



**In re Estate of Richard Kongo Gakuya alias Richard Kongo Gakunga (Deceased)  
(Succession Cause 213 of 2009) [2024] KEHC 12398 (KLR) (16 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12398 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
SUCCESSION CAUSE 213 OF 2009  
LM NJUGUNA, J  
OCTOBER 16, 2024**

**BETWEEN**

**FROMENA JOYCE WANGECHI MURIGUH ..... 1<sup>ST</sup> APPLICANT**

**LUCY WANJIRU GICHIRA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**GLADYS WAKIINI GAKUYA ..... RESPONDENT**

**JUDGMENT**

1. The applicants filed summons dated 18<sup>th</sup> October 2021 seeking the following orders:
  - a. That the grant of letters of administration intestate made on 15<sup>th</sup> July 2009 and confirmed on 04<sup>th</sup> March 2010, be revoked and/or annulled;
  - b. That the register relating to land parcel number Mwea/Kabiriri/378 be rectified by cancelling of entries no. 5 and 6 thereto to revert to parcel number Mwea/Kabiriri/378 in the deceased's name;
  - c. That the honourable court do cancel all the title deeds resulting from subdivisions of land parcel number Mwea/Kabiriri/378 under entry number 6 of the register (green card); and
  - d. That the respondent be condemned to pay the costs of this application.
2. The applicants, who are children of the deceased, deposed that they were left out of the succession proceedings which are defective in substance. That the petitioner, wife of the deceased, concealed from the court the material fact that some beneficiaries had been left out of the proceedings right from the chief's letter. That at the point of confirmation of the grant, their consent was not sought and now they have been disinherited but strangers to the estate have benefited from it.
3. The application was unopposed despite the respondent having been duly served.



4. The court directed parties to file their written submissions but only the applicants complied.
5. It was the applicants' submission that through falsehood, the respondent obtained the chief's letter introducing the beneficiaries excluding the applicants. That the respondent went on to obtain a grant of letters of administration made on 15<sup>th</sup> July 2009 and confirmed on 04<sup>th</sup> March 2010, wherein the estate of the deceased was distributed without the applicants participation contrary to section 51(2)(g) of the Law of Succession Act and Rule 7(1) of the Probate and Administration Rules. That the applicants as children of the deceased are recognized under section 3(2) of the Law of Succession Act.
6. They placed reliance on section 76 of the Law of Succession Act and the cases of Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] eKLR, Albert Imbuga Kisigwa v Recho Kawai Kisigwa [2016] eKLR and Re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR. They urged that once the grant has been revoked, the court should proceed to order cancellation of entries in the deceased's title deed according to section 26 of the Land Registration Act.
7. That this court has jurisdiction to order cancellation of entries in the title deed as stated in the case of Santuzza Bilioti alias Mei Santuzza (Deceased) v Giancarlo Falasconi [2014] eKLR. It was their argument that they will surely suffer prejudice if the grant is not revoked. They urged the court to revoke the grant and award them costs according to section 27 of the Civil Procedure Act and the case of Orix Oil (Kenya) Limited v Paul Kabeu & 2 Others [2014] eKLR.
8. The issue for determination is whether the grant issued to the respondent should be revoked.
9. A grant of letters of administration intestate was issued in the estate of the deceased on 15<sup>th</sup> July 2009. She filed summons for confirmation of grant dated 02<sup>nd</sup> February 2010 and the grant was confirmed, distributing the estate, which comprised of land parcel number Mwea/Kabiriri/378. According to form P&A.5, the chief's introductory letter and the summons for confirmation of grant, the beneficiaries of the estate are as follows: Gladys, Wakiini Kongo, Kiama Kongo, Joseph Karuri Kongo, Lillian Wangithi Muli, David Gakuya Kongo and Karuri Kongo Gakuya. The estate of the deceased was distributed amongst the named beneficiaries as well as others namely Pauline Wangari Gakuya, Veronica Kathungu Maria, Peter Kuria Njuguna and Susan Njoki Nyaga.
10. The applicants stated that the respondent is their stepmother, who also knew that they existed as the children of the deceased. It was their case that the respondent misled the court into believing that the deceased was only survived by the named beneficiaries, thus the grant was issued.
11. A grant may be revoked at any point in time as provided under Section 76 of the Law of Succession Act, thus:
  - “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 on grounds that;
    - (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.”

12. The application is unopposed and the court noted that the respondent was duly served but she did not file any response. According to the court record, the names of the applicants were not included in the petition or in the certificate of confirmation of grant as the beneficiaries. In as much as the application was unopposed, onus is on the party who alleges to prove their case as is provided under section 107 of the *Evidence Act*. The applicants have alleged that they, too, are children of the deceased but they have failed to produce any proof as such.

13. It would have helped to produce documentation like birth certificates or photographs to prove this but the court has no piece of evidence whatsoever to consider. The standard of proof in civil cases is known and it is on a balance of probabilities, not any higher. In the case of *Miller v Minister of Pensions* [1947] 2 ALL ER 372 the court stated;

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case....”

14. Even then, this standard of proof can only be attained through examination of evidence, which evidence is lacking in this case. It is very possible that the applicants are children of the deceased but the same can be said about any other person who lays a claim such as this one. A grant may be revoked if the court decides, either on application by any interested party or of its own motion. This means that the applicants herein should demonstrate their interest in the estate before the court can consider their prayers, otherwise, the grant remains settled.

15. That being said, I find that the application lacks merit and it is hereby dismissed.

16. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 16TH DAY OF OCTOBER, 2024.**

**L. NJUGUNA**

**JUDGE**

.....for the 1st Applicant

.....for the 2\*nd Applicant

.....for the Respondent

