



REPUBLIC OF KENYA



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**In re Estate of Paskwale Kirigia (Deceased) (Succession Cause
614 of 2011) [2022] KEHC 16382 (KLR) (16 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16382 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 614 OF 2011
EM MURIITHI, J
DECEMBER 16, 2022**

BETWEEN

BONFACE NDEGE KIRIGIA APPLICANT

AND

FRANKLIN KARIUKI KIRIGIA 1ST RESPONDENT

ERNEST KINYUA KIRIGIA 2ND RESPONDENT

AND

ROSEMARY KAJUJU KIRIGIA INTENDED OBJECTOR

RULING

The 1st Application

1. On December 10, 2020, the applicant herein, Bonface Ndege Kirigia, filed summons for rectification of grant dated October 22, 2020, seeking:

1. That Franklin Kariuki Kirigia, Ernest Kinyua Kirigia and Dinah Kambura Kirigia an administrator and beneficiaries respectively of the estate herein, their servants or agents be restrained by an order of this court from intermeddling, surveying and sharing out, trespassing thereon, disposing or in any other way interfering with the suit property below until the hearing and determination of this application, namely:
 - 1) Land reference Number Igoji/Mweru/295,
 - 2) Land reference Number Igoji/Gikui/1896,



- 3) Land reference Number Igoji/Gikui/2518,
 - 4) Land reference Number Igoji/Gikui/356,
 - 5) Land reference Number Igoji/Gikui/1104,
 - 6) Plot Number 15 Mukuune Market,
 - 7) Land reference Number Igoji/Kianjogu/1474,
 - 8) Land reference Number Igoji/Kianjogu/1475,
 - 9) Land reference Number Igoji/Kianjogu/1476,
 - 10) Land reference Number Igoji/Kianjogu/1477,
 - 11) Land reference Number Igoji/Kianjogu/1478.
2. That an order be made that the certificate of confirmation of grant issued to Bonface Ndege Kirigia and Franklin Kariuki Kirigia on the May 28, 2013 be rectified and all assets distributed to Silivana Mbuthu Kirigia be redistributed to all the beneficiaries herein equally.
 3. Costs of this application.
2. The application is premised on the grounds that after the death of the said Silivana Mbuthu Kirigia on September 28, 2020, the respondents redistributed all her assets amongst themselves and are in the process of surveying and distribution, and have indicated that they will unleash violence on anyone trying to stop them. The said Silivana Mbuthu Kirigia, having not transferred the assets to herself, the same are still in the name of the deceased herein, thus available for distribution to all of them. In his supporting affidavit sworn on even date, the applicant accuses the respondents and the intended objector of greed and illegality over the assets of the deceased herein, to the detriment of the other beneficiaries. He further accuses the respondents of taking advantage of his frail and sickly mother to cause her to sign papers leaving them all family assets allocated to her in this cause.
 3. The 3rd respondent swore a replying affidavit on November 17, 2020 in opposition to the application. She avers that the confirmed grant was given in the presence of all beneficiaries and it has never been challenged howsoever to date. She avers that the properties awarded to their deceased mother Silivana Mbuthu are hers and she already bequeathed them to the applicant and the respondents as she wished. She avers that the boundaries earlier fixed by their late mother Silivana were re-confirmed by the surveyor who was accompanied by the area chief and a village elder, and she employed a lady to take care of the home, who is certainly not a goon. She avers that after the death of their mother, they rightly appropriated her share equally among the 3 daughters, each getting 2.67 acres while their brothers were left with 4.53 acres. She urged the court to dismiss the application with costs, as it was fueled by the applicant's greed to grab their mother's land.

The 2nd application

3. This is an application by Dinah Kambura Kirigia, the 3rd respondent/applicant dated December 22, 2020 seeking:
 1. That this honorable court be pleased to annul and/or revoke the grant of letters of administration issued to the petitioners and confirmed on May 28, 2013.



2. That this honorable court be pleased to appoint the applicant Dinah Kambura Kirigia as administratrix of the estate of the deceased.
 3. That this honorable court be pleased to issue a fresh grant of letters of administration in the name of the applicant Dinah Kambura Kirigia.
 4. That the grant of letters of administration issued under paragraph 3 above be confirmed notwithstanding that 6 months have not elapsed.
 5. That the costs be in the cause.
4. She contends that the petitioners have failed to proceed diligently with the administration of the estate of the deceased as required by the law, thus denying the beneficiaries herein their entitlements and causing them immense suffering. Instead of finally distributing the estate of the deceased, the applicant sought to have the share of her deceased mother, Silvana Mbuthu Kariga, redistributed. She avers that the said Silvana Mbuthu had already shared out her entitlement of the deceased estate to other beneficiaries. She avers that the applicant has been employing delaying tactics in implementation of the grant herein and, therefore, the grant herein has become useless and inoperative through subsequent circumstances. Since the 1st respondent has sought to resign as an administrator, the applicant cannot be entrusted with administration herein, and the application ought to be allowed.
 5. The 3rd respondent, Dinah Kambura Kirigia swore a further replying affidavit on April 11, 2021 reiterating the contents of her affidavit in support of her application.

The 3rd Application

6. The intended objector, Rosemary Kajuju Kirigia, filed an application dated September 13, 2021 seeking, “That this honorable court be pleased to set aside certificate of grant issued on May 28, 2013 and grant leave to her to object the same out of time.”
7. The grounds upon which the application is premised are set out in the body of the application and her supporting affidavit sworn on even date. She contends that she is a daughter of the deceased who was born out of wedlock, and the petitioners did not inform her when they filed the cause, so that she could object to the same. She avers that unless the orders sought herein are granted, she will be disadvantaged as she will not benefit from her father’s estate.
8. The intended objector swore another supporting affidavit on February 2, 2022, in support of her application.
9. It appears the applications dated December 22, 2020 and September 13, 2021 were not responded to.

Submissions

10. The applicant firstly reproduced the history of the matter then urged that although Silvana Mbuthu Kirigia was given 8 acres to hold in trust for herself and her 3 daughters, the same ought to go to all beneficiaries because she had since died. Moreover, her portion is where they have their homestead and grave yard. He accused the 3rd respondent of intermeddling and sharing the land where the graveyard is to Annmary Gacheri Kirigia who lives and works at Taita Taveta, against the intention of the deceased herein. He submitted that the 2 acres held by their deceased mother in trust for all the beneficiaries contains the homestead and the grave yard which should be accessible to all members of the family and not to be held by one individual. He accused the 3rd respondent of coming to this court with unclean hands, since she has allocated herself 4 buildings within the estate, as evidenced by the photographs



annexed to the application, and cited *In re Estate of Isaac Mote Kiniti (Deceased) (2017) eKLR*. He called upon the intended objector to prove her dependency to the deceased estate as required by section 29 of the *Law of Succession Act*.

11. The 3rd respondent urged that Silvana Mbuthu Kiriga was given 8 acres to hold in trust for herself and her 3 daughters, but there was no mention of any part of the deceased estate that was to be utilized as a family graveyard as alleged by the applicant. Prior to her death, Silvana Mbuthu sub divided all property to the applicant and the respondents, who have since taken practical possession of their respective parcels. She urged that the applicant did not take any steps to fully administer the estate instead he went to slumber only to be woken up by his greed when their mother died and his attempt to redistribute the estate is only meant to increase his share. She urged that when she stepped up as a beneficiary, the applicant and his cohorts wasted no time accusing her of gerrymandering yet they have done nothing for more than 7 years. She submitted that the grant issued to the applicant and the 1st respondent ought to be revoked and issued to her, because she has taken steps and expended her own personal resources in order to ensure the estate is completely administered. She urged that since the properties given to Silvana Mbuthu were held in trust for her daughters, the same ought to automatically be transmitted to the beneficial owners whom she held it for, and relied on *In re Estate of Jacob Gichunge Muchiri (Deceased) (2019) eKLR*. She urged the court to dismiss the application dated October 22, 2020 but allow the applications dated November 9, 2020 and December 22, 2020.
12. The intended objector did not file any submissions.

Analysis and Determination

13. The applications dated December 22, 2020 and September 13, 2020 will be determined together as they fundamentally seek to have the grant revoked and/or set aside.
14. Intermeddling is outlawed by section 45 of the *Law of Succession Act*, for the authority to handle the property of a dead person emanates only from a grant of representation. Section 45 provides as follows:
 - “(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 - (2) Any person who contravenes the provisions of this section shall — (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”
15. The 3rd respondent refutes the applicant’s allegation that she has been intermeddling with the estate of the deceased, and asserts that all she did was to employ a lady to take care of the home.
16. 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.”

17. The 3rd respondent wants the grant revoked because the petitioners have failed to diligently proceed with the administration of the estate of the deceased 9 years after the same was confirmed on May 28, 2013. The intended objector wants the grant set aside so that she can get an opportunity to take out objection proceedings in respect of the estate of the deceased herein who was allegedly her father. The applicant accuses the respondents of intermeddling with the estate of the deceased and illegally subdividing the estate properties to the detriment of the other beneficiaries. The copies of official searches on record show that as at December 17, 2020, the estate properties were still in the name of the deceased herein. From the certificate of confirmation of grant dated May 28, 2013, majority of the estate properties were to be registered in the name of Silivana Mbuthu Kirigia (now deceased) save for Igoki/Kianjogu 1474, 1475, 1476, 1477 and 1478 which were to be consolidated and shared among the applicant, the 1st respondent, the 2nd respondent, Anthony Gitari Kirigia and James Kimathi Kirigia. Silivana Mbuthu Kirigia (now deceased) was to hold 8 acres in trust for herself and her 3 daughters namely Karen Karimi Kirigia (deceased), Dinah Kambura Kirigia, the 3rd respondent herein and Ann Mary Gacheri Kirigia.
18. A grant may be revoked if the administrators, who in this case are the applicant and the 1st respondent, have failed to proceed diligently with the administration of the estate.
19. I respectfully agree with the court *In re Estate of Omar Makokha Matsakhu (Deceased) [2021] eKLR*, (W Musyoka J) that:

“The programme in the *Law of Succession Act*, running in sections 71, 73, 76 (d) (i) and 83, is that a grant of representation should be confirmed and the estate distributed within one year of its making. Under this programme, administration of an estate should not run forever, if everything were to follow the script, the administration ought to be completed within one year. Failure to apply for confirmation of the grant after 6 months, and to complete administration within one year is a good ground for revocation of the grant under section 76 (d) (i). The administrator herein has utterly failed in that department. The grant was made



to him on July 10, 1989, and 32 years down the line, he is yet to apply for confirmation of his grant, and to complete administration. He should have applied for confirmation of his grant in January/February 1990, and completed administration by July/August 1990. He has given no plausible explanation whatsoever for his spectacular failure.”

21. Similarly, *In re Estate of the Late Njonjo Kibiga (Deceased) [2022] eKLR* the court (H K Chemitei, J) held:

“This court under section 76 (1) (d) (ii) as cited above allows this court to revoke grant of letters of administration in the event the administrator has failed after due notice and without reasonable cause to proceed diligently with the administration of the estate.”

22. This court finds that the applicant and the 1st respondent, the administrators of the estate of the deceased, have lacked diligence in administering the estate of the deceased herein. Besides, majority of the estate properties having been distributed to Silivana Mbutu Kirigia, who has since passed on, makes it difficult for the grant to be implemented at this stage.

23. It is thus clear that the 3rd respondent and the intended objector have demonstrated to the satisfaction of this court that the grant herein should be revoked.

24. Consequently, in view of the orders revoking the grant herein, the applicant’s application dated October 22, 2020 stands dismissed.

Orders

25. Accordingly, for the reasons set out above, the applications dated December 22, 2020 and September 13, 2021 are allowed in the following terms:

1. The grant issued to the applicant and the 1st respondent on January 19, 2012 and confirmed on May 28, 2013 is revoked.
2. Any of the beneficiaries may be appointed administrators and for that purpose the matter shall be mentioned on January 16, 2023 for appointment of an administrator by consent of the parties or by the court in default of such agreement.
3. Further directions on the hearing of the matter to be taken on January 16, 2023.

Order accordingly.

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

EDWARD M MURIITHI

JUDGE

Appearances:

Mr Muthomi Njeru, Advocate for the 3rd Respondent.

N/A for the applicant.

