



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION CAUSE NO.377 OF 2010**

**IN THE MATTER OF THE ESTATE OF WELLINGTON KARIUKI ECHESSA (DECEASED)**

**AND**

**PATRICIA GATHONI ECHESSA KARIUKI &**

**BEATRICE KAMUYU MWAI**

**(As Administrators of the Estate of Wellington Kariuki Echessa .....1<sup>ST</sup> & 2<sup>ND</sup> APPLICANTS**

**VERSUS**

**MARY NJOKI NGUGI.....1<sup>ST</sup> RESPONDENT**

**CATHERINE NJERI NGUGI.....2<sup>ND</sup> RESPONDENT**

**RULING**

On 12<sup>th</sup> November 2018 this matter came for hearing. Present was Mr. Gakaria for the respondents. Ms. Muniafu for the applicants was absent. Mr. Gakaria informed the court that he was ready to proceed with 2 witnesses. However, there was a note that Ms. Muniafu had fallen ill the previous night and was unable to attend court.

Mr. Gakaria told the court that had he known about Ms. Muniafu’s illness the previous night, or early in the morning he would not have travelled all the way from Nairobi with his witnesses. He conceded to the application for adjournment but asked for his costs and the expenses for witnesses. The matter was adjourned and the order for costs granted. Since there was a representative from Ms. Muniafu’s office, a hearing date of 28<sup>th</sup> January 2019 was fixed by consent.

Come 28<sup>th</sup> January 2019 neither Mr. Gikaria nor his client was present. There was no representation from his office. Ms. Muniafu was present with her witnesses. She said there was some vague information about the bereavement of Mr. Gikaria’s client. That Ms. Muniafu’s client and Mr. Gikaria clients were members of the same family and Ms. Muniafu’s clients were not aware of any bereavement in the family, and neither were other members of the family and they were present in court.

Ms. Muniafu proceeded to make an oral application. That the application before the court was brought in 2016 under Section 76 of the Laws of Succession Act.

That since the matter was filed the respondents had demonstrated a certain degree of unwillingness to proceed, that all this time they had appeared once on 17<sup>th</sup> October 2017 when 2 witnesses were heard otherwise they had made excuses not to proceed, once counsel alleged an appeal whose particulars were not supplied, another time the respondent was attending a seminar for a whole month. She herself had missed court only once out of sudden illness and admission in hospital. That one of her clients had a warning at work for not numerous absences occasioned by attendances to court for this case.

Considering the age of the matter Ms. Muniafu invited the court to invoke its inherent jurisdiction under Section 76 of the Laws of Succession Act to revoke the grant as confirmed and save the court’s and the applicants’ time one of who was at the risk of losing their job over absenteeism in attending the court.

Section 76 of the Law of Succession Act provides: -

**“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 by the court or its own motion”**

The law proceeds to set down the circumstances where this may be done-

That proceedings to obtain the grant were defective.

That there was fraud or the making of false statement or the applicant concealed material facts from the court.

That the applicant made untrue allegations of fact or law whether or not it was deliberate or inadvertent or out of ignorance.

That the holder of the grant had failed to either to apply for its confirmation or proceed to diligently administer the estate or give account as provided for under Section 83 of the Law of Succession Act.

That the grant had become useless and inoperative due to subsequent circumstances.

It is noteworthy that all these circumstances apply whether it is a party, an interested party or the court acting *suo motu*. The issue then, is this a case where the court can respond to the request made and move itself to revoke the grant? Would that not amount condemning the respondent unheard? Would it not be prejudicial to the respondent?

These are questions that I pondered over as I considered the circumstances of this case, and what would be the consequences for the respondents. Would it work any injustice to them?

The Summons for Revocation of Grant is dated 18<sup>th</sup> October 2016 and is supported by the affidavit of Patricia Gathoni Echessa and Beatrice Kamuyu Mwai.

From the record and the testimonies on record, the 1<sup>st</sup> respondent is one of the wives of the late Wellington Kariuki Echessa, who was the son of Emily Nyambura Echessa, the mother to the 1<sup>st</sup> applicant, and grandmother to the 2<sup>nd</sup> Applicant, who is also a step daughter to the 1<sup>st</sup> respondent, all facts which are not denied by the respondents.

The deceased was also brother to the 1<sup>st</sup> applicant among others. By the time of his death, he was living on LR Chinga/Kagongo/677 with the 1<sup>st</sup> respondent and her son Jeff Muthee. It has been stated that that parcel of land was the family land- where the deceased's mother lived, died and was buried.

According to the letter of the Chief Chinga North location dated 19<sup>th</sup> March 2010 Wellington Kariuki Echessa died on 13<sup>th</sup> December 2009. By that time, he was the registered proprietor of Chinga/Kagongo/677.

He was survived by: -

Mary Njoki –wife 1st respondent

Beatrice Kamuyu – daughter (2<sup>nd</sup> applicant)

Jeff Muthee senior- son

Gregory Kimani- son

Jeff Muthee junior- son

Mary Njoki applied for letters of administration together with one Catherine Njeri Ngugi and grant of letters of administration intestate was given to her on 9<sup>th</sup> December 2009.

On 14<sup>th</sup> September 2011 they applied for confirmation of the grant. At paragraph 3 they listed the beneficiaries of the estate as Beatrice Kamuyu – daughter, Jeff Muthee senior- son, Gregory Kimani- son, Jeff Muthee junior- son. The last two were listed as minors. A consent to the mode of distribution signed by Beatrice Kamuyu and Jeff Muthee senior was annexed to the application.

On 14<sup>th</sup> October 2011 the certificate of confirmation of the grant was made to them and Mary Njoki became the sole beneficiary of the entire estate of Wellington Kariuki Echessa.

There are on record affidavits by the other beneficiaries Jeff Muthee Kariuki, Gregory Kimaru Kariuki and Beatrice Kamuyu Mwai that they were not involved in the whole process, that they were disinherited and that they too deserved to be involved in the administration of their father's estate and receive shares of their father's estate.

The mother to Jeff Muthee and Gregory Kimani Alice Samantha Kimani also swore an affidavit as the estranged wife of the deceased although –she was not mentioned in the letter by the chief.

The applicants recognize the 1<sup>st</sup> respondent as one of the wives of the deceased.

Clearly on the face of it the certificate of confirmation of grant was issued without the court getting the opportunity to consider every person who was beneficially entitled to the estate and their specific shares.

Why because from the petition although the 1<sup>st</sup> respondent recognized the existence of other beneficiaries, some of whom were adults, they have indicated they never consented to her and one Catherine Ngugi being appointed as administrators of the estate, nor did they consent to the mode of distribution of the estate, and – there is nowhere they have waived their right to inherit their father's estate.

The deceased died intestate. Until otherwise proved Section 35 of Laws of Succession Act would apply to the distribution of the estate. That would only happen after the grant has been revoked and the proper process followed to allow all those legally beneficially entitled to the estate to participate.

I also noted that the time of confirmation of the grant the 1<sup>st</sup> respondent had indicated that 2 of the beneficiaries were minors yet no provision was made with regard to a continuous trust for them.

It is my considered view that since the 1<sup>st</sup> respondent is the sole beneficiary of the estate to the detriment of the other beneficiaries, she may not be in a hurry to have this matter concluded. It is also not in the interests of justice to keep this matter longer on this issue when on the face of it, the solution lies in the revocation of the grant and allowing the other parties to participate hence, ensuring that justice is not delayed and denied in the long run.

Consequently, I am persuaded that:-

On the face of information provided by the 1<sup>st</sup> respondent and the applicants the grant was obtained through defective proceedings as the other beneficiaries were not notified, there was concealment of material that would have affected outcome of the petition and there was no consent by beneficiaries to the grant of letters of administration intestate to the two administrators, nor to the mode of distribution which ought to have complied with the provisions of S.35 of the Law of Succession Act.

I am persuaded that to keep these proceedings for the revocation of this grant stringing along is not in the interests of justice as the 1<sup>st</sup> respondent is in control of the estate yet there are obviously other persons who are legally beneficiary entitled to the estate and whom the 1<sup>st</sup> respondent deliberately left out while distributing the estate. The law should not be used to support an obvious wrong.

In any event all the parties will get to be heard once the grant is revoked and their voices can be brought on board.

Hence, I allow the application and make the following orders

1. The grant issued on 9<sup>th</sup> December 2010 and the certificate of confirmation of 14<sup>th</sup> September 2011 is accordingly revoked.
2. A fresh grant to issue in the joint names of the 1<sup>st</sup> respondent, and the applicants viz; MARY NJOKI NGUGI, PATRICIA GATHONI ECHESSA KARIUKI and BEATRICE KAMUYU MWAI.
3. Each administrator or all them jointly is at liberty to file a summons for confirmation of the grant within 60 days hereof.
4. The 1<sup>st</sup> and 2<sup>nd</sup> respondents MARY NJOKI NGUGI and CATHERINE NJERI NGUGI to file with the court within the said period – the inventory as required by Section 83 (e) of the Laws of Succession Act.
5. Orders accordingly.
6. The orders be served on the respondents by the applicant's counsel.
7. Mention on 29<sup>th</sup> April 2019 to confirm compliance.

**Dated, delivered and signed at Nyeri this 22<sup>nd</sup> day of February 2019.**

**Mumbua T. Matheka**

**Judge**

In the presence of:-

Court Assistant: Juliet

Ms. Muniafu for applicants

N/A for respondents or counsel

**Mumbua T. Matheka**

**Judge**

**22/2/19**