



In re Estate of Gladys Gathoni Muriuki (Deceased) (Succession Cause 507 of 2011) [2021] KEHC 9805 (KLR) (28 May 2021) (Ruling)

Neutral citation: [2021] KEHC 9805 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 507 OF 2011**

JN ONYIEGO, J

MAY 28, 2021

IN THE MATTER OF THE ESTATE OF GLADYS GATHONI MURIUKI (DECEASED)

RULING

1. The deceased herein Gladys Gathoni Muriuki died intestate on 11th November, 2004. She was survived by the following beneficiaries; Geoffrey Muriuki Kaigi (husband) and six children namely; Anna Wangui Muriuki ,Regina Wakonyu Muriithi, Bernard Mwangi Kaigi ,Catherine Wanjiku Kaigi ,Michael Muriuki Kaigi and Daniel Weru Kaigi. According to form P&A 5 the only asset comprising the estate is Nyandarua /Kirima / 1121.
2. On 23rd December, 2011, Geoffrey Muriuki Kaigi the widower and his daughter Regina Wakonyu Muriithi petitioned for a grant of representation. The same was granted and issued on 29th May, 2012. It was later confirmed on 23rd July,2013 and the estate shared out equally amongst all the beneficiaries.
3. On 3rd September, 2014, Anna Wangui one of the beneficiaries filed summons for revocation of grant claiming that the grant was obtained fraudulently and through concealment of important information material to the case. She argued that her father (administrator) was not entitled to take out a grant of letters of administration in respect of her mother's estate taking into account that he and the deceased had divorced way back 1964 hence the father had no right to administer the deceased's estate nor entitled to a share as he was no longer a husband to the deceased as at the time she died.
4. Subsequently, Ann filed an application dated 8th March, 2019 the subject of this ruling seeking to have this file transferred to Nyahururu high court for hearing and determination of the revocation application. The application is anchored on the grounds stated on the face of it and averments contained in the affidavit in support. She basically raised the issue of lack of jurisdiction by this court in hearing this matter considering that all beneficiaries reside in Nyandarua where the deceased was buried and that the property comprising the estate is located in Nyandarua.
5. In response to the application, the respondents/petitioners filed grounds of opposition dated 27th May, 2019 stating that; the respondent/petitioner is an elderly man of meagre means residing in Mombasa hence it will be costly to be travelling to Nyahururu; the grant has been confirmed and it is only Mombasa high court which issued the grant to hear the revocation application ; Application is frivolous



and an abuse of the court process; no cogent reason has been submitted to warrant exercise of discretion and, the application is a waste of court's time.

6. In her rejoinder, the applicant filed a supplementary affidavit on 15th February, 2021 stating that, given time, she will prove that the 1st petitioner was not married to the deceased and that she will also be calling elderly witnesses all of whom reside in Nyandarua hence costly to travel to Mombasa.
7. When the matter came up for hearing on 17th February, 2021, counsel agreed to file submissions in canvassing the application. The court directed parties to appear on 12th April, 2021 to orally argue the application. On that day, parties did not appear and the court gave a date for ruling.
8. I have considered the application herein, affidavit in support and grounds of opposition thereto. The only issue for determination is whether this court had jurisdiction to entertain the matter and whether the same should be transferred to Nyahururu for hearing and determination of the revocation application. It is trite that jurisdiction is everything and without it, a court cannot move any step further. See owners of the *Motor Vessel "Lilian S" V Caltex Oil Kenya Ltd* (989) eKLR. There is no dispute that this matter has been heard and determined. This is clear from the confirmed grant. It is also clear that the only pending issue is transfer of the beneficiaries' shares into their names. Ideally, the suit has been determined and finalized. Jurisdiction cannot be raised at this stage.
9. Further, considering that what is pending is a revocation application, it is only fair and just that the court that issued the confirmed grant do hear the matter to conclusion.
10. The argument that the only asset comprising the estate is in Nyandarua and that it will be costly to transport elderly witnesses from Nyandarua to Mombasa, is an issue that can be dealt with technologically.
11. During this era of Covid and with the Judiciary electronic case management in place, witnesses do not have to travel from Nyandarua to Mombasa for purposes of giving evidence. They will record and file their witness statements and then testify virtually. With that in mind, the issue of travelling and the attendant costs does not arise. See *SMM VS AM* (2020) eKLR where the court refused to transfer a case from one subordinate court to the other on account of lack of territorial jurisdiction and convenience of witnesses in terms of travelling expenses by holding that

“...further still, with the electronic case management directions in place, witnesses if necessary can testify virtually”
12. In view of the above finding and observation, I do not find it necessary to transfer this matter to Nyahururu high court. To do so will further delay the matter. Further, I am alive to the fact that the high court has unlimited jurisdiction country wide on civil and criminal matters. Even in exercise of my discretion, it is in the interest of Justice that the said application be heard in Mombasa high court as it is equally seized of jurisdiction.
13. Accordingly, the application herein is dismissed with no order as to costs. The suit shall be set down for directions on how to proceed with the hearing of the revocation application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 28TH DAY OF MAY, 2021

J. N. ONYIEGO

JUDGE

