.

23. In the premises and since the only issue pending is the confirmation of grant, it will not be efficacious to wrestle the grant from the respondent. The best thing to do is to enjoin the two applicants to be joined administrators of the deceased estate herein.



24. Further in view of the fact that the application for confirmation is pending the same should be fixed for determination as soon as possible.
25. These therefore are the orders of the court.
 - a. The grant dated 13th July 2005 issued to Michael Muriithi Njoroge is hereby amended and the names of Wanjiru Njoroge Wanjiku and Monicah Njoki Njuki are hereby added and the three shall jointly administer the estate.
 - b. The application dated 28th July 2021 be fixed for hearing forthwith and any of the beneficiaries be at liberty to respond to the same.
 - c. Costs shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 23RD DAY OF JUNE 2022.

H K CHEMITEI.

JUDGE.

