



In re Estate of Rugano Nthiga (Deceased) (Succession Cause E004 of 2021) [2024] KEHC 4666 (KLR) (17 April 2024) (Judgment)

Neutral citation: [2024] KEHC 4666 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE E004 OF 2021**

LM NJUGUNA, J

APRIL 17, 2024

**IN THE MATTER OF THE ESTATE OF RUGANO NTHIGA
(DECEASED)**

BETWEEN

NJAGI NJERU ELIAS PETITIONER

AND

ESTON RUGANO MWANIKI APPLICANT

JUDGMENT

1. The matter for determination is summons dated 12th May 2023 for revocation of grant issued to the petitioner on 08th June 2021. The application is premised on grounds that:
 1. The proceedings to obtain the grant were defective in substance;
 2. The grant was obtained fraudulently by making of a false statement and/or concealment from the court, of material facts;
 3. The grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.
2. It is the applicant's case that the deceased is his father but he was excluded from the list of beneficiaries and survivors of the deceased. That the deceased was survived by the following:
 1. Damaris M. Rugano
 2. Beth Rugano
 3. Johnson N. Rugano
 4. Eston Rugano Mwaniki



5. Mary Rugano
6. Cyrus N. Rugano
7. Dina Rugano
8. Miriam Rugano
9. Mbogo Rugano
10. Munene Rugano

That they discovered that a stranger had instituted succession proceedings without their knowledge in the estate of their deceased father. That the petitioner is not related to the deceased. That the petitioner indicated in the P & A5 forms that the survivors of the deceased are the Ikandi Clan, Gandegi Group but this is not true. That a clan cannot be a survivor of the deceased under the *Law of Succession Act*, thus the proceedings are defective and incompetent.

3. He deposed that the survivors of the deceased as named in the supporting affidavit are the ones in possession of the estate of the deceased which comprises of the following properties:

1. Mbeere/Mbita/2805
2. Mbeere/Mbita/3771
3. Mbeere/Mbita/3772
4. Mbeere/Mbita/3773
5. Mbeere/Mbita/3774
6. Mbeere/Mbita/3775
7. Mbeere/Mbita/3776
8. Mbeere/Mbita/3777
9. Mbeere/Mbita/3778
10. Mbeere/Mbita/3779
11. Mbeere/Mbita/3780
12. Mbeere/Mbita/3781
13. Mbeere/Mbita/3782
14. Mbeere/Mbita/2185 including plot no. 2167

4. That the proposed beneficiaries are not survivors of the deceased neither are they blood relatives, hence the non-disclosure of their relationship to the deceased. That none of the survivors of the deceased were ever issued with a citation to take out a grant and that the grant was obtained fraudulently.

5. The background of the case is that a grant of letters of administration was issued to the petitioner herein on 08th June 2021. He proceeded to file summons for confirmation of the same vide summons for confirmation dated 10th March 2022 which included a proposed mode of distribution of the abovenamed properties to 66 beneficiaries including the petitioner and they were named as dependants of the deceased pursuant to section 29 of the *Law of Succession Act*. There was a consent to the mode of distribution signed by 56 of the proposed 66 beneficiaries.



6. At the confirmation proceedings, some of the proposed beneficiaries appeared in court in person and the court recorded them as follows:

1. Njagi Njeru Elias
2. Sospeter Kithumbo Murangiri
3. Crispin Njuki Wariru
4. Wilson Muriuki Mutegi
5. John Nyaga Muturi
6. Julius Karimi Mati
7. Mark Kinyua Nyaga
8. Esther Ngithi Muchiri
9. Ephantus Mitaru Kiringa
10. Jesinde Mbuya Nyaga
11. Brian Grishon Macharia Ngari
12. David Gitonga Ndundi
13. Robinson Ileri Muturi
14. Monica Wangari Kithumbu
15. John Mwangangi Ngari
16. Newton Mwaniki Ngari
17. Nyaga Mbiti
18. Godfrey Kariruki Gachoni Kingethu
19. Stephen Mugo Nyaga
20. Stephen Kariruki Muia
21. Barnabas Ngari Namu
22. Obadiah Nyaga Murungu
23. Angelo Ngari Nyaga
24. Jonathan Njeru Mbugi
25. Ephantus Nyaga Ngari
26. Rose Mbura Mate
27. Josphat Nyaga Mukembo
28. Victor Mwaniki Ileri
29. Paul Ileri Mwaniki
30. Margery Rwamba Njiru



31. Pauline Waanjuki Nyaga
 32. Nick Nyange Njuki
 33. David Munene Nthiga
 34. Jonathan Waweru Kavenia
 35. Brian Njagi Njeru
 36. Charles Njeru Njiru
 37. Dorothy Muthoni Mate
 38. Jamlick Munyi Ngungi
 39. Sospeter Nthiga David
 40. Benson Muriuki Njeru
 41. Phedis Igandu Njiru
 42. John Njeru Kanjoyah
 43. Daniel Kinyua Ngungi
 44. Caroline Njoki Njeru
 45. Barnabas Gerishon Ngari
 46. Justus Njeru Ngungi
 47. Charles Muriithi Kanyoya
 48. Michael Munyi Gakonyo
 49. Simon Ngari Ngungi
 50. Paul Njeru Mugo
 51. Rose Mumbi Njiru
 52. Catherine Wangari Njeri
 53. Benson Nyaga Mugo
 54. James Mbogo Nyanga
 55. Charity Muthoni Njeru
7. The court noted that David Mwendo Ngari and Purity Karimi Njeru were absent and the matter was adjourned to enable them to appear before a certificate of confirmation of grant would be issued. However, only David Mwendo Ngari appeared before court and agreed with the proposed mode of distribution. When Purity Karimi Njeru appeared in court, the protestors entered appearance and sought time to file their affidavits of protests against confirmation of the grant for various reasons.
 8. Norman Nyaga (1st protestor) filed an affidavit of protest stating that the properties Mbeere/Mbita/3771, 3773, 3774, 3776, 3778, 3779, 3780, 3781 and 3782 which are subdivisions of parcel number Mbeere/Mbita/1898 have been wrongly included in the estate of the deceased and that they belong to the members of the Nditi Clan of the Mbeere Tribe. That the properties were registered in



the name of the deceased but the said registration was supposed to be cancelled from the register. That the petitioner and some of the beneficiaries are not related to the deceased and are members of the Ikandi clan. That the 2 widows of the deceased namely Damaris Kiura Rugano and Wambui Rugano are not the petitioners and have not participated in the succession proceedings. That the deceased was survived by 7 children who have abandoned the proceedings since they know that their father did not own the said properties.

9. Elizaban Elias Nthiga (2nd Protestor) filed an affidavit of protest deposing the same facts as Norman Nyaga.
10. Jacinta Kiura Njeru (3rd Protestor) also filed an affidavit of protest stating that parcel number Mbeere/Mbita/2167 has been subdivided and it belongs to the estate of Faustino Njeru Njoka and it should not be included in the estate of the deceased herein. That the petitioner knows this fact but he chose to conceal it from the court. She produced copies of ownership documents of the said parcel of land.
11. James Mitaro Gachoni (4th protestor) filed an affidavit of protest wherein he stated that some of the properties named do not belong to the deceased and that he only held the same in representative capacity for the Ikandi clan. That this position was captured in the proceedings before the Minister of Lands. He produced copies of the said minutes of proceedings. That the petitioner is well versed with these details but he failed to disclose them to the court. That he was elected leader of the clan and he seeks to be enjoined in the cause in order to champion for the rights of the clan so that none of the members will be disadvantaged.
12. Geoffrey Gitonga Ngari (5th protestor), grandson of the deceased and administrator of the estate of the late Cyrus Ngari Rugano, son of the deceased, filed an affidavit of protest stating that the petitioner is not a member of the family of the deceased. That the family of the deceased is yet to institute succession proceedings, neither have they ever met to ascertain the properties of the deceased. That if the grant is confirmed and the properties distributed as proposed, the legitimate beneficiaries of the deceased will lose the properties to strangers.
13. In the pendency of the protests, the applicant herein filed the summons for revocation of grant on the grounds mentioned in my first paragraph. In response to the summons for revocation, the petitioner filed a replying affidavit stating that he filed the petition for letters of administration pursuant to an order of this court issued on 05th November 2020 in citation proceedings in Embu High Court Miscellaneous Succession Cause No. 8 of 2020. The order stated that the petitioner would be at liberty to petition for letters of administration in the estate of the deceased if Damaris Kiura alias Damaris Muthoni, widow of the deceased, failed to do so within 45 days of the said order. That the said widow of the deceased filed a replying affidavit to the citation and cannot be said to have been oblivious of the process.
14. He deposed that when the matter was transferred from Siakago Magistrate's Court to Embu High Court, she was fully aware of the process. That Beth Rugano, a daughter of the deceased was present in court throughout the citation proceedings. That after gazettelement, none of the family members of the deceased filed an objection to the petition until the point of confirmation. That in all the protests filed, the protestors stated that indeed the land belonged to the Ikandi Clan and so there is no ownership issue. That the clan could not wait indefinitely for the close family of the deceased to petition for letters of administration and that is why the widow of the deceased was cited but she refused to petition for letters of administration. That it is only through this grant that the clan members will get their land.
15. James Mitaro Gachoni (4th protestor), filed an affidavit in support of the summons for revocation, stating that the family of the deceased should be allowed to deal with the estate of the deceased without external interference. That the petitioner has included some parcels of land in the succession



- proceedings but they do not belong to the deceased. That the petitioner is operating under the guise of clan representative under power of attorney but he has since been ousted as chairman of the clan.
16. The court directed the parties to file their written submissions in the matter. Only the applicant and the 4th protestor complied.
 17. The applicant, in his submissions, relied on section 66 of the *Law of Succession Act* and Rule 26 (1) and (2) of the *Probate and Administration Rules* which provide for who may petition for letters of administration. That the provisions give priority to the surviving spouse and children of the deceased and in this case, it is a clan elder who petitioned and left out the members of the family of the deceased. He placed reliance on the case of *In Re James Kisala Ogwuma* (2021) eKLR and argued that the grant ought to be revoked since the rightful beneficiaries of the estate of the deceased were not involved in the proceedings.
 18. He relied on Section 76 of the *Law of Succession Act* and the cases of *In Re Estate of Prisca Ong'ayo Nande (deceased)* (2020) eKLR and *In the Estate of Katana Vuko Wale v. Hamisi Katana Vuko* (2021) eKLR. That the petitioner must prove that he had legal standing to petition for letters of administration in the estate of the deceased and that members of the Ikandi clan are beneficiaries of the estate of the deceased. He urged the court to exercise its powers under Article 159 of the *Constitution*, Section 76 of the *Law of Succession Act* and Rule 43 of the *Probate and Administration Rules* and revoke the grant.
 19. The 4th Protestor submitted the role of the family of the deceased under section 66 of the *Law of Succession Act* cannot be wished away because of citation orders. He relied on the case of *In the Estate of Lydia Khamalishi (deceased)* (2021) eKLR where the court gave factors to be considered before granting letters of administration to a creditor through citation. He also relied on the case of *In Re Estate of Wechuli Mwombe (deceased)* (2021) eKLR where the court prioritized members of the family as administrators of the estate of the deceased alongside the citor.
 20. The issue for determination is whether the grant should be revoked in light of section 76 of the *Law of Succession Act*.
 21. The grant issued on 08th June 2021 was issued pursuant to citation proceedings which culminated in an order dated 05th November 2020 by this court in Embu High Court Miscellaneous Succession Cause No. 8 of 2020. Through the said order, the petitioner was allowed to petition for letters of administration within 45 days of the order if the widow of the deceased does not petition. It followed that the widow of the deceased did not petition within the specified period, even though she participated in prosecuting the citation.
 22. A citation is usually filed by a party interested in the estate of the deceased, for purposes of prompting the person entitled to petition for letters of administration or grant of probate as the case may be, to do so to enable the interests of that party are executed through succession. Citations in the context of intestate succession are provided for under Rules 21-22 of the *Probate and Administration Rules*. In the case of *Josiah Muli Wambua* [2014] eKLR, Musyoka, J. explained that:

“In intestacy, citations issue only in cases where no petition has been lodged in court. Citations are intended to trigger the process of applying for letters of administration intestate in circumstances where the persons entitled to apply are not willing or are slow in moving the court in that behalf. The citor should not be a person who has himself already applied for the grant, for the citor should only apply for grant after the citee fails to so apply.”



23. Further, in the case of *John Osicho v Hana Omolo Osewe & Another* [2013] eKLR, the court stated:

“A Citation is a document issued by the Probate Registry, whereby the person being the claimant (Citor) calls upon the person cited (Citee) to provide a reason why a particular step should not be taken; ... Citations occur in both contentious and non-contentious probate. In non-contentious Probate, they serve the purpose of bullying along or fast tracking the issue of a grant of letters of administration.”

24. With this understanding, in this case, the petitioner petitioned and was granted letters of administration through citation proceedings. It was alleged that properties registered in the name of the deceased belonged to the Ikandu clan which was represented by the petitioner as the citor. When the citation was filed, the widow of the deceased, Damaris Kirura filed a response stating that the deceased did not hold any property on behalf of the clan. The 4th protestor’s submissions do not speak of the existence of citation proceedings but the truth is that they exist. Under ordinary circumstances, a member of a clan would not be issued with a grant as he/she would be a stranger to the estate.

25. I now turn to the issue of whether the proceedings leading to the grant were defective because the petitioner is not a member of the family of the deceased. As I have already mentioned, the grant was obtained through the process of citation proceedings by the petitioner. The response of the widow of the deceased was considered before the orders were given. It then follows that the proceedings were not substantially defective. Further, in the circumstances, the process of obtaining the grant cannot be isolated from the citation because one process led to the other.

26. I should add that in the citation determination, the court allowed the widow of the deceased 45 days within which to petition for letters of administration in default of which the petitioner would be allowed to petition. This court applied its discretion on the matter as empowered by Rule 73 of the *Probate and Administration Rules*, which provides that:

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

It would have been disastrous if the court refused to exercise its discretion in the matter and deny the petitioner the orders which he has sought procedurally before the right court. Therefore, in order to allow the deceased’s widow time to redeem the situation, the court gave a period of 45 days.

27. My explanation hereinabove also answers the other grounds for revocation which are that the grant was obtained fraudulently and on concealment of material facts that the deceased was survived by 2 widows and children. In hindsight, the orders of the court were not meant to punish the widow of the deceased but rather, to allow her to petition for the grant and then prosecute any protests that would definitely have been raised by the petitioner herein at the time of distribution of the estate.

28. However, since we have all been caught up in the present predicament, it is time that I address the elephant in the room. Even though no one from the immediate family of the deceased has raised a protest to the confirmation proceedings, except the applicant herein who seeks revocation of the grant, I still think that the court’s discretion can still be applied in the matter as provided for under Rule 73 of the *Probate and Administration Rules*.

29. The family of the deceased is legally entitled to the property which forms part of his estate which should be administered to the benefit of his family. The clan rightly claims that some of the properties being held by the deceased belonged to them. In the circumstances, if the grant would have been confirmed,



there would still be a part of the estate of the deceased that would remain unadministered and the right of the family of the deceased's family to the said estate would have been denied. The effect of this is that the estate of the deceased would not have a chance to petition for letters of administration since the opportunity bypassed them during the citation proceedings. At the same time, it is common knowledge that there cannot be more than one grant to the same intestate estate, thus court cannot issue a grant to the family of the deceased while there is a grant already issued to the clan representative at the same time. Through the protests (although the same are not up for determination at this point) it has been argued that some of the named properties do not form part of the estate of the deceased.

30. In my view, this court is at liberty to make any such orders as it deems fit and to enable the ends of justice. This is provided for under Rule 73 of the Probate and Administration Rules provides thus:

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

31. In the circumstances, it is in the interest of justice that this court issues the following orders:

1. The grant issued to the petitioner on 08th June 2021 is hereby revoked, on condition that the applicant pays the petitioner costs of Kshs. 30,000/= within 21 days of this ruling, failing which a grant will be issued jointly in the names of the applicant and the petitioner;

32. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF APRIL, 2024.

L. NJUGUNA

JUDGE

.....for the Petitioner

.....for the Applicant

