In re Estate of the Late John Kevin Karanja (Succession Cause 17 of 2007) [2024] KEHC 2339 (KLR) (8 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2339 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE 17 OF 2007

JRA WANANDA, J

MARCH 8, 2024

IN THE MATTER OF THE ESTATE OF THE LATE JOHN KEVIN KARANJA

BETWEEN

GEORGINA NJERI ..... APPLICANT

ACTING AS THE REPRESENTATIVE OF THE ESTATE OF THE LATE BETTY JOAN WANGUI KARANJA - DECEASED

AND

VIRGINIAH WAMBUI ..... 1ST ADMINISTRATOR

PETER KIRIRIO ..... 2ND ADMINISTRATOR

ANTHONY KIRIKA KARANJA ..... 3RD ADMINISTRATOR

CHRISTINE AGNES WANGARE ..... 4TH ADMINISTRATOR

RULING

1. The Application herein seeks revocation of the Grant of Letters of Administration issued and confirmed in this matter. It is brought by a grand-daughter of the deceased on behalf of and for the estate of her later mother in respect to whom the Applicant is the sole survivor.

2. The background of the matter is that the deceased, John Kevin Karanja, died intestate on 24/10/2006 at the age of 59 years. According to the letter from the Chief relied upon, the deceased was survived by a widow, Margaret Wanjiru Karanja, and 6 children (including the 4 Administrators herein). The deceased also left behind some parcels of land, company shares and funds at the bank.

3. On 24/01/2007, the widow and 1st Administrator petitioned for Grant of Letters of Administration Intestate in respect to the estate. The Grant was then issued by the Court on 1/10/2007. By that time however, one of the children, the 1st born - Betty Joan Wangari Karanja - had died in the intervening period, on 4/06/2007. Unfortunately, the widow also passed away subsequently on 3/06/2014, was

then substituted and the 2nd, 3rd and 4th Administrators appointed in her place as co-Administrators with the 1st Administrator. On 19/12/2018, the Administrators applied for Confirmation of the Grant. The same was then confirmed on 4/02/2019 and the estate distributed.

4. Now before Court for determination is the Application brought by way of the Summons dated 24/05/2023 and filed by the Applicant through Messrs Wambua Kigamwa & Co. Advocates. The prayers sought are as follows:

   i. [.....] Spent.

   ii. That the Grant of Letters of Administration intestate made on the 1st October 2007 and amended on the 9th March 2016 and subsequently confirmed be revoked and/or annulled.

   iii. That any transmission, transfers and distribution of the property of the deceased in respect of the land parcels, Uasin Gishu/Kimumu/239, Wareng Land, Parcel No. 14/1489 (share certificate No. 145, shares at Standard Chartered Bank Ltd account number [.....] be cancelled and reverted to the estate.

   iv. That Virginia Wambui, Peter Kiriro, Anthony Kirika Karanja and Christine Agnes Wangarae do account in respect of the estate of the deceased.

   v. That the Court appoints new Administrators/Administracies to the estate of the late John Kevin Karanja-deceased.

   vi. That distribution of the estate of the late John Kevin Karanja-deceased be carried out afresh.

   vii. That the costs of this Application be borne by the Administrators.

5. The Application is expressed to be brought under Section 76 of the *Law of Succession Act*, Section 44(1) and Rule 44 of the *Probate and Administration Rules* "together with all other enabling provisions of the law". It is then premised on the grounds stated on the face thereof and is supported by the Affidavit sworn by the Applicant.

6. In the Affidavit, the Applicant deponed that she is a grand-daughter of the deceased, that her mother is the daughter of the deceased and she was known as Betty Joan Wangui Karanja (hereinafter referred as Ms. Betty"), that her mother died on 4/06/2007 after the death of the deceased hence she was a beneficiary of the estate of the deceased, that despite the Petitioners including and acknowledging that Ms. Betty was a child and dependent of the deceased, they omitted to obtain her consent yet she was still alive by then, that Ms Betty never made a renunciation of her right to apply for the administration of the estate, that the omission to seek consent from Ms Betty yet she was the 1st born daughter in the family vitiated the application for grant, that the proceedings excluded the participation of Ms. Betty, that the ultimate distribution saw the Applicant, as opposed to the estate of Ms Betty, being granted a small portion of 0.09 hectares of the land parcel known as Uasin Gishu/Kimumu/239 which in total measures 2.0 hectares while the Administrators distributed to themselves 1.82 acres, that the distribution also totally excluded the estate of Ms Betty from the land parcel known as Wareng Land Parcel No. 14/1489 (share certificate No. 145), that despite the distribution indicating that the shares and funds held at Standard Chartered Bank Ltd were to be shared equally amongst the beneficiaries, the estate of Ms. Betty has not been granted any share, benefits or dividends therefrom, respectively, that the creation of a trust in which the Applicant was described as a minor in the distribution was improper since as at the year 2019, the Applicant was an adult and was by then 23 years of age having been born in the year 1996, that the estate of Ms. Betty, and that the dependents are now in dire need of provision considering that she is the sole surviving child of Ms. Betty who died when the Applicant was 11 years old.

Replying Affidavit

7. The Summons is opposed vide the lengthy Replying Affidavit sworn by the 4th Administrator and filed on 20/06/2023 through Messrs Mwinamo Lugonzo & Co. Advocates. She deponed that her late sister, Ms. Betty, fully participated in the process of obtaining Letters of Administration and duly executed P&A Form 38 granting consent to their late mother -Margaret Wanjiru Karanja - and the 1st Administrator, to take out the Grant, that they sat as a family under the leadership of their late mother and it was agreed that their mother and the 1st Administrator do take out the Letters of Administration and the two were duly appointed as such, that at the time of making the Application for confirmation, Ms Betty had passed on and she therefore never signed the consent for distribution, and that the Grant was confirmed on 9/04/2014 and their late mother was to hold all the properties in trust for all the deceased children who included Ms. Betty.

8. According to the 4th Administrator, they arrived at the distribution of the estate after factoring the considerations that at the time of Ms Betty's death, she depended on the estate entirely for her provision as she was not in any gainful employment, that the Applicant at the time of her birth, became a dependent of the estate of the deceased for the same reasons, that upon the demise of Ms Betty, the Applicant was then aged 11 years old and the estate continued providing for her with food, shelter, clothing and education, that the same share of 0.09 acres of Uasin Gishu/Kimumu/239 was similarly allocated to their other deceased sister, the late Esther Njeri's children, who are currently living with their father and that when they notified him of the share allocated to his children, he was contented and surprised at the good gesture, that the Applicant is not candid as she does not acknowledge that she entirely depended on the estate for the last 16 years she lived with the 1st and 4th Administrators from the time her mother was alive and upon her demise and that the Applicant lacked nothing and was taken to the best schools for both her primary, being Hambale Boarding, and then Rangala Girls High School for her school education.

9. The 4th Administrator deponed further that they gave the Applicant reasonable provision as a dependent being a grand-child of the deceased and not as a direct beneficiary as the Administrators and it would be unfair and unjust for the Applicant to claim an equal distribution of the estate yet she directly benefited from it from the time of her birth, that their mother had sold 0.10 hectares of Uasin Gishu/Kimumu/239 to offset debts of the estate before the Grant was confirmed, that as the Administrators, they registered the parcel into their names and subsequently transferred the same to the purchasers upon confirmation of the Grant, that upon deliberation, they agreed that the 2nd, 3rd and 4th Administrators do get 0.36 hectares each except the 1st Administrator who got 0.27 hectares as she had her own property elsewhere which did not form part of the estate, that 0.37 hectares was set aside for the family home/burial site and the same was to be utilized by all the beneficiaries and dependents including the grandchildren, the Applicant being amongst them, that the Administrators pulled resources to have their father's land, Uasin Gishu/Kimumu/239 surveyed and sub-divided and processing of the 19 title deeds is ongoing, including the one held by the Applicant, who is now thankless and dragging them back to Court, that it took a lot of their resources and money for this process to be undertaken and cancellation of the title deeds as submitted by the Applicant shows bad faith on her part, yet she did not contribute any money towards the process and only wants to benefit where she did not sow.

10. The 4th Administrator further deponed that the family agreed that land parcel Wareng 14/1489 (share certificate No. 145) be shared equally among the 2nd and 3rd Administrators as the sons of the deceased as it was their home where they lived with their parents before their demise and customarily, sons are entitled to it upon the demise of the parents, moreso, the 2nd Administrator who is the last born of the

family and who has since inherited the home, that the Bank Account had a sum of Kshs 73,104/- as the balance upon the death of the deceased, that the company shares were listed as unclaimed assets and the Administrators followed up on the same with the relevant departments and the same, upon being transmitted to the Administrators, were used for payment of the 2nd Administrator's fees and the Applicant. That in addition, apart from paying school fees for the Applicant, the Administrators also pulled resources and set aside a sum of Kshs 200,000/- for the Applicant's college fees and the 1st Administrator had the money deposited in a fixed account and upon maturity, it had accumulated interest all totalling Kshs 223,000/-, that the Administrators implored upon the Applicant to proceed to college but it was in vain and she became a mother of 2 children and she had to take care of the children and the college issue was done away with and the entire cash was released to the Applicant which she squandered. She added that the 1st and 4th Administrators catered for all the Applicant's needs and that of her 2 children including enrolling and fully paying NHIF contribution for her and that of her children so as to access medical services and whenever extra money was needed for medical services the Administrators gladly paid for the same, that the Applicant never bothered to look for gainful employment from the time she finished school in 2017 and upon noticing her lazy attitude towards life and wanting to depend on their sweat and hard earned cash, the Administrators sat as a family and decided to release and allow her to be independent like any other Kenyans who hustle to make ends meet, that the Administrators released the Applicant from their wings early that year 2023 when she was aged 26 years and she is now a mature adult capable of feeding herself and her children, that the Applicant became furious and threatened the Administrators with dire consequences and that it is not a surprise that she has filed the current Application 5 years after they had wound up the estate.

11. It was the 4th Administrator's further contention that the Applicant has not explained the inordinate delay in filing the Application, that the reason is obvious that she was directly benefiting from the estate until the Administrators decided to make her independent and give her share as a dependent being the residual after deducting what the estate had been providing for her from birth to date, that some of the beneficiaries have already passed genuine titles to 3rd parties and the Applicant has failed to prove fraud on the part of the Administrators to warrant the Grant being revoked, that the revocation will prejudice 3rd parties who would have been condemned unheard and none of the Administrators has ever been charged in any Court for fraud. She added that the Administrators agreed to have the Applicant's title deed held in trust together with that of the children of their late sister, Esther Njeri, as a safeguard for their future and avoid the same being disposed of, that the Applicant, being 19 years old then and still in school, having a property held in trust for her is not a strange phenomenon in Succession matters, that the Administrators were adults when the initial Grant was confirmed on 1/08/2008 and yet their mother held all the properties in trust for them despite being adults, that the Administrators shall execute all the transfer documents to have the Applicant's share registered solely in her name and that they have already handed over the title deed belonging to the Applicant and now await for her to avail the necessary documents for execution by the Administrators, and that the Applicant cannot claim for equal shares as the Administrators were the children of the deceased and by having made a reasonable provision for the Applicant, they have shown good faith on their part.

12. It was further deponed that the Applicant cannot claim to be in dire need of provision yet she was given her share of what the Administrators considered reasonable provision for a dependent being a grandchild, that she has not accounted for the Kshs 223,000/- given to her in January 2023, that 6 months later, she is claiming to be in dire need for provision, that by taking out the Letters of Administration Ad Litem, the Applicant presupposes that she wants to be enjoined in the suit yet there was no estate of the late Ms Betty and no one has ever applied for a Grant for the estate of Ms Betty's estate, that the Applicant has not come into the matter as an Administrator of the estate of Ms Betty and nothing had vested in the beneficiaries at the time of Ms. Betty's death to warrant her claim,

that the Applicant has a father who has never taken any responsibility for her but has now emerged and now pushing for a share of the alleged estate of Ms. Betty indirectly as a beneficiary through the Applicant, that the Application is instigated by the Applicant's father who has waited for the Applicant to attain the age of majority which is 16 years after the demise of Ms Betty, that it is high time the Applicant compelled her father to shoulder his share of responsibilities as her father and grandfather to the Applicant's 2 grandchildren, that the Administrators have shouldered their share of responsibilities for the Applicant from the time of her birth to date and it is time for her to claim from her father just the same way he is pushing her to claim for her mother's estate.

Applicant's Supplementary Affidavit

13. With leave of the Court, the Applicant filed the Supplementary Affidavit sworn on 5/12/2023. She deponed that the Administrators are guilty of material non-disclosure as they failed to disclose that the estate received a cheque dated 12/11/2005 for Kshs 400,000/- from Unaitas Sacco Society Limited and also a second cheque of Kshs 500,000/- which they failed to disclose amongst the assets of the deceased, and that the same together with those already earlier stated warrant revocation of the Grant and for an order for the Administrators to account in respect to the estate. She deponed further that upon the death of her mother, Ms. Betty, she stayed with her grandmother who is the widow of the deceased herein, that her care was done by her grandmother and not the Administrators, that her mother survived the deceased and being a survivor and child of the deceased, she was entitled to an equal share with the other siblings, the fact that Ms. Betty was dead at the time of confirmation of the Grant did not change the legal position, that no prejudice will be suffered by the Administrators in revoking the Grant, causing them to account and having the estate distributed equally among the siblings, that her mother ought not to have been treated in a discriminative manner by virtue of the fact that she was dead, that the grant of letters of administration ad litem entitles her to pursue her mother's estate entitlement, that the Administrators acknowledged her as a dependent of the estate and thus they ought to have included her in the Succession proceedings as a dependent, that an application for revocation of Grant has no time limit, and that having acknowledged her, the Administrators ought to have notified her of the intention to apply for confirmation of the Grant.

Hearing of the Application

14. The Application was canvassed by way of written Submissions. The Applicant's Counsel filed his Submissions on 5/12/2023 while the Administrators filed on 19/01/2023.

Applicant's Submissions

15. Regarding setting aside of a Grant of Confirmation, Counsel for the Applicant cited the Court of Appeal case of *Tom Lukalo v Beatrice Lukalo & Another* [2014] eKLR. He submitted that the ultimate distribution saw the Applicant, as opposed to the estate of Ms. Betty, being granted a small portion of 0.09 hectares of the land parcel, Uasin Gishu/Kimumu/239 which in total measures 2.0 hectares while the Respondents distributed to themselves 1.82 hectares. He also cited the case of *Re Estate of NKK (Decesaed)* [2019] eKLR and submitted that the distribution excluded the estate of Ms. Betty from the parcel of land Wareng Land parcel No. 14/1489 (share certificate No. 145), that despite the distribution indicating that the shares at Standard Chartered Bank Ltd and also money held at the same bank were to be shared equally, the estate of Ms. Betty has not been granted any benefits of dividends from the shares or been granted a share of the money, that the Administrators also concealed the fact that the estate of the deceased had been issued with 2 cheques amounting to Kshs 900,000/-. He cited the case of *Re Estate of Mary Ngina Kidi (Deceased)* and submitted that the Administrators while knowing that the Applicant was a dependent failed to also include her in the Application.

He also cited the case of *Charles Mutua M'anyoro vs Maria Gatiria* [2009] eKLR and submitted that the estate ought to be distributed equally. Counsel further cited the case of *Re Estate of John Musambayi Katumanga – Deceased* [2014] eKLR and also the case of Re Estate of Johnson Omae Aburi (Deceased) [2022]. Counsel then submitted that the creation of trust in which the Applicant was described as a minor in the distribution was improper as at the year 2019, she was an adult by then being 23 years of age having been born in the year 1996.

Administrator's Submissions

16. The Administrators' Submissions are basically "word-for-word" a recap of the same matters and arguments already set out in the Replying Affidavit. There would therefore be no benefit in reproducing the same herein since so doing would only amount to unnecessary repetition.

Analysis and Determination

17. Upon examination of the Application, the pleadings filed, including the Affidavits and respective parties' Submissions, I find the one broad issue that arises for determination to be as follows:

> " whether the Grant issued herein and subsequently confirmed, should be revoked and the consequential prayers sought granted."

18. Regarding revocation and/or annulment of Grants, Section 76 of the *Law of Succession Act* provides as follows:

> "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 of its own motion—
>
> (a) that the proceedings to obtain the grant were defective in substance;
>
> (b) 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;
>
> (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
>
> (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
>
> (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
>
> (ii) to proceed diligently with the administration of the estate; or
>
> (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
>
> (e) that the grant has become useless and inoperative through subsequent circumstances."

19. It is clear that the Objector's grievances in this matter relate to those set out at sub-Sections (a), (b) and (c) cited above.

20. On the issue of revocation of Grants, Section 76 was expounded upon by Hon. Justice W. Musyoka in the case of *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where he stated as follows:

> " Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust."

21. Regarding grandchildren's right to claim for their parent's share of their grandparent's estate, I refer to the decision of Mrima J in the case of *Cleopa Amutala Namayi vs. Judith Were* Succession Cause 457 of 2005 [2015] eKLR where he observed as follows:

> " Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents (sic) who died intestate after 01/07/1981 when the Act came into operation. The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents (sic) indirectly through their own parents, the children of their grandparents. The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the grandchildren's own parents are dead. Those grandchildren can now step into the shoes of their parents and take directly the share that ought to have gone to the said parents. Needless to say, such grandchildren must hold appropriate representation on behalf of their parents."

22. Similarly, H.K. Chemitei J in *In re Estate of Hellen Wangari Wathiai (Deceased)* [2021] eKLR, stated as follows:

> " 52. The evidence on record suggest that the Applicant herein brought these proceedings on behalf of his father; Abdi Ibrahim Hassan (deceased) who was the beneficiary to his father's estate. The Applicant's interest emanates

from the fact that his father was a beneficiary to the suit property, thus the Applicant being dependent to his father Abdi Ibrahim Ibrahim's estate within the provisions of Section 29 of the *Law of succession Act*, he acquires an interest in his grandfather's estate; the suit property by virtue of his father's share. Therefore, in the court's view, the instant Application is properly before this court.

53. In my humble view, therefore, it is clear that the applicant had the *locus standi* and he was rightfully before the court to fight for the interests of the estate of his late father with regard to the deceased grandmother's estate. The fact that he was a grandchild of the deceased taken care of by his deceased grandmother prior to her death and a dependant of his father's estate has not been disputed.

54. This therefore supports the fact that he and his sister acquired interest over the deceased's grandmother's estate and thus he had the necessary locus standi. ...."

23. There is also the case of *In re Estate of Imoli Luhatse Paul (Deceased)* [2021] eKLR, where Musyoka J stated as follows:

> " 3. In the instant case, the applicant, in the summons for revocation of grant, is a child of a dead son of the deceased herein. The applicant is claiming directly by dint of *In re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR (Musyoka J) and *In re Estate of Florence Mukami Kinyua (Deceased)* [2018] eKLR (T. Matheka J), and does not require to take out letters of administration to intervene in the estate of her late grandfather, where her own parents are dead. Secondly, apart from case law, the provisions of the *Law of Succession Act* cover these situations. Section 39 of the *Law of Succession Act* makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Section 41 of the *Law of Succession Act* is the provision that enables grandchildren to step into the shoes, of their own parents, and to step into those shoes they need not take out letters of administration."

24. Considering the above principles, I note that in the instant case, the Applicant's mother was a daughter of the deceased herein. The Applicant is therefore a granddaughter of the deceased. It is also not disputed that the Applicant is in fact the only survivor of her mother's estate. The Applicant's mother survived the Applicant's grandfather (deceased herein) since she died about 8 months after the deceased. I therefore fully agree with the Applicant that her mother, being a child of the deceased, and having survived the deceased, was entitled to inherit in the same manner as her siblings (Administrators herein). Unfortunately, the Applicant's mother died after the Petition for Letters of Administration was filed but before confirmation of the Grant. As was held in the authorities cited above, the Applicant, being her mother's survivor, the only survivor for that matter, possesses all the rights to claim and/or pursue her mother's share of the estate of the deceased. It is also not in dispute that the Applicant does hold a Grant of Letters Administration ad Litem which on the face of, authorizes her to pursue her mother's interests in the estate herein.

25. Ordinarily therefore, the Administrators ought to have, during Confirmation of the Grant, included the Applicant's mother's share in the distribution schedule. It is evident that the Administrators were alive to this entitlement since in the Certificate of Confirmation issued on 1/08/2008, the entire estate was issued on terms that the two land parcels comprising the estate were to be registered in the name of

the widow to the deceased (grandmother to the Applicant-mother to all the Administrators) "to hold for herself and in trust of the children of the deceased ...". All 6 children of the deceased, including the Applicant's mother, were then named as such beneficiaries.

26. The Certificate of Grant was later rectified and shares held at Standard Chartered Bank Limited included as part of the estate but the holding of the estate by the widow in trust was not interfered with. However, when the widow died, the 4 current Administrators were substituted and appointed in her place. The Certificate of Confirmation was also further amended or re-issued on several occasions and in the version that was given on 25/02/2019, the estate was eventually substantively distributed amongst the beneficiaries. The Applicant was born in the year 1996 and was therefore 23 years old as at 25/02/2023 when the said latest version of the Certificate of Confirmation was issued. In respect to the property, Uasin Gishu/Kimumu/239, 0.09 hectares thereof was allocated to the Applicant's mother but since she had passed on by then, the same was to be held by the current Administrators in trust for the Applicant. Another 0.09 hectares was also allocated to the deceased's other daughter who apparently had predeceased the deceased. Her share was also to be held by the Administrators in trust for her children. Shares held at Standard Chartered Bank Limited and funds held in an account at the same bank were to shared out "equally amongst all beneficiaries".

27. It is therefore evident that the Applicant's grievance cannot be that she was not provided for, but rather, that what was provided to her, for and on behalf of her mother, was below what she considered to the correct entitlement and unfair since the other beneficiaries (Administrators) allocated to themselves much more. Her other grievance is that although, as aforesaid, the shares held at Standard Chartered Bank Limited and funds held in an account at the same bank were to shared out "equally amongst all beneficiaries", to date she has never received her mother's share thereof.

28. Regarding the Applicant's allegation that her mother's consent to the Application for the Grant was never obtained yet she was still alive by then and that she never made a renunciation of her right to apply for administration of the estate, that allegation has been wholly debunked since, to the contrary, it has been sufficiently demonstrated that the Applicant's mother did give such consent (Form P&A Form 38). A copy of such consent dated 1/10/2007 and signed by the rest of the siblings, including the Applicant's mother, is indeed in the Court file. The signature of the Applicant's mother has not been alleged to be a forgery. The only correct position is that the Applicant's mother died before the Grant was issued by the Court. This being the only ground raised in seeking revocation of the Grant of Letters of Administration, that portion of the Applicant's prayer is accordingly dead on arrival.

29. As regards confirmation of the Grant and/or distribution of the estate, as I have already stated above, the Applicant's major grievance is that the distribution saw the Applicant and/or her mother's estate being granted only a small portion of 0.09 hectares of the land parcel known as Uasin Gishu/Kimumu/239 which in total measures 2.0 hectares while the Administrators distributed to themselves 1.82 acres. She complained further that the distribution also totally excluded her mother's estate from the land parcel known as Wareng Land Parcel No. 14/1489 (share certificate No. 145).

30. In their response, the Administrators deponed that they arrived at the distribution of the estate after factoring the consideration that at the time of the Applicant's mother's death, she depended on the estate entirely for her provision as she was not in any gainful employment, that at the date of her mother's death, the Applicant was aged 11 years old and the estate continued providing for her with food, shelter, clothing and education. They also deponed that a similar share of 0.09 acres of Uasin Gishu/Kimumu/239 was also allocated to their other deceased sister, the late Esther Njeri's children. It was contended further that the Applicant refuses to acknowledge that she entirely depended on the estate of the deceased for the last 16 years that she lived with the 1st and 4th Administrators from the time her mother was alive and upon her demise and that the Applicant lacked nothing and was taken

to the best schools for both her primary and secondary school education. The Administrators argue therefore that it would be unfair and unjust for the Applicant to claim an equal distribution of the estate yet she directly benefited from it from the time of her birth to date when she was supposed to. I note that the Applicant has not seriously challenged these allegations. Weighing all matters, I find this response and/or explanation by the Administrators to be plausible and credible.

31. Indeed, Section 42 of the *Law of Succession Act* enjoins the Court, when distributing an estate amongst the beneficiaries, to take into account, any previous benefits received by any of the beneficiaries. The Section stipulates as follows:

> " 42. Previous benefits to be brought into account where—
>
> (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
>
> (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

32. Although the Applicant has contended that her care was by her grandmother and not the Administrators, I note that she does not deny that the grandmother was herself the widow of the deceased and in fact, the initial Administrator before she too died and was substituted. It has been stated by the Administrators that at the material time, the widow, too, was not engaged in any gainful income earning activity. Since this statement has not been controverted by the Applicant, it follows that the provision that the Applicant received from the grandmother was itself from the estate. The same cannot therefore be divested from the estate. It would still amount to dependency and provision on the estate.

33. The Administrators have also claimed that before her death, their mother had sold 0.10 hectares of Uasin Gishu/Kimumu/239 to offset debts of the estate before the Grant was confirmed and that as the Administrators, they only registered the whole parcel into their names for convenience and that they subsequently transferred the same to the purchasers upon confirmation of the Grant and that upon deliberation, they agreed that the 2nd, 3rd and 4th Administrators do get 0.36 hectares each except the 1st Administrator who got 0.27 hectares as she had her own property elsewhere which did not form part of the estate of the deceased, that 0.37 hectares was set aside for the family home/burial site for the family including the grandchildren, the Applicant being amongst them. I however observe that the allegation of sale to 3rd parties has not corroborated by any supporting evidence. However, I have no reason to doubt the statements considering that, again, the Applicant has not challenged the same.

34. I also have no reason to doubt the Administrators' contention that they pulled resources to facilitate the survey and sub-division of the property, Uasin Gishu/Kimumu/239 and that processing of the 19 title deeds, including the one allocated to the Applicant, and that it took a lot of their resources and money for this process to be undertaken. According to the Administrators therefore, the plea by the Applicant for cancellation of the title deeds shows bad faith on her part, yet she did not contribute any money towards this process.

35. Regarding the land parcel Wareng 14/1489 (share certificate No. 145), the Administrators have explained that the family agreed that the same be shared equally among the 2nd and 3rd Administrators

as the sons of the deceased as it was their home where they lived with the parents before their demise and that customarily, sons are entitled to it upon the demise of the parents. This statement is verified and supported by the Certificate of Confirmation and is convincing to me. Since evidently, none of the daughters inherited any portion of this particular ancestral property, I do not believe that there was any malice or discrimination in the Applicant's mother also not inheriting it.

36. The Applicant also stated that despite the distribution indicating that the shares and funds held at Standard Chartered Bank Ltd were to be shared equally amongst the beneficiaries, her mother's estate has not been granted any share, benefits or dividends therefrom. She also averred that the Administrators are guilty of material non-disclosure as they failed to disclose that the estate received a cheque dated 12/11/2005 for Kshs 400,000/- from Unaitas Sacco Society Limited and also a second cheque of Kshs 500,000/- which they failed to disclose amongst the assets of the deceased. In their response, the Administrators stated that that the bank account had a sum of Kshs 73,104/- as the balance upon the death of the deceased, that the company shares were listed as unclaimed assets, that the Administrators followed up on the same with the relevant departments and the same upon being transmitted to the Administrators, were used for payment of school fees for the Applicant and for the 2nd Administrator. They also explained they pulled resources and set aside a sum of Kshs 200,000/- for the Applicant's college fees and that the same was deposited in a fixed account and that upon maturity, it had accumulated interest all totalling Kshs 223,000/-, that the Administrators implored upon the Applicant to proceed to college but she declined, that instead, she became a mother of 2 children, that since she had to take care of the children, the issue of going to college issue was "dropped". They claimed further that the entire cash was released to the Applicant. They added that they catered for all the Applicant's needs and that of her 2 children, including enrolling and fully paying NHIF contribution for them to enable them access medical services. Again, although the Applicant filed a Further Affidavit responding to matters raised in the Administrator's Replying, she did not challenge these allegations. The issue of factoring or taking into account of advance benefit already received from the estate as stipulated in Section 42 of the *Law of Succession Act* cited above, therefore militates against her demanding for a further provision.

37. Regarding the Applicant's complaint that the creation by the Administrators of a trust in the distribution and in respect to which she was described as a minor was improper since as at the year 2019, she was an adult aged 23 years, the Administrators explained that the Applicant's title as was those of the children of their late sister, Esther Njeri, was to be held in trust, simply as a safeguard for their future and to avoid the same being disposed of. They claimed that the Applicant, being at such young age, having a property held in trust for her is not a strange phenomenon in Succession matters. I accept this explanation too, particularly since the Administrators have undertaken to execute all the transfer documents to facilitate registration of the Applicant's title in her sole name. They also state that they have already handed over the title deed and are only awaiting the Applicant to avail the necessary documents for execution by the Administrators.

38. Last but not least, the Administrators contend that the Applicant has not explained the inordinate delay in filing the Application. It is true that the Certificate of Confirmation that contained the substantive distribution of the estate amongst the beneficiaries was issued on 25/02/2019. Having been born in the year 1996, in 2019 when the Certificate was issued, the Applicant was 23 years old and a full adult. She filed the present Application in the year 2023. She however does not explain this 4 years delay. The Applicant's only response to this question is that an application for revocation of Grant has no time limit. She does not bother at all to address the delay neither does she allege that she was under any incapacity. She does not even allege that she was not aware of the existence of the distribution adopted or even disclose as to when she came to know about it. I refuse to accept the argument that simply because the *Law of Succession Act* does not stipulate a time limit for applying for revocation of a

Grant, an Applicant who approaches the Court after an inordinate delay has no obligation to explain such delay. For this reason, coupled with the Administrators' argument that some of the beneficiaries have already passed genuine titles to 3rd parties and that revocation of the Grant or re-distribution of the estate shall prejudice such 3rd parties, I decline to interfere with the distribution.

39. On this issue, I refer to the Court of Appeal case *Ali Omar Ali Abdulrahman v Mohamed Ali Abdulrahman* [2020] eKLR, in which the Applicant sought sought extension of time within which to file an Appeal to challenge the High Court's refusal to revoke a Grant. Sitting as a single Judge, in declining the Application, Murgor JA, held as follows:

> " With respect to whether any prejudice would be occasioned to the respondent, it is apparent that the application for revocation relates to a grant that was confirmed way back in 1992. This is clearly a very old succession matter. The question would arise as to whether the revocation sought would serve any useful purpose this late in the day.
>
> All factors considered, I am not persuaded to exercise my unfettered discretion to allow the application, which I accordingly dismiss. Considering that this is a family dispute, I order each party to bear their own costs".

40. Similarly, Achode J (as she then was), in the case of *Monica Wangui Kimani & Another v Josphat Mburu Wainaina* [2015] eKLR, stated as follows:

> "
>
> " 16. Indeed Section 76 of the *Law of Succession Act* states that a grant may at any time be revoked, or annulled by the court if it finds that it was obtained fraudulently by making of false statements, or concealing material facts. This may appear to place no time limit within which an application for revocation may be brought. The Probate Court is a court of Equity and has very wide discretion to aid the interest of justice. However, Equity aides the vigilant and not the indolent. It is not in dispute that the deceased whose Estate is in question died in 1962, or that both suit properties were sold and or transferred to third parties in 1968 or that Wainaina Karanja the administrator who is accused of perpetrating the malfeasance has since died.
>
> 17. It is therefore my considered view that the interest of the Applicant has been extinguished by effluxion of time since the suit property has already been transferred to innocent third parties who had no notice. The Estate is no longer available to enable her to enjoy her right of life interest and the administrator of the Estate of Stanley Kimani Karanja against whom she should have brought her claim has also died.
>
> In the premise I find that the summons for revocation dated 22nd May 2014 cannot succeed and is therefore dismissed."

Final Orders

41. In the premises, the Application seeking revocation and/or annulment of the Grant of the Letters of Administration and the confirmation thereof fails. Accordingly, I order as follows:

    i. The Applicant's Summons dated 24/05/2023 is dismissed.

ii. This being a family matter, I make no order on costs in the hope that such refrain will contribute in the family quest to achieve reconciliation and to reclaim some level of comity between the Applicant on one side and her uncles and aunts on the other part.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 8TH DAY OF MARCH 2024

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WANANDA J. R. ANURO

JUDGE