



REPUBLIC OF KENYA



In re Estate of the Late Kungu Karumba (Deceased) (Succession Cause 138 of 1983) [2024] KEHC 2514 (KLR) (Family) (7 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2514 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 138 OF 1983
HK CHEMITEI, J
MARCH 7, 2024**

BETWEEN

JOHNSON MUCHAI KARUMBA 1ST APPLICANT

CHRISTOPHER KARUMBA KUNGU 2ND APPLICANT

AND

PETER MUCHAI KUNGU 1ST RESPONDENT

HANNAH WAIRIMU KUNGU 2ND RESPONDENT

ROSE NJERI NDUNGU 3RD RESPONDENT

OFFICE OF THE PUBLIC TRUSTEE 4TH RESPONDENT

RULING

1. In their summons for revocation of grant dated 23rd June 2022 the applicants have prayed for the following orders;
 - (a) That the grant of Letters of Administration intestate issued by this court to Peter Muchai Kungu, Hannah Wairimu Kungu and Rose Njeri Ndungu on 4th June 2019 and rectified on 17th December 2020 be and is hereby revoked.
 - (b) That the grant of letters of administration intestate issued to the Public Trustee on 15th March 1983 be reinstated forthwith.
 - (c) That all documents handed over by the Public Trustee to the respondents in respect of the estate of Kungu Karumba be returned to the office of the Public Trustee forthwith.



- (d) That the Public trustee be ordered to distribute the estate of the late Kungu Karumba in accordance with the certificate of confirmation of grant issued on 30th November 1992 and the Family Deed of Accord forthwith.
2. The applicant prayed for costs as well.
 3. The application is based on the grounds thereof and the sworn affidavit of Johnson Muchai Karumba dated even date.
 4. The application has been opposed by the respondents vide the sworn affidavits of Tevin Nazario Nyagah the son to the second respondent dated 4th July 2022 as well as the grounds of opposition, the affidavit of Regina Wambui Nderitu on behalf of the Public trustee via the affidavit she swore on 14th July 2022, and that of Hannah Wairimu Kungu sworn on 15th July 2022.
 5. At the close of the pleadings the court directed the parties to file written submissions which were complied by the applicant and the 4th respondent.
 6. The issues herein are not difficult to understand. The late Kungu Karumba was a prominent freedom fighter whose death remains a mystery to this day. It was alleged that he passed away while in some business trip to Uganda.
 7. From the averments of the parties in their rival affidavits it is evident that the Public Trustee took over the administration of his estate and on 15th March 1983 a grant was issued to him. The same was confirmed on 30th November 1992 and this was after he directed the family members to come up with a mode of distribution.
 8. The family it appears reached what they called a “family deed of accord” indicating how the estate was to be divided namely into a ratio of three as per the houses left behind by the deceased.
 9. The applicants thereafter wrote according to their averments, a letter to their advocates A I Onyango directing him to write to the 4th Respondent a protest concerning the distribution of the estate. The said law firm wrote a letter dated 30th April 2018 which was not acted upon by the Public Trustee.
 10. It is also the Applicants case that they learned that the 2nd and 3rd Respondent and the late Michael Njoroge Kungu had obtained the grant dated 4th June 2019. According to the applicants they were not served nor made aware of the said application for the above grant.
 11. They therefore argue that the said grant was obtained fraudulently with full knowledge that there was another grant on record and in any case the family deed of accord had already distributed the estate.
 12. They accused the respondents of wasting the estate after obtaining the grant and that they ought to be compelled to render accounts. They prayed for the application to be allowed.
 13. Tevin Nazario Nyagah Ndungu on behalf of the second respondent opposed the application arguing among others that the issue of the grant was well dealt with in the ruling of Honourable Justice Stella Mutuku dated 16th December 2021 and it gave the impugned grant a clean bill of health.
 14. He went on to accuse the applicants of including the deceased properties in the estate of their late mother Tabitha Muthoni Kungu, under Succession Cause no 2860 of 2012. That the properties mentioned therein are still in the name of the deceased herein.
 15. The Public trustee through Regina Wambui Nderitu opposed the application arguing that the grant the applicants intends to impugn was dealt with by Mutuku J in the ruling of 16th December 2021 and that the Public Trustee was functus officio as far as the estate herein was concerned.



16. That the Public Trustee had already handed over the management of the estate to the court appointed administrators for all intend and purposes. She therefore prayed that the application be dismissed.
17. The above position was taken by the 3rd Respondent in her replying affidavit arguing that the grant they obtained was lawful and within the legal parameters. She said that the applicant's intention was to simply disinherit the beneficiaries in the estate especially the girls.

Analysis and determination

18. Having gone through the rival affidavits, the annexures to them as well as the written submissions on board, what is in dispute is whether the letters of administration issued to the respondents on 4th June 2019 and rectified on 17th December 2020 were fraudulently obtained.
19. The other issues were basically agreed upon namely, that the 4th respondent up to until when the grant was issued to the respondents was administering the estate. The Public Trustee has said so much to show that immediately the court appointed the administrators it became functus officio.
20. I have perused the grounds raised by the applicants and in my view Mutuku J dealt with the matter when she explained herself among others that;

“I have not found anything adverse against the administrators of the estate. They were legally appointed as the administrators and took up the duties of the administration of the estate according to law...”
21. The applicants did not challenge the said ruling by way of review or appeal. As it is the same stands and I do not find it useful to stand as an appellate court in respect to the same.
22. Suffice to state that the applicants stand to lose nothing as they are the beneficiaries to the estate by virtue of being the deceased children. As found by Mutuku J the window of opportunity is still open to them.
23. As regards the estate of their late mother I think that is completely separate and distinct from this. If the issues therein touch on this matter, then it shall be dealt with appropriately at the right fora.
24. Needless to state that the 4th Respondent is right in stating that it was no longer a necessary party in this matter save when and if it is required to produce any issue which it dealt with at the period it was administering the estate.
25. Looking at the history of this matter it is the right time that it is brought to closure. I think the deceased shutters when he sees that over 40 years his estate is still in the corridors of justice. It is yet to attain the freedom he fought for, so to speak.
26. In the premises, the application is dismissed with costs to the Respondents. The Administrators should proceed with speed to determine the distribution of the estate once and for all.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 7TH DAY OF MARCH 2024.

H K CHEMITEI

JUDGE

