



REPUBLIC OF KENYA



**In re Estate of Jonathan Nzioka Muiya (Deceased) (Succession Cause 142 of 1993) [2024] KEHC 2347 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2347 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 142 OF 1993**

**FR OLEL, J**

**MARCH 6, 2024**

**IN RE ESTATE OF JONATHAN NZIOKA MUIYA (DECEASED)**

**BETWEEN**

**OBED NZIOKA ..... ADMINISTRATOR**

**AND**

**WAMBUA NZIOKA ..... 1<sup>ST</sup> ADMINISTRATOR**

**ROSE MUKULU NZIOKA ..... 2<sup>ND</sup> ADMINISTRATOR**

**RULING**

**A. Introduction**

1. Vide a Summons for revocation of grant dated 01.09.2022, the applicant herein sought the following orders;
  - a. The grant of letters of Administration (intestate) issued to the administrators by this Honourable Court on 24<sup>th</sup> March 2022 be revoked.
  - b. Upon hearing and determination of the application, the Honourable court do cancel or revoke all title deeds and all entries relating to registration of transmission in respect of the following parcels of land;
    - i. Kangundo /Isinga/1575
    - ii. Kangundo/Isinga/1435
    - iii. Kangundo/Isinga/2110
    - iv. Plot no. 34 and shares at Tana Ranch
    - v. Plot no. 35 at Kangundo



- c. Subsequent to prayer 1 and 2, the Honourable court be pleased to fairly and reasonably distribute the estate of the deceased to all beneficiaries.
  - d. Each party to bear their own costs
2. The summons herein was supported by the affidavit of Obed Nzioka dated 01.09.2022 wherein he deposes that, he is one of the children of the 1<sup>st</sup> house of the deceased and he was not aware of the mediation proceedings and settlement leading to the certificate of Grant confirmed on 24.03.2022. He deposed that the size and value of the estate inherited by the 2<sup>nd</sup> House as represented by the 1<sup>st</sup> Respondent was higher in value as compared to the estimated value of the estate inherited by the 1<sup>st</sup> house. He deposed that land parcel No 34 and shares at Tana ranch measures over 100 acres and whose value per acre is about Kshs 300,000/= translating to Kshs.30,000,000/= while Kangundo/Isinga/1575, Kangundo/Isinga/1435, Kangundo /Isinga /2110 all measuring about 50 x 100 valued at an estimate of Kshs 2,000,000/= each. He therefore contends that the 2<sup>nd</sup> House inheritance is valued at Kshs.32,000,000/= while the 1<sup>st</sup> House at Kshs. 6,000,000/= as per the confirmation of grant.
  3. The 1<sup>st</sup> House has nine beneficiaries namely; Anna Ndondu Nzioka, Flora Nduku, Vacy Nzioka, Muisyo Nzioka, Walter Nzioka, Obed Nzioka, Mary Nzioa and Abel Nzioka while the 2<sup>nd</sup> House has 5 beneficiaries namely, Katuthi Nzioka, Agnes Muneeni Nzioka, Rose Mukulu Nzioka, Obed Nzioka, Daniel Wambua Nzioka and Nzilani Nzioka.
  4. The objector/Applicant reiterated that he was not aware of the mediation proceedings and settlement made therefrom as it was done behind his back to his detriment as his interest in the estate of the deceased was not fairly provided for. For the foregoing reason, the applicant maintained that the certificate of confirmation of grant confirmed on 24.03.2022 was obtained irregularly, un-procedurally and fraudulently by material non-disclosure, misrepresentation and to his exclusion and therefore it was fair and just to grant he orders sought.

## **B. The Response**

5. In opposition to the summons under consideration, the 1<sup>st</sup> Respondent Wambua Nzioka filed a Replying affidavit on 15.05.2023 in which he deposed that vide ruling dated 14.01.2021, the court appointed the Objector/Applicant and himself as administrators of this Estate and the 1<sup>st</sup> family was ably represented by their advocates Manthi Masika & Co. Advocates. In addition, at the court annexed mediation, both houses were well represented and he cannot be heard to complain that he did not participate in the said mediation process. It was also illogical for the applicant to seek to revoke his own grant/ where he was an administrator and the only thing the applicant could do is to file an appeal against the decision to confirm grant, rather than file an application for revocation of the said Grant.
6. The Summons was disposed of by way of written submissions.

## **C. Submissions**

### **(i)The Objector/Applicant Submission**

7. The Objector/Applicant filed submissions on 19.06.2023 where he was submitted on three issues. Firstly, as to whether the method of distribution as provided for in the certificate of confirmation of grant issued on 24.03.2022 was unfair to the objector, it was submitted that the mediation proceedings were conducted with participants from the 2<sup>nd</sup> house to the exclusion of those from the first house. In addition to the averments in the supporting affidavit, it was submitted that distribution ought to have been done equally based on the number of beneficiaries in each house. The certificate of confirmation



of Grant issued on 24.03.2022 was unfair/unjust for amongst the reason that the size and value of the Estate inherited by the 2<sup>nd</sup> house was of higher value as compared to the estimate value inherited by the 1<sup>st</sup> family.

8. Secondly, the Objector/Applicant did aver that the certificate of confirmation of grant was obtained irregularly, un-procedurally fraudulently by material non-disclosure, and misrepresentation. The 1<sup>st</sup> house were never represented at the mediation proceedings and the settlement reached clearly was prejudicial to them and could not in clear conscious be upheld since their non participation negated the whole agreement. Section 76 of the *Succession Act*, Cap 160 provided that grant could be revoked at any time a party proved that it was obtained fraudulently by making a false statement or by concealment from court of some material fact. The Objector had proved his case on a balance of probability as was required under law and urged the court to allow the prayers sought for.

**(ii) The 2<sup>nd</sup> Administrator/Respondent Submissions.**

9. The 1<sup>st</sup> Administrator filed submissions on 2.08.2023 and submitted that the 1<sup>st</sup> house had filed this cause and had the grant confirmed in their favour. This was done without the knowledge of the 2<sup>nd</sup> house who eventually discovered the same and they did successfully apply for revocation of Grant and a fresh Grant was issued in the names of the applicant Obed Nzioka and Wambua Nzioka. The court further directed the parties to attend court annexed mediation, where both houses were fully represented, parties amicably agreed on the mode of distribution and the mediation agreement was eventually adopted as an order of this Honourable court and a certificate of confirmation of grant issued on 24.03.2022.
10. The application as filed was misplaced as the court could not revoke the certificate of confirmation of grant, which was a mere formal expression of the orders made by the court on confirmation application. The discretion given to the court under Section 76 of the *law of succession Act* was for revocation of grant of representation, not certificate that confirms that grant. Reliance was placed on the cases of *Re Estate of Joel Cheruiyot Ronoh* [2016] eKLR and *Re estate of Kiberenge Mukwa (deceased)* [2021] eKLR.
11. Secondly, it was submitted that the Applicant was the 1<sup>st</sup> administrator, jointly appointed with Wambua Nzioka to be the administrators herein and therefore he was not capable of seeking to revoke his own grant. That section 76 of the *Law of Succession Act*, Cap 160 provides that 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 on its own motion. The applicant therefore had no recourse in seeking to revoke or annul his own grant and had the option of applying to rectify or amend the same. Reliance was placed on the case of *Julius Nyamu Nkiruta v Stephen Mutai Mimanyara & Another* [2015] eKLR
12. Lastly, it was submitted that the confirmed grant was issued pursuant to a mediation agreement and the settlement thereof adopted as an order of the court. Though it is alleged that there was no representative of the 1<sup>st</sup> house, that allegation was not true as they were fully represented and the said mediation settlement signed by both parties. The majority of the Estate property was given to the 1<sup>st</sup> house and the issue of their valuation was baseless given that no valuation report was exhibited. The Respondent thus urged the court to find that the application was not merited and to dismiss the same.

**D. Analysis and Determination**

13. I have considered the Summons for revocation of grant on record, the corresponding affidavits and the submissions of the parties as filed and find the issues for determination as follows;



- a. Whether the Applicant/1<sup>st</sup> family participated in the medication agreement.
- b. Whether a proper basis has been laid out for the revocation of grant.
- c. Who should be awarded costs of the Application.

**A. Whether the Applicant/1st family participated in the medication agreement.**

14. From the court record, the deceased herein died on 11.07.1991 and upon application of a grant of letters of administration intestate, the same was issued to Anna N Nzioka, Muisyo Nzioka, Walter Nzioka and Esther Obed on 17.5.1994. and subsequently a Certificate of confirmation of grant was issued on 14.04.2008 by Lenaola J (as he then was). On 19.11.2015, a chamber summons application was filed by Wambua Nzioka & Rose Mukulu Nzyoka, which application was heard through viva voce evidence and a determination was made revoking the same. A fresh grant of letters of administration was issued on 14.01.2021 to Obed Nzioka & Wambua Nzioka. In addition, the court referred the matter for court annexed mediation and on 17.03.2022 the mediation agreement was adopted as the order of the court. Thereafter a certificate of confirmation of grant dated 17.03.2022 was issued which is what the Applicant seeks to have revoked.
15. On the first issue, it appears from the mediation settlement agreement that there were representatives of both houses who participated in the said mediation and signed the mediation settlement. The 1<sup>st</sup> house was represented by Walter Muia Nzioka and David Muisyo Nzioka, while the 2<sup>nd</sup> house was represented by Wambua Nzioka. The said agreement also explicitly states that “Today the parties have reached agreement. They were both accompanied by their advocates”. The Applicants contention that the 1<sup>st</sup> house was not represented in the mediation settlement is therefore not true, nor can his claim of being unaware of the mediation process hold water. The firm of Manthi Masika & Company Advocates participated in the said mediation process and was the same firm that represented the applicant/ 1<sup>st</sup> family in the objection proceedings. The applicant thus cannot be heard to say that he was unaware of this process and/or the mediation proceedings did not take care of his interest. This ground therefore fails.
16. In addition, the mediation agreement has since been adapted as an order of this court and therefore the only recourse available for the Applicant is either to appeal or seek review of the same.

**(B) Whether a proper basis has been laid out for the revocation of grant.**

17. The Applicant seeks to have the certificate of grant dated 17.03.2022 revoked on the grounds that it was obtained irregularly, procedurally and fraudulently by material non-disclosure, misrepresentation and he was excluded.
18. Revocation of grants is governed by section 76 of the *Law of Succession Act*, Cap 160 which provides that;

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. In the case of *In Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR the court stated that:

“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.”

20. In this case, while on the face of the application, the applicant states that he seeks to revoke the letters of administration (intestate) issued on 24<sup>th</sup> March 2022, the factual position is that what was issued on 24.03.2022 was the certificate of confirmation of grant. The Grant of letters of administration intestate was issued on 14<sup>th</sup> January 2021 and from the pleading herein it is obvious that the applicant has no grouse with the same. His issue is the confirmed grant issued pursuant to the mediation settlement.



21. The court in *Re Estate of Kiberenge Mukwa (Deceased)* [2021] eKLR which was relied on by the 1<sup>st</sup> Respondent dealt with a similar situation and stated as follows;

“ 14. What is sought to be revoked here is not the grant itself, but the certificate that was issued upon the confirmation of the grant. In principle, the Appellant appears to be unhappy with the confirmation process. That is what comes out from the body of the record of appeal and her written submissions. The principal prayer in the application is for revocation of the certificate of confirmation of grant.

.....

16. Rather than dealing with the definition of the term, what the *Law of Succession Act* does at, at sections 53 and 54, is to provide for the forms that the grant may take, which then gives us some sense of what a grant of representation is or means or refers to. The provisions say as follows:

“Forms and Grants

53. Forms of grant

A court may—

(a) where a deceased person is proved (whether by production of a will or an authenticated copy thereof or by oral evidence of its contents) to have left a valid will, grant, in respect of all property to which such will applies, either—

(i) probate of the will to one or more of the executors named therein; or

(ii) if there is no proving executor, letters of administration with the will annexed; and

(b) if and so far as there may be intestacy, grant letters of administration in respect of the intestate estate.

54. Limited grants

A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.”

17. As stated above, the principal concern of the Appellant is the confirmation of the grant. What she seeks principally is revocation of the certificate of confirmation of grant. The question then that arises is whether a certificate of confirmation of a grant is in fact a grant of representation intestate or the equivalent of a grant, to be revoked or annulled through section 76 of the *Law of Succession Act*. The answer to that question, appears to me, to be that a certificate of confirmation of grant is not a grant of representation.

Grants of representation take the form stated in sections 53 and 54 of the *Law of Succession Act*. They are either a grant of



probate or of letters of administration intestate or of letters of administration with will annexed or limited grants. A certificate of confirmation of grant does not take any of those forms, and it cannot possibly, therefore, be a grant of representation. It is a document extracted from the orders that a court makes after confirmation of a grant under section 71 of the [Law of Succession Act](#), as evidence by the fact that a grant of representation has been confirmed. It should be emphasized that the confirmation process does not produce another grant.

The grant sought to be confirmed, through that process, remains intact, after confirmation. Whereas a grant of representation appoints personal representatives or administrators, the certificate of confirmation does not do anything of that sort. All what it does is to confirm that the court has approved the persons appointed under the grant to continue to administer the estate, with a view to distribute it in accordance with the distribution schedule approved. A certificate of confirmation of grant is akin to that order or decree that is extracted from a ruling or judgement made by a court; it is an extract of the orders that the court makes on an application for confirmation of grant. Quite clearly, therefore, a certificate of confirmation of grant is not a grant of representation, and for that reason it is not available for revocation under section 76 of the [Law of Succession Act](#).

.....

22. The only connection between confirmation of grants and revocation of grant is that set out in section 76 (d) (i) of the [Law of Succession Act](#). It has nothing to do with a grant having been confirmed, rather it deals with situations where a personal representative or holder of a grant or administrator has failed to apply for confirmation of their grant. Section 76 of the [Act](#) relates to confirmation of grants to that very limited extent, not with confirmation itself, but the failure to apply for confirmation. A person who is aggrieved by the orders made with respect to a confirmation application, which are encapsulated in the certificate of confirmation of grant, has no remedy under section 76 of the [Law of Succession Act](#), since that provision does not envisage revocation of certificates of confirmation of grants.”
23. The wordings of section 76 of the Act stated above are that “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. On the first part, the court has been given powers to revoke or annul a grant whether or not the same has been confirmed.
24. A grant is defined under Rule 2 of The [Probate and Administration Rules](#) as:  
“grant” means a grant of representation, whether a grant of probate or of letters of administration with or without a will annexed, to the estate of a deceased person.”
25. Further this court is guided by the case of [In Re estate of Charles Kibe Karanja \(Deceased\)](#) [2015] eKLR where the court stated that;  
“A certificate of confirmation of grant is by its nature a formal order extracted from the orders made by the court on the application for confirmation of grant. If a party wishes to have the



assets of the estate redistributed or there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should be effected through a mere amendment of the certificate of confirmation of grant.”

26. Grants of representation take the form stated in sections 53 and 54 of the *Law of Succession Act*. They are either a grant of probate or of letters of administration intestate or of letters of administration with will annexed or limited grant. In the premises the only remedy available to the Applicant is either review or appeal or setting aside of the confirmation orders once the grounds for setting aside are met, but not to seek to revoke the confirmed grant which is formal order extracted from the orders made by the court on the application for confirmation of grant.
27. Finally, it would also be paradoxical for an administrator to seek to revoke his own grant. As stated In *Julius Nyamu Nkiruta v Stephen Mutai Mimanyara & Another* [2015] eKLR, Justice J.A. Makau did state that;

“..... in my view Section 76 of the *law of succession Act* is amenable to any interested party who may want to have grant to be revoked or annulled at any time whether confirmed or not based on the grounds set out thereunder or the court can decide to do so on its own motion. I therefore find that the petitioner/administrator herein had no recourse to seek revocation or annulment of his own grant but if anything the petitioner/administrator can move court by way of rectification or amendment on matters provided for such action in the relevant Act or file appeal to higher court or file a separate suit in a different court on claim for fraud or whatever he deems fit to recover the 80 acres or damages.....”

28. The applicant also alleged that the properties bequeathed to the 2<sup>nd</sup> family were of higher value and the estate was distributed in an inequitable manner. This allegation too cannot stand as no valuation certificate was annexed to show that indeed that the property given to the 2<sup>nd</sup> house was of a much higher value. The mediation settlement is tantamount to a consent and can only be set aside on grounds justifying setting aside a contract. That is the applicant had to show that the same was entered into through fraud, duress, suppression of evidence or it was based on false evidence to constitute a miscarriage of justice. The same was not so proved by the Applicant.

#### **E. Disposition**

29. The upshot is that the summons for revocation of grant dated 1<sup>st</sup> September 2022 is wholly unmerited. The same is dismissed with costs to the Respondent.
30. It is so ordered.

**RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 6<sup>TH</sup> DAY OF MARCH, 2024.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

Delivered on the virtual platform, Teams this 6th day of March, 2024.

In the presence of;



Mr. Musungu for Applicant

Ms Nyattta for Respondent

Sam Court Assistant

