



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Succession Cause 1045 of 1990**

**IN THE MATTER OF THE ESTATE OF JOSEPH NG'ANG'A GAKUMO (DECEASED)**

**GRACE KANYI NGANGA .....1<sup>ST</sup> ADMNISTRATOR /APPLICANT**

**VERSUS**

**NICHOLAS NJONJO NGANGA..... 2<sup>ND</sup> ADMINISTRATOR/RESPONDENT**

**JUDGEMENT**

**JOSEPH NGANGA GAKUMO** (the deceased) died intestate at M.P. Shah Hospital, Nairobi on 30<sup>th</sup> September 1986. He hailed from Dagoretti Location. He left an estate made up of parcels of land and shares in Kiakidi Co. Ltd. and Kangemi United Club.

The deceased was survived by his two wives, namely **JANET WANJIKU NGANGA** (the first widow) and **GRACE KANYI NGANGA** (the second widow). Both had children. Disputes have arisen in the estate between the beneficiaries, hence this litigation.

These disputes relate to intestate succession. The Applicant who has filed summons for revocation of the Grant was the second wife of the deceased and the Respondent is a son of the first wife of the deceased. The law applicable is **the Law of Succession Act**, Chapter 160 of the Laws of Kenya which came into force on 01.07.1981. The provisions of the Act constitute the Law of Kenya in respect of all cases of intestate and testate succession to the estates of deceased persons dying after 01.07.1981 and to the administration of estates of such persons.

Under the provisions of Section 76 of the Law of Succession Act, a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides either on application by an interested party or of its own motion that the proceedings to obtain the grant were defective in substance, or 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 or that the grant was obtained by means of an untrue allegation of a fact essential in a point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently. A grant may also be revoked where the administrator has failed to seek confirmation of the grant after due notice and without reasonable cause. It can also be revoked where the administrator has failed to proceed diligently with the administration of the estate or to account or where the grant has become useless and inoperative through subsequent circumstances.

In her evidence in court, the 2<sup>nd</sup> widow testified that she was not informed about the Petition for the grant of Letters of Administration intestate in the estate of her late husband. She told the court that she is illiterate and can neither read nor write. The Petition in the court file shows that O.T. Ngwiri & Company

Advocates initially acted for both widows and that while the first widow signed the various forms and affidavits accompanying the Petition, the 2<sup>nd</sup> widow thumb printed the same.

It is on record also that on 4/2/1992 the two widows of the deceased through advocates O.T. Ngwiri & Company gave a citation to George Kamau Gakumo, a son of the deceased, to take out letters of Administration because he had failed to give his consent to the Petition. It seems that on 20<sup>th</sup> August 1992, a grant of Letters of Administration, intestate, in the deceased's estate was made to the two widows namely Grace Kanyi Nganga and Janet Wanjiku Nganga. Messrs O.T. Ngwiri & co. Advocates were still the advocates on record for the two widows at that point.

The 1<sup>st</sup> widow, Janet Wanjiku Nganga, changed her lawyers and retained Timan Njagi, Advocate, while Grace Kanyi Nganga continued to retain O.T. Ngwiri & Comoany as her advocates. This is evident from the letter dated October 24<sup>th</sup>, 1997 addressed to Timan Njugi advocate by Messrs O.T. Ngwiri & Company, advocates which read:-

**“RE: P & A 1045 OF 1990**

**ESTATE OF JOSEPH NGANGA GAKUMO (DECEASED)**

*We refer to the above case and enclosed please find a certified copy of a certificate of confirmation of a grant for your information. Our client Janet Wanjiku Nganga has given us the details of how she wants her shares of the deceased's properties to be divided among her children. We do not know how your client Grace Kanyi Nganga wants to divide her shares among her children. We are therefore unable to prepare the necessary forms for transfer to her children.*

*Enclosed please find forms R.L. 7 and R.L. 19 for your client's signature. Please let us know how your client wants her shares of the estate to be divided among her children so that we can prepare the necessary forms for signature by our client. Kindly acknowledge receipt.*

*Very Truly Yours,*

**O.T. NGWIRI & CO.**

*c.c. Janet Wanjiku Nganga”  
P.O. Box 29025*

*NAIROBI*

The letter referred to above was annexed to the affidavit of Janet Wanjiku Nganga, the 1<sup>st</sup> widow sworn on 22.4.1998 in support of the chamber summons application filed in court on 24.4.1998 by O.T. Ngwiri & Company on behalf of the 1<sup>st</sup> widow seeking orders for subdivision and transfer of various plots constituting the deceased's estate and transfer thereof.

On 28.6.1998, Grace Kanyi Nganga, the 2<sup>nd</sup> widow, filed Notice withdrawing her instructions from advocate Timan Ngugi. The notice was neither signed nor thumb printed. However, on 15.7.1998, Advocate Roy Ouma went on record as the new advocate for the 2<sup>nd</sup> widow, Grace Kanyi Nganga.

On 1<sup>st</sup> February 1999, the 1<sup>st</sup> widow Janet Wanjiku Nganga died whereupon Messrs O.T. Ngwiri applied to have her replaced by her son, Nicholas Njongo Nganga, the Respondent.

On 22.6.2006, the 2<sup>nd</sup> widow, Grace Kanyi Nganga, appointed advocate Geoffrey Maina to represent her instead of advocates Roy Ouna & Company. She seems to have been disillusioned by many of the advocates she retained to act for her.

On 2.9.2009, the 2<sup>nd</sup> widow again instructed a new firm of advocates, namely, M/S ARATI & COMPANY to act for her in place of her previous advocates on record.

By a Chamber Summons dated 4.1.1994 filed in court on 8.2.1995 Advocates O.T. Ngwiri & Company on behalf of Janet Wanjiku Nganga sought confirmation of the Grant made on 20.8.1992 to the two widows. The said Chamber Summons application was supported by an affidavit sworn by Janet Wanjiku Nganga alone and the consents of all the beneficiaries do not appear to have been filed as none is in the court file nor were such consents or was referred to in the said Chamber Summons application. The extracted Certificate of Confirmation of the Grant shows that the grant was confirmed on 12.5.1995. There is no record of the proceedings of that day and the scant handwritten Judges' notes in the tattered papers do not shed any light as to what happened. But it is clear that no consents from the beneficiaries were filed in support of the confirmation of the Grant and distribution of the estate. However, the certificate of the confirmation of the grant in the court file shows that ten properties in the estate were vested in the 1<sup>st</sup> widow absolutely while six properties were vested in the 2<sup>nd</sup> widow absolutely, yet each of the two widows had children who were in law entitled to inherit while the widows themselves were entitled to life interest. In absence of written consents by each of the beneficiaries to the estate, one widow could not alone legitimately be entitled to have the grant confirmed and the estate distributed in the manner that was done.

On 28.9.2009, the 2<sup>nd</sup> widow, Grace Kanyi Nganga filed the application by way of **summons seeking revocation of the grant** made to her and the 1<sup>st</sup> widow and orders for the estate to be distributed afresh on the grounds, inter alia, that she and other beneficiaries did not consent to the distribution of the estate. Her application was supported by her affidavit sworn on 28.9.2009 from which one can discern that the consents of the 2<sup>nd</sup> widow and of the beneficiaries were neither sought nor obtained.

Following the death of the 1<sup>st</sup> widow, her son, Nicholas Njongo Nganga who stepped into her shoes as an administrator, caused some of the properties to be registered in his name as the absolute proprietor thereof.

The deceased was survived by nine sons and four daughters and two widows. The names of the sons and daughters are as follows:

1. Stephen Ngethe Gakumo (son)
2. George Kamau (son)
3. Lucy Nyakiuru Nganga (daughter)
4. Peter Kamuyu (son)
5. Leonard Thiani (son)
6. Nicholas Njonho (son)
7. Joan Wambui Nganga (daughter)
8. Martine Njenga Nganga (son)
9. Gakumo Nganga (son)
10. Alice Nyakiuru Giaga (daughter)
11. Peter Nganga (son)
12. Kungu Nganga (son)

13. Mary Wanbui Nganga (daughter)

On 4/10/2011, I allowed the application by Notice of motion dated 3.12.2010 and ordered evidence of the 2<sup>nd</sup> widow, Grace Kanyi Nganga to be taken *de bene esse* in view of her advanced age and failing health. I took her evidence on 24/10/2011 and that of Nicholas Njongo Nganga, the 1<sup>st</sup> widow's son, on 21.11.2011. Counsel on record for the parties filed submissions in the matter in January 2012 and on 8.2.2012 I undertook to deliver a Ruling on 22.3.2012. Unfortunately during the RRI exercise and reorganisation of the Registry in the Family Division, the court file seems to have been misplaced and it was not until after the August 2012 vacation that the file surfaced.

I have carefully examined the evidence of the Applicant, the 2<sup>nd</sup> widow (Grace Kanyi Nganga) and the evidence given by the 1<sup>st</sup> widow's son, Nicholas Njongo Nganga. I have also perused and considered the evidence contained in the documents furnished on the court and the written submissions made by **advocate Arati** of Arati & Company for the Applicant and by **advocate S.W. Nyaga** of Njenga Mbugua & Nyanjua Advocate.

It is patent that the applicant has attempted to get the dispute relating to the distribution of the estate of the deceased resolved through the area Chief to no avail. The applicant is not literate. The Respondent is. The Chief of the area at one time is said to have allocated equally to the Applicant and the Respondent houses in the estate of the deceased. He had no powers to do so but he was trying, in good faith, to resolve a dispute. All was well for a time. But problems ensued when the Respondent allegedly started interfering with tenants in the houses allocated to the Applicant. This was made worse by the resentment sparked off by the Respondent's retention of the documents of title to the properties constituting the estate. The transfer of some of the titles to the name of the Respondent did not help matters. It was contended by the Applicant that the Respondent has put up buildings on 4 plots while the Applicant herself has no place to build.

In his evidence, Nicholas Njongo Nganga, the Respondent, contended that the plot No. Dagoretti/Riruta/1123 had secured a loan and was charged to rural Urban Finance Company and that his mother, the 1<sup>st</sup> widow, paid 90% of the loan of Shs.340,000/=. He told the court that the estate is made up of sixteen properties and that the deceased as his father had given to him as gifts plots Nos. Dagoretti/Riruta/572 & 382 as well as Dagoretti/Riruta/113 which he said he has developed. He also stated that both Houses of the deceased have benefited from rent collected from this plots.

The provisions of the law of Succession Act require that all beneficiaries must consent to the confirmation of the grant and distribution of the estate. The evidence before the court shows that the Applicant and other beneficiaries in this estate were neither consulted nor did they give their consents to the confirmation of the grant and distribution of the estate. The manner in which the application for confirmation of the grant was made left a lot to be desired. Not only were the deceased's sons and daughters disinherited by dint of the fact that the bulk of the estate was vested absolutely in the name of the Respondent's mother and subsequently in the name of the Respondent himself after substitution, but it was also patent that no reference was made to the deceased's other children and no trust was created for the estate to be held for the benefit of lineal descendants.

The allegation by the Respondent, Nicholas Njongo Nganga, that some of the properties were given to him by the deceased as a gift was bereft of evidence. I so find. At any rate, if there was a gift, the same was not perfected and must fail. I so find. The deceased died intestate and none of the properties constituting his estate shall be taken by any of the lineal descendants on the basis of unproven gift.

I find merit in the Applicant's application for the revocation of the grant. I allow it. I make the following orders.

1. The certificate of confirmation of the grant in this cause is hereby revoked as is also the order confirming the grant itself.

2. The registration of the name/s of the Respondent and/or the applicant as proprietor or proprietors in each of the following properties which constitute the estate of the deceased shall be cancelled forthwith and the proprietorship of each of the properties shall revert to the name of the deceased pending redistribution of the estate. These properties include:

L.R. Dagoretti/Kangemi/142

L.R. Dageretti/Riruta/52

L.R. Dagoretti/Kangemi/S/72

L.R. Dageretti/Kangemi/113

L.R. Dageretti/Kangemi/893

L.R. Dageretti/Kangemi/S/38

Plot No. 21Thiboro

Plot No. 10 Thiboro

Plot No.345 Kawangware

3. The Chief Land Registrar and the District Land Registry shall cancel the registration of all dealings appearing after the date of death of the deceased on 30.9.1986 in each of the titles of properties constituting the estate of the deceased referred to in paragraph 2 above.

4. The Respondent, Nicholas Njongo Nganga, shall surrender to court all the titles held by him which form part of the deceased's estate including titles to the properties referred to in paragraph 2 above.

5. The Applicant and the Respondent shall make a proper application for confirmation of the grant made on 20<sup>th</sup> August 1992 and shall seek consents of all the beneficiaries for that purpose.

6. This matter shall be mention on a date to be given by the Court Registry for further directions and/or orders.

7. There shall be liberty to apply.

**Dated at Milimani Law Courts, Nairobi, this 13<sup>th</sup> day of November 2012.**

**G.B.M. KARIUKI, SC  
JUDGE**

**COUNSEL APPEARING**

***Ms. V.W. Muthoni for F.N. Wambui for 2<sup>nd</sup> Administrator/Respondent***

***Mr. N. Gatitu for Ms Arati for Applicant***