



**In re Estate of the Late Benson Macharia Gikuma alias B Macharia Gikuma (Deceased)
(Succession Cause 2 of 2021) [2022] KEHC 12544 (KLR) (5 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 12544 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 2 OF 2021
MM KASANGO, J
AUGUST 5, 2022**

JUDGMENT

1. This court ordered the summons of revocation of grant dated August 8, 2018 to be heard by receipt of *vivo voce* evidence.
2. The background of this estate is that Hannah Wanjira Macharia (now deceased) petitioned herein for grant of letters of administration of the estate of Benson Macharia Gikuma (deceased). She was then the widow of the deceased. She was granted a grant on February 18, 2014. That grant was confirmed on April 3, 2014 and she distributed the entire estate to herself. The widow died on April 4, 2015 and would seem that she died before transferring the deceased properties into her name. She was survived by two sons namely, Peter Njuguna Macharia (hereinafter Peter) and Evanson Mwangi Macharia (hereinafter Evanson). Evanson applied for rectification of the confirmed grant by substituting his name as administrator following the death of the widow (his mother). A rectified grant was issued on August 11, 2018 reflecting Evanson as the administrator.
3. The wife of Peter Namely, Nancy Wanjiru Mande (hereinafter Nancy), by the summons dated October 12, 2015, revocation of that rectified confirmed grant by summons dated August 8, 2018.
4. The evidence received from Nancy was that she is the wife of Peter. Peter disappeared and has not been heard of since July 9, 2016. That notwithstanding his disappearance, Evanson in apply for the rectification of confirmed grant in August, 2017 annexed a consent purportedly signed by Peter dated August 2, 2017.
5. Nancy testified that the signature appearing in that consent, purportedly signed by Peter was not the signature she knew as being Peter's signature. She alleged the signature of Peter was forged in that consent. She further stated that Evanson did not consult her when applying to rectify the confirmed grant.
6. Evanson in his evidence acknowledged that Peter disappeared on July 9, 2016. He however stated that Peter had signed a consent to the mode of distribution which he and peter had spent hours discussing. Those discussions were before Peter disappeared. That he, Evanson later filed the application of rectification of grant and attached the consent signed by Peter. Evanson acknowledged that the said



consent by Peter indicated that it was signed by the said Peter in the presence of an advocate on August 2, 2017. That date, August 2, 2017 was more than one year after Peter was reported missing.

Analysis

7. I will start by stating that Evanson erred to have the confirmed grant rectified and by proceeding to distribute the estate of the deceased without first obtaining a grant in his name.
8. Secondly, and perhaps more importantly, Evanson in applying for rectification of the confirmed grant out rightly presented false statement. This he did by presenting a consent dated August 2, 2017 purportedly signed by his brother Peter while Peter reportedly went missing on July 9, 2016.
9. I concur with the evidence of Nancy that the signature on that consent, more than likely, was not the signature of Peter. On April 2, 2014 Peter and Evanson appeared before court to consent to confirmation to the grant issued to their mother, the widow to the deceased. The learned magistrate noted the names of Peter and Evanson and obtained signature against their names in the court's proceedings. I have observed that the signature of Peter before that court and I note it is dissimilar to the signature appearing in the consent to rectification of grant, as sought by Evanson. The signature on the court's proceedings and the signature of that consent filed by Evanson are not of the same hand. On the basis of that finding alone, the summons for revocation succeeds. Nancy correctly invoked section 76 of the [Law of Succession Act](#) 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 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. Evanson, in evidence alleged he had sold one of the properties of deceased, namely Kajiado/loodariak/773. If he did so, such a transaction could have been completed in absence of Evanson obtaining a grant. There is also no documentation. I can trace in the file of such sale. Accordingly, I will set aside any transaction on that land and order it does revert back to this estate.

Disposition

11. The judgment of this court is that:-
 - a. The confirmed grant issued to Evanson Mwangi Machaira in Githunguri Magistrates Court Succession no 133 of 2013 is hereby revoked.
 - b. A grant shall be issued in the joint names of evanson Mwangi Macharia and Nancy Wanjiru Mande.
 - c. The transfer of Kajiado/loodariak/773 from the name of Benson Machaira Gikuma (deceased) is nullified and cancelled. That said title shall hereby revert back to the name of Benson Macharia Gikuma deceased.



- d. The costs of summons dated August 8, 2018 shall be paid to Nancy Wanjiru Mande by Evanson Mwangi Macharia.
- e. Orders accordingly.

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

MARY KASANGO

JUDGE

Coram:

Court assistant : Mourice

For Nancy Wanjiru Mande :-

For Evanson Mwangi Macharia :-

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE

