



REPUBLIC OF KENYA



KENYA LAW
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**Muthoni v Munene & 2 others (Succession Cause 62 of 2002)
[2025] KEHC 2652 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2652 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 62 OF 2002**

**M MUYA, J
MARCH 6, 2025**

BETWEEN

LYDIA MUTHONI APPLICANT

AND

BEATRICE MURUGI MUNENE 1ST RESPONDENT

ISAAC MAINA MUNENE 2ND RESPONDENT

SAMUEL THIONGO MUNENE 3RD RESPONDENT

RULING

1. The Summons for revocation or annulment of grant dated 19th February, 2019 seek the following orders:-

1. That the confirmed grant of letters of administration intestate to Beatrice Murugi Munene dated 27th July, 2007 be revoked or annulled.

The grounds are:-

1. That the Applicant Lydia Muthoni who is a daughter of the deceased Maina Munene was not listed as a beneficiary.
2. That the summons for confirmation of grant were defective on substance by not listing Isaac Maina Munene and Samuel Thiongo Munene as dependents whereas they are children of the deceased.
3. That the summons for confirmation of the grant were defective in substance in that the petitioner did not specify the age and addresses of the surviving spouse and children contrary to the provision of Section 5(g) of the Succession Act and Section 40(3)(a) of the Probate and Administration rules.



4. The summons for confirmation of grant were defective in substance in that the Advocate did not serve the summons for the confirmation of the grant, the mode of distribution and consent to all the beneficiaries and in particular Mary Muthoni, Emily Wajiru, Eunice Waruguru, Lilian Wachera, Margaret Wahito. That the summons were served on Peter Maina Munene contrary to Rule 26(1) of the Probate and Administration Rules.
 5. That the summons for confirmation of grant were defective in substance because the mode of distribution presented by the petitioner did not specify and ascertain to the court the exact share of each beneficiary.
That three beneficiaries namely Isaac Maina Munene, Samuel Thiongo Munene and Lydia Muthoni Munene were left out in the mode of distribution in the confirmed grant contrary to rule 40(4) of the Probate and Administration rules.
 6. That the summons for confirmation of the grant were defective in substance in that the applicants were not issued with notice (form 74) considering that they had not consented in writing to the grant itself or the mode of distribution.
 7. The confirmed grant was crafted in such a manner that it was practically impossible to administer the Estate for failure to identify the specific shares for each beneficiary.
 8. There was no consent on the mode of distribution by the applicant.
 9. The mode of distribution was unfair.
 10. The petitioner Beatrice Murugi Munene did not disclose the fact that plot no. 168 was jointly owned by the Deceased and one John Oloo (another deceased).
 11. The petitioner failed to disclose the fact that Beatrice Muchira Munene who is her daughter was never dependant of the Deceased.
2. In her replying affidavit the petitioner deposes that Peter Maina Munene and herself were appointed administrators by the court.
 3. That the applicant admits having been aware of the succession proceedings which fact is buttressed by her family engaging the services of four different firms of advocates.
 4. That initially applicant's brother had engaged the services of Waweru Macharia and Karweru Advocates and who subsequently disclosed all the applicant's siblings.
 5. That on 22/4/2003 her advocate received a letter on the sharing of rental proceeds after demand was made for the proceeds of rent be shared among the two houses.
 6. That after the lapse of the statutory period, there have been no agreement on the mode of distribution. She filed summons for confirmation of grant on 28th March, 2007 and served them on the firm of Waweru Macharia & Co. Advocates.
 7. That the grant was confirmed on 27/7/2007 and the Estate was to be shared equally between the petitioner and the co-administrator and his siblings including the applicant.
 8. The petitioner further deposes that when the co-administrator, the administrator and their siblings failed to co-operate on the transmission of the Estate. She filed an application on 1/3/2010 for the Deputy Registrar to execute the documents.



9. Subsequently, the applicant engaged the services of Ayuma & Co. Advocates. This firm filed an application dated 22/11/2010 which was later withdrawn on 12th November, 2019.
10. It is the petitioner's contention that being dissatisfied with the mode of distribution is not a ground for revocation of a grant.

Submissions by the Applicant

- a. The applicant's contention is that the proceedings to obtain the grant were defective in substance.
 - b. That the grant was obtained fraudulently by making of false statements.
 - c. That the grant was obtained by means of untrue allegations of fact.
 - d. That the grant did not take into consideration the legal position on the distribution of assets in a polygamous family.
11. As regards the issue whether the proceedings to obtain the grant were defective in substance, the applicant maintains that the grant was defective by reason of the fact the petitioner did not include Isaac Maina Munene and Samuel Thiongo Munene as beneficiaries.
 12. Secondly, that the grant was defective in that the petitioner did not serve the summons for the confirmation of the grant to Mary Wanjiru, Lydia Muthoni, Emily Wanjiru, Eunice Waruguru, Lilian Wachera and Margaret Wahito contrary to rule 26(1) of the Probate and Administration Rules.
 13. Thirdly, that the summons for confirmation of grant were defective in substance as the matter was never set down for directions and the applicants were never issued with notice as provided under rule 40(8) of the Probate and Administration rules.

Whether the grant was obtained fraudulently by making of false statements?

14. It is submitted that the petitioner had plot no. 168 shown as part of the Estate of the Deceased whereas she had knowledge that the said plot was jointly owned by the Deceased and one John Oloo (deceased). That there was concealment of material facts.
15. Further that the omission of the daughters of the deceased in the petition was discriminatory on account of gender and this was contrary to the provisions of Article 27 of *the constitution*.

Whether the distribution of the assets was legal as envisaged in the polygamous family set up?

16. It is the applicant's contention that the petitioner failed to disclose that Isaac Maina Munene and Samuel Thiongo Munene were at the time of grant minors and therefore the necessity of establishing a trust. That this failure led to exclusion of the two from the Estate of the deceased.
17. It is further submitted that the distribution of the Estate did not comply with the provisions of Section 40 of the *Law of Succession Act* which provides:-

“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate shall, in the first instance be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children (2) the distribution of the personal and household effects and the residue of the



net intestate estate within each house shall then be in accordance with the rules set out in Section 35 to 38”

Submissions by the Respondent

18. That the deceased was polygamous in his marriage. He had two wives. The Respondent Beatrice Murugi Munene and the mother of the applicant. That the 2nd and 3rd Respondents are the children of the 1st Respondent and are not against the confirmation of the grant as their interest was catered for by their mother who is the first Respondent.
19. The applicant’s mother was deceased at the time of filing of the Succession Cause.
20. It is submitted that after the cause was filed in court objection was filed in court by the firm of Waweru Macharia & Karweru Advocates. The applicant was among those in the objection proceedings.
21. Thereafter Peter Maina a brother too the applicant and the 1st Respondent were appointed as joint administrators of the Estate on 12th July, 2006. The grant was confirmed on 27th July, 2007.
22. The Estate was shared equally between the 1st Respondent and the house of the 1st applicant’s mother and her siblings.
23. Subsequently, on 22nd November, 2010 the firm of Ayuma & co. Advocates on behalf of the co-administrator filed an application seeking orders for the 1st Respondent to account for certain funds and for the amendment of the mode of distribution and to include the name of Lydia Muthoni Munene the applicant. The application was abandoned and another one filed on 26th October, 2019 by one Mary Wanjiku Gakuo a sister to the 1st applicant. She was seeking orders for substitution in place of the co-administrator her brother. This application was withdrawn later and the current one filed by the present applicant Lydia Muthoni.
24. The contention by the Respondents is that the grant confirmed on the 28th day of March, 2007 bears the name of the applicant Lydia Muthoni Munene as the 4th beneficiary of the 1st house.
25. That the omission on the typing certificate of the grant cannot be attributed to the Respondent as typing is done by the court and this can be cured by amendment as the error was not deliberate.
26. That the proceedings in the Succession Cause were not defective in substance or form.
27. That there was no fraud alleged and proved. Further that there were no untrue allegations made in the cause as the applicant and all her siblings were disclosed and the co-administrator was her brother.
28. It is submitted that there was no failure to administer the Estate. After the grant was confirmed the applicant and her siblings refused to co-operate. This necessitated the Respondent to file an application dated 1st March, 2010 to have the Deputy Registrar execute documents on behalf of the applicants and her siblings.
29. That what appears to be the applicant’s main issue is that of the mode of distribution of the Estate which cannot be a ground for revocation as provided under Section 76 of the Law of Succession.

Analysis and Determination

Issues

- a. Whether the applicant was omitted in the certificate of grant?
- b. Whether the proceedings to obtain the grant were defective?



- c. Whether the grant was obtained fraudulently?
 - d. Whether there were false allegations made to obtain the grant?
 - e. Whether the grant had become useless and inoperative?
30. The above are the main grounds for revocation of grant as provided for under Section 76 of the Law of Succession.
31. In respect of the issue as to whether the applicant was omitted in the certificate of the grant, it is not in dispute that the applicant was omitted but it is the contention by the 1st Respondent that the error was not deliberate but typographical on the part of the court.
32. A perusal of the summons for confirmation of the grant dated 28th March, 2007 shows that the name of the applicant Lydia Muthoni Munene was included in the list of the Deceased children and she is shown at number 4 belonging to the 1st house. There was omission but the same was not deliberate and ought not to form the basis of revocation of grant but amendment.

Whether the proceedings to obtain the grant were defective?

33. It is the contention by the applicant that the names of the Isaac Maina Munene and that of Samuel Thiongo Munene were not listed as children and beneficiaries of the Estate. It is not in dispute that the 2nd and 3rd Respondents are children of the 1st Respondent. They have not complained as their interest in the Estate is taken care of by the 1st Respondent, their mother.

Whether the grant was obtained fraudulently by making of false statements?

34. Plot no. 168 was said to be jointly owned by the Deceased and another deceased person whereas the Respondent had indicated that it was owned by the Deceased. This in itself cannot be said to be fraudulent as the plot is still shown to be owned by the Deceased though with another person.

Whether there false allegations made so as to obtain the grant?

35. I find no false allegations relevant and prejudicial to the applicant and her siblings as they were all listed as beneficiaries.
36. What appears to be the main issue in this application is that of distribution. It is the contention by the applicant that the distribution was not fair. It is apparent that the applicant was dissatisfied with the manner of distribution but her dissatisfaction cannot be a ground for revocation of a grant as envisaged under Section 76 of the Law of Succession.
37. I find the application for revocation is without merit and it is dismissed.

RULING READ AND DELIVERED IN OPEN COURT THIS 6TH DAY OF MARCH, 2025.

In the presence of:-

- 1. Kiminda for the Respondent
- 2. Ngugi Nganga for applicant (absent)

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M. MUYA
JUDGE

