



**Gichuhi (Suing as the surviving administrator of the Estate of Mary Nyambura Gichuhi - Deceased) v Theiya & another (Being sued as the administrators of the Estate of Titus Theiya Kimani - Deceased) (Succession Cause 291 of 2012) [2024] KEHC 13000 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13000 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 291 OF 2012**

**SM MOHOCHI, J**

**OCTOBER 24, 2024**

**IN THE MATTER OF THE ESTATE OF TITUS THEIYA KIMANI (DECEASED)**

**BETWEEN**

**MICHAEL MUNGAI GICHUHI (SUING AS THE SURVIVING ADMINISTRATOR OF THE ESTATE OF MARY NYAMBURA GICHUHI - DECEASED) ..... APPLICANT**

**AND**

**JOE GACHINA THEIYA ..... 1<sup>ST</sup> RESPONDENT**

**MARY WAIRIMU NTHEIYA ..... 2<sup>ND</sup> RESPONDENT**

**BEING SUED AS THE ADMINISTRATORS OF THE ESTATE OF TITUS THEIYA KIMANI - DECEASED**

**RULING**

1. This matter is in relation to Summons dated 30<sup>th</sup> April, 2024 brought under Sections 29 and 76 of the [Law of Succession Act](#) and Rule 44 of the Probate and Administration Rules seeking:
  - i. Spent
  - ii. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue orders recalling to Court and cancel/revoke the Grant of Letters of Administration given to Joe Gachina Theiya, Eunice Wairimu Ntheiya and Bernard Muiruri Ntheiya on the 21<sup>st</sup> February 2014 and subsequent rectified Certificates of Confirmation of Grants dated 7<sup>th</sup> October, 2016, 30<sup>th</sup> June, 2017, 5<sup>th</sup> April, 2018 and 3<sup>rd</sup> March, 2023;



- iii. That pending the hearing and determination of the Application, this Honourable Court be pleased to issue orders restraining the Respondents by themselves, their workers, agents or anyone acting on their behalf from disposing, appropriating, subdividing, alienating, wasting assigning rights and or intermeddling with the property belonging to the estate of the deceased;
  - iv. That pending the hearing and determination of the Application, this Honourable Court be pleased to issue orders compelling the Respondents/Administrators to tender, avail, render and or/supply the accounts relating to the administration in terms of the Grants of Letters of Administration hitherto granted on 21<sup>st</sup> February 2014 and further issued rectifications of the same certificates dating from 7<sup>th</sup> October, 2016, 30<sup>th</sup> June, 2017, 5<sup>th</sup> April, 2018 and most recently 3<sup>rd</sup> March, 2023;
  - v. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue orders restraining the Respondents by themselves, their workers, agents or anyone acting on their behalf from disposing, appropriating, subdividing, alienating, wasting, assigning rights and or intermeddling with the property belonging to the estate of the deceased until a new Certificate of Confirmation of Grant is issued over the estate;
  - vi. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue orders restraining the Respondents by themselves, their workers, agents or anyone acting on their behalf from disposing, appropriating, subdividing, alienating, wasting, assigning rights and or intermeddling with the property belonging to the estate of the deceased until a favourable mode of distribution of the estate can be agreed upon by all the beneficiaries;
  - vii. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue orders restraining the Respondents by themselves, their workers, agents or anyone acting on their behalf from disposing, appropriating, subdividing, alienating, wasting, assigning rights and or intermeddling with the property belonging to the estate of the deceased until compensation in equal share, can be agreed upon in regard to any of the estate that may have been sold prior to this Application: and
  - viii. That costs of this Application be provided for.
2. The Summons is premised on the grounds set out in the application and supported by an Affidavit of Michael Mungai Gichuhi, sworn on even date.

### **Applicants Case**

- 3. He deposed that he is the son and administrator of the estate of Mary Nyambura Theiya a.k.a Mary Nyambura Gichuhi who was the biological daughter of Titus Theiya Kimani the deceased herein.
- 4. He deposed further that Mary Nyambura Theiya predeceased the deceased on 12<sup>th</sup> April, 2000 and despite knowing she was eligible to be a beneficiary of the estate, the administrators intentionally omitted her existence as one of the beneficiaries and that the exclusion led to the disinheritance of her heirs. That the omission was also present even in the chief's letter dated 27<sup>th</sup> February, 2012.
- 5. It was his case that the Grant was obtained by making fraudulent and false statements that the only children of the deceased were those listed in the Affidavit sworn on 30<sup>th</sup> April, 2024 and or concealment that Mary was a beneficiary. It was his case further that the proceedings leading to obtaining of the grant and the subsequent rectified grants were defective in substance and procedure.



6. He also argued that the subdivision of the deceased estate was discriminatory since the female beneficiaries received a lesser share to the male beneficiaries. That the Rectifications made on 5<sup>th</sup> April, 2018 and 3<sup>rd</sup> March 2023 were made without the consent of Eunice Wairimu Theiya and should be considered unlawful.
7. He sought to have the Certificate of Grant granted in 2014 and all other subsequent rectifications be revoked entirely and a restriction should be placed on the estate of the deceased.
8. The application was unopposed. From the Return of Service filed on 5<sup>th</sup> August, 2024 the Applicant was served with the Summons via WhatsApp.

### **Applicant's Submissions**

9. It was submitted that the Applicant's mother was the biological child of the deceased. That the Applicant's mother being a child as defined under Section 3 (2) and (3) of the *Law of Succession Act*, she was a dependant of the Estate of the deceased by virtue of Section 29 of the *Law of Succession Act* and therefore the Applicant has an interest in the estate of the deceased through his mother. Reliance was placed in Ibrahim v Hassan & Charles Kimenyi Macharia, Interested Party [2019] eKLR.
10. It was submitted further that there was intentional concealment of one of the beneficiaries and fraudulent and false statements were made as to who the children of the deceased were. Counsel relied in re Estate of Prica Ong'ayo Nande (Deceased) [2021] eKLR where the Court delved into the purpose and impact of Section 76 and Re Naftali Ambwavo Majoni (Deceased) [2005] eKLR to submit that the process of acquiring the Grant was tainted and the grant should be revoked withing the provisions of Section 76 of the *Law of Succession Act*.
11. It was also contended that the Application met the threshold within which the grant should be revoked. Counsel relied on the case of Albert Imbuga Kisigwa vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000 to submit that the power to revoke or uphold a grant is discretionary and ought to be exercised judiciously. Further reliance was placed in Matheka and Another vs Matheka [2005] 2 KLR 455 and submitted that enough evidence has been adduced to satisfy the grounds for evocation.
12. Finally, on whether the Court should issue a fresh grant, it was submitted in the affirmative so to ensure proper administration and equal distribution of the estate amongst all beneficiaries and reliance was placed in re Estate of Murei Manyambe (Deceased) [2021] eKLR where the Court revoked the grant since all beneficiaries were not involved or consented to the mode of distribution.

### **Analysis and Determination**

13. The sole issue herein is whether the Applicants have satisfied the threshold for grant of the relief sought?
14. The Powers to revoke a grant is provided for under Section 76 of the *Law of Succession Act* which provides as follows;

“ 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.

15. The High Court has in the case of re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR expounded on the principals that:

“Under section 76, a Court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

16. The Administrators failed and/or ignored multiple electronic service upon them of the summons, directions and mention notices, as is evidenced by filed return of service dated 29<sup>th</sup> July 2024, 31<sup>st</sup> July 2024 and the 18<sup>th</sup> September 2024.



17. The 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 for revocation or annulment of a grant.
18. In this case it is clearly evidenced that Mary Nyambura Gichuhi was the daughter of the deceased and that the Applicant is her surviving son.
19. It has been evidenced and demonstrated that the Administrators excluded the estate of Mary Nyambura Gichuhi and her survivors and that the Administrators obtained the grant with concealment of the material information.
20. In Re Estate of Moses Wachira Kimotho (Deceased) Succession Cause 122 of 2002 [2009] eKLR, the Court made pronouncements on the importance of disclosing all material facts before a Court of law while seeking letters of administration and confirmation thereof. It observed;

“I am certain that had the Applicants been made aware of the application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of those interests. Further had the Respondent been forthright and candid and included the Applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the Court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is therefore the grant was obtained fraudulently by making of a false statement and or concealment from Court of something material to the cause. The Respondent knew of the Applicants’ interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for the confirmation of the grant.”

21. This Court is persuaded that a grandchild only becomes a direct heir to the estate of the grandparent where the parent Mary Nyambura Gichuhi pre-deceased the grandparent. The grandchildren step into the shoes of their deceased parents and take the parent’s share in the estate of the grandparents as was enunciated in RE Estate of Wahome Njoki Wakagoto (2013) eKLR where it was held: -

“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1<sup>st</sup> July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

22. It is Apparent that the Administrators willfully omitted the survivors of Mary Nyambura Gichuhi and that the Applicant has evidenced and persuaded this Court that he is a biological son who is lawfully qualified as a beneficiary in this probate.
23. This Court is persuaded in light of the above, to invoke its inherent powers 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 Respondents/Administrators and subsequent confirmation, as they were obtained fraudulently by the making of false statement or by the concealment from Court of something material to the case particularly in relation the entitlement by the estate of Mary Nyambura



Gichuhi and her survivors and finds favor and allow the Application dated 30<sup>th</sup> April, 2024 on the following terms:

- i. The Rectified Certificate of Confirmed Grant dated 3<sup>rd</sup> March, 2023 is hereby revoked and annulled;
- ii. The parties to file consent on distribution within 30 days from dates herein and not later than by the 30<sup>th</sup> November 2024, or file separate proposals on distribution within same span, in default the Court to go ahead and make verdict with or without parties' input.
- iii. An order restraining Joe Gachina Theiya, Eunice Wairimu Ntheiya and Bernard Muiruri Ntheiya by themselves, their workers, agents or anyone acting on their behalf from disposing, appropriating, subdividing, alienating, wasting assigning rights and or intermeddling with the property belonging to the estate of the deceased;
- iv. An order restraining Joe Gachina Theiya, Eunice Wairimu Ntheiya and Bernard Muiruri Ntheiya by themselves, their workers, agents or anyone acting on their behalf from disposing, appropriating, subdividing, alienating, wasting assigning rights and or intermeddling with the property belonging to the estate of the deceased by themselves, their workers, agents or anyone acting on their behalf from disposing, appropriating, subdividing, alienating, wasting, assigning rights and or intermeddling with the property belonging to the estate of the deceased until a Rectified Certificate of Confirmation of Grant is issued over the estate;
- v. This Matter shall be mentioned on the 3<sup>rd</sup> of December 2024.

It is so ordered.

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 24<sup>TH</sup> DAY OF OCTOBER 2024**

**Mohochi S.M**

**JUDGE**

