



REPUBLIC OF KENYA



**In re Estate of Kariuki Iranji (Deceased) (Succession Cause  
8 of 1995) [2022] KEHC 12597 (KLR) (17 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12597 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 8 OF 1995  
FN MUCHEMI, J  
AUGUST 17, 2022  
IN THE MATTER OF THE ESTATE OF KARIUKI IRANJI-DECEASED**

**BETWEEN**

**DUNCAN NYAGA KARIUKI ..... APPLICANT**

**AND**

**PAUL WANJUKI KARIUKI ..... RESPONDENT**

**AND**

**WILLIAM NGATIA KARIUKI ..... 1<sup>ST</sup> DECEASED**

**REBECCA WANGUI KARIUKI ..... 2<sup>ND</sup> DECEASED**

**RULING**

1. This is a ruling on summons for revocation of grant dated September 27, 2021 in the estate of Kariuki Iranji deceased.
2. The applicant describes himself as the son of the deceased and therefore a rightful beneficiary in the estate. He states that the grounds for seeking orders for revocation is that the two administrators have since passed on and the grant has become useless and inoperative. The applicant states that the administrators were appointed in 1993, but failed to distribute the estate to them. He prays that he be appointed as the administrator upon revocation of the grant so as to distribute the estate to the beneficiaries.
3. The application was opposed by the respondent who states that he is a son of the deceased. He states that the applicant has not obtained consent of other beneficiaries to be appointed as the administrator in a polygamous household. Even if the court was to appoint the applicant as the sole administrator, the rest of the family would not cooperate with him. The respondent states he was a co-administrator with the two deceased administrators who are now deceased and that he is still desirous of administering



- the estate of the deceased for the benefit of the beneficiaries. The deceased had four(4) wives who are survived by their children. He proposes that it is prudent to have each house represented in the administration of the estate to achieve fair distribution of the estate.
4. The respondent lists properties of the deceased in his replying affidavit which he is convicted are for distribution to the beneficiaries. He says the applicant has listed other assets which he says belong to the deceased but he has not attached any documentary evidence.
  5. The respondent further states that the estate of the deceased has no liabilities as stated by the applicant. There exists monies owed by several people to the deceased before he died. He argues that those monies cannot be listed as liabilities of the estate.
  6. The relevant law in this application is section 76 of the *Law of Succession* which provides:-

“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:-

    - (d) that the person to whom the grant was made has failed, a 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.
    - (e) That the grant has become useless and inoperative through subsequent circumstances.”
  7. The applicant says the grant has become useless and inoperative following the death of the two out of the three administrators in whose favour the grant was issued. The grant in this cause was issued on September 13, 1993 to Rebecca Wangui, William Ngatia and Paul Wanjuki. The first two administrators are deceased leaving only the 3<sup>rd</sup> administrator who is the respondent in this application.
  8. I note that the applicant did not attach the death certificate of the deceased administrators. He explained in his supporting affidavit that the families of the deceased persons refused to provide him with copies of the death certificates. The applicant further stated that when he approached the office of the Registrar for births and deaths, he was informed that a certified copy could not be issued to him.
  9. The respondent who is a son of the deceased acknowledges the fact of death of his co-administrators. The beneficiaries in this matter have not denied that the two administrators are deceased. Owing to the age of this case which was filed in 1992 Succession Cause No 146 of 1992 and a second case in the High court Succession cause No 8 of 1995, and the fact of acknowledgement of the parties of the deaths, I hereby take judicial notice of the said fact. This is on the premise that for the court to insist on production of the certificates which are in the hands of the respective families who have refused to release them let alone applying for substitution, further delay occur in this case which will not be in the interests of justice.
  10. The law applicable to this case is section 66, 76 and 81 of the *Law of Succession Act*. Section 66 provides that certain persons will be given preference in administration of the estate where the deceased has died intestate. The persons listed are :-
    - a) Surviving spouse or spouses
    - b) Other beneficiaries entitled on intestacy starting with children of the deceased followed by other relatives where the deceased left no surviving spouse or children.



11. Section 81 provides:-

Upon the death of one or several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thin in respect of such trust until the court has made a further grant to one or more persons jointly with him.

12. It is therefore clear in this section that the surviving administrator(s) may continue in administration of the estate. This will happen in cases where it is found appropriate depending on the circumstances prevailing with the family. The family of the deceased may agree that the surviving administrator(s) proceed with the duties of the administration of the estate. I am saying so because there are many scenarios that can arise in families upon death of one or more of the administrators.
13. In the case before me, the deceased had four wives who were deceased at the time of his death. The respondent explained that the three administrators were appointed based on consent of the family to represent the houses of the deceased in this cause. His proposal was that each house represented in the administration of the estate. In my view, this proposal seems fair in that if a single administrator is appointed from one of the houses, he may be confronted with difficulties in bringing the deceased family together to discuss distribution of the estate. It will therefore, be in the interests of justice to appoint three(3) or four(4) administrators to ensure fairness to the entire family of the deceased and to reduce conflicts as well as help in fast tracking the distribution of the estate.
14. Taking into account, the provisions of section 81, it is correct to say that the death of one or two administrators in a case where three or more had been appointed does not render the grant useless or inoperative. However, in a case where the administrators do not fulfil their obligations under the law, the grant may be declared inoperative.
15. Section 76(d)(i) provides that where the administrator fails to apply for confirmation within one(1) year, the grant may be revoked on this ground. The three administrators in this case were appointed in 1993. The 1<sup>st</sup> and 2<sup>nd</sup> administrators died in 2003 and 2020 respectively, while the 3<sup>rd</sup> administrator is still alive. Up to the demise of the 1<sup>st</sup> and 2<sup>nd</sup> administrator which was ten (10) and 28 years respectively from the date the grant was issued, they had not applied for confirmation of the grant. The 3<sup>rd</sup> administrator who is the respondent has not applied for confirmation 29 years after the grant was issued. I am in agreement with the applicant that the administrators failed in their duties of distributing the estate of the deceased among the beneficiaries which presents a good ground for revocation. The respondent could not explain why he failed to act except pleading with the court not to revoke the grant and allow him apply for confirmation.
16. The parties in this case raised the issues of the assets of the deceased available for distribution. The respondent disagreed with the applicant by deposing that several properties had been bequeathed to some beneficiaries including himself. In my considered view this is an issue to be addressed later after this application is determined.
17. From the foregoing analysis, I am satisfied that the applicant has demonstrated that the grant issued on September 13, 1993 has become useless and inoperative and it ought to be revoked under section 76 of the Act.
18. Consequently this application has merit and it is allowed in the following terms:-



- a) That the grant issued to Rebecca Wangu, William Ngatia and Paul Wanjuki Kariuki is hereby revoked.
  - b) That the family of the deceased shall agree on three or four (4) administrators to be appointed as administrators in this case within 30 days.
  - c) That an affidavit signed by the person agreed on shall be filed in court within thirty (30) days by either the applicant or the respondent.
19. Each party to meet their own costs.
20. It is hereby so ordered.

**DATED AND SIGNED AT NYERI THIS 17<sup>TH</sup> DAY OF AUGUST, 2022.**

**F MUCHEMI**

**JUDGE**

**RULING DELIVERED THROUGH VIDEO LINK THIS 17<sup>TH</sup> DAY OF AUGUST, 2022**

