



**In re Estate of Francis Kungu Wachira (Deceased) (Succession Cause 601 of 2003) [2022] KEHC 14898 (KLR) (Family) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14898 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 601 OF 2003  
MA ODERO, J  
OCTOBER 21, 2022**

**BETWEEN**

**JANE WANJIRU NGUYO ..... APPLICANT**

**AND**

**SERAH NJERI WACHIRA ..... RESPONDENT**

**RULING**

1. Before this court for determination is the notice of preliminary objection dated April 27, 2022 by which the respondent Serah Njeri Wachira challenges the amended summons for revocation of confirmed grant dated May 15, 2017 and amended on May 19, 2022.
2. The notice of preliminary objection was opposed by the applicant Jane Wanjiru Nguyo. The matter was canvassed by way of written submissions. The respondent filed the written submissions dated July 18, 2022 whilst the applicant relied on her written submissions dated July 28, 2022.

**Background**

3. This Succession Cause relates to the estate of the late Francis Kungu Wachira (hereinafter ‘the deceased’) who died intestate on April 6, 2001. Following the demise of the deceased his mother Mary Waithira Wachira applied for and obtained letters of administration intestate in respect of the estate. The grant was duly confirmed on November 29, 2004.
4. Following the issuance of the confirmed grant the administrator of the estate herself passed away on December 11, 2015. Thereafter the applicant Jane Wanjiru Nguyo who claims to be a widow of the



deceased filed the amended summons for revocation of grant dated May 19, 2022 seeking the following orders:-

- “ 1. Spent.
  2. That the applicant be enjoined as an Interested Party in these proceedings.
  3. That status quo of LR No Limuru/Bibirioni/T 371 be maintained pending hearing and determination of this application.
  4. That the confirmed grant issued to Mary Waithira Wachira who is now deceased on November 29, 2004 in the succession cause be revoked.
  5. That the court do appoint an administrator from the beneficiaries of the estate as per the petition of grant filed on March 14, 2003.
  6. That the applicant and her children namely: Carolyn Waithera Nguyo, Emmah Wambui Wanjiru and Jacinta Wangari Kungu be recognized and included as the legal beneficiaries of the deceased’s estate herein and in particular LR No Limuru/Bibirioni/T 371.
  7. That the cost of this application be borne by the respondents in the cause.”
5. In response to the amended summons filed by the applicant the respondent filed this notice of preliminary objection in which she raised the following grounds.
- “ a) That the application is bad in law as the petitioner/administrator is deceased hence no party to defend the application.
  - b) There is no asset of the deceased left unadministrerd hence the original grant had completed and exhausted its mandate.
  - c) The respondent is not an administrator but a sister of the deceased hence the application is brought improperly against her as she is improperly enjoined.
  - d) This application is not properly in this court as per the directions given by this court on March 21, 2018.

### **Analysis and Determination**

6. I have carefully considered this Notice of preliminary objection as well as the written submissions filed by both parties.
7. The definition of a preliminary objection was given in the case of *Mukisa Biscuit Manufacturing Company v West End Distributors Ltd [1969] EA* where it was held as follows:-

“ .....A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all facts pleaded by the opposite side are correct. It cannot be raised if any fact is to be ascertained or if what is sought is the exercise of judicial discretion.”
8. The respondent submits that the summons for revocation of grant filed by the applicant as bad in law and cannot be sustained for reason that upon the death of the court appointed administrator, there exists no personal representative to the estate of the deceased who can be sued by the applicant.



9. The applicant states that she herself is not an Administrator to the estate but is merely a sister to the late administrator and has been improperly enjoined in this suit.
10. It is correct that a grant is personal to the administrator(s) and cannot be transferred to a third party. Therefore upon the death of the court appointed administrator(s) the grant ceases to exist and becomes useless and inoperative. In the case of *Charles Gatimu Kamuthi v Evan Kaburu Kamutai* Embu Misc Application No 1 of 2001, the court held as follows:-

“Fourthly there are no provisions under the *Law of Succession Act*, allowing substitution of a deceased administrator or executor of the estate of another person, and this is rightly so bearing in mind the special process through which a person has to pass before that person becomes an administrator or an executor as such an administrator or executor cannot be imposed by the court upon beneficiaries and other interested members of the family and relatives of the deceased, whose estate the deceased administrator or executor was administering or executing.”

The above being the position I see no point in having this summons dated January 5, 2001 for revocation or annulment of grant issued to Evans Kaburu Kamuthi stood over generally as it serves no useful purpose having a case which is overtaken by events remaining pending.”

11. In this Succession Cause only one administrator was appointed being Mary Waithira Wachura who was the mother of the deceased. This administrator then passed away on December 11, 2015. A copy of the Death Certificate Serial Number 0759xxx which appears as annexure SNW-1 to the replying affidavit dated June 28, 2022 is proof of her demise.
12. Upon the demise of the administrator the confirmed grant which had been issued to her on November 29, 2004 immediately became useless and inoperative. The respondent who is a sister of the deceased and therefore at best a beneficiary to his estate cannot be substituted as administrator to replace her deceased mother.
13. I note that on May 19, 2022 one Evans Ndungu Wachira a brother to the deceased filed a summons seeking to substitute the deceased administrator. In dismissing that summons Hon Lady Justice Ongeru found and held as follows:-

“5. The applicant was part of the beneficiaries of the deceased has no basis for seeking to substitute the administrator who is now deceased and who had already completed the task of administering the estate.

6. the applicant who signed the consent for confirmation of grant has not said why it took so many years for him to disclose that the deceased had a wife and children.

7. the application dated May 19, 2018 has no merit, the same is an afterthought and I accordingly dismiss it with no orders as to costs.”

14. As things currently stand there exists no administrator to defend the summons for revocation of grant filed by the applicant.
15. In the case of *Charles Gatimu Kumuthi v Evan Kaburu Kamuthi* [supra] the court stated as follow:-

“The application for revocation of grant has been overtaken by events, for the reasons that;



Firstly, the administrator died after he had completed the administration of the estate of Kamuthi Munyiri and had given each beneficiary a title.

Secondly it follow therefore, that the applicant who wants the administrator to give him a share of that estate is coming too late.

Thirdly the administrator of the estate Kamuthi Munyiri having died it will be improper for the applicant to proceed with the summons for revocation of grant, as doing so will amount to proceeding against a deceased person and the law does not permit that.” (Own emphasis)

16. Similarly the summons filed by the applicant has been overtaken by events being the death of the only Administrator to the estate. No other administrator has been appointed since according to the respondent the estate was fully distributed thus the administrator exhausted her mandate.
17. There is therefore no asset left for distribution in the estate of the deceased. The summons is therefore a non starter.
18. Lastly I note that the applicant claims that she was a wife of the deceased who was separated from the deceased. She claims that she was neither consulted nor involved in the succession cause. The deceased died in April 2001. The grant was confirmed in November 2007. It was not until the year 2017 (a full ten (10) years later) that the applicant moved to court seeking to revoke the confirmed grant. The obvious question that arises is where has the applicant been all this time? If she had a genuine claim, why did she not move to court much sooner? The applicant has given no explanation as to why she has woken up a full twenty-one (21) years after the death of her so called husband, seeking to revoke the grant issued in respect of his estate.
19. The application has come too late in the day. The administrator fully distributed the estate before she died. Finally based on the forgoing I find merit in this preliminary objection. I uphold the same and dismiss in its entirety the amended summons for revocation of confirmed grant dated May 19, 2022.
20. The applicant will met the costs of this preliminary objection.

**DATED IN NAIROBI THIS 21<sup>ST</sup> DAY OF OCTOBER, 2022.**

**MAUREEN A. ODERO**

**JUDGE**

