



In re Estate of Elizabeth Gathoni Wanyoike (Deceased) (Succession Cause 121 of 2017) [2024] KEHC 3895 (KLR) (16 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 121 OF 2017
SM MOHOCHI, J
APRIL 16, 2024**

IN THE MATTER OF THE ESTATE OF ELIZABETH GATHONI WANYOIKE (DECEASED)

BETWEEN

CAROLINE WACHIIRA CHEGE OBJECTOR

AND

DAVID GICHIA CHEGE 1ST PETITIONER

PRISCILA WANJIRU MBUGU 2ND PETITIONER

RULING

1. What is for determination is an application for Revocation of Temporary Grant filed via Summons dated 16th May, 2023, brought under Section 76 of the *Law of Succession Act* and Rules 44, 45, 49 and 73 of the *Probate and Administration Rules*. In it, the Applicants seeks for orders:
 - i. This Honourable Court be pleased to revoke the Certificate of Confirmation of Grant issued on 30th January, 2019.
 - ii. That the District Land Registrar, Nakuru be directed to cancel all entries made in the register of land parcel Bahati/Engashura Block 3/251 (Tuinuane) and further closing the title for subdivision or any other entries made thereafter a consequence thereof.
 - iii. That the suit property does remain in the name of the deceased, late Elizabeth Gathoni Wanyoike
 - iv. That the Honourable Court does give certain directions as it deems fit and just to grant.
 - v. That costs of this Application be provided for.
2. The Application is grounded on the face of it and upon the affidavit of Caroline Wachira Chege sworn on 16th May, 2023 in support of the application. In it, she deposes that the proceedings to obtain the



Grant were defective and incompetent in substance and the ultimate Grant is void. That the Grant was issued to the Petitioners on 21st May, 2018. That pursuant to an application dated 10th December, 2018 for Confirmation of Grant, the Petitioner's proposed a mode of distribution a Certificate of Confirmation of Grant was issued on 30th January, 2019 to the effect. That the Petitioners disclosed that the deceased had only one property; monies in Equity Bank Account Number [particulars withheld] while failing to include parcel Bahati/Engashura Block 3/251 (Tuinuane).

3. She further deposed that upon issuance of the Certificate of Confirmation of Grant, the Petitioners proceeded to subdivide parcel Bahati/Engashura Block 3/251 (Tuinuane) yet it was not disclosed to Court. That the subdivisions were not done equally as some beneficiaries received unequal portions. She stated that the failure to include the property was deliberate and aimed at unfairly depriving some beneficiaries of their entitlement.
4. She also stated that she was not consulted to consent to the Petition. That leaving out some properties was to benefit the Petitioner. She sought that Court does allow the Application and revoke and or review the Grant due to concealment and misrepresentation.
5. The Petitioners on their part did not file any response after being served with the above application. When the matter came before me on 13th October, 2023, the Court directed that the instant Application be argued by way of written submissions.

Applicant's Written Submissions

6. The Applicant in her submissions dated 20th November, 2023 submitted that the instant application invites the Court to exercise its discretion and allow it since it's a family matter and all properties belong to the estate of the deceased and reliance was placed *in Re Estate of Leah Wangui Nding'uri (Deceased)* (2020) eKLR.
7. The Applicant also contended that there was intermeddling and that the estate property was handled without proper authority. She relied in the case of *Veronica Njoki Wakigeto* (2013) eKLR, and *Santuzzabilioti alias Mei Santuzza (Deceased) v Giancarlos Felasconi* (2014) eKLR.
8. It was further contended that the Court has jurisdiction to cancel a title if a matter is a succession cause and the title has been fraudulently acquired. Reliance was placed in *Munyasya Mulili & 3 Others v Sammy Muteti Mulili* (2017) eKLR.

Analysis and Determination

9. The Court has now considered the Applicant's application, the affidavit in support of the application thereof and the submissions and the only issue this Court needs to determine is whether the prayers sought should be granted.
10. The sole ground relied upon is unsatisfactory for revocation of grant.
11. The law requires that the properties be distributed within 6 months after the confirmation of the grant. *In Re Estate of Gitere Kabura (deceased)* [2020] eKLR the Court stated that:

“the primary mandate of the probate court is distribution of the estate and once an order is made distributing the estate, the Administrators must comply or the Court would be compelled to remove them as Administrators. The court further stated that administrators have a duty to the beneficiaries to ensure distribution of the estate within the stipulated time”.



12. The Applicant is the daughter of the deceased and was aware of the instant proceedings when she signed the consent to making of a grant on the 21st February 2017. If one asset parcel Bahati/Engashura Block 3/251 (Tuinuane) belonging to the deceased was never included, then nothing prevents its inclusion before further consequential orders may issue including its distribution.
 13. In this instance the Grant was confirmed on 30th January 2019 and the Administrator was expected by law to distribute the deceased assets within 6 months and as such the Court expected accountability for the distribution of assets as is contained in the certificate of confirmation of grant as well as proof of ownership by the deceased of parcel Bahati/Engashura Block 3/251 (Tuinuane) has not been exhibited.
 14. This Court accordingly finds the Application to be without merit and the same is dismissed.
 15. Parties to bear their respective costs this being a family matter.
- It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 16TH DAY OF APRIL, 2024.

MOHOCHI S.M.

JUDGE

