



**In re Estate of Naomi Kabui Gakumo (Deceased) (Succession Cause 99 of 2016) [2022] KEHC 10600 (KLR) (5 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 10600 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
SUCCESSION CAUSE 99 OF 2016  
MM KASANGO, J  
AUGUST 5, 2022**

**JUDGMENT**

1. Before me is the summons dated June 19, 2020. That summons is for revocation of the grant issued by the Chief Magistrate's Court Kiambu in Succession Cause No. 58 of 2013.
2. The summons will best be understood in the perspective of the background of this estate.
3. The deceased in this estate, Naomi Kabui Gakumo (deceased) died on January 21, 2013. There were two separate petitions filed before the Kiambu Chief Magistrate's Court in respect to this estate.
4. The first petition in time is the one challenged by the summons under consideration in this judgment. That is Kiambu Chief Magistrate Court succession Cause No. 58 of 2013. The petition thereof, was by Janet Wanjiku Kabui (hereinafter Janet). The petition was filed on 5<sup>th</sup> March 2013. In the affidavit in support of that petition, Janet only listed herself as the only person who survived her mother, the deceased. A grant was issued to Janet dated May 20, 2013 which grant was confirmed on 26<sup>th</sup> May, 2013 which grant was confirmed on June 26, 2013. Janet filed a summons for rectification of grant to include two person she described as purchasers to whom she distributed O.I. ha of the property kiambaa/ruaka/4112, (hereinafter property 4112). The confirmed grant was rectified on 24<sup>th</sup> April, 2014.
5. The second petition also before Kiambu Chief Magistrate's Court was by Nancy Kabura Kiarie and Janet Wanjiku Kabui. That was Kiambu Magistrate's Court Succession Cause No. 151 of 2013. The grant was granted in that matter on September 17, 2013 and was confirmed on September 26, 2013.
6. Before this Court and in this cause, that grant issued to Nancy and Janet in succession 151 of 2013 was revoked by a judgment of June 12, 2020. The transfers effected on the strength of the confirmed grant issued in succession 151 of 2013 was cancelled and property 4112 was ordered to revert into the name of the deceased.



## Analysis of Summons Dated June 19, 2020

7. The said summons seeks revocation of the grant issued in Succession Cause No. 58 of 2013 to “Simon (sic) Janet Wanjiku Kabui.”.
8. The Chief of Ruaka location wrote a letter dated 6<sup>th</sup> May, 2013 setting out those who survived the deceased as follows:-Rachel Wanjiku Karomo - /daughter-in-law.Alice Wambui Kimani – daughter-in-lawNancy Kabura Kiarie – daughter-in-lawJanet Wanjiku Kabui – daughter-in-lawAlice Wanjiru Gakumo - daughter
9. Janet in petitioning for grant of letters of administration in Succession Cause No. 58 of 2013 stated that she was the only person who survived the deceased. When it transpired that two successions had been filed, one by Jane and the other by Nancy and Janet, and even at the hearing of revocation of grant issued in succession No. 151 of 2013, Janet has not denied as stated by the Chief’s letter that there were other persons, other than herself who survived the deceased. Janet has tried to explain her lack of involvement or mentioning of those others who survived the deceased on the ground that they benefited for gifts inter vivos and were therefore not entitled to share property 4112. In other words, Janet arrogated to herself authority to determine who would inherit the deceased estate. In arrogating herself that power she determined she alone was entitled to inherit the deceased’s estate.
10. I wish to dissuade Janet on that assumption. The law is very clear that notice to and consents of the persons excluded in her petition was mandatory.
11. I will begin by referring to rule 7(7) of the Probate and Administration rules which provides:-
  - 7) where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has:-
    - a) renounced his right generally to apply for a grant; or
    - b) consented in willing to the making of the grant to the application; Or
    - c) been issued with a citation calling upon him either to renounce such right or to apply for a grant.”
12. Janet ought in the first place, to have revealed to the court that she was not the only person who survived the deceased and as provided under the above rule should have filed those person’s renunciation of their right to inherit or she ought to have cited them. It was not permitted for Janet to decide who should be included in her petition.
13. See also the case *ISB v. Ms & 3 others (interested Parties)*(2021) eKLR thus:-

“Under section 51(2) (g) the petitioner is required to disclose all the surviving spouses and children of the deceased. The provision is in mandatory terms. The Administrator in this present case disclosed all the three widows survived by the deceased, brother of the deceased and all the four children of the deceased. This court notes that failure to disclose all the above petitioners would be non-compliance with the provisions of section 51 (2) (g).



14. Further, rule 26(1) of *Probate and Administration on Rules* required Janet to have informed the court by affidavit if the others surviving the deceased failed to renounce their right or failed to give consent to her petition. That rule 26(1) provides:-
- (1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
  - (2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”
15. As stated before, Janet is not entitled in law to exclude any beneficiary from a petition on the basis they benefited from gift inter vivos. The law under section 42 of the *Law of Succession Act*, Cap 16 empowers the court during confirmation of grant to take into account such gifts inter vivos.
16. The failures I have outlined above, by Janet when she petitioned for grant of letters of administration suffice to meet the conditions required under section 76 of Cap 160 for revocation of grant. In this regard, I rely on the holding in by the court the case *In re Estate of Hannah Wambui Murigi (deceased)* 2018) eKLR as follows:-
- “ ... consent from ALL the deceased’s beneficiaries must be availed as to the appointment of the administrator and an application for grant of Letters of Administration is granted. The Applicant herein contends that the Grant issued to the Respondent is defective in substance. This is attributed to the lack of written consent from the Applicant who is a beneficiary of the estate by virtue of being the deceased’s son. In The Matter of The Estate of Ngaii Gatumbi Alias James Ngaii Gatumbi (H.C. Succession Case No. 783 of 1993). The court held that:-
- ‘A grant will be revoked where a person who is entitled to apply is not notified by the petitioner of his intention to apply and that person’s consent to the petitioner’s application is not sought’.”
17. Janet’s failures set out above, cannot be wished away by what she termed as errors in the application for revocation such as that the revocation was not sought in the court file of Succession No. 58 of 2013. She herself obtained revocation of Succession No. 151 of 2013 in this very file. It also cannot be a reason not to grant the prayers for revocation on the ground that the application wrongly cited her name to include the name “Simon”. The right to meet the justice of the case will lead to the court ignore that name of “Simon” since Janet’s full names are in the prayer for revocation.
18. The argument by Janet that the application for revocation of grant was re judicata erroneous understanding of the law. The application before court has not been heard and determined before. It therefore follows that the argument that the application is res judicata is rejected.
19. It is clear that the grant issued in Succession NO. 58 of 2013 was obtained by fraudulently making false statements or by concealing from the court something material to the case. The grant was also obtained by means of untrue allegations of facts essential in point of law to justify the grant to be revoked.

## **Disposition**

20. The judgment of this Court is that:-



- a. a. The grant issued in Kiambu Succession Cause No. 58 of 2013 on May 20, 2013 is hereby revoked.
- b. b. A grant shall hereby issued in the joint names of Rachel Wanjiku Karomo And Janet Wanjiku Kabui
- c. c. Leave is hereby granted for that grant to be confirmed before the expiry of 6 months notwithstanding.
- d. d. Each party to bear their own costs in the summons dated June 19, 2020.
- e. e. Orders accordingly.

**JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 5TH DAY OF AUGUST, 2022.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : Mourice

For Rachel Wanjiku & others :- Ms. Karanja H/B Mburu Machua

For Janet Wanjiku :- Ms. Chege

**COURT**

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**

