



REPUBLIC OF KENYA



In re Estate of Peter Njenga Kuria (Deceased) (Succession Cause E055 of 2022) [2024] KEHC 12763 (KLR) (18 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE E055 OF 2022**

A MSHILA, J

OCTOBER 18, 2024

IN THE MATTER OF THE ESTATE OF PETER NJENGA KURIA (DECEASED)

BETWEEN

JOY KAGURE MBUGUA (SUING ON HER BEHALF AND ON BEHALF OF JMN AND JWN (MINORS) APPLICANT

AND

NJUGUNA WANYOIKE RESPONDENT

RULING

1. Before court are two applications. The first application is brought by way of Amended Summons for Revocation of the Confirmed Certificate of Grant of Probate dated 7th March, 2023 brought under Section 26,27,29,45,47,66,76 and 83 of Law of Succession. The Applicant sought for orders:-
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That pending the hearing and determination of this summons a temporary injunction do issue restraining Njuguna Wanyoike the executor, the beneficiaries of the Will, herein and their agents and/or servants from wasting, damaging, selling, transferring land held under Mung'ere Farm Limited: Gatamaiyu/Gachoire/924, Gatamaiyu/Nyanduma/49, Gatamaiyu/Kamuchege/1774, Gatamaiyu/Kamuchege/1775, Gatamaiyu/Nyanduma/T35, Gatamaiyu/Nyanduma/2028, Golden Valley Limited:- Gatamaiyu/Kagwe/1588, Gatamaiyu/Nyanduma/T247, Ruiru/Ruiru East Block 7/246, Ruiru/Ruiru East Block 7/247, L.R No.28649/ 75(IR No.149660), Gatamaiyu/Nyanduma/ T23, Gatamaiyu/Nyanduma/3465, Gatamaiyu/Nyanduma/3466, Gatamaiyu/Nyanduma/3467, Gatamaiyu/



Kagwe/850, Nairobi/Block 126/2136, Nairobi/Block 126/2137, Nairobi/Block 126/2156, Nairobi/Block 126/2157, Ruiru/Ruiru East Block 1/698, Ruiru/Ruiru East Block1 (Githunguri)/689, Ruiru East Block 1/586, Ruiru/Ruiru East Block 1/4426, Ruiru/Ruiru East Block 1/4418, Ruiru/Ruiru East Block 1/688 or anyway whatsoever dealing with any property registered under a body corporate where the deceased is a shareholder as at the date of death as per the estate as per the Certificate of Confirmation of Grant Probate issued on 27th July, 2022.

- e. That this Honourable Court be pleased to revoke the Certificate of Confirmation of grant probate issued to Njuguna Wanyoike on the 27th July, 2022.
 - f. That this Honourable Court do issue a grant of letters of administration with a written Will annexed to Joy Kagure Mbugua and Njuguna Wanyoike, as the executors.
 - g. That this Honourable Court be pleased to adequately provide for the Applicants and all beneficiaries not named in the Will.
2. The application is premised on the grounds that the proceedings to obtain the grant were defective, that the grant was obtained fraudulently and by means of an untrue allegation.
 3. The application is supported by the affidavit of Joy Kagure Mbugua. She deposed that in the grant which was confirmed on 27th July, 2022, the deceased in the WILL only made provision for Mary Wambui Njihia and her three children. She listed the beneficiaries of the deceased's estate. Further she indicated that the executor concealed the existence of other court proceedings in Ruiru that the Applicants herein are children of the deceased who ought to be considered in the distribution of the estate. The executor should be prohibited from operationalizing the Certificate of Confirmation of Grant. It was deposed that the executor of the WILL knowing the existence of other beneficiaries failed to make an application for those beneficiaries to be provided for in the WILL. Out of 600 shares in Golden Valley Co. only 80 shares were distributed making the estate intestate.
 4. The second application by way of Summons for Limited Grant Ad Colligenda Bona was brought under Sections 54, 67 of the *Law of Succession Act*, Rules 26(1), 36(3) of the Probate and Administration Rules and Article 53(1) of *the Constitution* and all other enabling provisions of the law. The Objector/Applicant sought for orders:-
 - a. Spent
 - b. That this Honourable Court be pleased to grant letters of administration Ad Colligenda Bona limited to the purpose of getting into the bank account number 01XXXX at Standard Chartered Bank, Westlands Branch, Bank account number 14XXXX at ABSA Bank Westlands Branch, Bank account number XXXX at ABSA Bank Queensway Branch and/or account number 01XXXX at Family Bank, Cargen House Branch for purposes of paying school fees of the minor amounting to Kshs. 464,100/= as per the school fees structure for the entire academic year 2022 starting 25th April, 2022 to 25th November 2022.
 - c. That pending the hearing and determination of the application for Reasonable Provision, Revocation and Annulment of Grant, this Honourable court be pleased to authorise the bank managers of the deceased's estate bank accounts to debit the deceased's bank accounts with the fee structure every time it falls due and file returns in Court.
 - d. That in the interim, the Respondent herein be ordered to provide maintenance of the minor as personal representative and executor of the Will of Peter Njenga Kuria (Deceased) who had the duty and parental responsibility of the said minor before his demise as follows:-



- i. clothing of the minor per year Kshs.100,000/=
 - ii. food per month during holidays Kshs.50,000/=
 - iii. entertainment/recreational activities Kshs.150,000/=
 - for the minor per year
 - iv. shelter per month Kshs.25,000/=
 - v. medical & miscellaneous per year Kshs.60,000/=
- Total Kshs.385,000/=

5. The application is supported by the affidavit of Esther Nyokabi Njoroge. She deposed that she cohabited with the deceased since 1999 until his death on 20/2/2022 and that their child was born on 24/10/2006. The deceased was taking care of the minor's health care, shelter, clothing and education. She stated that the deceased used to cater for the minor's school fees at Juja Preparatory School Co. Ltd and that the deceased paid rent and had bought them a car. She deposed that due to unpaid fees arrears, the minor might be chased out of school. They participated in the burial arrangements and that they were also included in the Eulogy. She contended that she is struggling to raise the minor as the minor's interest were not addressed in deceased's WILL as such the prayers sought should be granted.
6. Njuguna Wanyoike filed his replying affidavit dated 23rd January, 2023 in response to the two applications above. He stated that after the confirmation of grant on 27/7/2022 he proceeded to distribute the estate to the rightful beneficiaries. In regard to the claim that the grant was obtained fraudulently, he contended that that he was not a party to the court proceedings at Ruiru as such he was not aware of the court order as such the court should disregard the allegations. He averred that no evidence has been produced to support the allegation that the deceased had shares in more than 11 companies as alleged by the Applicant. The 520 shares belonging to Golden Valley Company Limited were said to have been transferred to his children during his lifetime. The bank accounts belonging to the deceased were said to have been closed during the deceased's lifetime and no funds are available from them. The Applicants were said to be people of good financial standings with consistent and sufficient income.
7. In his further affidavit dated 3rd February, 2023, Njuguna Wanyoike stated that since the grant of probate was confirmed he has not distributed any part of the estate as set out in schedule. The deceased had transferred a substantial part of his estate during his life time.
8. Joy Kagure Mbugua filed her supplementary affidavit dated 7th March, 2023. She averred that it would be contemptuous of the court order of 3/8/2022 for the executor to commence distribution of the estate the grant having been suspended. The executor was said to have made changes on the shares previously held by the deceased has also interfered with the share capital of the company. That LR 29123/145 has since been sold. She averred that the executor was well aware of the court proceedings at Ruiru and that the deceased had bequeathed 80 shares out of 600. She listed several properties owned by Golden Valley Properties Limited which had been left out by the executor in his schedule.
9. Esther Nyokabi Njoroge filed her supplementary affidavit dated 13th March, 2023, in response to the 1st Respondent's further affidavit dated 3rd February, 2023. She averred that the 1st and the 2nd Respondents are working together to dispose the deceased's prime properties so as to disinherit the Applicants despite the confirmed grant being suspended on 3/8/2022. That land reference number 29123/145 was sold on 25/10/2022 in contempt of the court order. The shares of Golden Valley Limited property have been varied from 1000 to 5000 on 17/8/2022 when there was an existing court



order. The 1st Respondent was said to have been aware of the court proceedings at Ruiru. The executor was said to be misleading the court as such should be removed from that responsibility. The court was urged to issue orders prohibiting any sale of the properties registered under Golden Valley Properties Limited.

10. Njuguna Wanyoike filed a further supplementary affidavit dated 23rd March, 2023. He stated that his mandate is only limited to the assets listed on the WILL. He denied claims by the Applicants that he has disobeyed the court order of 3/8/2022 as he is not party to the sale agreement of 25/10/2022. He stated that the 520 shares are yet to be distributed to the deceased's wife as bequeathed in the WILL. He denied altering the shareholding of Golden Valley Ltd from 1000 to 5000 as he is not a shareholder or a director. He insisted that his mandate was only for 80 shares. He denied knowledge of the properties listed by the Applicant.

Issues For Determination

11. Upon reading the applications, affidavits this court has framed the following issues for determination;
 - i. Whether the executor should be prohibited from operationalizing the Certificate of Confirmation of Grant.
 - ii. Whether to issue Letters of Administration Ad Colligenda Bona
 - iii. Other orders that this court may deem fit and just to grant.

Analysis

Whether the executor should be prohibited from operationalizing the Certificate of Confirmation of Grant.

12. The Applicant seeks restraining orders against the Respondent /Executor herein from operationalizing the Certificate of Confirmation of Grant; it is not in dispute that the deceased held shares in Golden Valley Limited and that the properties as listed by the Applicant were registered and held under Golden Valley Limited; it is the Respondents evidence that all the properties the deceased owned through the company were distributed by the deceased during his lifetime; that the deceased held 600 shares in Golden Valley Limited and out of the 600 shares 80 have been transmitted and all that remains is 520 which shares were specifically bequeathed and have been distributed but are yet to be transmitted by the Executor to the wife of the deceased; these are the shares the Applicant seeks to have the Respondent restrained from transmitting;
13. For the Applicant to merit the orders sought she must first establish a prima facie case which has high chances of succeeding; she must also demonstrate that she will suffer irreparable harm that cannot be quantified in monetary terms; Lastly, if in doubt then the balance of convenience would tilt in whose favour;
14. The Applicant prays that this court issues orders prohibiting any sale of the properties registered under Golden Valley Properties Limited. It will be noted that this company is not a party to these proceedings and it is trite law that an injunctive order is a remedy that is only granted against parties enjoined to the proceedings; The fact that the Applicant confirms that ownership of the properties vests in the company and that the deceased was a mere shareholder therein suffices in demonstrating that the Applicant has not established a prima facie case with high chances of succeeding.
15. The maintenance and fees structure presented by the Applicant demonstrates that any loss she may suffer is quantifiable and therefore she can be compensated in monetary terms. An injunctive order



granted against Golden Valley Limited would instead cause substantial damage to the operations of the company and it is this courts considered view that the balance of convenience in favour of the Respondent and the Golden Valley Limited.

16. From the material placed before this court also notes the existence of the court order of 3/8/2022 suspending the Grant which in essence stopped the Executor from commencing with the distribution of the estate; with the suspension still in place this finds that the prohibitory orders sought by the Applicant are superfluous and not merited.

Whether to Issue Letters of Administration Ad Colligenda Bona

17. The Applicant is primarily seeking a grant of Letters of administration Ad Colligenda Bona limited to the purpose of accessing funds from the deceased's bank account number 01XXXX at Standard Chartered Bank, Westlands Branch, Bank account number 14XXXX at ABSA Bank Westlands Branch, Bank account number 8XXXX at ABSA Bank Queensway Branch and/or account number 01XXXX at Family Bank, Cargen House Branch for purposes of paying school fees of the minor amounting to Kshs. 464,100/= as per the school fees structure for the entire academic year 2022 starting 25th April, 2022 to 25th November 2022.
18. The Executor in his response stated that the bank accounts belonging to the deceased had been closed during the deceased's lifetime and no funds are available from therefrom.
19. The issuance of a grant of Letters Ad Colligenda Bona is usually done when there is an urgent need to collect, protect and preserve the estate of a deceased before the letters of administration are granted or confirmed.
20. In seeking for such orders the Applicant is in essence asking this court to overturn a decision of a court with concurrent jurisdiction where the court in its finding found the WILL to be valid; the court was satisfied that the facts and details of the estate of the deceased had been ascertained in the Will and a Fullgrant was issued and later confirmed.
21. The upshot is that by issuance of a FullGrant the application for Letters Ad Colligenda Bona has been overtaken by events.
Other Orders this court may deem fit and just to grant
22. From the court order of 3/08/2022 and from the testimony of the Executor the Grant was suspended and the Executor was stopped from effecting the transmission this means the 520 shares that are yet to be transmitted to the deceased's wife or children. It is this courts considered view that this establishes a suitable case to be referred to Court Annexed Mediation.
23. The parties are therefore referred to Court Annexed Mediation with a view to partial renunciation of Will and an amicable re-distribution.

Findings & Determination

24. For the forgoing reasons this court makes the following findings and determinations;
 - i. This court finds that this is not a suitable case to issue injunctive orders as sought by the Applicants; the application be and is hereby dismissed
 - (ii) This court finds the application to issue Letters of Administration Ad Colligenda Bona has been overtaken by events and the application be and is hereby disallowed.



- (iii) This court finds that this is a suitable case to refer for Court Annexed Mediation on the un-operationalised shares in Golden Valley Limited.
- (v) Each party to bear their own costs as it is a family matter.
- (iv) Mention on 6/11/2024 before the Deputy Registrar for screening for CAM on the un-operationalised shares in Golden Valley Limited.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 18TH DAY OF OCTOBER, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

Muema- h/b for Kamonjo for Ester

Mutisya – h/b for Kanjama SC

Alex Thengei – for 1st and 2nd Respondent

Miss Munyoki – h/b for Mwangi Ndegwa – for Applicant -Joyce Kagure

