



In re the Estate of Simon Kariuki Maina (Deceased) (Succession Cause 3 of 2020) [2024] KEHC 9781 (KLR) (25 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9781 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
SUCCESSION CAUSE 3 OF 2020
AK NDUNG’U, J
JULY 25, 2024**

IN THE MATTER OF THE ESTATE OF SIMON KARIUKI MAINA (DECEASED)

BETWEEN

**ESTHER MUTHONI 1ST PROTESTOR
TABITHAWAMBUI KARIUKI 2ND PROTESTOR
DANIEL MWANGI 3RD PROTESTOR**

AND

REGINA GATHONI RESPONDENT

RULING

1. Esther Muthoni (hereinafter, the Applicant) moved this court vide what is described as an affidavit of protest against confirmation of grant sworn on the 20th September, 2023 and filed in court on 10th November, 2023.
2. She depones that she has the authority to swear the affidavit on behalf of the other Applicants.
3. She avers that the grant of letters of administration was issued to the Respondent herein on 25th June, 2015 and subsequently confirmed on 19th May, 2016.
4. That the Applicants bring this protest in their capacity as the deceased’s children from the 1st house.
5. She adds that the late Simon Kariuki Maina was survived by two houses;
1st House
 - a. Esther Muthoni - daughter
 - b. Tabitha Wambui Kariuki - daughter



- c. Daniel Mwangi - son
2nd House
 - a. Regina Gathoni Kariuki
 - b. Anne Mumbi
 - c. Esther Wangui
6. That upon learning of the obtaining by the Respondent of certificate of confirmation of grant, the Applicant filed an application dated 3rd April, 2019 seeking to revoke the Grant of Letters of Administration of grant issued to the Respondent culminating in a judgment delivered on 27th October, 2022 dismissing the aforesaid application.
 7. It is stated that the judgment did not make a finding that the Applicants are not beneficiaries of the deceased's estate but rather that the application for revocation of grant was not merited for reasons therein and hence the protest herein.
 8. That despite being rightful beneficiaries of the deceased estate the Respondent did not consider the rightful share from the deceased estate since only the 2nd house benefited from the estate.
 9. Further, that the Applicant has been residing on the parcel of land known as Nyandarua/Ol Kalou West/452 since the lifetime of her father to date.
 10. That the deceased's estate comprised of the following properties;
 - a. Nyandarua/Ol Kalou West/452
 - b. Kiambogo/Kiambogo Block 2/8592
 11. She urges that the persons listed under paragraph 5 of the affidavit are the only dependents of the deceased.
 12. In the premises the Applicant protests to the confirmation of grant as proposed in the schedule of distribution as the same is done with malice.
 13. It is prayed that the deceased's estate be distributed equally among all the beneficiaries and the confirmation of grant issued on 19th May, 2016 be rectified accordingly or be issued afresh.
 14. The Respondent Regina Gathoni in response filed a replying affidavit dated 11th April, 2024 and filed in court on 16th April, 2024 where she depones that the application dated 20th September, 2023 is bad in law, baseless, malicious, vexatious and a gross abuse of the court process.
 15. It is her case that one can only protest if the grant has not been confirmed pursuant to Rule 40 (5) & (6) of the *Probate of the Administration Rules*. The grant in this case was confirmed on 19th May, 2016.
 16. That in any event the germane issue in the affidavit of protest is not on the issue on mode of distribution but whether the Applicants are beneficiaries of the estate.
 17. It is averred that contrary to the allegations of the Protestors herein, the learned Judge while adjudging not to revoke the grant, stated that the Protestors did not adduce sufficient evidence to show they were entitled to be notified of the successions cause as beneficiaries of the estate thus concluded there was no concealment of material facts.
 18. She adds that if the Protestors were beneficiaries of estate, why would the learned Judge fail to revoke the grant on the ground of the concealment of material facts.



19. Further, that the protest is a backdoor to review and/or appeal on the judgment delivered on 27th October, 2022.
20. It is urged that the protest will only amount to embarrassment of the court process.
21. It is noted that the matter has been in court for over 5 years now and at some point, litigation should come to an end and the Respondent is entitled to the fruits of successful litigation.
22. I have considered the application and the response thereto. The issue whether the deceased was survived by two wives wherein the 1st wife had children who are the Applicants was a live issue in the Applicant's application for revocation of grant vide the summons dated 3rd April 2019. That issue among others were determined vide the court's judgement dated 27th October 2022. To that extent, the issue is res judicata.
23. The application is also beset with legal headwinds in that there is no jurisdiction conferred on this court by law to entertain a protest in a succession cause after the confirmation of grant.
24. Protests are provided under Rule 40 of the *probate and administration Rules* which is couched in the following words;

Rule 40 application for confirmation of Grant;

 1. Where the holder of a grant which has not been confirmed seeks confirmation of the grant he shall apply for such confirmation by summons in Form 108 in the cause in which the grant was issued, supported by an affidavit in Form 8 or 9 exhibiting the grant together with an estate duty compliance certificate or other satisfactory evidence that no estate duty is payable and setting out the full names of the deceased person to whose estate the grant relates, and he shall satisfy the court that no application under Part III of the Act is pending.
 2.
 3.
 4. Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all persons beneficially entitled to the estate have been ascertained and determined.
 5. Where it appears to the principal registrar that an application has been made in any registry for the confirmation of a grant to the estate of a deceased in regard to which a caveat has been entered pursuant to rule 15 and is subsisting, the principal registrar shall send a notice in Form 111 to the caveator warning him of the making of the application and notifying him that if he wishes to object to the confirmation of the grant he must file in duplicate an affidavit of protest in Form 10 in the principal registry within fifteen days (or such longer period as the registry for reasons to be recorded may allow) from the receipt of the notice, in default of which the caveat shall cease to have effect in regard to the confirmation of the grant.
 6. Any person wishing to object to the proposed confirmation of a grant shall file in the cause in duplicate at the principal registry an affidavit of protest in Form 10 against such confirmation stating the grounds of his objection.
25. My reading of the law clearly sets out the lodging of a protest as the only legal avenue through which a party can oppose confirmation of a grant and this is before not after confirmation of grant.



26. The only recourse for a party aggrieved with the confirmation of a grant is to seek revocation of the grant or to lodge an appeal. The Applicants have already exercised the right to the former. That application was dismissed. An appeal, in my view, remains their only route to ventilate their issues.
27. With the result that the application has been brought under a procedure unknown in law and is, in any event, res judicata. It is dismissed. In the circumstances of the case, I direct that each party bears their own costs.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 25TH DAY OF JULY, 2024

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A.K. NDUNG’U

JUDGE

