



In re Estate of Mary Nansubuga Wango (Deceased) (Succession Cause 655 of 2014) [2022] KEHC 3050 (KLR) (20 June 2022) (Judgment)

Neutral citation: [2022] KEHC 3050 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 655 OF 2014**

TM MATHEKA, J

JUNE 20, 2022

IN THE MATTER OF THE ESTATE OF MARY NANSUBUGA WANGO (DECEASED)

JUDGMENT

1. Mary Nansubuga Wango and her husband Samuel Mathaga Mwangi (both deceased) were residents of Kiamunyi Location where they owned a shamba. They had nine (9) children.
2. Samuel Mathaga Wango pre-deceased his wife, and a Succession Cause Number 281 of 1995 was filed. In that cause his property Subukia/Subukia West Block 1/7 was distributed among his beneficiaries who included his wife Mary Nansubuga. She got 4½ acres. When Mary died this cause was filed by her son Fred Wango Mathaga. Her estate was listed as Njoro/Ngata/4137. A Certificate of Confirmation of Grant was issued to him dated 19th October 2015, in which, Njoro Ngata Block 1/4137 was shared out in ¼ acre shares to all the other children of the deceased except Fred Wango Mathaga who got ½ acre.
3. The other two (2) properties were added to the list of assets Njoro/Ngata Block 1/4140 and Njoro/Ngata Block 1/4141 through the administrator's application for rectification dated 5th December 2015. In that application he proposed that the newly discovered properties be shared to two (2) of his sisters, and he was to get the whole of Subukia/Subukia 1/7 to sell and share the proceeds among the beneficiaries. This raised the ire of the other beneficiaries of the estate of Samuel Mathaga Wango as this latter property had already been distributed, and his mother's estate was only entitled to 4½ acres.
4. By an Application dated 6th May 2019, the administrator sought to rectify the grant so that now, the 2 additional properties would go to beneficiaries of his two (2) sisters, Moses Wango and Geoffrey Sabyala respectively, while he would now be the sole beneficiary of Subukia/Subukia West 1/7. That Application was declined as Subukia/Subukia west /1/7 was not available for distribution.
5. Meanwhile on 5th October 2016 the Hon. Justice A. K. Ndung'u had pursuant to order issued on 26th September 2016 received the surveyor's report of the distribution of the estate in Kiamunyi. The surveyors report indicated that there was an extra ¼ acre available for sharing among the beneficiaries. The judge directed that this be sold and the proceeds be shared equally among the beneficiaries



6. It is in this background that the applicant, Nina Grace Wango has filed the Summons for Revocation of Grant dated 25th April, 2022 on the main ground that the administrator has failed to diligently administer the estate and produce to court within the requisite period of time, as required by law, an account of the administration of the estate. In addition, that she the applicant had found a consent in the file dated 7th June 2016 which she and her sister Jennifer Kakooza Wango were supposed to have signed yet Jennifer passed on on 17th September 2012 as per the Certificate of Death and could not have signed that consent.
7. In the meantime, the advocates for the administrator, the firm of Gladys Ndeda & Co. Advocates, sought and were granted orders to cease acting after their client stopped giving instructions. His wife confirmed that he had left the country and she had no way of communicating with him.
8. The applicant made efforts to serve him and hit the same wall. Hence, we have an estate whose administration is incomplete, and whose administrator's whereabouts are unknown.
9. In the circumstances the issue is whether the Application ought to be granted.
10. Section 76 of the *Law of Succession Act* states; 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.”
11. The Grant was made to Fred Wango Mathaga on 8th December 2014. It was confirmed on 19th October 2015, when only one property was distributed Njoro/Ngata Block 1/4137.
12. In the initial distribution of the estate he had taken more of the land than the grant had allowed him. This was only discovered by the surveyor's report of 4th October 2016 leading to the court order of 5th



October 2016. Even then the administrator never complied with the court's order to sell the extra ¼ acres and share the proceeds with other beneficiaries.

13. It is also evident that the administrator was also not candid about the Subukia/Subukia West /1/7, land, where he sought to get the whole share yet his mother's estate had only 4 ½ acres which was to be shared equally among the beneficiaries, i.e. him and his sisters.
14. It is evident that the administrator was not forthright in the manner in which he dealt with the estate, and in the end he abandoned the whole responsibility.
15. In the circumstances, the application for Revocation of Grant is allowed. The Grant made to Fred Wango Mathaga on 8th December 2014 be and is hereby revoked.
16. A fresh grant to issue to Nina Grace Wango.
17. Within thirty (30) days hereof Nina Grace Wango to file a fresh Summons for Confirmation of Grant listing all the properties and the beneficiaries of the deceased.
18. The proposed mode of distribution to include the ¼ acre out of Njoro/Ngata Block 1/4137 the court directed to be sold and the proceeds be shared among all the beneficiaries.
19. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF JUNE, 2022.

Mumbua T Matheka

Judge

In the presence of;

CA Edna

Nina Grace Wango present

