



REPUBLIC OF KENYA



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

**In re Estate of Marete Imweri (Deceased) (Succession Cause 78 of 2001)
[2022] KEHC 16344 (KLR) (16 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16344 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 78 OF 2001
EM MURIITHI, J
DECEMBER 16, 2022**

BETWEEN

VENEDETA NCHOGA MARETE APPLICANT

AND

BEATRICE MWENDWA INTERESTED PARTY

JUDGMENT

1. By summons under certificate of urgency dated November 8, 2021 under section 76 of the [Law of Succession Act](#), rule 44(1) of the [Probate and Administration Rules](#), the applicant seeks:
 1. Spent
 2. Spent
 3. That the grant issued to Benine Kijogo M'marete on June 26, 2001 and confirmed on April 15, 2002 be revoked.
 4. That the transfer of Abothuguchi/Gitie/716 to Beatrice Mwendwa and its subdivision into Abothuguchi/Gitie/1143 and Abothuguchi/Gitie/1144 by Beatrice Mwendwa be nullified.
 5. That the transfer of Abothuguchi/Gitie/1144 to Stella Nkatha Kimathi and the transfer of Abothuguchi/Gitie/1143 to Joanina Kanja jointly with David Mutwiri Mutuerandu be cancelled.
 6. That upon nullification of transfer subdivision and transfer as prayed in prayers 4-5 above, the property does revert to the deceased for proper distribution to the applicant.
 7. That this honorable court be pleased to give directions and/or any other orders as it may deem necessary and expedient for the fast tracking of this matter.
 8. That cost of this application be provided for.



2. The application is grounded on the allegation that the applicant, a child to the deceased herein, was not notified and/or her consent sought when the petition was being instituted. The administrator concealed her existence as a genuine beneficiary of the deceased estate thus the distribution of the estate was unlawful and unprocedural, as it intentionally disinherited her. The administrator then transferred Abothuguchi/Gitie/716 to Beatrice Mwendwa, who was neither a beneficiary nor a dependant of the deceased to her exclusion. The said Beatrice Mwendwa subdivided Abothuguchi/Gitie/716 into Abothuguchi/1443 and 1444 which she transferred to Joanina Kanja jointly with David Mutwiri Mutuerandu and Stella Nkatha Kimathi respectively to her exclusion despite having placed a caution against the property to protect her interest. Beatrice Mwendwa, Joanina Kanja, David Mutwiri Mutuerandu and Stella Nkatha Kimathi have since evicted her and her family, brought down her structures, cut down her trees and destroyed her plantations leaving her homeless, destitute and completely disinherited. She prays for the revocation of the grant as the administrator has failed to proceed diligently with the distribution of the deceased estate, and cancellation of the titles issued herein, as the proceedings of obtaining the letters of administration were defective in nature and fraudulent.
3. The interested party filed a replying affidavit on February 11, 2022 contemporaneously with a notice of preliminary objection. She avers that the applicant is her mother, the deceased herein was her grandfather and the administratrix, Benine Kijogo Marete, has since passed on. Upon receiving a share of estate, she subdivided it and disposed the same, and therefore she has no property in relation to the estate. The application has been brought too late in the day after the subject matter has changed hands, and it is full of contradiction and half truths. She avers that any suspicion of fraud on her part ought to be addressed in a substantive suit where all the issues will be trashed out.
4. The 6 grounds raised in the notice of preliminary objection are that:
 - ' The application dated November 8, 2021 is brought with undue delay and styled and coached to cause injustice; the application is not founded on any rule of law or equity; the application is in substance suit by itself founded on fraud or otherwise and it ought to be started as civil or a claim for land; the application ought not to be entertained in a succession cause; the administratrix is deceased and the application is therefore mis-advised; and the application is an afterthought, frivolous, vexatious and an abuse of the court process.
5. On July 4, 2022, the applicant filed a supplementary affidavit together with grounds of opposition to the preliminary objection that:
 - ' The application is brought under section 63 and 76 of the *Law of Succession Act*; there is no limitation of actions for revocation of grant; and death of an administrator is not a limit to the courts jurisdiction under section 76 of the LSA but rather a ground for revocation by itself among other grounds upon which this application is premised.'
6. The applicant and the interested party filed their respective submissions to the application and the PO on July 1, 2022 and July 22, 2022 respectively. The applicant relied on section 76 of the *Law of Succession Act*, the Court of Appeal case of *Ansazi Gambo Tinga & Another v Nicholas Patrice Tabuche (2019) eKLR* and In *re Estate of Nzoka Musavi (Deceased) (2022) eKLR* to affirm that revocation proceedings had no limitation and could be brought at any time, and urged the court to dismiss the PO. She urged that since she was never notified of the succession proceedings nor her consent sought yet she was in actual occupation of Abothuguchi/Gitie/716, a fact that was not disclosed to the court, the grant ought to be revoked as she was disinherited, and cited *In re Estate of Wabome Mwenje Ngonoro Deceased (2016) eKLR*, *re Estate of M'amanja M'ithinyai (Deceased) (2019) eKLR* and *In re Estate*



of M’Kungania M’Mbui (Deceased) (2019) eKLR. She urged that it was wrong for the administrator to introduce the applicant and another grandchild of the deceased to inherit directly from the estate yet their parents were alive, and relied on sections 26 and 29 of the *Law of Succession Act*. She urged that the certificate of confirmation of grant is defective as it does not disclose all the beneficiaries or identify their shares, and relied on *Re estate of Robert Mungai Gichinji (Deceased) (2016) eKLR* and *Santuzza Bilioti alias Mei santuzza (deceased) v Giancarlo Falasconi (2014) eLKR*. She urged the court to revoke the grant, cancel the interested party’s title and order Abothuguchi/Gitie/716 to revert to the name of the deceased, or give it to her.

7. The interested party urged that, by virtue of being a granddaughter to the deceased, she falls within the degree of consanguinity and affinity recognized and envisaged by the rules of probate and administration and the general laws of succession, therefore she had the right to inherit. She urged that the applicant had inordinately delayed for 20 years in bringing the complaint herein, and it would be unfair to disturb the situation because Abothuguchi/Gitie/716 had changed hands and other parties have developed it. She advised the applicant to instead commence civil proceedings where the parties would be in a position to test evidence as appropriate. She urged the court to dismiss the application with costs for being meritless, fatally defective and an abuse of the court process.

Analysis and determination

8. The court finds that the preliminary objection dated February 11, 2022 was wrongly raised, as the procedure for revoking a grant is well laid out in section 76 of the *Law of Succession Act*, and therefore these proceedings are properly before this court.
9. The issues for determination are whether the grant should be revoked and the subsequent subdivision of Abothuguchi/Gitie/716 cancelled.
10. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant 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 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.'

11. The beneficiaries of the deceased herein are listed in the chief's letter dated November 13, 1996 as Benine Kijogi M'Marete - widow (now deceased), Vitorio Karambu - daughter (married), Agnes Nkirote - daughter (married), Ernest Simba - son(married), Venedeeta Ncoga - daughter (not married), Sisimonda Gatwiri - daughter (married), Lawrenca Kajira -daughter (married) and Luceta Nceri - daughter (married). It appears from the certificate of confirmation of grant that Abothuguchi/Gitie/301(henceforth called the estate property) was only shared amongst Ernest Simba Marete, Samson Gitonga, Beatrice Mwendwa, Luceta Stanley and Benine Kijogo M'Marete (deceased).
12. The applicant is the mother to Beatrice Mwendwa, the registered owner of Abothuguchi/Gitie/716, which has since been subdivided into 2 and transferred to other people. The applicant is only interested in that parcel of land and not the estate property. It is unclear how Beatrice Mwendwa, a granddaughter to the deceased, was given a share of the estate property directly during the lifetime of her mother. The other beneficiaries do not seem to have a problem with that save for the applicant herein.
13. Section 29 of the Law of Succession Act gives priority to the children of the deceased to inherit first as opposed to grandchildren.
14. In re Estate of Joyce Kanjiru Njiru (Deceased) [2017] eKLR the court (LW Gitari J) observed the following:

' From the definition given under section 29 (supra) the spouses and children of the deceased have priority to inherit the estate. The grandchildren and others can inherit if they were being maintained by the deceased prior to her death. In this present cause, the two grandchildren are not claiming interests as dependents but are coming in to claim the interests of their respective parents who are now deceased. My view is that the children are entitled to inherit the share which their deceased parents would have inherited.'
15. The grant herein was confirmed way back on April 15, 2002 and this application was only filed this year, which is approximately 20 years down the line. The applicant has not proffered any reason at all for the inordinate delay in commencing these revocation proceedings, despite having placed a caution on Abothuguchi/Gitie/1144 in 2015.
16. Nonetheless, the court will allow the revocation sought in respect of Abothuguchi/Gitie/716, which ought to have gone to the applicant instead of her daughter, Beatrice Mwendwa, who is the granddaughter of the deceased herein.

Orders

17. Accordingly, for the reasons set out above, the preliminary objection dated February 11, 2022 is accordingly dismissed.
18. The applicant's application dated November 8, 2021 is allowed in the following terms:
 1. The subdivision of Abothuguchi/Gitie/716 into Abothuguchi/Gitie/1143 and 1144 is hereby cancelled.
 2. Abothuguchi/Gitie/716 shall be registered in the name of the applicant.

Order accordingly.

DATED AND DELIVERED ON THIS 16TH DAY OF DECEMBER, 2022.



EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Karwitha, Advocate for the Applicant.

N/A for the Respondent.

