



REPUBLIC OF KENYA



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In re Estate of the Late Emily Njeri Ng'ang'a (Deceased) (Succession Cause 398 of 2013) [2024] KEHC 12282 (KLR) (11 October 2024) (Judgment)

Neutral citation: [2024] KEHC 12282 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 398 OF 2013
SM MOHOCHI, J
OCTOBER 11, 2024**

ESTATE OF THE LATE EMILY NJERI NG'ANG'A (DECEASED)

BETWEEN

LEAH NJOKI WAKIBI PETITIONER

AND

ZLOISE ETHER WANJIKU (SUED AS ADMINISTRATOR OF THE ESTATE OF MIRIAM NG'ENDO FRANCIS) PETITIONER

AND

ISAACK KAMAU INTERESTED PARTY

JUDGMENT

1. The matter before Court relates to the estate of the deceased herein. Letters of Administration were issued to Miriam Ng'endo Francis on 27th August, 2013 and subsequently confirmed on 19th March, 2019. The Petitioner has been sued in her capacity as the legal representative of the estate of the late Miriam Ng'endo Francis.
2. Before this Court for determination is an Application by the Applicant dated 6th July, 2019 brought under Sections 68 and 76 of the [Law of Succession Act](#) and Rule 44 (i) of the Probate and Administration Rules seeking: -
 - i. Spent
 - ii. That the grant of letters of administration issued to Miriam Ng'endo Ngure Made on the 30th day of July, 2014 and any other grant of letters of administration flowing therefrom be revoked and/or annulled
 - iii. Spent



- iv. That the Applicant be allowed to file out of time Notice of Objection, Answer to Petition and Cross-Application to Petition for letters of administration intestate filed on 21st June, 2013
 - v. That the Petitioner/Respondent does pay the costs of this application.
3. The Application is supported by the sworn affidavit of the Applicant of even date. The Application is premised on the grounds that, the Grant was fraudulently obtained through concealment of material facts and that the Objector together with her siblings were left out of the proceedings and disinherited in the distribution. It was also the Objectors argument that the Petitioner was not the daughter of the deceased and therefore a stranger to the estate.
 4. It was the Objector's averment that the deceased left behind two assets that is Shawa/Rongai Block 1/99 and Elburgon/Elburgon Block 3/133.
 5. The Petitioner's Response is not on record but has been hinted at by the Objector in her submissions to have been done through a Replying Affidavit sworn on 25th November, 2019 and a Further Affidavit sworn on 21st September, 2020.
 6. The Interested Party opposed the Application vide Replying Affidavit sworn on 27th January, 2021 and averred that he is the registered owner of Elburgon/Elburgon Block 3/133 having Purchased it from Loice Esther Wanjiku and Joel Kamau Ngure vide sale agreement dated 21st June, 2018 as administrators of the estate of Miriam Ngendo. It was his case that two-tenant refused to vacate the land upon demand which prompted him to file ELC No 91 of 2019 seeking eviction orders. He stated that he was an innocent purchaser for value and family issues should not deny him his right of ownership.
 7. The matter proceeded viva voce

The Objector's Case

8. OW1, Leah Wanjiku Wakibi testified that the deceased was her mother, that they were 6 children, all borne of the same parents, namely; Rebecca Wanjiru, Joseph Gakini, Wambui Nganga, Damaris Waithera, the Objector and Francis Nganga. That their father was Benson Nganga Gakini and only the Objector is the sole surviving beneficiary. She produced as Exh-1 chief's letter dated 28th June, 2019, burial permit and death certificate No. 6381 as Exh-2. She stated that Miriam Ng'endo Ngure was not the deceased's child nor a daughter in law of the family.
9. It was her testimony that according to Miriam, the deceased lived and died in Elburgon. The Objector objected and stated that the deceased lived and died in Njoro. Miriam relied on the death certificate 0035337 dated 10th June, 2013 and letter MFI-3(a) (b) respectively. According to the chief's letter the deceased died on 13th November, 1995 but according to MFI-3a the deceased died on 3rd November, 1994. MFI 3(b) indicates that the deceased died at 90 years but according to the Objector the deceased died at 95 years.
10. It was her testimony that, the deceased lived in Matweku farm Elburgon Block 3/333, the only land she had with two plots both in her name at the time of death. She produced copies of title deed as Exh-4 (a-c). She testified that the plots belonged to their father which were then transferred to their mother's name. That the children of her brothers, Francis Ngure Nganga and Joseph Gekoni Ng'ang'a are living on the land. Photos of land and house built marked MFI-5.
11. She claimed to have no objection to her brothers' children living there. She also claimed she was not aware when the land was sold to the Interested Party or when the Petitioner filed succession cause since



- she was never served with Court documents. It was her testimony that they lived in Kiambu when she was born and when the Matweku land was bought she had already gotten married. She prays that her brothers' children continue living on the land.
12. The Objector also claimed that, she could not recognize Miriam's children, did not know about Loice or her marriage to her brother or the divorce. She was also not aware that Loice purchased Shawa Rongai Block 1/99 and Elburgon Block 3/133.
 13. It was her case further that her brother was Francis Ngure Nganga and not Francis Njuguna and he died on 26th June, 2009 and not 28th July, 2009. She claimed that she was not aware that her mother's title was used to secure a loan. That the reason she was not in a hurry to institute succession was because her brother's children were still young and in school. She was told by Emily Njeri the beneficiary in Succession Cause 183 of 2017 that they were being evicted.
 14. It was her argument that children are named after grandparents and if Loice is the child of Francis Ngure she would have been called Emily Njeri. That she did not recognize the purchaser or the purchase and if proper procedure was followed, the he would not have a problem and if he paid monthly then Loice should be refunded.
 15. In cross-examination she clarified that Wakibi is her husband having married in 1964 and Benson Nganga her father though she had not brought the baptism card and birth certificate. She also denied giving the date of death or the heirs of the deceased to the chief but admitted to being the one that collected the letter from the chief.
 16. She denied knowing Miriam Ngure or the marriage to Francis Ngure. She also denied knowledge of Divorce Case No. 21 of 1985 or that divorce was granted in February of 1985.
 17. She confirmed that the deceased bought property in Eburgon but denied knowledge of charge dated 14th November, 1991 with Barclays Bank and that she had heard of the loan in Court. She confirmed that the name Ngure is from their family.

Petitioner's Case

18. The PW1, Loice Esther Wanjiku adopted her affidavit sworn on 25th November, 2019 as well as annexures thereto as PExh 1-19. She denied knowing the Objector and that her mother Miriam had already inherited the property in dispute prior to her death. It was also her testimony that Miriam left behind children.
19. She stated that Miriam had sold the Elburgon land to Kamau though she did not know his other name. That she thereafter sold the land after she got the grant in Succession Cause No 183 of 2017 PExh-2. Miriam left behind the plot in Elburgon and 2 plots in Salгаа which have since been sold.
20. She denied knowing Emily Njeri. That the property in dispute belongs to Miriam Ng'endo who was the wife of Francis Ngure, her step-father. Francis was the son of Emily Njeri. She testified that she was not aware of where Francis used to live before he started living with her mother in their home. It was further her testimony that the Objector has no relationship with her mother.
21. In cross-examination she stated that, she had a document to show that Miriam had been married to Francis but she was never asked to produce it. She denied knowing Francis Njuguna as per the death certificate produced in PExh-3 . She stated she was referring to Francis Ngure Nganga.
22. She confirmed that as per register in PExh 9(a-c) there is no date of death indicated just the month and year as November, 1994, place of death as Elburgon Matweku Village. She also confirmed it had no



burial permit number, no date of presentation or signed by applicant neither did it have names of the applicant, the deceased or witness.

23. She also confirmed that, Gazette Notice PExh-14 indicated Miriam as the daughter of the deceased but clarified that Miriam was the daughter in law of the deceased. She confirmed she was not close with Francis and also denied knowledge of the siblings of Francis. She confirmed that of her mother's 4 children, Benjamin Ngure and Emily Njeri (deceased) were borne of Francis although she had no documents to show it.
24. She propounded that they lived in Kisumu and their mother said she bought land in Elburgon where they relocated to but had no proof that Miriam bought the properties only the demand letter dated 3rd April, 2000 PExh-4. That her mother did not follow up on the lands as per the letter.
25. She further confirmed that the caution dated 24th July 1997 PExh-7 was not used to caution the Elburgon land but stated she had produced PExh-5 though she was not aware if her mother met the members of the company. That the Charge to Barclays Bank PExh-10 is for Shawa/Rongai/Block 1/99 and Miriam paid the debts and the evidence was discharge.
26. She denied knowledge of Miriam going to have Teresia Wambui Ngure removed from the company. She denied knowledge that Francis had another family or that he was Married to Teresia Wambui Ngure. She however stated that at the time of Francis' death, he was not living with Mirriam. She confirmed that as a grandchild she had never met the deceased or had a relationship.
27. The Court on 13th February, 2024 directed parties to file written submissions. Both the Objector's and the Petitioner's submissions were dated and filed on 12th June, 2024.

Objector's Submissions

28. The Objector submitted on three issues firstly that the Objector was entitled to an order of revocation of Grant and relied on the decision in the matter of the Estate of L.A.K (Deceased) [2014] eKLR on the circumstances that a grant may be revoked and submitted that to submit that there was misrepresentation from Miriam to Court that she was a daughter of the deceased and the sole beneficiary. That further Miriam failed to notify the beneficiaries of the succession proceedings.
29. It was also the objector's argument that Miriam lacked standing to Petition for letters of administration as per the provisions of Section 66 of the [Law of Succession Act](#) and the decision in the Estate of Daniel Njuguna Ng'ang'a (Deceased) [2020] eKLR as the objector ranked highest. That all the beneficiaries of the estate were left out of the proceedings despite the grandchildren living in the land.
30. Secondly, on whether the objector is entitled to leave to file out of time Notice of Objection, Answer to Petition and Cross-Application to Petition for letters of administration intestate it was submitted there were unfortunate events that preceded the application brought out in the hearing warranting issuance of the order. Reliance was placed in the case of Lukah Mai Kasuni v Simon Kioko Mai & Another [2004] eKLR where the Court allowed enlargement of time pursuant to Rules 60 and 67 of the Probate and Administration Rules so as no one interested in the estate is not locked out and is heard.
31. Thirdly the Objector sought to be awarded costs in line with Rule 69 and history of the matter.

Petitioner's Submissions

32. The Petitioner submitted on only one issue on whether the summons for revocation of grant was merited. The Petitioner also relied on the Case of the matter of the Estate of LAK supra submit on instances a grant can be revoked.



33. Reliance was also placed in the decision in *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.
34. It was the Petitioner's argument that the Miriam Ng'endo legally and procedurally obtained the grant and the particulars of fraud or concealment of facts are unfounded and are just allegations against a deceased person with no proof. That the objector had not shown interest in objecting to the letters of administration and their actions are therefore an afterthought. The Court was invited to consider the position in *Re Estate of Benjamin Kiregenyi Muri (Deceased) [2022] eKLR* and dismiss the summons as it has not met the threshold stipulated under Section 76 of the [*Law of Succession Act*](#).

Analysis and Determination

35. This is unique summons for revocation of grant by an Applicant claiming to be the daughter of the deceased against an administrator to the estate of Miriam Ng'endo Francis (Deceased) who was the Administrator in this succession cause.
36. In simple language the Administrator herein accused of transgression is since deceased, the Court was however not able to tell when Miriam Ng'endo Francis died. So, the Objector sought to showcase the transgressions committed by Miriam Ng'endo Francis (Deceased) way back on 27th August 2013 almost eleven years ago.
37. Upon Confirmation of Grant on the 19th March, 2019 Miriam Ng'endo Francis (Deceased) distributed all the assets in the estate of the deceased which then comprised of Shawa/Rongai Block 1/99 and Elburgon/Elburgon Block 3/133 the said properties were disposed off by the petitioner after she acquired a grant in Succession Cause No 183 of 2017.
38. No wrongdoing is directly imputed upon the petitioner and no wrongdoing is imputed in the acquisition of the grant by the petitioner in Succession Cause No 183 of 2017 but rather the conduct of the Petitioner's mother (deceased) prior and up to the 27th August 2013 when the Grant herein was issued.
39. The Interested Party on his part contends that he is the registered owner of Elburgon/Elburgon Block 3/133 having Purchased it from Loice Esther Wanjiku and Joel Kamau Nguni vide sale agreement dated 21st June, 2018 as administrators of the estate of Miriam Ngendo. It was his case that two-tenant refused to vacate the land upon demand which prompted him to file ELC No 91 of 2019 seeking eviction orders. He stated that he was an innocent purchaser for value and family issues should not deny him his right of ownership.
40. The Objector grounds the summons on premise that:
 - i. the Grant was fraudulently obtained through concealment of material facts
 - ii. the Objector together with her siblings were left out of the proceedings and disinherited in the distribution.
 - iii. the Petitioner was not the daughter of the deceased and therefore a stranger to the estate.
41. The Objector did not disclose to this Court the pre-existing litigation ELC No 91 of 2019 where the interested party sought to evict some resisting tenants whom I would deduct are the offspring of Francis Nguni Nganga and Joseph Gekoni Ng'ang'a.



42. It would Appear that Francis Ngure Nganga who died on the 28th July 2008 might have had more than one wife but the evidence was unclear. What is clear is that Francis Ngure had a long running dispute with Miriam over the Properties known as Shawa/Rongai Block 1/99 and Elburgon/Elburgon Block 3/133 culminating in an agreement dated 2nd October 1979 where he was to transfer the properties to Miriam’s name but he did transfer the same to his mother the deceased herein.

43. The jurisdiction of the Probate Court is always to distribute free estate of the deceased. The Law of Succession Act in Section 47 provides for jurisdiction of the High Court in respect of matters falling under the Act as follows: -

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”

44. Section 76 of the Law of Succession Act provides for Revocation or annulment of grant 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.”

45. Rule 41(3) of the Probate and Administration Rules provides that: -

“Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the Court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate of the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71(2) of the Act, proceed to confirm the grant”.



46. In the case of Priscilla Ndubi and Zipporah Mutiga vs Gerishon Gatobu Mbui, Meru Succession Cause No. 720 of 2013, held: -

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.”

47. In re Estate of Stone Kathuli Muinde (Deceased) [2016] eKLR the Learned Judge held tha: -

“With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate Court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.

Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil Court in accordance with the provisions of the *Civil Procedure Act* and the Civil Procedure Rules. This could mean filing suit at the magistrates’ Courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate Court in the succession cause so that that Court can give effect to it”.

48. In the Matter of the Estate of L.A.K. (Deceased) [2014] eKLR the Court has the occasion to further the circumstances that a grant may be revoked: -

“Revocation of grants is governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”

49. The power to revoke a grant is discretionary as was restated in the case of Albert Imbuga Kisigwa vs Recho Kawai Kisigwa, Succession Cause No.158 of 2000, Mwita J. noted thus:

“(13) 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 to revoke or annul a grant. And when a Court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

50. Section 83(g) of the *Law of Succession Act* obligates the administrator(s) of an estate to, within six months of confirmation of grant or longer period as the Court may allow, complete the administration



of the estate, and to produce to the Court a full and accurate account of the complete administration. This Court expects the Administrators to have concluded the probate by 20th September 2019 the Grant having been confirmed on the 19th March, 2019.

51. No evidence has been presented on fraud (if any) and that it is apparent that, there existed historical ownership dispute over the parcel of land known as Shawa/Rongai Block 1/99 and Elburgon/Elburgon Block 3/133 and that the resultant succession herein has nothing indicative that the proceedings to obtain the grant were defective in substance or 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 or 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.
52. This Court observes that while the objector had maintained that she was the sole survivor in the estate of the deceased and that her deceased brothers had children living on Elburgon/Elburgon Block 3/133 no one has petitioned to be issued with a grant of representation in the estates of Francis Ngure Nganga and Joseph Gekoni Ng'ang'a staking a claim on the share of the deceased herein.
53. The Objector in her evidence prays that her brothers' children continue living on the land Elburgon/Elburgon Block 3/133 and that she moved the Court on behalf of her brother's children.
54. This Court takes a dim view of the never ending probates that are reopened many years after confirmation of grant and distribution of the estate.
55. The threshold for revocation under such historical circumstances would entail presentation of solid evidence of fraud, ideally the same ought to have been referred to the police for criminal investigations or solid evidence of concealment from the Court of something material to the case or that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.
56. In this instant summons it is apparent that there exists a live dispute under consideration in the Nakuru ELC No 91 of 2019, this Court is unpersuaded that the objector has satisfied the conditions for grant of the orders sought. In fact, the Application is a decoy litigation seeking to extend and prolong an ownership dispute that subsisted before the demise of the Administrator, her former husband and the deceased.
57. This Court in exercise of its inherent Jurisdiction necessary for the ends of justice or to prevent abuse of the process of the Court hereby issues the resultant orders:
 - i. The Summons for Revocation of grant dated 6th July, 2019, is found to be lacking in merit and is accordingly dismissed.
 - ii. This succession cause shall be marked as closed.
 - iii. This being a family matter, parties shall bear their respective costs.

It is so Ordered.

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 11TH OCTOBER 2024.

MOHOCHI S.M

JUDGE

