



**In re Estate of Eliakim Agadize Lwangu (Deceased) (Succession Cause 252 of 2003) [2024] KEHC 12170 (KLR) (11 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12170 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 252 OF 2003  
RN NYAKUNDI, J  
OCTOBER 11, 2024**

**IN THE MATTER OF THE ESTATE OF ELIAKIM AGADIZE LWANGU (DECEASED)**

**BETWEEN**

**JOHN LWANGU MISOGA ..... PETITIONER**

**AND**

**MARY JAHENDA LWANGU ..... 1<sup>ST</sup> OBJECTOR**

**OSCAR KEGODE LWANGU ..... 2<sup>ND</sup> OBJECTOR**

**ALLAN EGADIZE KWANGU ..... 3<sup>RD</sup> OBJECTOR**

**JUDGMENT**

1. The deceased in this matter died on 29<sup>th</sup> December, 2002. John Lwangu and Mary Jehanda Lwangu in their capacities as son and daughter respectively filed a petition for Letters of Administration Intestate on 12<sup>th</sup> November, 2003 in which they identified the following beneficiaries:
  - a. John Lwangu Misoga – son – 46 years
  - b. Sophie Feis Lwangu – daughter – 50 years
  - c. Peter Ijaika Lwangu – son – 47 years
  - d. Pamela Lwangu – daughter – 43 years
  - e. Mary Jahenda lwangu – daughter 41 years
  - f. Kennedy Kibisu Lwangu – son – 39 years
  - g. Amy Mideva lwangu – daughter – 35 years
  - h. Oscar Kegode Lwangu – Son – 34 years



- i. Fiona Kakadinya Lwangu – daughter – 30 years
- j. Allan Egadize Lwangu – son – 25 years
2. The Petitioners also identified two assets; Land Parcel No. Nandi/Koibarak “B”/P/No. 496 and Nandi Tea Growers Sacco – On 057xxxx.
3. After this court considered the said Petition and there being no Objection, a Grant was issued on 30<sup>th</sup> November, 2005 which the Petitioners sought to confirm vide the summons for confirmation dated 3<sup>rd</sup> March, 2022.
4. In his affidavit in support of the summons, John Lwangu Misoga deposed as follows:
  - a. A grant of letters of administration of the said estate was made to us in this matter on the 30<sup>th</sup> November, 2022
  - b. The deceased was survived by the following children:
    - i. Sophie Feis Lwangu – daughter – 69 years
    - ii. Peter Ijaika Lwangu – son – 66 years
    - iii. John Lwangu Misoga – son – 65 years
    - iv. Pamela Lwangu – daughter – 62 years
    - v. Mary Jahenda Lwangu – daughter – 60 years
    - vi. Kennedy Kibisu Lwangu – son – (deceased)
    - vii. Amy Mideva Lwangu – daughter – 54 years
    - viii. Oscar Kegode Lwangu – son – 53 years
    - ix. Fiona Kakadinya Lwangu – daughter (deceased)
    - x. Allan Egadize Lwangu – son – 44 years,
  - c. That no application for provision for dependents is pending, save that provisions should be made for the dependents of the deceased beneficiaries.
  - d. The identification and shares of all persons beneficially entitled to the said estate has not been ascertained but the following are rightful beneficiaries to the estate of the deceased;
    - i. Sophie Feis Lwangu – daughter – 69 years
    - ii. Peter Ijaika Lwangu – son – 66 years
    - iii. John Lwangu Misoga – son – 65 years
    - iv. Pamela Lwangu – daughter – 62 years
    - v. Mary Jahenda Lwangu – daughter – 60 years
    - vi. Kennedy Kibisu Lwangu – son – (deceased)
    - vii. Amy Mideva Lwangu – daughter – 54 years
    - viii. Oscar Kegode Lwangu – son – 53 years



- ix. Fiona Kakadinya Lwangu – daughter (deceased)
  - x. Allan Egadize Lwangu – son – 44 years,
- e. That no estate duty is payable or remains unpaid in respect of the estate of the deceased
  - f. That my co-administrator and the side of the family she represents have resisted attempts to distribute the deceased estate equally among the deceased children.
  - g. That the co-administrator has now moved back to the deceased house and ejected the deceased son who is culturally entitled to remain in the deceased home.
  - h. That Oscar Kegode Lwangu has taken over the entire deceased estate and is hostile to any of the other deceased children getting their rightful shares of the deceased estate.
  - i. That Oscar Kegode Lwangu has been enjoying proceeds of tea on the deceased account Nandi Tea Growers Sacco CN 057xxxx and coffee to the exclusion of the other beneficiaries.
  - j. That attempts to have the property subdivided in equal proportions have been violently resisted by Oscar Kegode Lwangu who has threatened violence upon any person who would attempt to subdivide the property for distribution to the other beneficiaries.
  - k. That it is now in the interest of justice that the court determines the shares of each beneficiary of Title Number Nandi/Koibarak “B” and tea proceeds since the beneficiaries are unable to agree on the mode and manner of distribution.
5. While the summons was still on course, the Objectors filed summons for revocation of grant dated 27<sup>th</sup> July, 2022 on grounds that the proceedings to obtain grant were defective in substance since the consent of all the beneficiaries was not sought prior to petitioning for grant of Letters of Administration.
  6. In response, John Misoga Lwangu that the averments in the application are made in bad faith as no one was forced to sign any form, and if the same were true, then nothing stopped the objectors from moving court appropriately through an objection before the Grant was issued.
  7. He further averred that Mary Jahenda and himself swore an affidavit on the 7<sup>th</sup> September, 2005 confirming that Peter Ijaika Lwanug and Pamela Lwangu were in the United States, while Oscar Kegode had become uncooperative. That contrary to the Objectors’ assertions, forms 11 and 38 were duly filed in court and the Deputy Registrar was satisfied with the compliance and endorsed her signature on the 13/09/2005 and the judge was also satisfied and endorsed an order on the 30.2.2005.
  8. He concluded by stating that the error in not obtaining the consent for all the beneficiaries is not reason enough to revoke the grant since it has not been shown what prejudice any person has suffered.

### **Analysis and Determination**

10. What I have for determination are the two applications; one for confirmation of Grant dated 3<sup>rd</sup> March, 2022 and the summons for revocation dated 27<sup>th</sup> July, 2022. I shall start with the summons for revocation before proceeding to determine the summons for confirmation and finally distribute the estate to avoid any further delays given that it has been in court for quite some time.

Section 76 of the *Law of Succession Act*, sets out situations when a grant can be revoked or annulled, Section 76 provides as follows:

“Section 76



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.”

9. In the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* (2015) eKLR the court discussed circumstances when a grant can be revoked. The court observed:

“ 11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

10. In discussing Section 76 the court in the case of *In re Estate of Seth Namiba Ashuma (Deceased)* [2020] eKLR stated as follows:

“Under section 76 of the *Act*, a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining the grant was attended by glaring difficulties, such as where the same was defective, say because the person who



obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant. The second general ground is where the grant is obtained procedurally, but the administrator subsequently runs into difficulties during the process of administration of the estate. Such difficulties include his failure or omission to apply for confirmation of his grant within the period allowed in law, or where he fails to exercise diligence in administration of the estate, such as where he omits to collect or get in an asset, or where he fails to render accounts as and when he is required to do so by the law. The third general ground is where the grant has become inoperative or useless on account of subsequent circumstances, such as where the sole administrator died or lost the soundness of his mind or was adjudged bankrupt.”

11. The Objectors’ cited grounds for revocation are that the Grant was obtained fraudulently by concealment of material facts to the court and obtaining of signatures of some beneficiaries in a deceitful and dishonest manner.
12. To counter this averment, the Petitioner stated that Mary Jahenda together with himself swore an affidavit on the 7<sup>th</sup> September, 2005 confirming that Peter Ijaika Lwangu and Pamela Lwangu were in the United States, while Oscar Kegode had become uncooperative.
13. It is instructive to note that the Petition for Letters of administration was filed way back in year 2003 and the same was duly gazetted. The objectors at no point did they file an objection to the said Petition for Letters of administration. As it has also been noted by the Petitioner, there is an affidavit on record giving reasons as to why all the beneficiaries did not sign the consent. I have perused through the summons for revocation and the response thereto and I find no reason enough to revoke the Grant issued by this court. The Objectors have not been successful in discharging their burden to meet the threshold set out in Section 76. The summons dated 27<sup>th</sup> July, 2022 are therefore found without merit and are dismissed with no orders as to costs.
14. Moving to the summons for confirmation, the Petitioner did not propose a mode of distribution but rather argued that they have been unable to agree on the just model of distribution. Section 38 states as follows: -

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”
15. The above provision provides for equal distribution among all the children of the deceased, whether male or female, whether married or not; they are treated equally when it comes to the intestate distribution of the estate of the deceased parent. I have seen no reason why any of the beneficiaries receive a larger share than the other. All the assets belonging to the estate of the deceased should be distributed equally among all the beneficiaries.
16. For the foregoing reasons, Land Parcel No. Nandi/Koibarak “B”/P/No. 496 and Nandi Tea Growers Sacco – On 0570037 shall be distributed equally among all the beneficiaries.



No	Property	Share	Beneficiary
1	Land Parcel No. Nandi/Koibarak "B"/ P/No. 496	Equally	Sophie Feis Lwangu Peter Ijaika Lwangu John Lwangu Misoga Pamela Lwangu Mary Jahenda Lwangu Estate of Kennedy Kibisu Lwangu Amy Mideva Lwangu Oscar Kegode Lwangu Estate of Fiona Kakadinya Lwangu Allan Egadize Lwangu
2.	Nandi Tea Growers Sacco – On 0570037	Equally	Sophie Feis Lwangu Peter Ijaika Lwangu John Lwangu Misoga Pamela Lwangu Mary Jahenda Lwangu Estate of Kennedy Kibisu Lwangu Amy Mideva Lwangu Oscar Kegode Lwangu Estate of Fiona Kakadinya Lwangu Allan Egadize Lwangu

17. For those reasons, a certificate of confirmation of Grant be and is hereby issued sequenced within the above model in consonant with Section 35, 36, 37 and 38 of the Law of Succession Act. The administrators have a duty to comply with Section 83(g) of the Law of Succession Act to submit a probate account to the registry of the High Court within six months from today's date in default of which this court can cite them for contempt. I must say that on the face of these proceedings, the other beneficiaries with leave of the court in the event the administrators abrogate or derogates from their legal obligations, leave be and is hereby granted to the Deputy Registrar of the High Court to take custody of the survey report, the mutation, certificate of Grant to convene a meeting and have the transmission instruments executed with finality.
18. For purposes of monitoring compliance on transmission of the estate, a status conference be held before the Deputy Registrar on 16<sup>th</sup> December, 2024.
19. The costs of the matter shall be in the cause.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 11<sup>TH</sup> DAY OF OCTOBER 2024**

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**R. NYAKUNDI**

**JUDGE**

In the Presence of:

Mr. Odhiambo for the Petitioner

