



Karobia & another v Karobia & another; Riungu & another (Beneficiary) (Succession Cause 209 of 2012) [2022] KEHC 15606 (KLR) (24 November 2022) (Ruling)

Neutral citation: [2022] KEHC 15606 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 209 OF 2012
TM MATHEKA, J
NOVEMBER 24, 2022**

BETWEEN

TERRY WAIRIMU KAROBIA 1ST APPLICANT

ANN WACHUKA KAROBIA 2ND APPLICANT

AND

PHILIP HABEL KAROBIA 1ST RESPONDENT

IRENE NJOKI KAROBIA 2ND RESPONDENT

AND

CATHERINE IGOKI RIUNGU BENEFICIARY

LOISE KAROBIA BENEFICIARY

RULING

1. The Matter herein relates to the estate of Habel Thumi Karobia who died intestate on 31st January, 2012 aged 84 years. His son Philip Habel Karobia on 2nd October 2012 petitioned for letters of Administration Intestate. According to the Affidavit in support of Petition sworn on 24th July, 2012, the deceased was survived by the following:

1. Loise Wangeshi Karobia - Widow
2. Raphael Karobia - Son
3. Irene Njoki Karobia - Daughter
4. Terry Wairimu Karobia - Daughter
5. Ann Washukia Karobi - Daughter



6. Hellen Victoria Karobia - Daughter
 7. Philip Habel Karobia - Son
2. The following, estimated at Kenya Shillings Five Million (Kshs. 5,000,000/=) with no Liabilities were listed as the assets of the estate of the deceased:-
1. L.R No. 27799/39
 2. L.R No. 27799/11
 3. L.R No. 27799/7
 4. L.R No. 27799/33
 5. L.R No. 27799/10
 6. NAKURU MUNICIPALITY BLOCK 15/89
 7. MV REG. NO. KAX 827Y
 8. M/V REG. NO. KYA 514
 9. FAMILY BANK A/C No. 181982041011669- Nakuru
 10. K.C.B. A/C No. 1101703547- Nakuru.
3. Limited grant of Letters of Administration ad Colligenda bona was issued to Philip Habel Karobia on 3rd March, 2017 for the purpose of collecting the estate of the deceased, and an Amended Grant of Letters of Administration Intestate issued to Philip Habel Karobia & Irene Njoki Karobia on 5th of November, 2019.
4. On 9th March 2020, vide Summons for Revocation Of Grant dated 9th March ,2020, brought under Section 76 of the Laws of Succession Act and Rule 46 & 73 of the Probate and Administration Rules, the Applicants herein sought for the following:-
1. That pending the hearing and determination of this Application, this Honourable Court be pleased to stay the application, use of the grant of letters of administration and the certificate of confirmation of Grant issued to Philip Habel Karobia & Irene Njoki Karobia.
 2. That pending the hearing and determination of this application, this Honourable Court be pleased to order that the properties forming part of the estate herein be preserved and that there be no dealings whatsoever relating to the said properties.
 3. That the grant of letters of administration issued to Philip Habel Karobia & Irene Njoki Karobia be revoked and reissued in the names of Philip Habel Karobia, Irene Njoki Karobia, Terry Wairimu Karobia & Ann Wachuka Karobia.
 4. That this Honourable Court do confirm the reissued grant in respect of the estate of Habel Thumi Karobia.
 5. That the Honourable Court do issue directions as to the administration of the estate.



5. The grounds for the application are set out on its face the Supporting Affidavit of Terry Wairimu Karobi sworn on her behalf and on behalf of the 2nd Applicant on 9th March, 2020. She averred that they are daughters of the deceased thus bonafide beneficiaries to the estate. That the proceedings to obtain the grant were defective in substance for reasons that the 1st administrator omitted some of the beneficiaries in the petition of letters of administration intestate and that through malice and misrepresentation added a number of beneficiaries whose origin remain opaque to them.
6. She contended that in view of the above the administrators have indeed betrayed the trust vested upon them by this court to dispose the estate of the deceased and transmit said estate to the rightful beneficiaries of the deceased.
7. She accused the administrators of wishing to disenfranchise the bona fide beneficiaries and unjustly enriching themselves and other persons not entitled to the estate of the deceased subjecting the estate to mortal peril which may only be secured by revocation of the said grant and issuance of another with more administrators to ensure greater accountability as envisioned by the Law of Succession Act.
8. It was her further deposition that the actions by the administrators of concealing and misrepresenting material facts from the court and failing to seek consent of all beneficiaries in making the application for grant of letters of administration show that their intentions are mala fides and contrary to the interests of all other beneficiaries.
9. The Application is opposed by Catherine Igoki Riungu who swore a Replying Affidavit in opposition on undated date. She stated that the application is misplaced, misconceived as it fails to comprehend the role of an administrator of an estate and that the effect of the application is to compound interlocutory issues making it difficult to substantively hear and determine the matter herein.
10. She averred that there is no proof that the administrators are mismanaging the deceased's estate, that the grant issued is defective in substance and that the administrators have vested the estate's properties in the names of strangers.
11. The 1st respondent, Philip Habel Karobia opposed the application vide his Affidavit sworn on the 3rd March 2022. He deposed that the grant issued on 5th November, 2019 procedurally without any objection and that by consent of the family recorded on 1st January 2018; that there is no evidence of misadministration of the estate; that adding more administrators will make the whole administration chaotic since him and his co-administrator were already facing some challenges.
12. He stated that the applicants have not brought the application in good faith and their intentions are not to preserve the estate of the deceased but to ensure that the deceased's estate wastes away.
13. He deposed that the application is baseless, full of falsehoods against him and should be dismissed with costs to him.
14. The Application was canvassed via Written Submissions.

Applicants' Submissions

15. The Applicants submitted that the only issue for determination was whether their prayer for revocation of the grant can be granted and the same be reissued in the names of Philip Habel Karobia, Irene Njoki Karobia, Terry Wairimu Karobia and Ann Wachuka Karobia.
16. They submitted that they are biological sisters to the two administrators herein. They cited the provisions of section 76 of the Law of Succession Act on revocation of grant and Section 66 of the Act on order of preference.



17. They also placed reliance on the case of *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa* Succession Cause No. 158 of 2000 where the court made the remarks on the guiding principles for revocation of a grant as follows:-

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
18. They blamed the Respondents for failing to apply for confirmation of grant within the mandatory six (6) months period as provided for under section 71 of the *Law of Succession Act*.
19. They submitted that the administrators have not been working in harmony and that the 2nd administrator had lost interest in the administration of the estate. They urged the court to add more administrators as section 56 (1) (b) of the *Law of Succession Act* allows appointment of up to four (4) administrators.
20. They urged this court to invoke the provisions of section 76 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules and allow the Application as prayed.

Monica Muthoni’s Submissions

21. She submitted that a grant can be revoked by the court if it is discovered that it was obtained through material non-disclosure or concealment of material facts.
22. She argued that the respondents offended the provisions of Section 51 of the *Law of Succession Act* by failing to make true information when obtaining the grant in question. That they obtained the grant without disclosing that she was the widow of the deceased thus excluding her and her children as beneficiaries of the deceased estate. She similarly submitted that the administrators did omit Caroline Igoki Riungu, a wife to the deceased’s late son Henry Kiragu Karobia and her children as beneficiaries. To buttress this position, reliance was placed on the case of *Re Estate Of George Muriithi Gitabi (Deceased)* [2019] eKLR cited with approval *in Re Estate of Laurent Ntirampeba (Deceased)* [2017] eKLR where the court stated that it is settled law that a person who approaches the court for grant of equitable relief or otherwise is under a solemn obligation to candidly disclose all the material/important facts which have a bearing on the adjudication of the issues raised in the case.
23. She also relied on the case of *Re Estate Of Ibrahim Hassan Alias Sheikh Ibrahim Hassan (Deceased)* [2019] eKLR where the court revoked a grant on grounds of contravening section 51(2)(g) on non-disclosure of material facts. She therefore argued that the current grant cannot possibly be used to advance or discharge the duties of administrators under section 83 as the same is flawed ab initio.

1st & 2nd Proposed Beneficiaries’ Submissions

24. They submitted that the grant should not be revoked as the matters before court should be determined expeditiously as envisaged under article 159 of *the Constitution*. It is their position that this matter may take reasonably long if this court was to determine interlocutory applications.
25. They argued that there is no evidence advanced by the Applicants to prove that the proceedings herein are defective and that the administrators are in breach of trust bestowed upon them.



26. They submitted that this application is a waste of judicial time and prayed that it be dismissed.

1st Respondent's/administrator's Submissions

27. The 1st respondent submitted only on one issue. Namely:

1. Whether the applicants' application is merited and worth grant of orders sought.

28. He submitted that the applicants have not demonstrated any ground for revocations of grant as provided for under Section 76 of the *Law of Succession Act*.

29. He cited the case *Estate of LAK – (Deceased)* [2014] eKLR where the court held there must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant.

30. He argued that the Applicants have not adduced any evidence to show that the grant was obtained fraudulently or through concealment of material facts. He referred this court to the case in *Re Estate of Benjamin Kiregenyi Muiri (Deceased)* [2022] eKLR where the court declined to revoke a grant for want of proof.

31. It is his position that this Application is meant to taint his name and delay the administration of the estate.

Analysis & Determination

32. The issues that fall for determination are:-

1. Whether the grant should be revoked
2. Whether the applicants should be added as administrators

Whether the grant should be revoked

33. The *Law of Succession Act* provides for revocation of grants under section 76, which states as follows:

“

“76. Revocation or annulment of grant

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—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the 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 an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, 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 order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or



(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.”

34. In the case of *Jamleck Maina Njoroge vs Mary Wanjiru Mwangi* 2015, eKLR, the court rendered the following holding:-

“The circumstances that can lead to the revocation of grant have been set out in Section 76 *Law of Succession Act* namely; Making false statement Concealment of something material Untrue allegations

35. It is alleged in this case that the respondents omitted some of the beneficiaries named as Monica Muthoni Kimani alleged deceased’s widow and her two children Peter Muna Karobia & Anthony Karanja and Catherine Igoki Riungu, alleged wife to the son of the deceased, the late Henry Kiragu Karobia and her children.

36. The record shows that the respondents were first appointed for purposes of gathering of the deceased vide orders of court of 23rd January 2017. After the gazettelement of the estate with only the name of the 1st respondent as administrator the registry in tandem with the orders of 23rd January 2017 made an amended grant in the names of the two which was issued on 5th November, 2019.

37. On the record there is an application dated 25th May 2017 by two proposed beneficiaries seeking joinder. This application has never been heard and determined.

38. Monica Muthoni cited Loice Wangechi with a claim that she Monica was the 2nd wife of the deceased. I have not seen any proceedings with respect to the citation. That remains to be determined.

39. Hence the participation of these three in this application was irregular taking into consideration their respective pending proceedings would have to be determined separately or in the context of protest proceedings. I noted that Monica is described invariably as a protester yet the matter has not ripened for the filing of a protest. The other two are yet to be joined to this proceeding.

40. It is my considered view that at this stage the issue is between the applicants and the respondents as to the appointment of the administrator. Once the administrators are determined the rest of the matter can move from there.

41. What is evident from the record is that since the grant was made to the two in 2019, the respondents have never done what was expected of them, to move the court to distribute the estate. Neither have they filed anything in court to show that they indeed acted on the grant issued to them in 2017.

42. The Amended Grant of Letters of Administration Intestate was issued on 5th November, 2019 and therefore by 5th June 2020 the respondents should have applied for the confirmation of grant. However, to date none has been filed.

43. It is also evident that two administrators have differences between them and were not working as a team. For instance, in the appointment of counsel, it was clear that there was no consultation and the



1st respondent moved to get new counsel without consulting his co administrator who expressed the genuine fear of wasting the estate through payment of multiple legal fees.

44. The four i.e the applicants and the respondents are siblings. They are equal in status and priority with respect to appointment as administrators. The respondents will not suffer any prejudice, and the estate may be safer in four hands rather than two disjointed ones.
45. In view of the foregoing I find that the application is merited. The grant issued on 5th November 2019 to the Respondents be and is hereby revoked.

Whether the court should appoint the applicants as administrators

46. Section 66 of the *Law of Succession Act* sets out the order of preference with regard to who ought to apply and be appointed administrator in intestacy. Priority is given to surviving spouses, followed by the children of the deceased. These provisions state as follows:

“S. 66. Preference to be given to certain persons to administer where deceased died intestate

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors ...” and”

47. As stated hereinabove the applicants are eligible.

48. In the end, the following final orders should issue:

- a. That the Amended grant issued to Philip Habel Karobia & Irene Njoki Karobia on 5th November 2019 be and is hereby revoked.
- b. Philip Habel Karobia, Irene Njoki Karobia Terry Wairimu Karobia & Ann Wachuka Karobia be and are hereby appointed the administrators of the estate of Habel Thumi Karobia.
- c. A grant of letters of administration intestate do issue to them accordingly.
- d. That the administrators so appointed shall within 30 days hereof apply for confirmation of the grant made to them in default the grant will stand revoked;
- e. That the administrators shall cause the application to be filed to be served upon all known beneficiaries of the estate.
- f. That any beneficiary dissatisfied with the proposals made in the application for confirmation of the grant shall be at liberty to file Affidavit of Protest making their own proposals on distribution;
- g. Each party shall bear their own costs.



- h. This is an old family matter. This court is obligated by article 159(2) (c) of *the Constitution* to encourage them to pursue Alternative Dispute Resolution Mechanisms. In Nakuru we have Alternative Justice Systems (AJS) and mediation. Parties and their counsel can seek either through a mention before the requisite Deputy Registrar. For this purpose, parties to appear before the Deputy Registrar within 14 days hereof on a date to be assigned by the Court Assistant.
- i. Orders accordingly.

Dated, signed and delivered via email at Nakuru this 24th day of November 2022.

Mumbua T Matheka,

Judge.

CA Jennifer

Maiyo & Mbugua Co. Advocates,

EMAIL : maiyombuquallp@gmail.com

Nancy W. Njoroge & Co Advocates,

EMAIL: nancyadvocate@yahoo.com.

Githui & Co Advocates,

EMAIL: githuiadvocates@yahoo.com

Frank Mwangi & Company Advocates,

EMAIL :frankmwangiadvocates@gmail.com

Nakuru H.C. Succession Cause Number 209 of 2012 Page 7 of 7

