



REPUBLIC OF KENYA



In re Estate of Francis Gathungu Muhinja (Deceased) (Succession Cause 3 of 2019) [2024] KEHC 3273 (KLR) (5 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3273 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 3 OF 2019**

**A MSHILA, J
APRIL 5, 2024**

BETWEEN

PURITY NYAWIRA APPLICANT

AND

TERESIA NJANGO GATHUNGU RESPONDENT

RULING

1. Before court is the Summons dated 15th August, 2022 brought under Section 76 of the [Law of Succession Act](#) and the inherent powers of the court. Purity Nyawira sought for orders:-
 - a. Spent
 - b. That this Honourable Court be pleased to revoke and annul the grant herein issued to Teresia Njango Gathungu dated 22nd November, 2022.
 - c. That preservatory orders be granted on Plot Number 15 Egerton Estate (title No. Nairobi LR/361/179/VII) and the deceased's Estate, until the hearing and determination of this application.
 - d. That this Honourable Court be pleased to grant a temporary injunction restraining the administrator of the estate herein being Teresia Njango Gathungu to cease and desist from transmitting/selling/disposing off Plot Number 15 Egerton Estate (title No. Nairobi LR/361/179/VII) until the full determination of this application.
 - e. That this Honourable court be pleased to order that the Nairobi Land Registrar to cease and desist from making any entries in the register relating to Plot Number 15 Egerton Estate (title No. Nairobi LR/361/179/VII) until the full determination of this application.



- f. That all consequential transactions and in particular those relating to Plot Number 15 Egerton Estate (title No. Nairobi LR/361/179/VII) undertaken by the Letters of Administration and the Confirmed grant both issued to Teresia Njango Gathungu be cancelled.
 - g. That if at all Plot Number 15 Egerton Estate (title No. Nairobi LR/361/179/VII) has been disposed of, this Honourable Court be pleased to order that all proceeds of the sale be deposited to this Honourable Court until the full determination of this application.
 - h. That the court be pleased to make such other consequential orders as are necessary for the administration of the estate of the deceased herein.
2. The application is premised on the grounds that the Applicant was married to James Muhinja Gathungu (deceased) since 1990 and that they were blessed with three issues and that they used to reside at Plot Number 15 Egerton Estate (title No. Nairobi LR/361/179/VII) which was given to them by the deceased herein which they enjoyed even after the deceased's demise. That after the demise of James Muhinja the plot was put up for sale and they were evicted which evictions caused severe mental anguish to her children.
 3. The application is supported by the affidavit of Purity Nyawira sworn on even date. She deposed that she was married by James Muhinja Gathungu (deceased) who was a son to the deceased herein and that their matrimonial home was situated at Plot Number 15 Egerton Estate (title No. Nairobi LR/361/179/VII) which was given to them by the deceased herein. They enjoyed quiet possession until the demise of her husband when on 10th June, 2022 they were evicted from their home by goons purportedly sent by the Administrator/Respondent herein. She averred that the eviction has caused severe mental anguish to her and her children. She averred that the administrator should hold the deceased's estate for the benefit of the deceased's children and that she never consented to the sale of Plot Number 15 Egerton Estate (title No. Nairobi LR/361/179/VII). The administrator was said to have acted maliciously by failing to disclose to the court about the death of James Muhinja and for evicting the Applicant from her matrimonial home.
 4. Teresia Njango Gathungu filed her replying affidavit sworn on 19th October, 2022. She deposed that in 1978, together with the deceased herein they purchased the suit property where she developed and lived with her tenants until later when she moved to her rural home. Her deceased husband had apportioned some parcel of land to their now deceased son and the same was transferred to him. She denied interfering with her deceased's son property. She averred that she bought the suit property while she was working and that her late husband and her children knew that the property belonged to her. She contended that her deceased son had requested her that he rents one room where he at times used to pay rent. In 2021, she issued notices to her tenants to vacate as she intended to sell the property to cater for her medical expenses which she later sold. She denied that she had failed to include her deceased's son in her petition.
 5. Purity Nyawira in her supplementary affidavit sworn on 2nd November, 2022 deposed that the suit property is registered in the name of the deceased herein and that the Respondent was a house wife as such it is not true that she bought and developed the suit property. The sale by the Respondent was said to be selfish as the deceased always declined to sell the property being that it was an investment for his children. She averred that the Respondent has refused to allow the estate of James Muhinja (deceased) enjoy their gift from the deceased herein as the Respondent still farms and plucks tea thereon.
 6. The court directed Anne Wanjiru Gathungu who had filed the application dated 8th August, 2022, seeking revocation of the grant which remained unopposed to participate during the hearing of the instant application.



7. The summons was heard by way of viva voce evidence and thereafter parties filed their written submissions.

Applicant's Submissions

8. The Applicant submits that the court did not grant any consent for the properties held in trust to be sold. The Applicant faulted the Respondent for failing to inform her of her intention to sell the suit property as her matrimonial home was situated on the said property. Further, it was submitted that there is no proof to show that the deceased gifted the suit property as nothing was done by the deceased to complete the gift. Reliance was placed in the case of *in re estate of Phylis Muthoni M'Inoti (deceased)* (2019) eKLR. The allegations that the Respondent was gifted the suit property by the deceased were said to be a fallacy given the period from 2009 to 2018 when the deceased passed on. The Respondent is said to hold a lifetime interest as such the Applicant being a surviving spouse has a right for apportionment of the suit property. The Applicant submits that the grant ought to be revoked as the Administrator/respondent concealed material fact at the confirmation that James Muhinja (deceased) ought to have been replaced by his widow the Applicant herein and that the Respondent has failed to proceed diligently with the administration of the estate. Reliance was placed in the case of *Eddah Wangu & another vs Sacilia Magwi Kivuti (deceased) substituted with Ribereta Ngai* (2021) eKLR.

Anne Wanjiru's Submissions

9. Anne Wanjiru Gathungu, the Applicant in the application dated 8/8/2022 submitted that the Respondent made various misrepresentations as she failed to disclose the existence of a second wife, other beneficiaries being her children with the deceased and that she did not disclose a full and accurate inventory of the assets of the deceased. It was submitted that the estate should be administered by Edward Kambu Gathungu who was assigned as the executor of the WILL as per the wishes of the deceased. The Respondent was faulted for taking all the property of the deceased wholly and not in trust for the children. It was submitted that any property left out in the will should be divided between the two wives and that the Respondent intentionally left out properties belonging to the deceased. The Respondent was said to have failed in her duties as expected of a fiduciary.

Respondents Submissions

10. The Respondent submitted that she bought the suit property and that her children were gifted land elsewhere by the deceased. She denied interfering with her son's property as alleged by the Applicant.

Issues For Determination

11. After due consideration of the summons for revocation of grant, the replying affidavit and the rival submissions by the parties, the issue for determination is whether the Applicant has met the threshold for revocation of grant.

Analysis

12. The *Law of Succession Act* provides for revocation or annulment of grants under Section 76, which states 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—



- (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.”
13. *In re Estate of Prisca Ong'ayo Nande (Deceased) (2020)* eKLR in expounding Section 76 it was 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.”

14. The Applicant herein claims to be the wife of James Muhinja a son to the deceased herein. She averred that their matrimonial home was situated at the suit property where they were enjoying quiet possession until the demise of her husband when the Respondent applied for confirmation of grant without her knowledge. She contended that the Respondent concealed to the court that her husband who was a son to the deceased had passed on as such she was supposed to replace him as the surviving



- spouse. She also stated that she never consented to the sale of the suit property which land was said to be registered in the name of the deceased.
15. Anne Wanjiru who claims to be the 2nd wife to the deceased submitted that there existed a WILL which the Respondent failed to disclose to the court. She also claimed that the Respondent failed to disclose about her presence and that of her children to the court. The Respondent was also faulted for failing to make a full and accurate account of the deceased's estate as well as failing to hold the deceased's property in trust for his children. She submitted that the Respondent intentionally left out properties belonging to the deceased which properties should be shared between the two wives.
 16. The Respondent on the other hand stated that she bought the suit property and that her children were gifted land elsewhere by the deceased. She denied interfering with her son's property as alleged by the Applicant.
 17. In the instant case, it is not contested that the deceased was polygamous. It is also not in contention that the Respondent petitioned for letters of administration without involving Ann Wanjiru the deceased's alleged 2nd wife. Further, this court notes that the Respondent applied for the confirmation of grant after the Applicant's husband who was the deceased's son had passed on and the position was not disclosed to the court. The essence of disclosing the same to the court is so that the surviving spouse could replace her husband as the beneficiary of the deceased's estate herein.
 18. Further, the Respondent avers that she has since sold the suit property as the same belonged to her a fact which is disputed by the Applicants as the gift process was not completed since 2009 to 2018 when the deceased died as the land was still registered in the name of the deceased. The fact that the Applicant never consented to the alleged sale of the suit property also indicates that the Respondent proceeded wrongfully when she sold the suit land. The confirmed grant also shows that the Respondent acquired whole share of the deceased's estate whereas the deceased had children who did not consent to such mode of distribution. From the evidence on record it is clear that some properties belonging to the deceased have been left out.
 19. In the circumstances, and bearing in mind the provisions of Section 76 of the Law of Succession on the grounds when a grant can be revoked. All the above-mentioned actions by the Respondent amounted to concealment of material facts in line with Section 76 (b) of the *Law of Succession Act*. Similarly, the Respondent has failed to proceed diligently with the administration of the deceased's estate.
 20. This court is satisfied that the issuance of the grant and subsequent confirmation of the same on 22nd November, 2022, to the Respondent was irregular having been obtained through concealment and fraudulent misrepresentation of material facts thereby rendering the process to be defective.

Findings And Determination

7. In the light of the forgoing this court makes the following findings and determinations;
 - i. The application for Revocation of the Grant is found to have merit and it is hereby allowed.
 - ii. This court finds that the Grant was obtained in a manner that renders it defective as it was obtained through concealment and fraudulent misrepresentation of material facts.
 - iii. This Court hereby revokes the Grant herein issued to Teresia Njango Gathungu dated 22nd November, 2022.
 - iv. All consequential transactions and in particular those touching on or relating to Plot Number 15 Egerton Estate (title No. Nairobi LR/361/179/VII) undertaken by the Letters of



Administration and the Confirmed Grant both issued to Teresia Njango Gathungu be and are hereby cancelled and the property to revert to the original form.

- v. Parties at liberty to apply for further directions;
- vi. This being a family matter each party shall bear their own costs;

It is so ordered accordingly.

DATED, SIGNED AND DELIVERED via TEAMS AT KIAMBU THIS 5TH DAY OF APRIL, 2024.

A. MSHILA

JUDGE

In the presence of;

Martin – Court Assistant

Muranja -for the Anne

Njuguna – Intended Objector Elizabeth

Notice of Appointment yet to be filed

Miss Njoroge – for Applicant/ Purity Nyawira

Miss Kwengu – holding brief for Omenke – for Petitioner/Respondent

