



REPUBLIC OF KENYA



In re Estate of James Kibe Ndegwa (Deceased) (Succession Cause E659 of 2021) [2024] KEHC 11642 (KLR) (Family) (12 July 2024) (Judgment)

Neutral citation: [2024] KEHC 11642 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E659 OF 2021
PM NYAUNDI, J
JULY 12, 2024**

BETWEEN

SAMUEL NDEGWA KIBE 1ST APPLICANT

MERCY NJERI KIBE 2ND APPLICANT

AND

JANE NJERI KIBE RESPONDENT

JUDGMENT

1. James Kibe Ndegwa (the Deceased) died on 30th August 2017. Jane Njeri Kibe, the deceased's wife petitioned this court for grant of letters of administration intestate. The said grant was issued on 22nd August 2022. The grant is yet to be confirmed.
2. The Deceased is said to be survived by the following;
 - a. Jane Njeri Kibe- wife.
 - b. Samuel Ndegwa Kibe- son
 - c. Mercy Njeri Kibe-daughter.
 - d. Elijah Ndegwa Kibe- son.
 - e. Robert Kanina Kibe- son.
 - f. Grace Muthoni Kibe- daughter.
 - g. Mikelinah Wambui Kibe – daughter.
 - h. David Muhia Kibe -son.



- i. Mary Wangui Kibe- daughter.
Assets
 - a. Gilgil/gilgil Block 1/1174.
 - b. Gilgil/gilgil Block 1/5519.
 - c. Plot No. P8924 Embakasi Ranching.
 - d. Plot No. C4-183 Kayole
 - e. Plot No. D4-138 Kayole.
 - f. Plot No. 83.
 - g. Plot No. 315 A.
 - h. Ngomongo Plot No. 533.
 - i. Ngomongo Plot No. 832.
3. Samuel Ndegwa Kibe and Mercy Njeri Kibe (the applicants) filed summons for revocation dated 30th November 2022 seeking the following orders;
- a. The Grant of Letters of Administration given to Jane Njeri Kibe, the 2nd wife of the deceased made on 22nd August 2022 was obtained fraudulently by making of false statement and by concealment from the court of vital material facts that the petition dated 19th March 2021 was not served on the Applicants who are the children of the 1st wife Susan Wanjiku (deceased).
 - b. The Grant of Letters of Administration dated 22nd August 2022 be revoked as the date which James Kibe Ndegwa(Deceased) died was erroneously indicated as 30th August 2021 instead of the correct date the 30th August 2017 as evidenced by his death certificate dated 3rd October 2017.
 - c. The Grant of Letters of Administration dated 22nd August 2022 be amended to reflect the correct date of the deceased which is 30th August 2017.
 - d. A new grant of letters of administration be issued to the 2nd administrator, Jane Njeri Kibe and Samuel Ndegwa Kibe to represent the 1st and the 2nd houses of the deceased.
 - e. The costs of this application be costs in the cause.
4. The Summons is brought pursuant to Section 76 of the [Law of Succession Act](#) and Rule 44 (1) of the Probate and Administration Rules and is supported by the Applicants sworn affidavit of even date. They filed a supplementary affidavit sworn on 12th May 2023.
5. The applicants' case is that they are the children of the deceased's 1st wife, Susan Wanjiku (deceased). They argued that respondent secretly filed the Petition for Letters of Administration and did not serve them with the same. Also, that they did not sign consent to appoint the administrator. Further, that the administrator concealed material facts by failing to include the following properties in the petition which form part of the deceased's estate: Equity Bank Account No. xxxxxx; Share in Ishanel House, Nairobi CBD; Malaa Plot No.; and Malaa Plot No. They urged the court to issue a new grant to Jane Njeri Kibe (the administrator) and Samuel Ndegwa Kibe.



6. The respondent (administrator) opposed the summons for revocation vide a Replying Affidavit dated 5th April 2023. She averred that the applicants were served with pleadings but they refused to sign the documents. They have refused to co-operate and have frustrated these succession proceedings. She argued that she disclosed all the properties belonging to the deceased and is not aware of other properties. That the applicants' application is an abuse of the court process.
7. By consent of the parties on 1/11/2023, prayer (b) and (c) in the summons was allowed by correcting the typing error by the court.
8. The summons for revocation was disposed by way of viva voce evidence.

Summary Of Applicants's Testimony

9. RW 1, Samuel Ndegwa Kibe testified on 1st November 2023. He adopted his written statement dated 15th March 2023 and bundle of documents as his evidence in chief. He is a son to the deceased and his first wife, Susan Wanjiku (now deceased). He has a sister, Mercy Njeri who is the 2nd Applicant herein. He relied on Chief's letter dated 8th November 2019 as evidence of this fact. He contends that the Grant should be revoked as he and his sister were not notified and that the Petition did not disclose that the deceased had 2 houses (wives) and further they did not sign the Consent.
10. During cross examination, he stated that the respondent was his step-mother. His mother died in 1977 when he was 4 years old. The deceased did not tell him about the properties he acquired with his late mother. He learnt of these proceedings when he visited the registry at Milimani Law Courts to file a petition in the deceased's estate. He is aware that the deceased had other properties which had been left out by the respondent. The deceased at one point sent him to deposit money in the account he mentioned in their supporting affidavit. He stated that the respondent showed him certificates of the other properties. He lives in the deceased's house in Kayole.
11. In re-examination, he stated that he wishes to be an administrator to represent the interests of the first house.
12. DW 1, Jane Njeri Kibe is the administrator herein. She testified that she was the wife of the deceased. She adopted her replying affidavit sworn on 5th April 2023 as her evidence in chief. She and the deceased got married in 1980. The mother to the 1st and 2nd Applicants was dead by then. She raised the two applicants as her own children and it was only upon the death of her husband that the rift between her and them has emerged.
13. She and the deceased acquired the properties enumerated in the Petition. As a spouse to the deceased she is entitled to the personal and household effects of the deceased and a life interest in the whole residue of the net intestate. It is her testimony that the Applicants were always aware of the proceedings but declined to sign the documents when she presented them. She has disclosed all the properties known to her. She is currently living with the 1st Applicant in her house.
14. During cross-examination, she stated that the deceased married her after the death of his first wife. When she lodged the petition, the applicants refused to sign the consents. They wanted to be appointed as administrators.
15. In re-examination, she stated that the deceased was not polygamous. She and the deceased acquired the properties jointly. She stated that she will not discriminate against any of the beneficiaries during distribution.
16. At the close of the trial both parties filed written submissions.



Applicants Submissions.

17. The Applicants submissions are dated 27th November 2023. It is their submission that the appointment of administrators is governed by Section 66 of the [Law of Succession Act](#) which provides that;

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- a. surviving spouse or spouses, with or without association of other beneficiaries;
- b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

18. They submitted that the deceased was polygamous and this court should be guided by Section 66 of the [Law of Succession Act](#) and allow Samuel Ndegwa Kibe to be appointed as co-administrator.

Administrator/respondent's Submissions

19. The Respondent's submissions are dated 29th November 2023. She submitted that the deceased was not a polygamous man since the first wife died before the respondent was married to the deceased. That according to Section 66 of the [Law of Succession Act](#), the Respondent as the deceased's wife ranked in priority to petition for letters of administration.

20. She submitted that the applicants were aware of the proceedings as they were served with the petition. They refused to co-operate because their mother's name was not included in the list of beneficiaries. She argued that although this court has the discretion to revoke a grant, the applicants were required to prove any of the grounds set out in Section 76 of the [Law of Succession Act](#). In this case, the applicants had not proved any of the grounds.

Analysis And Determination

21. Upon considering the pleadings, evidence, submissions filed herein and relevant law I consider the following to be the pertinent issues for determination-

- i. Whether the Grant of Letters of Administration Intestate dated 22nd August 2022 issued to Jane Njeri Kibe should be revoked
- ii. Whether Samuel Ndegwa Kibe should be appointed as an administrator
- iii. Who should pay costs

22. On the first issue, whether the Grant should be revoked?

A Grant may be revoked as set out in section 76 of the [Law of Succession Act](#) which provides 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. 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.”
23. Whereas the Applicants urged that the process of obtaining the grant was defective as they did not sign the consent, I am inclined to believe the Administrator who testified that her attempt to secure the cooperation of the Applicants prior to filing the petition were futile. I observe that in the Petition she included both Applicants as children of the deceased. On this basis, it is evident to me that the Administrator is prepared to include the Applicants in the distribution of the estate of the deceased.
24. It is further alleged that the Administrator failed to include all the assets of the deceased in the Petition. The properties said to have been excluded are
- i. Equity Bank Account No. xxxxxxxxx
 - ii. Share in Ishanel House, Nairobi CBD
 - iii. Malaa Plot No
 - iv. Malaa Plot No
25. I observe that the Applicants have not submitted proof of ownership by the deceased of these assets. I am therefore unable to conclude that the Administrator excluded these assets. All is not lost the Applicants can introduce the documentation at the stage of confirmation of the grant.
26. 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.
27. In *re Estate of the Late Mwaura Makuro (Deceased) [2021] eKLR*, Ogola J, reiterated that the overarching duty of the Court is to uphold substantive justice and invoked rule 73 of the Probate and Administration Rules.



28. I find that the instant case the basis has not been laid for the revocation of the grant. And therefore on the 2nd Issue, I find it not necessary to rectify the grant to include the 1st Applicant as an administrator.
29. In light of the foregoing these are the final orders
- i. The Summons dated 30th November 2022 succeeds only to the extent that the Grant shall be rectified to correct the date of death of the deceased to read 30th August 2017
 - ii. The Administrator will present Summons for confirmation within 60 days. In the event that the Applicants are not agreeable to the proposed mode of distribution, they shall file affidavit of protest within 14 days of service of the summons for confirmation of grant. The Administrator is granted leave to file further affidavit if necessary within 7 days of service of the affidavit of protest.
 - iii. Mention on 9th October 2024 to confirm compliance and take directions
 - iv. There shall be no order as to costs.

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 12th DAY OF JULY, 2024.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Fardosa Court Assistant

