



REPUBLIC OF KENYA



**KENYA LAW**

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**In re Estate of Benedict Ngata Njoroge (Deceased) (Succession Cause  
255 of 2011) [2022] KEHC 11699 (KLR) (Family) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 11699 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**SUCCESSION CAUSE 255 OF 2011**

**MA ODERO, J**

**JULY 29, 2022**

**BETWEEN**

**MARY WANJIRA NJOROGE ..... APPLICANT**

**AND**

**JACINTA MUGURE NGATA ..... RESPONDENT**

**JUDGMENT**

1. Before this court is the summons dated November 8, 2021 by which the applicant Mary Wanjira Njoroge seeks for orders That:-

“a. the Grant of letters of Administration that were confirmed on 11<sup>th</sup> day of June 2012 to Jacinta Mugure Ngata and rectified on February 6, 2013 be partly revoked (or annulled) to the extent of land Parcel No. 10090/102

b. Spent.”

2. The Summons was supported by the affidavit of even date sworn by the applicant.
3. The respondent Jacinta Muruge Ngata opposed the summons for revocation of Grant. She filed a replying affidavit dated February 2, 2022. The summons was canvassed by way of oral evidence. Each side called one (1) witness.

**The Evidence**

4. This Succession Cause relates to the estate of Benedict Ngata Njoroge (hereinafter ‘the Deceased’) who died intestate on August 14, 2009. The Deceased was survived by one widow Jacinta Mugure Ngata and seven (7) children whose names were given as follows:-



- (a) Edward Njoroge Ngata – son (Deceased)
  - (b) Lucy Njeri Ngata – daughter
  - (c) George Ngunungu Ngata – son
  - (d) Joseph Ngotho Ngata – son
  - (e) Mary Ann Wanjiru Ngata – daughter
  - (f) John Gituhu Ngata – son
  - (g) Margaret Wanjiku Ngata – daughter
5. Following the demise of the Deceased his widow Jacinta Mugure Ngata (the respondent) filed a Petition for Grant of Letters Intestate. Grant of Letters of Administration were issued to the respondent as Administrator on 22<sup>nd</sup> July 2011. The Grant was duly confirmed on June 11, 2012 and later rectified on February 6, 2013.
  6. The applicant told the court that she was married to Edward Njoroge Ngata who was one of the sons of the Deceased. That they got married under Kikuyu Customary Law in the year 1998 and were blessed with two (2) children.
  7. The applicant states that her husband fell ill and died on May 18, 2017. She alleges that throughout their married life, she and her husband lived and farmed on the suit land and this is the only home known to her children.
  8. The applicant complains that the respondent filed the petition for Grant of letters of Administration secretly without involving the applicant who was her daughter-in-law. That the respondent caused LR No. 10090/102 to be transferred into her name alone. The applicant alleges that the Grant was defective as the same was obtained by material non-disclosure of the applicants interest in the suit land. She prays that for this reason the confirmed Grant issued to the respondent be revoked.
  9. The respondent opposed the application for revocation of the Grant. The respondent confirms that she is the only widow of the Deceased. She confirms having obtained letters of Administration in respect of the estate of the Deceased.
  10. The respondent asserts that she made full disclosure in her Petition. That her son Edward Njoroge Ngata (whom the applicant claims was her husband) signed a consent to the summons for confirmation of Grant. The respondent maintains that LR 10090/102 was properly registered in her name as the Administratrix of the estate of the Deceased.
  11. The respondent avers that all her children were fully aware of the Succession Cause she had filed and they all appeared in court and consented to the transmission of the suit property to the herself.
  12. The respondent vehemently denies the claim by the applicant that she is the wife of the Deceased's son. She insists that her son Edward Njoroge Ngata died as a Bachelor and had no children. She states that when her son died in the year 2017 she buried him in her compound. That the Applicant never attended the burial. She states that the respondent is nothing but a malicious trespasser who has no right at all to the suit land. She urges the court to dismiss this summons in its entirety.
  13. Upon close of evidence the parties were invited to file their written submissions. The applicant filed the written submissions dated May 27, 2022 whilst the Respondent did not file any written submissions.



## Analysis and Determination

14. I have carefully considered this summons, the affidavit filed in reply, the evidence on record as well as the written submissions filed by both parties. The questions which arise for determination are as follows :-
  - (i) Whether the applicant has a legitimate claim to LR No. 10090/102, Thika Municipality.
  - (ii) Whether the Grant issued to the applicant ought to be revoked.
    - (i) Applicants claim to LR No. 10090/102
15. It is common ground that the Deceased herein Benedict Ngata Njoroge passed away intestate on August 14, 2009. A copy of the Death Certificate Serial No. 269652 is annexed to the Petition for Grant of Letters of Administration dated November 24, 2010. It is also not in dispute that amongst the assets left behind by the Deceased was the parcel of land known as LR No. 10090/102, Thika Municipality.
16. A letter dated June 2, 2010 written by the Chief of Nganda Location, Gatundu District names the widow of Deceased Jacinta Muguru Ngata (the respondent herein) and her seven (7) children as the beneficiaries of the estate. The applicant claims that one of the sons of the Deceased who is named as a beneficiary Edward Njoroge Ngata was her husband. She claims that the two got married in the year 1998 under Kikuyu Customary Law and bore two (2) children together. The Applicant states that she and her husband together with their children lived and farmed on the suit land.
17. The respondent vehemently denies that her son was married to the applicant. She insists that her son died as a Bachelor and had no children.
18. I was able to observe the demeanour of the respondent as she testified. Though an elderly lady, she did not strike me as a very honest witness. On the one hand, the respondent denies that her son was married yet on the other hand, she admits that her son brought the applicant to her home and that the couple built rooms in the compound. The respondent cannot claim not to know a woman who lived with her son in her own compound.
19. The respondents denial that her son had any children also does not ring true. The applicant has annexed a birth certificate Serial Number 201168 in respect of her daughter Jacinta Mugure who was born on August 30, 1989. The Birth Certificate is annexed to the applicants supporting affidavit dated June 18, 2021. Edward Njoroge Ngata is named as the Father to the child. Moreover, the respondent was unable to explain why the applicants daughter is named after her. Why would the applicant name her child 'Jacinta Mugure' which is the Respondents name if she had no relationship with the son of the respondent?
20. The applicant also annexed a copy of the Eulogy written for Edward Njoroge Ngata. The Eulogy indicated that the Deceased was married to Mary Wanjira (the Applicant) with whom he bore two (2) children. It does not escape the courts attention that the two (2) children are named after the Respondent and her late husband in keeping with Kikuyu Customary practices in naming of children.
21. Although the respondent has not gone far enough to prove the existence of a customary marriage between herself and the son of the respondent, I do find that there is sufficient evidence to prove that the applicant was either married to, or at the very least cohabited with the son of the Deceased.
22. Having said that, the fact that the applicant was married to and/or cohabited with the son of the Deceased does not mean that she has a valid or legitimate claim to the suit land. All the parties agree that the suit land belonged to the Deceased. A copy of the Title to the suit land was annexed to the Petition for Grant. The proprietor of the land is named as Benedict Ngata Njoroge who is the Deceased herein.



- There is no evidence that the Deceased held title to the suit land jointly with his son Edward Njoroge Ngata. Certainly, there is no evidence that the Applicant was ever a registered owner of the suit land.
23. The mere fact that the applicant resided on the suit land with her family, the mere fact that she put up structures on the suit land does not give the Applicant a legal claim to the suit land. Likewise the fact that the man whom the applicant claims to have been her husband was a son to the registered owner of the suit land does not give the applicant a legal claim to said land.
24. In order to establish a legal/beneficial interest in the suit land, the applicant must firstly prove the existence of a marriage between herself and the son of the Deceased. A mere statement that they got married under Kikuyu Customary Law and bore children is not proof of marriage. Secondly, she must establish her alleged 'husbands' claim to the said land. This the applicant has not done. Accordingly, I find that the applicant has not established her claim to the suit land.
- (ii) Should the Grant issued to the respondent be revoked.
25. It is not in doubt that following the demise of the Deceased Grant of letters of Administration were on July 22, 2011 issued to the respondent. It is also not in dispute that said Grant was later confirmed on June 11, 2012 and rectified on February 6, 2013. The applicant claims that the Grant obtained by the respondent was defective as the Petition for Grant was filed secretly without involving the applicant. She further claims that the Grant was obtained by material non-disclosure in that the respondent failed to inform court of the existence of herself as a beneficiary to the estate.
26. As stated earlier the Applicant failed to establish on a balance of probability that she was married to the son of the Deceased.
27. The respondent denies the allegation that the Grant issued to her was defective. She insists that she made full disclosure in her Petition and asserts that the suit land was properly transmitted to herself as the widow of the Deceased.
28. Section 76 of the Law of Succession Act cap 160 Laws of Kenya provides for the circumstances under which a Grant may be revoked 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 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.
29. In the case of *Jesse Karaya Gatimu v Mary Wanjiku Gitthinji* [2014] eKLR the court stated as follows:-
- “The grounds upon which a grant may be revoked or annulled are thus statutory and it is incumbent upon any party making an application for revocation or annulment of grant to demonstrate the existence of any some or all of these grounds, whatever the case may be.”
30. The Applicant alleges that in obtaining the Grant the Respondent failed to reveal/disclose the existence of the Applicant as a beneficiary of the estate. The persons who are considered beneficiaries of an estate are clearly set out in section 29 of the *Law of Succession Act* cap 160, Laws of Kenya. They include amongst others the spouse/spouses and children of the Deceased. Nowhere in section 29 is mention made of a ‘daughter-in-law’. The applicant was not a beneficiary to the Estate of the Deceased and the Respondent had no legal obligation to name her in the petition for Grant of letters of Administration.
31. I have perused the Petition filed by the respondent dated November 24, 2010. In her Petition, the respondent listed all the children of the Deceased including Edward Njoroge Ngata who the applicant claims was her husband. Therefore, I am satisfied that the Applicant made full disclosure in her Petition for Grant.
32. I further note that the said Edward Njoroge Ngata signed a consent dated November 24, 2010 consenting to the making of a grant of Administration to his mother (the respondent). Furthermore, the same Edward Njoroge Ngata signed the consent dated March 8, 2012 to the confirmation of Grant and the mode of distribution of the estate. On the basis of this consent the Grant was confirmed. By agreement of all the legally recognized beneficiaries the entire estate of the Deceased including the suit land devolved to the widow Jacinta Muguru Ngata (the respondent hereon) as Administratrix of the estate.
33. Once a Grant has been confirmed then the assets of the estate are transferred into the name of the Administrator who in this case was the respondent. Thus the Transmission of title in the suit land into the name of the Respondent was proper as it is sanctioned by law.
34. Based on the above I find that the Grant was not defective at all. The same was obtained procedurally and the Title in the suit property now vests legally in the Respondent as Administratrix of the estate of her late husband. I find no grounds upon which the Grant ought to be revoked. Finally, the summons dated November 8, 2021 is dismissed in its entirety. Each party to meet its own costs.

Dated in Nairobi this 29<sup>th</sup> day of July 2022.

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MAUREEN A. ODERO

JUDGE

