



**In re Estate of Susan Wakonyo Kahiu alias Maria Gathoni Macharia (Deceased)
(Succession Cause 41 of 1996) [2024] KEHC 4574 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4574 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 41 OF 1996**

SM MOHOCHI, J

MAY 2, 2024

**IN THE MATTER OF ESTATE OF SUSAN WAKONYO
KAHIU ALIAS MARIA GATHONI MACHARIA (DECEASED)**

BETWEEN

JOSEPH NDIRANGU GITONGA APPLICANT

AND

MAGDALENE W. NYAGA 1ST RESPONDENT

TERESIA W. KINGORI 2ND RESPONDENT

JACKSON M. NDIRANGU 3RD RESPONDENT

RULING

1. Before me is an Application dated 11th February 2021 a Summons for Revocation of Grant filed pursuant to Sections 47 and 76 of the *Law of Succession Act* by Joseph Ndirangu Gitonga an alleged grandson and beneficiary of the estate of the above-named Susan Wakonyo Kahiu (Deceased) who died on the 1st June 1995 seeking the following reliefs: -
 - a. Spent.
 - b. That the grant of letter of administration issued to the respondents herein on the 6th of June, 2006 be revoked and annulled.
 - c. That Costs of this application be borne by the respondents.
2. The Application is premised on the following grounds;
 - i. That, the proceedings to obtain the grant were defective in substance.



- ii. That, the grant was obtained fraudulently by the concealment of material facts from the honourable Court.
 - iii. That, the certificate of confirmation of grant issued on the 6th of June 2006, is illegal as it was procured without any consent or knowledge.
 - iv. That, the above stated grant purports to bequeath property to persons who are strangers to the estate of the deceased.
 - v. That, it is in the interest of justice and for convenience of forum that the prayers sought herein be granted.
3. This Court on the 25th July 2023 was informed by Ms. Achieng Advocate holding brief of Chege Advocate she needed time to file summons for rectification of grant and the same was allowed with directions that the Application shall be heard on 3rd November 2023.
 4. On 3rd November 2023 the matter came up for hearing and none of the parties were present a mention date was scheduled for 8th February 2024 with notices being issued to the parties.
 5. On 8th February 2024, the Court was informed by Ms. Achieng Advocate holding brief of Chege Advocate that their Summons for revocation dated 11th February 2021 was coming up for hearing. The Court asserted that, it was a scheduled mention and not a hearing, and further directed parties to file written submissions within 14 days and a ruling date was fixed.
 6. It is noteworthy that, none of the parties complied with the directions of the Court on filing written submissions and this Court has thus been obliged to consider the summons without submissions by the parties and/or response from the administrators, bearing in mind that the summons for revocation has remained undetermined for three (3) years and the probate and administration is thus active.
 7. The Applicant deponed that, his late grandmother owned the Suit property LAIKIPIA/ NYAHURURU/ 572 measuring approximately 20 acres.
 8. That, the Respondents fraudulently obtained the grant of representation of the deceased's estate by the concealment of material facts from the honourable Court.
 9. That, the certificate of confirmation of grant issued on the 6th of June, 2006 was procured without his consent or knowledge as beneficiary.
 10. That, the aforesaid certificate of confirmation of grant issued on the 6th of June, 2006, bequeaths property to other persons who are otherwise unknown to the deceased and are thus strangers to the estate.
 11. That the Applicant knows that, the deceased had in place her written wishes regarding the distribution of her estate and that from the reading of the wishes, it is clearly depicted that the deceased had no intentions of bequeathing property to the 1st and 3rd Respondents and as a consequence, the 1st and 3rd Respondents are not entitled to benefit from the deceased estate. (Exhibiting a copy of the said letter JNG 2)
 12. That, the foregoing notwithstanding, the 1st and 3rd Respondent abused their position as administrators of the estate to serve their interests by bequeathing themselves property despite not being beneficiaries of the estate.
 13. That, the proposed mode of distribution of the deceased estate is unfair and in total disregard of wishes of the deceased.



14. That the Applicant disagrees with the proposed mode of distribution of the estate and aver that the same should equally be shared among the rightful beneficiaries of the estate in accordance to the wishes of the deceased.
15. That the Applicant propose that the suit parcel be distributed as follows:
 - a. Joseph Ndirangu Gitonga-5acres
 - b. John Muthee Gitonga 5 acres
 - c. Wamathai Gitonga- 5 acres
 - d. Teresiah Wamahiga Kingori-5 acres
16. Without using too much ink to regurgitate what transpired in the in the lengthy and protracted probate, it is important to all recall where we are coming from.
 - a. The Petition of Making of a grant was made on the 6th February 1996 by Teresia Wamahiga Kingori and John Muthee Gitonga.
 - b. The Petitioners identified themselves as niece and grandson.
 - c. The Petition further listed the petitioners and Burunji Ndirangu and Wamathai Gitonga Kigotho as surviving the deceased;
 - d. All survivors were listed as grandsons save for Teresia Wamahiga Kingori who identifies as the niece to the deceased.
 - e. The Court confirmed the grant on the 4th February 1998;
 - f. On 13th May 1998 Magdalene Wangechi Nyaga, a sister to Teresia Wamahiga Kingori contested the confirmed grant.
 - g. A fresh grant was issued to Magdalene Wangechi Nyaga, Teresia Wamahiga Kingori, Jackson Mwangi and Joseph Ndirangu on 2nd July 2000
 - h. A summons for confirmation of grant was filed on 4th April 2001 now listing the following as beneficiaries;
 - i. Magdalene Wangechi nyaga, - Niece
 - ii. Teresia Wamahiga Kingori- Niece
 - iii. Jackson mwangi- Grand Nephew
 - iv. Mburunje Ndirangu- Grand Nephew
 - v. joseph ndirangu- Grand Nephew
 - vi. Ndirangu Kimondo- Grand Nephew
 - vii. John Muthee- Grand Nephew
 - viii. Wamathai Gitonga- Grand Nephew
17. The grant of letters of Administration was confirmed on the 6th June 2006 with the sole asset LR. No. Laikipia/Nyahururu/572 being proposed for distribution as follows;
 - i. Magdalene Wangechi Nyaga, - 5Acres



- ii. Teresia Wamahiga Kingori- 5Acres
 - iii. Jackson Mwangi- 1.66 Acres
 - iv. Mburunje Ndirangu- 1.66 Acres
 - v. Joseph Ndirangu- 1.66 Acres
 - vi. Ndirangu Kimondo- 1.66 Acres
 - vii. John Muthee- 1.66 Acres
 - viii. Wamathai Gitonga- 1.66 Acres
18. It would appear that no transmissions were effected from 2006 to 2018 and Jackson Ndirangu Mwangi died on the 24th August 2018 and by 28th September 2023 a summons for amendment of grant had been filed seeking removal of Joseph Ndirangu the current Applicant as Administrator and seeking substitution of Mburunje Ndirangu with Pricilla Mumbi Burunji and Ndirangu Kimondo with Jane Nyambura Ndirangu.
19. The joint Affidavit in support of the summons dated 28th September 2018 is sworn by Jackson Ndirangu Mwangi(deceased), Teresia Wamahiga Kingori and Magdalene Wangechi Nyaga.
20. On the 27th February 2019, Joseph Ndirangu filed an affidavit in opposition to the summons dated 28th September 2018 and therein gave a proposed mode for distribution as is contained in his current Application.
- i. Teresia Wamahiga Kingori- 5Acres
 - ii. joseph ndirangu- 5 Acres
 - iii. John Muthee- 5 Acres
 - iv. Wamathai Gitonga- 5 Acres
21. By Ruling dated 18th July 2019, Joseph Ndirangu was removed as an administrator, his objection was accordingly dismissed and for two more years the succession was in a lull until the 18th February 2021 when the Applicant filed a summons for revocation of grant alleging he is the grandson of the deceased, regurgitating his assertions as earlier made in the Affidavit dated 26th February 2016

Analysis and Determination

22. 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](#).
23. 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. (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.”

24. 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.”

25. 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.
26. A grandchild only becomes a direct heir to the estate of the grandparent where the parent pre-deceased the grandparent. The grandchildren step into the shoes of their deceased parents and take the parent’s share in the estate of the grandparents as was enunciated in *RE Estate of Wahome Njoki Wakagoto* (2013) eKLR where it was held: -

“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”
27. No evidence has been evidenced or laid on how the Applicant is a grand child and how then he meets the threshold to acquire locus standi noting that the deceased died intestate without any children of her own.
28. This Court takes a dim view on the rational of disturbing a grant of probate of letters of administration intestate, confirmed eighteen (18) years earlier on the basis that the deceased did not know some of the beneficiaries herein.
29. This Court notes that, Hon Justice A.K. Ndungu effectively dealt with the Applicants assertion when he delivered the Ruling dated 18th July 2019.
30. The unfortunate observation here is that the deceased was never survived by any children of her own and all the parties herein are distant relatives who must have received inheritance from their own parents and that the standoff in conclusion of this probate is sheer greed by extremely distant relatives to the deceased.
31. The persons entitled in intestacy according to Part V of the *Law of Succession Act*, in their order of preference, include children (and grandchildren where their own parents are dead), parents, siblings, half-siblings and other relatives who are in the nearest degree of consanguinity up to and including the sixth degree.
32. The Applicant belongs to the “other relatives” as is set out in Section 39 of the *Law of Succession Act* and his status is in no way different from the status of the other beneficiaries.
33. The Applicant has not laid evidence of fraud by any party or concealment of material facts from the Court, he has equally failed to evidence who the alleged strangers to this estate are and how he has a better claim than them.
34. The Applicant has not demonstrated, how it was a must for him to consent in the making of this grant which consent he never gave and how he ranks higher in priority than those he alleges to be strangers.



35. The power to revoke a grant is discretionary as was restated in the case of *Albert Imbuga Kisigwa v 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.”

36. Section 83(g) of the *Law of Succession Act* mandates administrators of an estate to, within six months of confirmation of grant or longer period as the Court may allow, complete the administration of the estate, and to produce to the Court a full and accurate account of the complete administration. This Court expects the Administrators to have concluded the probate by January 2000.

37. In this instance the Grant was confirmed on the 6th June 2006 and after contestations and substitution of beneficiaries and the ruling dated 18th July 2019 settled any contestations, the Applicant was removed as an administrator and he never sought leave to Appeal the Ruling.

38. 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 orders;

- i. The Summons for revocation of grant dated 11th February 2021, is found to be lacking in merit and is accordingly dismissed.
- ii. The Administrators shall file a return demonstrating conclusion of the transmission and settlement of the estate within the next thirty (30) days from the date hereof.
- iii. This being a family matter, parties shall bear their respective costs.

It is So Ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 2ND DAY OF MAY, 2024.

S. MOHOCHI

JUDGE

