



REPUBLIC OF KENYA



**In re Estate of Edward Ngangira Wamagata (Deceased) (Succession Cause 1255 of 2017) [2024] KEHC 6312 (KLR) (Family) (3 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 6312 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1255 OF 2017**

**MA ODERO, J**

**JUNE 3, 2024**

**JUDGMENT**

1. Before this Court for determination is the Summons for Revocation of Grant of letters of Administration and Appointment of a New Administrator. The Summons which is dated 6<sup>th</sup> May, 2022 was premised upon Section 76 *Law of Succession Act*, Rule 44 (1) of the Probate and Administration Rules and is supported by the Affidavit of even date and further Affidavit dated 5<sup>th</sup> July, 2022 both sworn by the Administrator Grace Wangari Ngangira.
2. The Objector/Respondent Edward Wanaina Njoroge opposed the application through his Replying Affidavit dated 31<sup>st</sup> May, 2023.
3. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 29<sup>th</sup> July, 2023 whilst the Respondent filed his written submissions dated 18<sup>th</sup> July, 2023.

**Background**

4. This succession cause relates to the estate of the late Edward Ngangira Wamagata who died intestate on 21<sup>st</sup> January, 1995. A copy of the Death Certificate Serial No. 54775 appears as Annexure WGN '1' to the Summons for confirmation of Grant dated 28<sup>th</sup> August, 2018.
5. The Deceased was survived by the following persons:-
  - i. Rachel Wanjiru - widow
  - ii. Lilian Wahu Kuganya - Daughter (Deceased)
  - iii. Penina Wangui Mungai - Daughter (Deceased)
  - iv. Grace Wangari Ngangira - Daughter
  - v. Mary Wambui Ngangira - Daughter



- vi. Joseph Njoroge Wamagata - son (Deceased)
6. The Estate of the Deceased comprised the following assets;-
- a. LR Dagoretti/Uthiru/T.16 - 0.22 Acres
  - b. LR Dagoretti/Uthiru/208 - 0.48 Acres
7. Following the demise of the Deceased Grant of letters of Administration Intestate was on 14<sup>th</sup> February, 2018 made to Mary Wambui Gatiba and Grace Wangari Ngangira.
8. Thereafter the said Administrators filled a Summons for confirmation of Grant dated 28<sup>th</sup> August, 2018. A certificate of confirmed Grant was issued to the two on 24<sup>th</sup> October, 2018. As per the confirmed Grant the estate of the Deceased was to be distributed in the following manner;-

Name	Description of properties	Share of Heirs
1. Wangari Grace Ngangira 2. Mary Wambui Gatiba	Dagoretti/Uthiru/T.16 (0.22 Acres)	Equal shares
3. Joseph Njoroge Wamagata (deceased) (esther Wairimu Wambugu- Widow)	Dagoretti/Uthiru/208 (0.48 Acres)	Absolutely

9. The Appellant Grace Wangari Ngangira then filed this Summons for revocation of Grant which summons was premised upon the following grounds:-
- “(a) (a) That the late Mary Wambui Gatiba a co-administratrix of the estate of Edward Ngangira Wamagata died on the 17<sup>th</sup> day of January 2018 therefore necessitating the need to revoke the said letters of administration and appoint Wangari Grace Ngangira as the new Administrator.
  - (b) That the hearing summons for confirmation of grant were marred with irregularities and falsehoods.
  - c. That the mode of distribution as outlined in the fraudulently acquired Certificate of Confirmation of Grant is not fair.”
10. The Applicant avers that the Grant was obtained fraudulently by failure to disclose material facts to the court to wit that her Co-Administrator Mary Wambui Gatiba had actually passed away on 17<sup>th</sup> January, 2018 which was before the Grant was even issued.
11. The Applicant further claims that the mode of distribution of the estate failed to take into account the existing and future needs of the defendants. The Applicant accuses the Advocates who were acting for one Esther Wairimu Wambugu (Now Deceased) who was the widow of her late brother Joseph Njoroge of manipulating the court by giving false information that the Administrators were of advanced age and were therefore unable to attend court on the date of hearing of the summons for confirmation of Grant.



12. The Respondent Edward Wamaina Njoroge in opposing the Summons for revocation of Grant averred that he is the proposed Administrator of the estate of his late mother Esther Wairimu Wambugu who passed away on 13<sup>th</sup> February, 2021.
13. That during the lifetime of his late mother the Applicant made no move to have the Grant revoked. The Respondent states that the present Summons is activated by malice as the Applicant wishes to have his family evicted from LR Dagoretti/Uthiru/208 where they have always lived even during the lifetime of her parents. That the Applicant was allocated LR Dagoretti/Uthiru/T.160 where she resides peacefully without interference from any other beneficiary.
14. The Respondent denied that there was any manipulation of the court process during the hearing of the summons for confirmation of Grant. That the Applicant on her own accord opted not to attend court for said hearing.
15. The Respondent submits that the distribution of the estate is fair and accords with what was agreed upon by all the beneficiaries. He urges the court to uphold the same.

### **Analysis and Determination**

16. I have carefully considered the Summons before this court, the reply filed thereto as well as the written submissions filed by both parties.
17. The first issue to consider is whether the Respondent has Locus Standi in this matter
18. Locus Standi is a latin term which literally means ‘place of standing.’ It refers to the right of an individual and/or party to appear in a particular case.
19. It is trite law that pleadings filed by a person who has no Locus Standi are void ab initio. In Ibrahim - vs- Hassan & Charles Kimenyi Macharia [2009] eKLR it was stated as follows:-
 

“Locus standi is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, it means that party cannot be heard despite whether or not he has a case worth listening to. The issue herein is whether the Applicant lacks the requisite Locus Standi to seek relief from the court to revoke the grant in question issued to the Respondent. In my view issues regarding locus standi are critical preliminary issues which must be dealt with and settled before delving into other substantive issues. [Own emphasis]
20. This court is sitting as a Probate Court with the mandate to supervise and oversee the distribution of the estate to the genuine heirs. In Re Estate Of Gkk (Deceased) [2017] eKLR the court observed that
 

“The primary functions of a Probate Court is distribution of the estate of a dead person”
21. In a Succession Cause the persons who have locus standi are the beneficiaries/heirs of the estate and any dependants of the Deceased, as defined by Section 29 of the *Law of Succession Act*.
22. The Respondent is not a child nor is he a dependant of the Deceased. The Respondent is one of the children of Joseph Njoroge Wamagata who was a son to the Deceased and his wife Esther Wairimu Wambugu. Both parents of the Respondent are now Deceased.
23. Since he is not a direct beneficiary of the estate the Respondent can only inherit what was allocated to his late Parents. He cannot claim any share of the estate for himself.



24. The Respondent purports to be acting in this matter on behalf of the estate of his late parents. However the Respondent has not exhibited to the court any Grant of representation authorizing him to act on behalf of the estate of either his late mother or his late father.
25. It is trite law that only a person who has been issued with a Grant of Representation may act on behalf of the estate of a Deceased person.
26. In the case of *Isaya Masira Momanyi -vs- Daniel Omwoyo & Another* [2017] eKLR the court held that:-

“It is trite law that the estate of a deceased person can only be represented in any legal proceedings by a person who is duly authorized to do so on behalf of the estate. Only a person who has been issued a grant of letters of Administration has capacity to represent the estate of a deceased person” [Own emphasis]

27. Given that the Respondent has no Grant of letters of Administration issued to him in respect of the estate of either of his parents, he has no legal authority to pursue a claim on behalf of their estates. Based on the above I find that the Respondent does not have locus standi in this successions cause.
28. Be that as it may I will proceed to consider whether the Applicants prayers seeking revocation of the Grant has merit.
29. The Grounds upon which a Grant may be revoked are clearly set out in Section 76 of the *Law of Succession Act* Cap 160 laws of Kenya as follows:-

“A grant of representation whether or not confirmed may at time be revoked or annulled if the court decides either on application by any interested party 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 in 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
  - iv. that the grant has become useless and inoperative through subsequent circumstances. [Own emphasis]



30. In the case of Albert Imbuqa Kisigwa vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000 Mwita J stated as follows:-

“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.” [Own emphasis]

31. The Applicant has alleged that the issuance of the Grant and the certificate of confirmation of the Grant were fraudulent as her Co-Administrator had passed away by the time the Grant was being issued.

32. I have looked at the Death Certificate Serial No. 1054324. It indicates that the said Mary Wambui Gatiba passed away on 17<sup>th</sup> January, 2018. The Grant was issued on 14<sup>th</sup> February, 2018 about one (1) month after the demise of the Co-Administrator.

33. The Applicant cannot blame third party yet she herself actively withheld this information from the court. The Applicant did not inform the court that her co-administrator had already passed away. Neither did the Applicant notify the court of the demise of her Co-Administrator at the time the Grant was being confirmed. As such the Applicant is equally ‘guilty’ of failing to disclose material information to the court.

34. I have no doubt that had the court been aware of the demise of the Co-Administrator, then the court would not have issued nor confirmed the Grant.

35. I find that with the active connivance of the Applicant herself this Grant was obtained unprocedurally. Critical information to wit the death of one Administrator was withheld from the court.

36. In the circumstances I find that this Grant is for revocation. Accordingly I hereby revoke the Grant issued to Mary Gatiba and Grace Wangari Pangura on 14<sup>th</sup> February, 2018 and confirmed 24<sup>th</sup> October, 2018. The beneficiaries to meet and agree on a substitute Administrator within fourteen (14) days. The Applicant who deliberately misled the court into issuing a Grant to herself and her deceased Co-Administrator is excluded from nomination as an Administrator.

37. This being a family matter each side will meet their own costs.

**DATED IN NYERI THIS 3<sup>RD</sup> DAY OF JUNE, 2024.**

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**MAUREEN A. ODERO**

**JUDGE**

