



REPUBLIC OF KENYA



**Wakahia v Mungai (Sued as the Personal Representative of the Late Mungai Kahia [Deceased])
(Civil Appeal E195 of 2022) [2024] KEHC 9858 (KLR) (5 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 9858 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E195 OF 2022**

**AC BETT, J
AUGUST 5, 2024**

BETWEEN

FRANCIS KIRUKU WAKAHIA APPELLANT

AND

GITAU NJUGUNA MUNGAI RESPONDENT

**SUED AS THE PERSONAL REPRESENTATIVE OF THE LATE MUNGAI
KAHIA [DECEASED]**

*(Appeal from the ruling of the Senior Principal Magistrate Court at
Kikuyu, Hon. J. Orwa dated 2nd August 2022 in Succession Cause No.
104 of 2015 dismissing the Appellant's application dated 23rd May 2022)*

JUDGMENT

1. By a petition for Grant of Letters of Administration intestate dated 13th July 2015, in *Kikuyu PMCC Succ. Cause No. 104 of 2015*, Mungai Kahia (now deceased) petitioned the court for a grant. He named six beneficiaries including himself. Grant of Letters of Administration were issued to the deceased on 9th November 2015 and confirmed on 1st March 2016. The entire estate of the deceased Paul Wakahia Kairigo devolved to the Petitioner absolutely.
2. On 22nd July 2021, the Appellant filed on application dated even date, in which he prayed for stay of enforcement of the Certificate of confirmation of Grant earlier issued to the petitioner on the ground that the same was obtained fraudulently and through concealment of material facts in that the Petitioner failed to disclose to the court that the Applicant was a son to the deceased and therefore a beneficiary of his estate.
3. In the affidavit in support of the application, the Applicant deposed that the Petitioner/Respondent died on 14th October 2020. It is not clear how it happened but in the course of time, the deceased respondent was substituted with his son who the present respondent.



4. Upon considering the application, the court granted interim orders of stay of enforcement or execution of the Grant on 3rd August 2021.
5. The application was never disposed of, instead, the Appellant filed a similar application dated 23rd May 2022, that is now the subject matter of this appeal.
6. Before the Appellant filed the application dated 23rd May 2022, the person he had named as the Respondent on 6th April 2022, filed an application seeking to have the Appellant committed to jail for being in breach of the interim orders of stay of enforcement and execution dated 3rd August 2021.
7. On 1st July 2022, the trial magistrate ordered that the objection proceedings filed by the appellant be disposed of before the contempt proceedings. Both parties opted to rely on their affidavits.
8. By a ruling dated 2nd August 2022, the trial court deduced the following issues for determination: -
 - a. Whether the respondent is the son of the deceased administrator could respond to the issues raised by the appellant against his deceased father.
 - b. Whether the objection proceedings were sustainable.
9. The trial court proceeded to dismiss the objection proceedings thus giving rise to this appeal.
10. The Appellant now faults the trial court for dismissing the objection proceedings. He states that the dismissal left him with no recourse as one of the beneficiaries of the estate of Paul Wakahia Kairigio (deceased).
11. According to him, the trial court erred in holding that the appellant could not file objection proceedings against a deceased administrator or his personal representative.
12. The appeal was canvassed by way of written submissions.
13. The appellants submitted that he was one of the two sons of Paul Wakahia Kairigio (deceased) who died intestate on 9th May 1970. That the deceased owned two parcels of land composed in Title Numbers Muguga/Muguga/159 and Muguga/Muguga /T136.
14. According to him, his deceased brother connived with the Respondent herein and secretly obtained a Certificate of Confirmation of Grant of Letters of Administration in the name of his deceased brother Mungai Kahia upon which he was disinherited.
15. He submitted that the trial court failed to appreciate the objection proceedings and the fact that his deceased brother made himself the sole beneficiary of their deceased father's estate to his entire exclusion.
16. He further faulted the trial court for failing to appreciate that the grant of letters of administration was confirmed within a period of three months without any legal basis. He submitted that the court had powers to allow the objection proceedings yet proceeded to dismiss there.
17. He submitted that the court failed to apply the law, which was in his favor and relying on Section 16(a), (b), (c) and (e) of The Law of Concession Act, he maintained that notwithstanding the fact that the Grant had been confirmed, the court had power to revoke the same. This is a summary of the submissions with respect to the appellant's 15 grounds of appeal.
18. On his part, the Respondent submitted that although the impugned grant was confirmed within 3 months, it was in accordance with Section 71 (1), (3) of The Law of Succession Act.



19. He further submitted that the trial court had no jurisdiction to handle the matter since the estate had been distributed and the deceased administrator had transferred the subject property to him.
20. According to him, only the Environment and Land Court was seized with jurisdiction to hear and determine this matter. He relied on the case of [*John Mureithi Gatogo v Lawrence Munene Ndambizi*](#). He thus urged this court to dismiss the appeal.
21. The issue before this court is whether the Probate and administration court retains the jurisdiction to hear and determine objection proceedings under the following circumstances: -
 - a) Where the Administrator has implemented the Grant and distributed the estate of the deceased.
 - b) Where the Administrator is deceased.
22. The relevant provisions regarding revocation of Grant are found in Section 76 of The [*Law of Succession Act*](#) which states:-

“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.”



22. Following the above provisions of Section 76 of The *Law of Succession Act*, a grant may be revoked if the proceedings taken by the parties to obtain the grant were defective in substance for example where the wrong person applied for representation where a mandatory step like publishing in Kenya Gazette was omitted, or where the court that made the grant lacked jurisdiction; or where there was in existence on written will and the parties were unaware of the right procedure of subjecting the will to probate; or where the party who obtained the grant was fraudulent and misled the court, misrepresented material facts to the court or concealed material details from the court such as the existence of undisclosed beneficiaries, or debts owed by the estate to third parties which must be settled before distribution of the estate or where an untrue allegation of fact essential in a point of law to justify the grant is made such as where one purports to be the sole spouse, or only spouse and it emerges later that they were not, where one alleges to be a beneficiary of the estate but is not, where the sole property is said to form part of the estate of the deceased but is not.
23. The court may also revoke a grant for failure by the administrator to diligently proceed with administration, has failed to furnish court with inventory or account of administration as required by court, the grant has become useless and inoperative through subsequent circumstances such as death of the sole administrator. See *In Re-estate Of Prisca Ong'ayo Nande (deceased)* [2020] eKLR.
24. Section 76 of The *Law of Succession Act* empowers the court to revoke a grant of letters of administration whether confirmed or not, subject to the Applicant who is namely referred to as the objector, meeting the conditions set out therein.
25. *In Re Estate Of The Late Epharus Nyambura Nduati (deceased)* [2021] eKLR, Kariuki J. revoked and set aside a certificate of confirmation notwithstanding the fact that distribution had been finalized and ordered for the cancellation of the titles arising from submission of the deceased's title so as to revert the name of the deceased awaiting further proceedings with respect to a fresh made of distribution.
26. In the instant case, the grounds for summons for revocation of grant by the Appellant before the trial court were clear. He stated that the deceased administrator, who was his brother, had deliberately failed to disclose to the court that the appellant was also a child to the deceased and a beneficiary of his estate.
27. According to him, the deceased administrator undertook the succession process secretly. He further stated that the deceased administrator furnished a chief's letter that misled the court as it listed only the said deceased as the sole son of the deceased, the Appellant attached a baptism card, a funeral program in respect of Moses Kairigo Mungai (the Appellant's deceased father), and a death and funeral announcement for Hannah Njeri Wakahia (the Appellant's deceased mother) to his supporting affidavit in proof of his identity as a beneficiary.
28. It was the Appellant's averment under oath, that he resided on one of the parcels of land belonging to the estate in ignorance of his deceased brother's subterfuge until after his brother's demise when he discovered that their father's property had been devolved to the respondent (his nephew) therefore disinheriting him.
29. From the appellant's evidence, he had established a prima facie case for the revocation of the Grant of Letters of Administration and the setting aside of the Certificate of Confirmation *Odaria Wanja v Charles Kinyua Njoka* [2021] eKLR And *Beatrice Mbeere Mjiru v Alexander Nyaga Njiru* [2022] eKLR of Grant of Letters of Administration issued pursuant to the grant.
30. However, the Appellant's case presented a legal quagmire. First, the estate had already been distributed. Secondly, the administrator had passed on in the year 2020. The trial court therefore held that since the duly appointed administrator was deceased, the application by the appellant had been overtaken by events since the respondent was not in a position to answer questions arising from the administration.



31. The court held that the only recourse the Appellant had was to file suit in the Environment and Land Court. In the case of *Matthew Simotwo And Another v Kikwai Rono And 2 Others* [2016] eKLR. Mumbi Ngugi J, as she then was dismissed an application similar to the one the appellant had filed before the lower court and held: -

“No point would be served in substituting the applicant as administrator in place of his deceased mother, the distribution of the estate being complete.”

32. In the same vein, this court is of the view that if distribution had not been completed by the administrator before his demise, then the court would have exercised its discretion and substituted the deceased with the appellant. Unfortunately, the appellant slept on his rights for 50 years as a consequence of which his brother who had secured confirmation of grant of letters of administration, distributed their father’s estate. Since the administrator died after effecting distribution and the property having been transmitted to the Respondent, the only recourse is for the appellant to take his grievances to the Environment and Land Court.

34. For the above stated reasons, the appeal lacks merit and is therefore dismissed. This being a family matter, there shall be no order as to costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 5TH DAY OF AUGUST 2024.

A. C. BETT

JUDGE

