



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

In re Estate of Samuel Mbugua Kiarie (Miscellaneous Succession Cause 92 of 2019) [2022] KEHC 12551 (KLR) (5 August 2022) (Judgment)

Neutral citation: [2022] KEHC 12551 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS SUCCESSION CAUSE 92 OF 2019
MM KASANGO, J
AUGUST 5, 2022**

JUDGMENT

1. Richard Njoroge Gachuiiri seeks, by the summons dated 12th October, 2015, the revocation of the grant.
2. The background of this matter is that before the Limuru Magistrate’s Court in Succession NO. 109 of 2013, Isaac Kigo Mbugua (Isaac) petitioned for grant of letters of administration in the estate hereof of Samuel Mbugua deceased. Isaac listed in that petition, himself and Maxwell George Murungaru, as sons of the deceased. He also listed the deceased’s assets as plot No. 81 Limuru Rungai Market. A grant was issued to Isaac on 29th July, 2013.
3. The summons under consideration was filed by Richard Njoroge Gachuiiri (Richard). The court directed the hearing of the summon to be by viva voce evidence. Although Isaac was served with a hearing notice for 26th April, 2022, he did not attend court on that day. More importantly, he did not file any affidavit evidence opposing the summons.
4. Richard during the hearing of the summons relied on his affidavit in support of the summons. The evidence that comes from that affidavit is that Richard is the son of deceased. He listed the following as those who survived the deceased:-
 - i. Penina Njambi – 1st widow (now deceased)
 - ii. Maria Wangui Gachuiiri – 2nd widow
 - iii. Wilfred Kiarie Mbugua – son
 - iv. Mary Wanjiku Mbugua – daughter (now deceased)
 - v. Cecilia Wairimu Mbugua – daughter
 - vi. Isaac Kigo Mbugua – son
 - vii. Rose Mukuhi Gachuiiri – daughter



- viii. Margaret Wanjiku Ndungu – daughter
 - ix. Joseph Ndungu Gachuiiri – son
 - x. Richard Njoroge Gachuiiri – son
 - xi. Hannah Nyakaro Gachuiiri – daughter
5. Richard produced a letter dated 16th December, 2013 written by the Chief's of Bibirioni location which letter confirmed the above list of beneficiaries of this estate.
6. Richard also listed the following as the list of assets of this estate:-

Assets

- i. Limuru/Rongai/81
 - ii. Limuru/Bibiroini/1124
 - iii. Naivasha/Mwiciringiri Block 1/204
 - iv. Naivasha/Mwiciringiri Block 1/517
 - v. Longonot/Kijabe Block 3/1448
 - vi. Longonot/Kijabe Block 3/77
7. Richard attached title documents of the above properties which prove their ownership by the estate of the deceased.
8. From the evidence adduced by Richard, it becomes very clear that Isaac failed to disclose in the petition the correct beneficiaries of this estate and failed to list all the assets of the estate. Instead, Isaac listed, as a beneficiary, a person who bears no relation to the deceased and in so doing, falsely stated that person was deceased's son.
9. In view of the above, I find and hold that the grant ought to be revoked. It was obtained by Isaac fraudulently through false statements. It follows that the provisions of Section 76 of the *Law of Succession Act* is applicable. It 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 an 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 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 untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.”



10. Isaac was statutorily required to inform everyone who was entitled to inherit from the estate, either in the same degree or in priority, before petitioning for grant. This is precisely what Rule 26(1) and (2) of the *Probate and Administration Rule* provides. That Rule states:-

- “(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.”

11. Isaac amongst other requirement provided under Rule 7(7) of the *Probate and Administration Rule* was required to file consents of other beneficiaries consenting to his petition. That Rule further required as seen here under:-

- “(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 writing 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. Richard has proved on a balance of probability that the grant issued to Isaac should be revoked. The circumstances of this matter will require Isaac to pay the costs of the application.

Disposition

13. The judgment of this Court is that:-

- (a) The grant issued to Isaac Kigo Mbugua on 29th July, 2013 is hereby revoked.
- (b) A fresh grant shall be issued jointly to:-
 - (i) Richard Njoroge Gachuiiri
 - (ii) Wilfred Kiarie Mbugua
- (c) Leave is hereby granted for that grant to be confirmed before the expiry of 6 months.
- (d) Costs of the summons dated 12th October, 2015 shall be paid by Isaac Kigo Mbugua.
- (e) Orders accordingly.

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



MARY KASANGO

JUDGE

In the presence of:

Coram:

Court Assistant : Mourice

For Applicant: - Richard Njoroge Gachuri }**

& Wilfred Kiarie Mbugua }

For Petitioner: - Isaac Kigo Mbugua: -

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE

