



REPUBLIC OF KENYA



**In re Estate of the Late Daniel Kamau Kimani (Succession Cause  
3027 of 2014) [2024] KEHC 9471 (KLR) (Family) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9471 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 3027 OF 2014  
SN RIECHI, J  
JULY 19, 2024  
SUMMONS OF REVOCATION OF GRANT  
IN THE MATTER OF THE ESTATE OF THE LATE DANIEL KAMAU KIMANI**

**RULING**

1. Before this court for determination is a summons for revocation of grant dated 3<sup>rd</sup> February 2020 brought under Section 76 of the [Law of Succession Act](#) and Rule 44 of the [Probate and Administration Rules](#) in which the objectors are seeking orders;
  1. That this cause herein be consolidated with High Court Succession Cause number 3363 of 2007 in the matter of the Estate of Paul Gitau Kimani(Deceased);
  2. That the grant herein and that issued in High Court Succession Cause Number 3363 of 2007 be revoked/ annulled.
  3. That this honourable court be pleased to issue other grants in both the succession causes indicating that the Estate of Daniel Kamau Kiman: gets 1.44A of Ngenda/Gathage/ 46 while as the Estate of Paul Gitau Kimani gets 1.15HA of the same parcel of land.
  4. Costs of this Application be provided for.
2. The summons was premised on the grounds on face of it and supported by the Affidavit of Emmanuel Kimani Kamausworn on even date.
3. In opposition to the application, the respondent Stanley Kimani Gitau filed a replying affidavit sworn on 16<sup>th</sup> January 2024 in which he denies the allegations in the Summons General.By consent of parties the Summons was canvassed by way of written submissions.
4. The 1<sup>st</sup> and 2<sup>nd</sup> applicants' case is the that Daniel Kamau Kimani (Deceased) and Paul Gitau Kimani (Deceased) were brothers. That the main subject matter of this succession cause and succession cause 3363 of 2007 Estate of Paul Gitau Kimani is Ngenda/Gathage/ 46. The applicants stated that Ngenda/



- Gathage/46 belonged to the deceased father and they jointly inherited the same. They annexed copies of the court documents for Stephen Kimani succession cause to the summons.
5. The applicants stated that the grant herein and in cause number 3363 of 2007 were obtained by Stanley Kimani Gitau by making of false statements and concealment from this court of material facts and information. The applicants stated that the Stanley Kimani Gitau is the son and Administrator of the Estate of Paul Gitau hence he is the applicants' cousin.
  6. The applicants stated further that they delegated the task of instituting the succession causes for their father and uncle to Stanley Kimani Gitau. The applicants stated that the respondent instituted the separate succession and he made false statements and concealed crucial information from this court.
  7. The applicants stated that although their grandfather Stephen Kimani legally died intestate, he had left an informal Will which guided the court in distributing his Estate as all parties were in agreement with his wishes. The applicants referred to attached copy of the said informal Will.
  8. The applicants deponed that in accordance to applicants grandfather's wishes, Paul Gitau Kimani and his family got a parcel of land title number Ngenda/Gathage/T.46, a commercial plot number 10 with 2 operable shops, and a portion of Ngenda/Gathage/46, while their father Daniel Kamau Kimani only got a portion of Ngenda/Gathage/ 46. The applicants stated that since their father was only getting a portion of Ngenda/ Gathage/ 46 their grandfather indicated that he would get the larger portion of it to share with their late grandmother Elizabeth Wairimu Kimani.
  9. The applicants stated that in accordance with the above wishes their father and Paul Gitau Kimani in 1989 voluntarily caused the parcel of land in question to be subdivided into two unequal portions where Paul Gitau Kimani got 1.15HA while their father got 1.44HA. The applicants referred to the annexed copies of mutation forms signed by their father, Paul Gitau Kimani and the District surveyor then. The applicants stated that the above mutation/subdivision is what is the status quo on the ground, and has been since 1989 with the exception that the Applicant's late father arbitrary uprooted the beacons planted by the surveyor and placed his own markings. The applicants stated that Paul Gitau Kimani and his family have had possession of the other properties (Ngenda/Gathage/T.46, and plot number 10) since their grandfather died. The applicant averred that to them the succession for Daniel Kamau Kimani and Paul Gitau Kimani were just a formality.
  10. The applicants averred that in the year 2018 they learnt that Stanley Kimani Gitau had actually filed separate succession causes seven years apart, despite him informing them that he had filed a joint one. The applicants stated that they learnt of this when they got the confirmation of grant for our father's Estate herein. The applicants stated that in a very deceitful and fraudulent way, Stanley Kimani Gitau the respondent herein had indicated in the pleadings herein that applicants father was only entitled to half a share of Ngenda/ Gathage/ 46 and that his father in cause number 3363 of 2007 was entitled to the other half share. The applicants stated that respondent Stanley Kimani Gitau did the above while as knowing he was lying to the honourable court and their whole family.
  11. The applicants stated that it is clear that the grant herein and in cause number 3363 of 2007 were obtained by Stanley Kimani Gitau by making of false statements and concealment from this honourable court of crucial facts and information. The applicants urged this court to allow their application.
  12. In response the respondent case is that he is the Administrator of the estate of the Late Paul Gitau Kimani Succession Cause No. 3363 of 2007. he deponed that the estates of his father Paul Gitau Kimani and that one of his uncle Daniel Kamau Kimani are distinct and separate and it is therefore not



- true that he was involved in the filing Succession Cause No. 3027 of 2014 as alleged by the Applicants herein.
13. The respondent deponed that it is not true that their deceased grand-father one Stephen Kimani either left a written Will to the effect that the estate of Daniel Kamau Kimani was to get a bigger share out of LRNo.Ngenda/gathage/46.
  14. The respondent stated that the correct position is that our their grand-father during his lifetime equitably shared his assets to his two sons and his wife and indeed Daniel Kamau Kimani got a lion share as he was given half of LR No.ngenda/gathage/46 together with a permanent house thereon and inherited all the coffee and other crops plus livestock belonging to his late grandfather. The respondent stated that his father had to plant his own coffee on his share of the said land.
  15. The respondent stated upon his grand-father' s demise, the said LR No. Ngenda/gathage/46 vide Gatundu District Magistrate' s Court Succession Cause No. 3 of 1969 was inherited by his father Paul Gitau Kimaniand his uncle Daniel Kamau Kimanias proprietors in common in equal shares. The respondent referred to annexed copies of judgement marked SKG 2. He stated that pursuant to the said Gatundu District Magistrate's Court Succession Cause No. 3 of 1969, the said LR No. Ngenda/gathage/46 was registered in the names of him father and uncle as proprietors in common in equal shares. The respondent referred to the annexed copy of the Green Card and title deed marked SKG 2 and 3 respectively.
  16. The respondent stated that during the life time of his father, he severally engaged his uncle on the partition of the said land so that each of them could get their respective titles for half portion but his uncle was un-co-operative.
  17. The respondent averred that both his father and his uncle are deceased respective families have taken out the grants which have been confirmed. In the said Certificates of Confirmation of the Grants, both parties have confirmed that each estate is entitled to half share of LR No. Ngenda/ Gathage/46. The respondent referred to copies of Certificate of Confirmation of the Grants in Nairobi High Court Succession Cause No. 3363 of 2007 - Estate of Paul Gitau Kimani and Succession Cause No.3027 of 2014 - Estate of Daniel Kamau Kimani attached to the application and marked SKG 5 and 6 respectively.
  18. The respondent stated that it is therefore false for the applicant Emmanuel Kimani Kamau to state that his father's estate was to get a bigger share of LR No. Ngenda/gathage/46 than respondent's father. He stated that both their Certificate of Grant and his confirm the correct share, and it is therefore late for the Applicants to apply for the revocation of the two grants.
  19. The respondent deponed that the Applicants accused him of material non-disclosure when he was applying and confirming the grant in respect of his late father's estate to get half share of the said land and yet the Applicants have not stated anywhere why they applied for their grant for the estate of their father to also get half share of the said land. The respondent deponed further that the Applicants' grant was confirmed on 27 February 2018 wherein they informed the Court their father' s estate was entitled to half share in LR No. Ngenda/gathage/46.
  20. The respondent stated that as relates to the Mutation Form (annexture EN3) in the Applicants\* Supporting Affidavit, the same was never signed by his late father and the same also applies to an Application for Partition allegedly dated 15<sup>th</sup> June 1989 and in any event any partition had to conform to the Gatundu Court Succession Cause as aforesaid. He stated that moreover Gatundu District Magistrate's Court Succession Cause No. 3 of 1969 was filed and determined intestate and the



allegations by the Applicants that their grand-father had left a will is false. In any event the said cause has never been revoked and the judgement stands.

21. The respondent stated that it is the Applicants who have delayed in the implementation of the respective certificate of confirmations from this Court due to the non-surrender of the original title in respect of the subject suit land herein and the Applicants have not denied that they are in possession of the original title deed in respect of LR No.ngenda/gathage/46 and that necessitated him to file the application dated 2nd January 2020 which the applicants now are delaying its determination by filing the instant Summons for Revocation or Annulment of a Grant.
22. This court directed the Parties to file written submissions. The applicants opted not to file submissions and the respondent filed written submissions dated 14<sup>th</sup> March 2024 through the firm of Kinyua Muriithi & Co. Advocates.
23. The respondent submitted through Mr.Kanyi who reiterated averments in the replying affidavit and I do not need reproduce them. He further submitted that estates of respondent's father Paul Gitau Kimani and that one of his uncle Daniel Kamau Kimani are distinct and separate and it is therefore not true that they were involved in the filing of the Succession Cause No. 3027 of 2014 as alleged by the Applicants herein. Mr.Kanyi submitted that the respondent only petitioned for the succession cause of his father Paul Gitau Kimani and at no point in time did he take any papers to be signed by the Applicants herein.
24. Mr. Kanyi submitted that It is not true that their deceased grand-father one Stephen Kimani either left a written Will to the effect that the estate of Daniel Kamau Kimani was to get a bigger share out of LR No.ngenda/gathage/46. He submitted that the correct position is that their grand-father during his lifetime equitably shared out his assets to his two sons and his wife.
25. Mr Kanyi submitted that it is therefore false for the 2<sup>nd</sup> Applicant Emmanuel Kimani Kamau to state that his father's estate was to get a bigger share of LR No. Ngenda/gathage/46 than the Respondent's Father. He submitted that both their Certificate of Grant confirm the correct share, and it is therefore late for the Applicants to apply for the revocation of the two grants.
26. Counsel submitted that the Applicants accused the Respondent of material non-disclosure when he was applying and confirming the grant in respect of his late father's estate to get half share of the said land and yet the Applicants have not stated anywhere why they applied for their grant for the estate of their father to also get half share of the said land. He submitted the Applicants' grant was confirmed on 27 February 2018 wherein they informed the Court their father's estate was entitled to half share in LR No. Ngenda/gathage/46. It was submitted by Mr.Kanyi that as it relates to the Mutation Form (annexture EN3) in the Applicants' Supporting Affidavit, the same was never signed by the Respondent's late father and the same also applies to an Application for Partition allegedly dated 15th June 1989 and that in any event any partition had to conform to the Gatundu Court Succession Cause as aforesaid.
27. Mr. Kanyi submitted that Gatundu District Magistrate's Court Succession Cause No. 3 of 1969 was filed and determined intestate and the allegations by the Applicants that the Respondent's grand-father had left a will is false. It was submitted that In any event the said cause has never been revoked.
28. Mr. Kanyi submitted that If the Summons for Revocation or Annulment of a Grant dated 3<sup>rd</sup> February 2020 was to be entertained and allowed then this Honourable Court will have through back door have sat on an appeal against the decision of Gatundu District Magistrate's Court Succession Cause No. 3 of 1969 dated 8th January 1969.



29. Mr.Kanyi submitted that the issue of distribution of LR No. Ngenda/gathage/46 is res judicata. Section 7 of the Civil Procedure Act, provides that no court shall hear any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. The respondent relied on the case of Kennedy Mokuia Ongiri v John Nyasende Mosioma & Florence Nyamoita Nyasende /2022/ eKLR.
30. Counsel submitted that even the Applicant himself is aware of the Gatundu District Magistrate's Court Succession Cause No. 3 of 1969 dated 8th January 1969 which distributed LR No. Ngenda/gathage/46 equally between his father and the Respondent's father and that is why when the Applicant petitioned for the Grant and confirmation thereof in his father's estate in Nairobi High Court Succession No. 3077 of 2014 the beneficiaries therein asked the Court that they get ½ share of LR No. Ngenda/gathage/46. H submitted that It is therefore late in the day and in deed fraudulent for the Applicant to turn back and apply even for his grant to be revoked so that they can get a bigger share of the said land contrary to the Gatundu District Magistrate's Court Succession Cause No. 3 of 1969 certificate which neither themselves nor their late father bothered to appeal against. Mr .Kanyi submitted that the Applicant is dishonest and does not deserve the reliefs sought. He placed reliance on the case in Nairobi HCCC No.288 of1990 (O.S) Njeka Ocbunyi-is- MOhanlal Girdhar Shah.
31. After careful analysis, we humbly submit that the main issues for determination are;
- i. Whether this court should make an order to consolidate this cause with High Court Succession Cause number 3363 of 2007 in the matter of the Estate of Paul Gitau Kimani(Deceased).
  - ii. Whether the applicants have presented sufficient evidence to warrant revocation or annulment of the grant;
32. On the first issue the applicants are seeking an order of consolidation of this cause with High Court Succession Cause number 3363 of 2007 in the matter of the Estate of Paul Gitau Kimani (Deceased).
33. The applicants' contention is that the respondent herein filed separate causes in respect of the applicants' father and that of his father who are both deceased yet they had agreed the same the be filed as one succession cause.
34. I have perused the lower court file and I note that the respondent filed *succession cause number 3363 of 2007* in respect of his father's estate Paul Gitau Kimani. This court notes the applicants and respondent are pursuing interests in respect of their respective father's estate. I also note that the applicants interest lies in the estate of Daniel Kamau Kimani under succession cause number 3027 of 2014 whose confirmation of grant was issued on 27<sup>th</sup> February 2018.This court notes That from evidence on record the subject matter in question was jointly owned by the two deceased and the subject matter relates to the two estates. I therefore find that it will be interest of justice the two succession causes are consolidate and heard and determined together.
35. On the 2<sup>nd</sup> issue Section 76 of the Law of Succession Act gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It states that:-
- 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 has ordered or allowed; 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. The grant has become useless and inoperative through subsequent circumstances.

36. The circumstances in which a grant can be revoked were discussed in the case of *In the Matter of the Estate of L.A.K.* (Deceased) [2014] eKLR :-

“Revocation of grants is governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”

20. Notably, the power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the persuasive decision in *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa* Succession Cause No. 158 of 2000 where Mwita J stated:-

“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.”

37. In this case, the applicants are seeking revocation of grant issued on 27<sup>th</sup> February 2018 in this cause and that issued in High Court Succession Cause NO.3363 OF 2007 on grounds that the grant in cause number 3363 of 2007 were obtained by respondent by making false statements and concealment from this honourable court of the material facts and information.

38. The applicants have argued that they delegated the task of instituting the cause for their father and uncle to the respondent. They stated the respondent instituted separate succession and made false



statement and concealed crucial information from this court. The applicants stated that they did not play an active role in the filing and prosecution of the cause and only came to learn of it when the grant herein was being confirmed.

39. The respondent on his part submitted that the Applicants accused him for material non-disclosure when he was applying and confirming the grant in respect of his late father's estate to get half share of the said land and yet the Applicants have not stated anywhere why they applied for their grant for the estate of their father to also get half share of the said land. The respondent submitted the Applicants' grant was confirmed on 27 February 2018 wherein they informed the Court their father's estate was entitled to half share in LR No. Ngenda/gathage/46.
40. To determine this issue I have perused and analyzed the evidence on record in order to establish how the two grants were issued in respect of succession cause number 3363 of 2007 and succession cause number 3027 of 2014. This is to enable the court determine whether to revoke the grants or not. The court proceedings indicate that this court has severally made an order for file in respect of succession 3027 of 2014 to be availed in court but the same has never been brought before court.
41. Section 76 envisions that a grant can be revoked where the proceedings to obtain the grant were defective in substance. In light of the above, I invoke the inherent powers of this court granted under Article 159 of the Constitution and Section 76 of the Law of Succession Act and make the order to revoke the letters of grant of administration issued to the applicants in respect of succession cause number 3027 of 2014 and Succession Cause Number 3363 of 2007. The certificate of confirmation of Grant in respect of the two estates are hereby set aside.
42. The assets of the estate to remain in the name of the deceased in both files. Fresh summons for confirmation in respect of the two files be filed within 30 days of the date this ruling.

**DATED AT NAIROBI THIS 19<sup>TH</sup> DAY OF JULY, 2024**

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**S.N.RIECHI**

**JUDGE**

