



REPUBLIC OF KENYA



In re Estate of Kagoiya Wabage alias Kagoha s/o Kabage (Deceased) (Succession Cause 1181 of 2010) [2024] KEHC 4760 (KLR) (19 April 2024) (Judgment)

Neutral citation: [2024] KEHC 4760 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 1181 OF 2010**

MA ODERO, J

APRIL 19, 2024

**IN THE MATTER OF THE ESTATE OF KAGOIYA
WABAGE ALIAS KAGOHA S/O KABAGE (DECEASED)**

JUDGMENT

1. Before this court is the summons for Revocation of Grant dated 12th January, 2023 by which the Applicant MWANGI KAHWE KAGOIYA seeks the following orders:-
 - “ 1. That the grant of letters of administration issued herein and confirmed on 20th July, 2018 be revoked.
 2. That cost of this application be borne by the Respondent.
2. The application which was premised upon Sections 76 and 52 of the *Law of Succession Act* and Rule 73 of the *Probate and Administration Rules* was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent / Administrator NYAMBURA KAGOIYA opposed the application through her Replying Affidavit dated 6th March, 2023.
4. The matter was canvassed by way of written submissions. The Applicant did not file any submissions whilst the Respondent relied upon her written submissions dated 9th November, 2023.

BACKGROUND

5. This succession cause relates to the estate of the late KAGOIYA WABAGE (hereinafter ‘the Deceased’) who died intestate on 4th May, 1985. A copy of the Death certificate Serial No. 360759 is annexed to the Petition for Grant of letters of Administration Intestate dated 28th December, 2010.
6. Following the demise of the Deceased a Grant was issued to Nyambura Kagoiya on 23rd August, 2011. That Grant was duly confirmed on 20th July, 2012 and was later rectified on 20th July, 2018.
7. The Deceased is said to have been survived by the following persons



- (i) Julia Wangui Kagoiya - Widow
 - (ii) Nyambura Kagoiya - Daughter
 - (iii) Maina Kagoiya - Son
8. The widow Julia Wangui later passed away on 4th August, 2017. A copy of her Death Certificate is annexed to the Respondents Replying Affidavit. According to the confirmed Grant the only asset left behind by the Deceased being the property known as L.R. MUHITO/MUYU/151 comprising 2.6 acres was to be divided equally between Nyambura Kagoiya and Maina Kagoiya. The third Child (daughter) of the Deceased namely ANNE NGIRI GAKINYA has through her Affidavit dated 6th March, 2023 renounced all claim and interest to the estate of her late father.
 9. The Applicant Mwangi Kahwe Kagoiya claims that he is a son of the Deceased. He alleges that the Grant was obtained fraudulently as his existence was concealed. On this basis the Applicant prays that the confirmed Grant be revoked.
 10. In her reply the Administrator categorically denies that the Applicant is a son of the Deceased. She avers that the Deceased had only one son namely Maina Kagoiya who has been provided for in the distribution of the estate.

ANALYSIS AND DETERMINATION

11. I have carefully considered this summons, the reply filed thereto as well as the written submissions on record. The only issue for determination is whether the confirmed Grant issued to the Respondent ought to be revoked.
12. The grounds upon which a Grant may be revoked are set out in Section 76 of the *law of Succession Act*, Cap 160, laws of Kenya 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 -

- i. that the proceedings to obtain the grant were defective in substance;
- ii. 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;
- iii. 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;
- iv. 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



- iv. that the grant has become useless and inoperative through subsequent circumstances.”

13. Section 76 was expounded on by the court *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where it 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 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.”

14. The Applicant claims that he is a son to the Deceased. It is trite law that he who alleges must prove. The Applicant has not produced any evidence in the form of a birth certificate, baptism card, Identity card or any other document to confirm that the Deceased was his father.
15. Nor has the Applicant annexed any Affidavit sworn by any family member to confirm that he is a son to the Deceased.
16. I have perused the chief's letter dated 27th December, 2010, which was authored by the chief of Muheto Location in Mukurweini. In that letter the chief names Maina Kagoiya as the only son of the Deceased. The letter makes no mention of Mwangi Kahwe Kagoiya who is the Applicant herein.
17. The local chief must have known the family members of the Deceased well. The fact that he did not name the Applicant as one of heirs is indicative that the Applicant was not a member of the Deceased's family. The Respondent has denied that the Applicant was a son to the Deceased. She has also annexed to her Replying Affidavit an Affidavit dated 6th March, 2023, sworn by Ann Ngiri a daughter of the Deceased. In that Affidavit the Respondent states that the family has only one brother known as Maina Kagoiya and asserts that Mwangi Khawe Kagoiya is a stranger.
18. The said Maina Kagoiya who is named in the chief's letter is duly provided for in the distribution of the estate.
19. In his written submissions the Applicant claims that the parcel of land known as MUHITO/MUYU/151 which is the estate property is registered in his name. The Applicant has not annexed a copy of the Title Document as proof of this claim.



20. I have perused the certificate of official search dated 24th November, 2010 which indicates that the said parcel of land was registered in the name of Kagoiya s/o Wabage who is the Deceased in this matter
21. All in all I find no evidence to suggest much less prove that the Applicant was a son to the Deceased. In the premises I find there was no concealment in obtaining the Grant. The Grant was properly issued to the Respondent
22. Finally I find no merit in this summons and the same is dismissed in its entirety. Costs to be met by the Applicants.

DATED IN NYERI THIS 19TH DAY OF APRIL, 2024.

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MAUREEN A. ODERO

JUDGE

