



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 378 OF 1997**

**IN THE MATTER OF THE ESTATE OF JONATHAN NJENGA (DECEASED)**

**RULING**

1. The application dated 30<sup>th</sup> July 2014 seeks revocation of the grant of letters of administration intestate made on 29<sup>th</sup> November 2006, and amended severally thereafter, to Jane Wanjiku, Lewis Muchene and Edwin Gitau. It is brought at the instance of Salome Njambi Njenga who is apparently aggrieved about the manner in which the estate was distributed.
2. The deceased herein, Jonathan Njenga died on 14<sup>th</sup> January 1992. Representation to his estate was sought by the current administrators *vide* a petition lodged in this cause on 17<sup>th</sup> March 1997. He was expressed to have been survived by his widow, Jane Wanjiku Njenga, his sons: Lewis Muchene and Edwin Gitau, and his daughters: Salome Njambi Thande and Anne Wairimu Tchoreret. He died possessed of the assets set out in a schedule attached to the petitioner's affidavit in support of the petition.
3. The applicants in the application dated 30<sup>th</sup> July 2014 are the daughters of the deceased. They were resident abroad in 1996 when this cause was initiated at this registry. They both executed consents to allow the administrators' petition for representation of the estate. Anne Wairimu Tchoreret executed her consent on 3<sup>rd</sup> February 1996, while Salome Njambi Thande executed hers on 29<sup>th</sup> July 1996.
4. The grant was duly made on 28<sup>th</sup> May 1997 to the administrators.
5. The administrators filed an application on 1<sup>st</sup> March 2002, dated 17<sup>th</sup> May 2001, seeking confirmation of the grant. They listed eight (8) assets as available for distribution amongst the five (5) survivors of the deceased named in paragraph 2 hereabove. The applicants got a share in only one of the assets, the bulk of estate going to the administrators. The estate was also devolved to Rachel Wanjiru Muchene and Juliah Wangu Gitau, who were not listed in the petition and in the application for confirmation of grant as survivors of the deceased. There is no explanation in the application dated 17<sup>th</sup> May 2001 as to who these individuals were and why they were given shares in the estate of the deceased.
6. The Summons dated 17<sup>th</sup> May 2001 was heard on 29<sup>th</sup> November 2006 in the presence of the administrators and was allowed. A certificate of confirmation of grant in the terms proposed in the said application was issued accordingly. The said certificate was rectified on 29<sup>th</sup> July 2008 to include assets that had been omitted and to correct or allow the names of the deceased.
7. When the application dated 30<sup>th</sup> July 2014 was placed before me on 26<sup>th</sup> August 2014, I directed that the same be served. There is on record an affidavit of service sworn on 30<sup>th</sup> September 2014

by a process server, Enock Shamala, filed herein on 30<sup>th</sup> September 2014 to the effect that the said application and a hearing notice were served on counsel for the administrators. Attached to the affidavit of service is a hearing notice dated 8<sup>th</sup> September 2014 in respect of a hearing fixed for 1<sup>st</sup> October 2014. Embossed on the hearing notice is an office stamp of the firm of Nyoro Njogu & Company, Advocates, with the date of 10<sup>th</sup> September 2014, the time of 3.45pm and a signature of the receiving officer.

8. Come the 1<sup>st</sup> October 2014, Mr. Adere for the applicants attended court in the absence of the respondents. I gave directions to the effect that the said application be disposed of by way of written submissions and that the matter be mentioned further for compliance. The matter was mentioned on 26<sup>th</sup> November 2014 in the presence of Mr. Gachuhi, holding brief for Mr. Adere, for the applicants and Mr. Njogu for the respondents. Mr. Gachuhi confirmed filing submissions, while Mr. Njogu expressed his difficulty in getting the respondents for the purpose of obtaining instructions. I gave the respondents thirty (30) days to reply to the application and fixed the matter for highlighting of submissions on 3<sup>rd</sup> March 2015.
9. The record before me reflects that the respondents did not reply to the application dated 30<sup>th</sup> July 2014 for there is no affidavit in reply or grounds of opposition on record. The applicants filed submissions on 29<sup>th</sup> October 2014, dated 8<sup>th</sup> October 2014. The respondents did not file submissions.
10. When the matter came up for hearing on 3<sup>rd</sup> March 2015, a date fixed in court in the presence of counsel for both sides, Mr. Adere was present for the applicants but there was no attendance on the part of the respondents. I allowed Mr. Adere to proceed to urge the applicants' case.
11. In his address before me, Mr. Adere raised several issues. He highlighted the concern that the rectification of the grant made by the orders of 9<sup>th</sup> July 2013 brought into the administration of the estate a person who was not a survivor of the deceased. The rectification complained of had seen the appointment of Julie Wangui Waweru, the widow of a dead administrator, to replace her deceased husband Edwin Gitau Njenga as such. The applicants complain that their consent had not been sought prior to that appointment being made.
12. It was submitted further that at confirmation, the consents of the applicants had not been obtained to the distribution approved by the court. In any event, the two only got small portions of only one asset out of the eight (8) that were on offer. The distribution was therefore not fair nor equitable. It was further submitted that the estate was devolved to persons that were not even survivors of the deceased.
13. Revocation of grants of representation is provided for under Section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. The grounds for revocation specified in the provision include defects in the proceedings leading up to the making of the grant, fraud and misrepresentation, problems relating to the manner the administration is carried out and the grant becoming useless and inoperative.
14. Going through the application dated 30<sup>th</sup> July 2014, it is clear that the same is not grounded at all on the matters set out in Section 76 of the Law of Succession Act. The applicants are not aggrieved about the manner in which the grant of representation was obtained, nor about maladministration, neither are they alleging that the grant has otherwise become useless or inoperative. For all practical purposes, the application before me is not about revocation of the grant, and indeed no effort has been made to ground it on Section 76 of the Law of Succession Act.
15. I have carefully gone through the record before me. I have noted that there was nothing unprocedural about the way the grant on record was obtained. There is also nothing to suggest that there has been maladministration of the estate by the administrators, nor that the grant has somewhat become useless and inoperative. There is therefore nothing on record to enable me

exercise the discretion given to the court by Section 76 of the Act to revoke the grant *suo moto*.

16. The only matter that I can perhaps deal with regarding appointment of administrators concerns the orders made on 9<sup>th</sup> July 2013, when Julie Wangu Waweru was appointed to take the place of her dead husband. In my view that is not sufficient ground to revoke the grant in question.
17. The applicant's main problem is with the distribution of the estate. They appear to ground their revocation application on the reason that the distribution has not been done fairly. They are unhappy with the process of confirmation of the grant. Yet parties who are unhappy with the process of distribution need not apply for revocation of the grant. There is no basis for that. They ought instead to seek to have the orders on distribution reviewed or otherwise set aside to pave way for a fresh confirmation of the grant.
18. I have scrutinized the application for the confirmation of the grant. It is apparent that the sons of the deceased got a disproportionately large share of the estate compared with the daughters, the applicants herein. No reason was given for this, but perhaps because the daughters were married at the material time. The provisions of the Law of Succession Act, as set out in Part V thereof, on intestate distribution are clear that there should be equal distribution between all the children of the deceased, irrespective of their age, gender and marital status. The distribution in the certificate of confirmation of grant dated 29<sup>th</sup> November 2006 is obviously unequal and discriminatory and should not be allowed to stand.
19. I have noted too that the distribution of 29<sup>th</sup> November 2006 benefited Rachel Wanjiru Muchene and Juliah Wangu Gitau. The letter from the Assistant Chief of Red Hill Sub-Location, dated 21<sup>st</sup> December 2004, did not identify these two as children of the deceased. They were not listed as such in the petition lodged in court on 17<sup>th</sup> March 1987, nor in the summons for confirmation of the grant dated 17<sup>th</sup> May 2001. They were said to be wives of the sons of the deceased, who were themselves alive at the material time. As these two women were not children of the deceased, they ought not have received anything from the estate of the deceased. The distribution should have been confined to the five survivors of the deceased, that is to say Jane Wanjiku Njenga, Lewis Muchene Njenga, Salome Njambi Njenga (Thande), Edwin Gitau Njenga and Anne Wairimu Tchoreret.
20. A distribution that introduces persons who are not survivors of the deceased, and who have not acquired any third party interests in the estate is flawed. A daughter in law is not a survivor of her deceased mother in law or father in law so long as her husband is alive and himself taking a share in the estate. Consequently, the said distribution is erroneous and wrongful.
21. In view of what I have stated above, I hold that a case has not been made out for the revocation of the grant on record, but there are substantial grounds for the setting aside of the distribution approved by the court on 29<sup>th</sup> November 2006.
22. The orders that I am bound to make in the circumstances are as follows:-
  - a. **That the orders made on 29<sup>th</sup> November 2006 confirming the grant herein are hereby set aside and the certificate of confirmation of grant of even date is accordingly cancelled;**
  - b. **That any transactions carried on the basis of the said certificate of confirmation of grant dated 29<sup>th</sup> November 2006 are hereby cancelled or annulled;**
  - c. **That the estate of the deceased shall be distributed in the following manner:-**
    - i. **LR No. 3564/2 – Redhill – equally between Jane Wanjiku Njenga, Lewis Muchene Njenga, Estate of Edwin Gitau Njenga, Salome Njambi Njenga and Anne Wairimu Tchoreret;**

- ii. **Plot No. 214, Mtwapa Scheme 452 – equally to Jane Wanjiku Njenga, Lewis Muchene Njenga, Estate of Edwin Gitau Njenga, Salome Njambi Njenga and Anne Wairimu Tchoreret;**
  - iii. **Chania/Ng’orongo/1037 – equally to Jane Wanjiku Njenga, Lewis Muchene Njenga, Estate of Edwin Gitau Njenga, Salome Njambi Njenga and Anne Wairimu Tchoreret;**
  - iv. **Dagoretti/Uthiru/283 – to Jane Wanjiku Njenga;**
  - v. **Dagoretti/Uthiru/324 – to Jane Wanjiku Njenga;**
  - vi. **Shares in East Africa Bata Shoe Company - equally to Jane Wanjiku Njenga, Lewis Muchene Njenga, Estate of Edwin Gitau Njenga, Salome Njambi Njenga and Anne Wairimu Tchoreret;**
- d. **That a certificate of confirmation of grant shall issue accordingly in terms of (c) above; and**
  - e. **That each party shall bear their own costs.**

**DATED, SIGNED and DELIVERED at NAIROBI this 18<sup>TH</sup> DAY OF DECEMBER, 2015.**

**W. MUSYOKA**

**JUDGE**