



In re Estate of Joseph Njoroge Kamau (Deceased) (Succession Cause 3064 of 2012) [2024] KEHC 11816 (KLR) (Family) (5 July 2024) (Judgment)

Neutral citation: [2024] KEHC 11816 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 3064 OF 2012
PM NYAUNDI, J
JULY 5, 2024
IN THE MATTER OF THE ESTATE OF JOSEPH NJOROGE KAMAU (DECEASED)**

BETWEEN

MARY WANGARI MWAURA APPLICANT

AND

ANN MBAIRE NJOROGE RESPONDENT

JUDGMENT

1. Joseph Njoroge Kamau (the Deceased) died intestate on 13th November 2021. Mary Wangari Mwaura and Anne Mbaire Njoroge petitioned this court for grant of letters of administration intestate in their capacity as wife and daughter of the Deceased. The grant was issued on 13th November 2011. Subsequently, the grant was confirmed on 29th September 2014.
2. The applicant, Mary Wangari Mwaura, who is also an administrator of the deceased's estate filed Summons for Revocation dated 13th March 2015 seeking the following orders;
 1. That the grant issued to the petitioners herein be annulled/revoked.
 2. That costs of this application be provided for.
3. In her supporting affidavit of even date, she averred that she was in attendance when the grant was confirmed but she was not conversant with the court procedures. She averred that the mode of distribution in the certificate for confirmation of grant is not equitable. That some of the properties were left out in the list of properties in the schedule of distribution. Further, that she has not been allocated any assets of the estate. She asked the court to revoke the grant on these grounds.



4. She filed a supplementary affidavit dated 10th June 2016. She averred that her mother was sick and later died. The Respondent took advantage of her confusion during this time and engaged their family lawyer when the grant was confirmed. That the Respondent allocated herself her matrimonial home, IR No. 15046 and could dispose it leaving her and her son destitute. She deponed that the confirmed grant should be revoked and the properties be given to her and her son. That the schedule of assets should include the deceased's share from Mbakanjo traders company Limited and be distributed to David Kamau Njoroge.
5. The Respondent did not respond the summons. Neither of the parties filed written submissions.

Analysis and Determination

6. 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.”

7. I have considered the evidence on record. There is no evidence on record to prove that the grant was in any way defective in substance, that the grant was obtained fraudulently by the making of false



statement, that there was by concealment of something material to the case, or that the grant was obtained by means of untrue allegation of facts essential in point of law.

8. The applicant who is also the administrator stated that she was unhappy with the proposed mode of distribution of the estate. It is not clear therefore how the revocation will resolve the grievance that she has. Courts have in similar circumstances as the present declined to revoke the grant and likewise I find that this is not an appropriate case for annulment or revocation of grant. See, *Re Estate of Gitau (Deceased)* [2002] 2 KLR 430.
9. In the circumstances of the current case I am not inclined to set aside the confirmation or cancel the certificate of confirmation either see *In the matter of the Estate of Laban King'ori Macharia (Deceased)* Nairobi High Court P&A Cause No.16 of 1988).
10. The Applicant appeared before court on 29th September 2014 for the confirmation of grant. She had the opportunity to raise her objections. She sat through the proceedings, and cannot now be heard to say that she was not involved or did not have actual knowledge of what was going on. I find that her claim has no basis. She duly consented to the confirmation of grant. She cannot be allowed to resile from what she agreed to in the consent.
11. In her supplementary affidavit sworn on 10th June 2016, she seeks to introduce an asset that was not incorporated in the earlier summons for confirmation of grant. That is the deceased's share in Mbakanjo Traders Company Limited. Whereas the Application for rectification of grant is not properly presented to Court I will in exercise of mandate donated by article 159 (2) (d) of the *Constitution of Kenya*, 2010 and section 47 of the *Law of Succession Act* as read with rule 73 of the *Probate and Administration Rules* allow the same.
12. Accordingly, the grant is amended to include 1/3 share in Mbakanjo traders Company Limited, that the deceased held, to be assigned to David Kamau Njoroge.
13. Consequently, the application dated 13th March 2015 is partially succeeds in terms of paragraph 12 above.
14. This being a family matter, there is no order as to costs.

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 5th DAY OF JULY, 2024.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:-

Fardosa- Court Assistant

