



**Mungai & another v Mungai (Succession Cause 1124 of 2011)
[2025] KEHC 265 (KLR) (Family) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 265 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1124 OF 2011
HK CHEMITEI, J
JANUARY 23, 2025
IN THE MATTER OF THE ESTATE OF MMN(DECEASED)**

BETWEEN

NANCY WAMAITHA MUNGAI 1ST APPLICANT

CECILIA WANJIKU MUNGAI 2ND APPLICANT

AND

ELIZABETH NJOKI MUNGAI RESPONDENT

RULING

1. This ruling relates to the summons dated 14th December, 2022 filed by the Applicants, NWM and CWM, seeking for orders that:-
 - (a) Spent.
 - (b) The Rectified Certificate of Confirmation of Grant dated 15th day of November, 2017, be and is hereby revoked and/or annulled.
 - (c) A fresh Certificate of Confirmation of Grant do issue appointing CMM and NWM as the Administrators of the Estate of the deceased herein.
 - (d) This Honourable Court be pleased to order that the administrator ENM do render a full and accurate account of all dealings of the assets of the deceased and in particular, the rental income generated by that parcel of land known as Nairobi Land Reference Number 36/1/1981 which she has been in sole and full control of, since the 1st day of January, 2017 and up to the date of this Summons.



- (e) This Honourable Court be pleased to order that the Administrator ENM do distribute in equality ALL sums of money collected as rental income by her and on behalf of the five (5) beneficiaries of the Estate (including herself) since January 2017 to enable the Four (4) other beneficiaries benefit from the Estate to meet their pressing needs which include school fees for SWK and BMK being children of NWM a beneficiary of this Estate and so as to enable their return to school by the 8th of January, 2023, and thereafter for their continued stay in school.
 - (f) Such further or other orders be made as may be just and expedient in the circumstances.
 - (g) The costs of this application be provided for.
2. The application is supported by affidavit sworn by NWM on 14th December, 2022.
 3. She avers inter alia that she is a beneficiary of the deceased's estate with CWM's consent to swear this affidavit. Her siblings CMM, ENM and PWM are also beneficiaries of the deceased's estate with the first two being the current administrators.
 4. The property that is the subject of the instant suit is Nairobi Land Reference Number 36/1/891 situated at Eastleigh within Nairobi County (hereinafter, "the suit property") in which ENM has been in sole control of and has failed and/ or declined to account for the rental proceeds therefrom and evenly distribute the same to the other beneficiaries.
 5. That she has failed and/or declined to account for the rental proceeds in their father's estate in Nairobi HCFP&A 434 of 2014 – In The Matter Of The Estate Of Stephen Mungai Kamau. She therefore owes her siblings a total of Kshs. 4, 592, 721. 60 and CWM a total of Kshs. 1, 165, 380. 00.
 6. The application is opposed vide replying affidavit sworn by ENM on 10th February, 2023.
 7. She avers inter alia that she is an administrator to and beneficiary of the deceased's estate. Grant was issued to her and their father (now deceased) on 10th July, 2012. Their father passed away in 2016 after which the deceased's children filed summons for rectification of grant which was granted and issued on 15th November, 2017 replacing their deceased dad with CMM.
 8. She averred that N W and CMM took control of the suit property in April, 2016 and by December, 2016, they had been unable to manage the suit property and the rent arrears accrued to the tune of Kshs. 1,100,000/=. They also failed to share some of the rent proceeds with the rest of the beneficiaries.
 9. She said that there have been challenges in managing the same as the agent at some point managed to kick out one Mr. Said who was not paying rent. She further stated that she had singlehandedly managed to bring the management and collection of rent to some reasonable level including developing the property.
 10. She accused the Applicant of dishonesty and failing to account for all the money she had paid to her including bailing her out when she faced financial challenges.
 11. She attached series of WhatsApp chats between them which indicated the extent to which the Applicant N had sunk into financial situation. It was her case therefore that the grant ought to be confirmed and the property sold out so that the proceedings can be shared out.
 12. The Applicants have filed written submissions dated 8th April, 2024 placing reliance on Jamleck Maina Njoroge vs. Mary Wanjiru Mwangi [2015] eKLR where the court stated as follows: "The circumstances that can lead to the revocation of grant have been set out in section 76 Law of succession. For a grant to be revoked, either on application of an interested party or on the court's own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was



obtained fraudulently by making false statement or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations or facts essential in point of law.”

13. The Respondent has not filed written submissions.

Analysis and Determination

14. I have gone through the application, the responses thereto and the submissions filed by the Applicants.

15. The issue in my view is simple and straight forward. Owing to the mistrust between the parties the grant ought to be confirmed and they need to agree on what to do with the property. This court is not entirely in agreement with the Applicant and in particular N that she has not benefited from the proceeds of the rent.

16. The trails of WhatsApp chats seeking bail out from her siblings does not indicate a person of financial prudence.

17. Consequently, I decline the Application.

18. The administrators are granted 60 days from the date herein to apply for the confirmation of grant and in default the same shall stand revoked and any beneficiary shall be at liberty to apply.

19. Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIDE VIDEO LINK THIS 23RD DAY OF JANUARY 2025.

H K CHEMITEI

JUDGE

