



**In re Estate of Ruth Njeri Thuo (Deceased) (Succession Cause  
514 of 1998) [2024] KEHC 5292 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5292 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 514 OF 1998  
SM MOHOCHI, J  
MAY 17, 2024  
IN THE MATTER OF ESTATE OF RUTH NJERI THUO (DECEASED)**

**BETWEEN**

**NANCY WANJIKU THUO ..... 1<sup>ST</sup> APPLICANT  
BETTY MUKUHI KIMANI ..... 2<sup>ND</sup> APPLICANT  
MILKA WANGUI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**DAVID MUGO THUO ..... RESPONDENT**

**RULING**

1. Before me is an Application dated 9<sup>th</sup> January 2019 is a Summons for Revocation of grant filed pursuant to Sections 47 and 76 of the [Law of Succession Act](#) and Rules 44(1), 49 and 73 of the Probate and Administration Rules by Nancy Wanjiku Thuo, Betty Mukuhi Kimani and Milka Wangui daughters to Ruth Njeri - the deceased and beneficiary of the estate of the above-named Ruth Njeri Thuo (Deceased) who died on the 9<sup>th</sup> October 1999, seeking the following reliefs: -
  - a. Spent.
  - b. That, the Letters of administration issued to the Respondent herein be revoked and/or annulled.
  - c. That, pending the hearing and determination of this application the honourable court be pleased to restrain the respondent from in any way interfering and/or disposing of the deceased assets particularly parcels of Land known as Nakuru Municipality Block 13/1 80 and Dundori/Mugwathi Block 1/1.
  - d. That, costs of this application be provided for.



2. The Application is premised on the following grounds is further supported by the affidavit of the applicants:
  - i. That, the Grant was obtained fraudulently by the making of a false Statement, misrepresentation of facts and concealment of material facts from the Court.
  - ii. That, due to the misrepresentation of facts to the Court the Applicants herein were left out of their mother's Estate and as beneficiaries are not benefitting at all.
  - iii. That, the respondent has taken that advantage to disinherit the applicants and has threatened to dispose of the assets at their expense.
  - iv. That, the conduct by the respondent has rendered the Grant totally ineffective.
  - v. That, in it is in the best interest of all beneficiaries that the application be allowed.
3. By a replying affidavit 18<sup>th</sup> March 2019 David Mugo admits that the three Applicants are indeed her biological sisters who are married and upon the death of their mother they deserted the home and he was left alone to take care of the whole bill that had accrued when our mother was in hospital.
4. That the following properties were left behind;
  - a. Parcel of land referred to as Nakuru/Municipality Block 3/180 then registered in the name of our late father.
  - b. Parcel of land in Solai
  - c. Parcel of land referred to a Dondori Mugwati block 1/2191.
5. That in the year 2000, he petitioned the Court for grant of letters of administration and the same were issued on 17<sup>th</sup> January 2000 and that having obtained the grant, he sold the parcel of land in Dondori referred to a Dondori Mugwati Block 1/2191 in the year 2003 and used the proceeds to settle the hospital bill left behind the deceased. (The sale agreement was provided as annexed DMT.)
6. That, subsequent to the sale he caused to be transferred to the names the said parcel of land in Solai that is occupied and managed by the 2<sup>nd</sup> applicant who collects proceeds of rent.
7. That Parcel of land referred to as Nakuru/Municipality Block 13/180 now registered in his name is the only property available.
8. That after obtaining grant of letters of administration, he caused Nakuru/Municipality Block 13/180 to be registered in his name and has developed and is utilizing it.
9. That, the applicants abandoned the estate never come home and neither did they bother to follow up on the properties until recently when they filed the application for revocation of grant.
10. That he has no intention of selling the property as alleged and had to first obtain grant before he could do anything with the estate which he did.
11. I have enumerated the Administrator's response to showcase that he was untruthful on the 13<sup>th</sup> of July 2000 when he appeared before justice S.C Ondeyo claiming to be the only survivor to the deceased, that he had two brothers that predeceased their mother (the deceased) and that his deceased brothers did not have families of their own.



12. By so doing, the Respondent obtained the Grant fraudulently by the making of a false statement, misrepresentation of facts and concealment of material facts from the Court he failed to disclose that he had three (3) sisters the current Applicants.
13. From 2019 the parties were afforded an opportunity to resolve the dispute out of Court and the matter was indicated resolved on the 5<sup>th</sup> November 2019 only for the Respondent to renege.
14. Ultimately this Court in October 2023 referred the matter back to the Court Administered (AJS) and once more there was no breakthrough and the Court scheduled the matter for hearing on the 14<sup>th</sup> of March 2024.
15. On the 14<sup>th</sup> of March 2024, the respondent and his counsel were absent, the trial proceeded and the same was closed and the ruling reserved for the 14<sup>th</sup> of May 2024

### **Analysis and Determination**

16. The sole issue that presents itself for determination herein is whether the Applicant's application meets the threshold for the revocation of a grant within the meaning of Section 76 of the [Law of Succession Act](#).
17. For avoidance of doubt, Section 76 of the [Law of Succession Act](#) states as follows:

“76. Revocation or annulment of grant

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.”

18. Section 76 was clearly expounded on *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where 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.”

19. Revocation of grant is an ultimate tool where it is apparently demonstrated that the Administrators can no longer be allowed to be. This Court can, even where a Revocation would be allowed, give directions to conclude distribution as a catalyst of conclusion.
20. This decision is a clear message to male heirs in probate and administration, to exorcise the cultural, paternalistic and chauvinistic beliefs and practice, that they have a more and better entitlement at inheritance over their own biological sisters or such male heirs are entitled to the entire estate to the exclusion of sister on the ground that the sisters are all married.
21. For avoidance of doubt, where a deceased person dies without leaving a valid will, the *Law of Succession Act* and the enabling rules automatically comes into operation and male and female heirs have similar and equal rights to inheritance.
22. The Admission by the Respondent and resultant weaponization of litigation is sufficiently persuasive of this Court to allow the Application.
23. The power to revoke a grant is discretionary as was restated in the case of *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa*, Succession Cause No.158 of 2000, Mwita J. noted thus:

“(13) Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account



interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

24. This Court in exercise of its inherent Jurisdiction necessary for the ends of justice or to prevent abuse of the process of the Court hereby issues the resultant final orders;
- i. The Summons for revocation of grant dated 9<sup>th</sup> January 2019, is found to be meritorious and is accordingly Allowed.
  - ii. The Grant Probate of Letters of Administration (intestate) made and confirmed on the 27<sup>th</sup> July 2000, in favour of David Mugo Thuo is hereby revoked and annulled.
  - iii. All actions done by Mr David Mugo Thuo subsequent to in consequence of the Grant Probate of Letters of Administration (intestate) made and confirmed on the 27<sup>th</sup> July 2000, are hereby declared null and void.
  - iv. Mr David Mugo Thuo is permanently restrained from in any way dealing with, interfering with and/or disposing of the deceased Assets comprising of the assets known as Nakuru Municipality Block 13/180 and Dundori/Mugwathi 1/2191.
  - v. The Agreement Dated 16<sup>th</sup> September 2003, purporting to sell Dundori/Mugwathi 1/2191 is as nullity and of no effect.
  - vi. Mr David Mugo Thuo is ordered, to forthwith refund to Paul Murango Warutumo, Gatimu Njenga and John Wakiiru Muira, the purported consideration paid pursuant to the Agreement Dated 16<sup>th</sup> September 2003.
  - vii. The Registrar of Lands is hereby ordered to forthwith register requisite, inhibitions(s) and restrictions on Nakuru Municipality Block 13/180 and Dundori/Mugwathi 1/2191;
  - viii. The Parties (either collectively or individually) shall file a fresh Petition of issuance Grant Probate of Letters of Administration (intestate) within the next Sixty (60) days from the date hereof;
  - ix. This being a family matter, parties shall bear their respective costs.
  - x. This file shall be marked as closed.

It is so ordered

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 17<sup>TH</sup> DAY OF MAY 2024.**

.....

**S. Mohochi**

**JUDGE**

