



**In re Estate of Daniel Kago Macharia alias Daniel Kago alias Kago Mukore
alias Daniel Kago Mukore (Deceased) (Succession Cause 2859 of 2012)
[2024] KEHC 15541 (KLR) (Family) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 15541 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 2859 OF 2012

EKO OGOLA, J

OCTOBER 3, 2024

BETWEEN

VALENTINE KANINI KAGO APPLICANT

AND

GLADYS WAMBUI KAGO 1ST RESPONDENT

ESTHER WANJIRU KAGO 2ND RESPONDENT

MERCY NDUATA KAGO 3RD RESPONDENT

AND

BLAISE MUCHINA KAGO INTERESTED PARTY

RULING

1. The Summons for revocation before this court is dated 19th December 2022. The applicant prays for the following orders:-
 - a. Directions be given as to what persons may be served with the Summons and affidavits herein and the grant of probate of administration of the estate of the deceased herein be and is hereby administered by the applicant.
 - b. The grant of probate letters of Administration issued on the 6th August 2013 to the petitioners/ respondents be and is hereby revoked.
 - c. This Honourable Court be pleased to set aside, review and or vary the judgment dated 27th February 2020 and delivered on the 2nd March 2020 and all consequential orders issued therein pending hearing and determination of the application herein.



- d. This Honourable Court be pleased to grant temporary orders of stay of execution emanating from the said judgment therein pending hearing and determination of the application herein.
 - e. This Honourable Court be pleased to order the inclusion of Valentine Kanini Kago (the beneficiary/applicant) as co-administrators of the estate of the deceased herein.
 - f. The administrators/respondents herein do give a full account of any portion of the estate of the deceased they have since assembled and or disbursed if any.
2. In her affidavit in support of the summons, the applicant deposed that the deceased died in 2012. He was survived by four houses. She is from the 3rd house. According to the applicant, she was never informed about the proceedings to obtain grant of letters of administration. She never instructed any counsel to represent her in any proceedings. The applicant deposed that due to concealment of facts, the grant was issued to members of the other houses, whilst the members of the 3rd house have been left disinherited. She deposed that her mother, now deceased, took part in developing the deceased estate. Therefore, the 3rd house should not be disinherited.
 3. On record are Affidavits sworn by Moses Kungu and Stephen Mbuguiro Mwangi. They allege to have been dear friends of the deceased. They narrated their friendship with the deceased and how the deceased met the widows from all the houses. He supported the application. I have read and considered all the averments in the said affidavits.
 4. On record is also an Affidavit by Samuel Kungu Kuria, the deceased nephew. He narrated the murder of the 3rd widow and the relationship of the deceased with the other widows. He deposed that the deceased gifted the 4th widow with plot 1808 and Blaise Muchina was bequeathed plot 1806 where the 3rd widow was buried. He deposed that the developments on plots 1212 and 1213 were done by the deceased and the 3rd widow. I have read and considered all the averments in the affidavit.
 5. In response, the 1st and 2nd respondents filed a Replying Affidavit sworn by the 1st respondent. She denied the applicant's averment and deposed that the application is a replica of applications by the applicant's brother Blaise Muchina Kago. According to the 1st respondent, the 3rd house should not be the sole beneficiary of the deceased estate. She deposed that this court distributed the deceased estate equally amongst all the beneficiaries, a position they had supported all along.
 6. The 1st respondent denied the allegations that the applicant was not informed of these proceedings. She deposed that the applicant was the main financier of the legal process and would constantly call from abroad during family meetings for briefing, updates, and concurrence.
 7. The 1st respondent deposed that the 3rd family was issued with citations to apply for a grant of letters of administration. She deposed that the applicant was initially reluctant to participate in the succession cause. According to the 1st respondent, this application is a guise to delay the distribution of the estate as per the judgment of this court.
 8. The 3rd respondent opposed the application by way of a Replying Affidavit. She denied the allegation that the 3rd house was unaware of the proceedings since Blaise Muchina, the applicant's brother swore an affidavit in 2015 stating, "That I am aware that the 1st and 2nd wives of my late father are the administrators herein having been appointed by family members to spearhead the administration in spite of lack of support of the 4th wifeThat I vividly remember that during the filing of this succession cause, the said administrator did everything within their power to bring every beneficiary on board to bring their consent but some of the beneficiaries refused to do so without giving any reasons..."



9. The 3rd respondent deposed that in the court's ruling dated 27th July 2022, the court stated that if the parties were aggrieved with the judgment of the distribution of the estate, they had every right to appeal. The applicant deposed that this application is similar to Blaise Muchina's application that was dismissed.
10. In her further affidavit, the applicant deposed that the 3rd respondent deposed that the administrators failed to bring everyone on board, and that is why they hurried in submitting their consent without her involvement. She further deposed that the 3rd house did not propose their mode of distribution. Furthermore, the applicant deposed that in the judgment, the court had noted that the three administrators were unable to show how each of them contributed to the acquisition or development of the said properties.
11. The application was canvassed by way of written submissions

Determination

12. I have read and considered the application, the rival affidavits and submissions, and the entire record of the Court. The applicant prays that the grant of letters of administration issued to the respondent be revoked. The main ground is that she was not informed of the proceedings for obtaining the grant. Hence, the 3rd house did not propose the mode of distribution. The applicant is also aggrieved with the judgment of this Court on the distribution of the deceased estate for several reasons, but the major one is that the 3rd widow put in more effort in developing the estate compared to the other houses.
13. Section 76 of the *Law of Succession Act* provides for revocation of grants. It stipulates 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.”
14. I have perused the record before me relating to the process of application for a grant. On record are Citations to accept or refuse letters of administration intestate and an affidavit by the 1st and 2nd respondents explaining that the applicant, her brother, and two others had refused to execute the



- consent. The citation was issued to both the applicant and Blaise Muchina. The grant was issued to the respondents in 2013.
15. Furthermore, Blaise Muchina swore an affidavit dated 4th February 2015 where he deposed that Citations were duly issued to all beneficiaries who had not consented to the respondents petitioning the court for a grant. Blaise Muchina in the said affidavit had deposed that there was consensus between him and his siblings together with the 1st and 2nd house, that the grant should not be revoked by the 4th widow. This meant that, indeed the 3rd House was in the loop about the proceedings in court.
 16. The applicant has contended that she was unaware of the proceedings yet has not denied being issued with the citation.
 17. From the foregoing, I am not satisfied that the applicant and the 3rd house were unaware of the proceedings to obtain a grant. Furthermore, I am of the view that the applicant, the 3rd house, knew of the proceedings that led to the judgment of this Court distributing the estate. The upshot is that the applicant has not proved on a balance of probability that the grant should be revoked in accordance with Section 76 of the *Law of Succession Act*.
 18. On the prayer to review, vary and set aside the judgment of this Court dated 27th February 2020, the law according to Rule 63 of the Probate and Administration Rules is that any party seeking review of orders, in a probate and succession matter, is bound by the provisions of Order 45 of the Civil Procedure Rules. The substantive provisions of Order 45, state as follows:
 1. Any person considering himself aggrieved—
 - a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”
 19. Order 45 provides for three circumstances under which an order for review can be made. To be successful, the applicant must demonstrate to the court that there has been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. A party may successfully apply for review, secondly, if he can demonstrate to the court that there has been some mistake or error apparent on the face of the record. The third ground for review is worded broadly: an application for review can be made for any other sufficient reason.
 20. The applicant is aggrieved with the judgment of this Court. She knew of these proceedings, and if she had been diligent enough, she would have duly participated in them. Furthermore, Order 45 stipulates that an application for review must be made without unreasonable delay. The judgment was delivered in March 2020. The application for review was made in December 2022. The applicant has not given reasons for this unreasonable delay. From the foregoing, I am satisfied that the application has not met the threshold set under Order 45 of the Civil Procedure Rules.
 21. The upshot is that the Summons for revocation dated 19th December 2022 is dismissed for lack of merit. Costs be in the cause.



Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2024

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E.K. OGOLA

JUDGE

In the presence of:

Ms. Maira h/b for Mr. Ndegwa for the Applicant

Mr. Isayi h/b Mr. Titi Ng'ang'a for the Respondents

Gisiele Muthoni Court Assistant

E. OGOLA J.

