



**In re Estate of Mutuku Nyaga (Deceased) (Succession Cause
240 of 2013) [2024] KEHC 8519 (KLR) (12 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8519 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 240 OF 2013**

MA ODERO, J

JULY 12, 2024

**IN THE MATTER OF THE ESTATE OF MUTUKU NYAGA (DECEASED)
(FORMERLY NYERI HIGH COURT MISCELLANEOUS 34 OF 1999)**

BETWEEN

HANNAH MICHERE GITHAKA APPLICANT

AND

CYRUS NYAGA NJAGE RESPONDENT

JUDGMENT

1. Before this court for determination is the Summons for Annulment/Revocation of Grant dated 26th February, 1999 filed by the Objector Hannah Michere Githaka. The Summons was supported by the Affidavit of even dated 16th September 1998 sworn by the Objector.
2. The Respondent Cyrus Nyaga Njage did not file any reply to the Summons nor did he (having been properly notified) appear during the trial.
3. This matter was fully heard by Hon. Lady Justice Mshilla way back in the year 2018. Upon conclusion of the hearing the objector sought leave to file a Further Affidavit. Leave was granted. The Further Affidavit was not filed until 28th February, 2024. It is now my duty to prepare the judgment in the matter.

Background

4. This succession cause relates to the estate of the late Mutuku Nyaga (hereinafter ‘the Deceased’) who died intestate on 30th November 1972. A copy of the Death Certificate Serial No. 196/66 is in the file.



5. Following the demise of the Deceased one Cyrus Nyaga Njagi (the Respondent) filed in the Senior Resident Magistrates Court in Kerugoya a Petition for Grant of letters of Administration Intestate dated 12th July 1995.
6. In that Petition the Respondent indicated that the Deceased was survived by the following persons.
 - i. Cyrus Nyaga Njagi
 - ii. Wangeci Ngethero
 - iii. Muthoni Ngunyu
 - iv. Wamuikuyu Kithaka
7. The estate of the Deceased was said to comprise of one parcel of land being LR No Mwerua/kagi/195.
8. A grant was duly issued to the Respondent on 19th November, 1996 which Grant was confirmed 11th February 1998. The Certificate of confirmed Grant indicated that the entire estate comprising LR Mwerua/Kagio/195 was to devolve to the Respondent alone.
9. The Objector then filed this Summons seeking revocation of the Grant. In her evidence she states that the Deceased was survived by only three (3) daughters being herself.Wangechi Mutuga - now DeceasedElizabeth Muthoni
10. That in obtaining the Grant the Respondent misrepresented himself as a son to the Deceased whilst he was in actual fact a nephew to the Deceased.
11. The Objector further claims that the Respondent did not inform the daughters of the Deceased of the existence of the Succession cause nor did he involve them. That after obtaining the confirmed Grant the Respondent sold the suit land to one Francis Macharia Karanja and kept the proceeds of sale to himself.
12. The Objector complains that the genuine beneficiaries of the estate were sidelined and that the Grant was obtained fraudulently and by way of concealment of material facts. She prays that the Grant so issued to the Respondent be revoked.
13. As stated earlier despite being properly served the Respondent did not respond to the Summons nor did he appear in court for the hearing.

The matter therefore proceeded in his absence.

Analysis And Determination

14. I have carefully considered this Summons for revocation of Grant, the supporting Affidavit filed by the Objector as well as the evidence on record.
15. The Grounds upon which 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 or 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]

16. In the case of Albert Imbuga 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]

- 17. The Objector has alleged that the Grant was obtained by concealment of material facts to wit that the Respondent was not a biological son of the Deceased. This allegation has not been denied. The Respondent has not adduced any evidence to prove that he was in fact a son of the Deceased.
- 18. It is noteworthy that the Petition filed by the Respondent was not accompanied by a chief’s letter indicating who the next of kin of the Deceased were. The chiefs letter is a mandatory requirement before a Grant may be issued as it is only the local chief who is best placed to know the identities of the Deceased’s next of kin.
- 19. The importance of the chief’s letter was brought out in the case of In re Estate Shem Kitanga (Deceased) [2018] eKLR where the Court held as follows:

“6. I have perused the court file from Vihiga Law Courts. A succession cause starts with an introduction letter from the chief of the area where the intended petitioner hails from. Though this is not a legal requirement, it is presumed that the chief is well familiar with the family of a deceased person and can inform the court of the beneficiaries left behind by a deceased.”



20. This position was also reiterated in the case of *In re Estate of Ambutu Mbogori [Deceased]* [2018] eKLR where the Court held that:

“The petitioner neither notified of these proceedings nor sought consent from the objector before filing the cause. The Petitioner committed other sins; he initiated these proceedings without a letter of introduction from the chief. This letter serves an important purpose in the ascertainment of deceased, dependants as well as properties of the deceased. His explanation that the chief demanded for a bribe was hollow statement without any basis.” [own emphasis]

21. It is clear that the failure to annex the chief’s letter was deliberate as well as the letter would have indicated that the Petitioner (Respondent) was not a son to the Deceased. This omission was a deliberate ploy to mislead the court.

22. In the absence of the chiefs letter the court ought not to have proceeded to issue a Grant to the Respondent.

23. In the supplementary Affidavit dated 28th February, 2024 the objector has annexed a letter dated 8th February 2024 written by the chief Muthuthi Location of Mwea West. That letter names the Objector Elizabeth Muthoni Mgunyu and Margaret Wangeci Mutugi (Deceased) as the only survivors/next of kin of the Deceased.

24. The evidence adduced by the Objector was not opposed and therefore remains uncontroverted. It is clear that the Respondent deceived the court in Kerugoya by misrepresenting himself as the biological son of the Deceased who had capacity to petition for Grant of Letters of Administration Intestate.

25. The Objector told the Court that neither she nor any of her sisters were involved in the Succession Cause before the lower Court. The Hearing Notices dated 27th November, 1997 served on the objector and her sisters were purportedly signed by ‘Wangeci’ and ‘Wamukuyu’ Even to the naked eye the hand writing (signature), on both documents appear to have been made by the same hand.

26. Further I note that in the Affidavit of service dated 9th February 1998 the process server one Rose M. Njoka claims to have served the Hearing Notice addressed to Wamukuyu Kithaka on one ‘Wangeci’. However the said Hearing Notice appears to bear the signature of ‘Wamukuyu’. If the hearing Notice was served on ‘Wangeci’ then how comes ‘Wamukuyu’ signed it. More importantly there is no Affidavit of Service indicating service of Hearing Notice on the Objector Hannah Michere Githaka.

27. I am not satisfied that all three daughters of the Deceased were individually and personally served with the requisite hearing notice. Therefore the claim that the three were not involved in their Father’s Succession case cannot be dismissed out of hand.

28. I further note that no consent signed by the three daughters of the Deceased indicating that they had no objection to the entire estate devolving to the Respondent, was annexed to the Summons for confirmation of the Grant, neither were the three physically present in court to confirm their consent to the mode of distribution of the estate.

29. The record indicates that on 10th February 1996 only the Respondent appeared in court. He stated as follows;-

“Petitioner - I ask the grant be confirmed. There are no objectors. The land parcel No. Mwerua/Kagio/ 195 be registered in my name as sole proprietor”



30. The court then agreed there were no objections without confirming the consent of the other beneficiaries and proceeded to confirm the Grant.

The Grant in the circumstances ought NOT have been confirmed.

31. The Objector and her sisters who were the biological children of the Deceased were the persons entitled to Petition for Grant. They had a right to inherit the estate of their late father. The Respondent who was a nephew to the Deceased did not rank in priority over the daughters.

32. It is clear that the Respondent pulled a fast one on the genuine beneficiaries. He took advantage of their ignorance and gender and moved to court misrepresenting himself as a son and heir of The Deceased. In this way the Respondent managed to have the entire estate allocated to himself thereby disinheriting the genuine beneficiaries.

33. I am satisfied that this Grant issued to the Respondent was obtained fraudulently by way of deception, by misleading the court and by failure to disclose material facts. That Grant is certainly for revocation.

34. Finally this summons succeeds. The Grant issued to the Respondent CYRUS NYAGA NJAGI on 19th November 1996 and confirmed on 11th February 1998 is hereby revoked. No orders on costs.

DATED IN NYERI THIS 12TH DAY OF JULY, 2024.

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MAUREEN A. ODERO

JUDGE

