



REPUBLIC OF KENYA



**In re Estate of Adija Gathoni (Deceased) (Succession Cause 3124 of 2015)
[2024] KEHC 7493 (KLR) (Family) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7493 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 3124 OF 2015
HK CHEMITEI, J
JUNE 20, 2024
IN THE MATTER OF THE ESTATE OF THE LATE ADIJA
GATHONI (DECEASED)**

BETWEEN

DAVID NJOGU KIMANI APPLICANT

AND

JAMES KIBE KIMANI RESPONDENT

RULING

1. In his summons dated 15th January 2021 the Applicant seeks the following orders:
 - (a) That the grant of Letters of Administration and the confirmed Grant issued herein to the Respondent be revoked on the ground that the said grant and confirmation thereof was made fraudulently by making of false statement and or concealment from court of material facts pertinent to the case.
 - (b) That a fresh Grant of Letters of Administration intestate in respect of the estate of the deceased be made jointly to David Njogu and James Kibe Kimani or to any such combination of dependants of the deceased's estate as the court may deem fit and the estate be distributed amongst all the beneficiaries of the deceased.
 - (c) That all orders issued herein be served upon the legal department of Nairobi county, the lessor of the estate property for effectuation.
2. The application is based on the Applicant's sworn affidavit of even date.



3. Briefly, the Applicant is a step brother to the Respondent having been sired by the same father but different mothers.
4. The deceased was a sister to their father and was not married and had no children. She died intestate leaving behind the suit property namely House No 875/a Kariobangi South Phase Iv.
5. He went on to state that he has been in actual possession of the property together with his other siblings who are all related to the deceased. He attached a letter dated 12th January 2021 from the chief Kariobangi North in which it lists all the persons related to the deceased.
6. It is his case therefore that the Respondent who is not in actual occupation of the property surreptitiously obtained the grant without their knowledge yet all along he knew that the Applicant and others were beneficiaries of their Aunt's estate.
7. He therefore prayed that the grant be revoked and he and the Applicant be appointed joint administrators for their benefit and the rest of the dependants.
8. The Respondent in his replying affidavit sworn on 8th July 2021 opposed the application on the grounds that the Applicant has never been a dependant of the deceased. On the contrary he said that he had been her dependant for over 25 years.
9. He went ahead to exhibit the receipts from Nairobi county of rates he allegedly paid. He also accused the Applicant of stealing the legal documents of the property from him.
10. The court directed the parties to file written submissions. It's only the Applicant who complied.
11. I have read the same exhaustively and see no reason to reproduce the same here save to state that it gravitates towards the issues raised in the supporting affidavit.

Analysis and determination

12. The issues that are not in dispute herein are that the deceased died intestate leaving behind a single property.
13. Secondly she was not married and had no children. The beneficiaries therefore would be her relatives.
14. The Applicant and the Respondent are step brothers and nephews to the deceased. It appears from the chief's letter that there were other beneficiaries.
15. The Respondent does not deny the above facts. Neither does he deny the fact that he was the holder of the grant. There is however no evidence that the rest of the beneficiaries were introduced to the court. He presented himself as a sole beneficiary.
16. In the letter dated 6th January 2012 from John Chege, the senior chief Kariobangi location he indicated that the Respondent's brothers and sisters were not alive. This of course was not true as the Applicant at least was alive by then.
17. I think it would have been in order for the Respondent to have indicated the true position on the ground. There was no reason for instance not to mention the Applicant at least in his pleadings to the court.
18. For now, I find that the application is meritorious. The subject property does not belong to either of them. The degree of consanguinity between the two of them is similar. Non ranks better than the other.



19. The parties including the ones not herein or the ones mentioned in the chief's letter shall have the opportunity at the level of confirmation of the new grant to stake their claim if need be.
20. In the premises I allow the application as hereunder;
- (a) The grant of Letters of Administration issued and confirmed on 22nd November 2016 is hereby set aside with all the attendant consequences.
 - (b) Fresh Grant is hereby issued jointly to James Kibe Kimani and David Njogu Kimani
 - (c) The two administrators should within 60 days apply for the said grant to be confirmed including the mode of distribution of the estate.
 - (d) Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 20TH DAY OF JUNE 2024.

H K CHEMITEI.

JUDGE

