



In re Estate of Esther Wangari Ndegwa (Deceased) (Succession Cause 637 of 2015) [2024] KEHC 11901 (KLR) (3 October 2024) (Ruling)

Neutral citation: [2024] KEHC 11901 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 637 OF 2015
SM MOHOCHI, J
OCTOBER 3, 2024**

IN THE MATTER OF THE ESTATE OF ESTHER WANGARI NDEGWA (DECEASED)

BETWEEN

LEORNARD WAKABA NDEGWA PETITIONER

AND

ERICKSON WAKABA NDEGWA OBJECTOR

RULING

1. Esther Wangari Ndegwa died intestate on 1st of May, 2012. Letters of Administration were issued to Leonard Wakaba Ndegwa on 13th April, 2016 and subsequently confirmed on 15th December, 2020 with a Certificate of Confirmation issued thereto. As per the record, the deceased was survived by children namely Jecinta Wairimu Ndegwa, Leonard Wakaba Ndegwa, Pauline Muciku Ndegwa and Bernice Ndegwa.
2. The Objector through Summons dated 22nd March, 2024 brought under Sections 47 and 76 of the [Law of Succession Act](#) and Rules 44(1), 49, and 73 of the Probate and Administration Rules seeks the following
 - a. Spent
 - b. That the Grant of Letters of Administration intestate issued 25th April, 2023 and Amended Grant of Letters of Administration intestate issue on 13th April 2016 respectively in the above-mentioned suit be revoked;
 - c. That the revocation objection proceedings be heard by way of viva voce evidence;
 - d. That the objector/Applicant be enjoined to this cause as one of the beneficiaries of the deceased persons estate in place of his mother Jecinta Wairimu Ndegwa (Deceased);



- e. That the costs of this Application be provided for
3. The Application was premised on the grounds on its face and the Supporting Affidavit of Erickson Wakaba Ndegwa of even date. In summary, the main grounds are that Objector was included in the list of beneficiaries and was given a share as a son of the deceased. That all the beneficiaries were apportioned a share except Jecinta Wairimu Ndegwa (Deceased) and now he seeks to be apportioned a share of his mother on behalf of his brother Martine Njane.
 4. The Petitioner in opposition through the Replying Affidavit sworn on 20th June, 2024 deposed that a consent was entered on 15th December, 2020 by the Pauline Muciku Kamau, Bernice Ndegwa and himself over distribution of the estate of the deceased which was adopted. That the Objector was allocated properties on behalf of his mother and to hold in trust on behalf of his brother.
 5. He added that the Consent was never challenged prior and was only challenged when the Court issued directions for issuance of the original documents. It was his case that the Grant need not be revoked as the Objector is not complaining that he was unaware of proceedings or that he was shut out of the process or that he was inadequately allocated the deceased properties.
 6. By Consent the Application was disposed by way of Submissions. The Objector filed submission on 21st August, 2024 whereas the Petitioner filed on 6th September, 2024.

Objector's Submissions

7. Counsel submitted on one issue on whether the Court should grant the orders sought, reliance was placed *in Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where the Court elucidated on the principles under Section 76 of the *Law of Succession Act*. Counsel argued that in the case of the Objector the process was marred with fraud and misrepresentation or concealment of matter
8. It was further argued that the deceased considered the Petitioner as a son so he benefited as one however it was concealed that the Objector's mother was child of the deceased hence the purpose of the instant application.
9. It was argued that Section 41 of the *Law of Succession Act* provided of survivors of the heirs of an estate. Counsel relied *in Re Estate of Tuaruchiu Marete (Deceased)* [2019] eKLR as was cited *in Re Estate of Ashford Miriti (Deceased)* [2021] eKLR where the court declined to revoke a Grant but ordered for an amendment.

Respondent's Submissions

10. That grandchildren do not inherit directly from their grandparents unless their parents are deceased and they step in their shoes to take up the shares and reference was placed *in re Estate of Imoli Lubatse Paul (Deceased)* [2021] eKLR
11. The Petitioner also argued that the Objector has not met the prerequisites for revocation of a grant under Section 76 and as discussed *Re Estate of L.A.K. (Deceased)* [2014] eKLR. Counsel further relied on in *Albert Imbuga Kisugwa v Recho Kawai Kisigwa* [2016] eKLR to submit that the power to revoke a grant was discretionary.

Analysis and Determination

12. Having considered the application, the affidavits both in support of and against as well as the submissions filed thereto the only issue for determination is whether the application is merited.



13. Section 76 of the [Law of Succession Act](#) provides for Revocation of Grant as well as Rule 44 of the Probate and Administration Rules. Section 76(a), (b) and (c) of the [Law of Succession Act](#) provides as hereunder:

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;
14. Courts have the discretionary power to revoke or annul a grant however this discretionary power must be judiciously exercised taking into account the circumstances of the case, principles of justice and equity, common sense and within the guidelines laid down under Section 76.
15. The Court, derives guidance from the holding in [Jamleck Maina Njoroge v Mary Wanjiku Mwangi](#) [2015] eKLR wherein the Court held that it was upon the party seeking revocation of a grant to prove the elements set out under Section 76 of the [law of succession Act](#)
16. In this particular case, the reasons cited for seeking revocation of grant are that one of the heirs who passed on in during the pendency of this cause Jecinta Wairimu Ndegwa (Deceased) was not apportioned a share of the estate and that the Objector was claiming his mother's share on behalf of his brother. The Objector was listed in the consent to the mode of distribution and the Certificate of Confirmation of Grant and he argued that the reason he was listed as a beneficiary is because the deceased took him as son.
17. Both in the Petition and in the Summons for Confirmation of Grant, the Petitioner, listed all the children of the deceased including Jecinta Wairimu Ndegwa It would have been important for the parties to inform the Court when Jecinta Wairimu Ndegwa passed away and her personal representative. The Petitioner was nevertheless required by law to list all the beneficiaries, the record shows he did.
18. Section 41 of the [Law of Succession Act](#) enables grandchildren to step into the shoes of their parents in succession if the parents are deceased. It does not envisage where a grandchild directly inherits from a deceased unless the grandchild proves that he was maintained by the deceased up to the point of death. See [Re Estate of Wabome Njoki Wakagoto](#) [2013] eKLR. The Objector got into the shoes of his deceased's mother upon her demise and the assertion that the deceased viewed the Objector as a child is not backed up by any evidence and can therefore not hold water.
19. The Petitioner stated under oath that Objector stood in place of Jecinta Wairimu Ndegwa and was holding the property in trust for his brother, no evidence has been tabled to dislodge this notion. In any case of Jecinta Wairimu Ndegwa's two children; why single out the Objector and leave out his brother? It is illogical to single out one grandchild over another and throughout the proceedings fail to mention the Objector as child of the deceased but only do so at the point of confirmation of grant.
20. It is noteworthy that the consent dated 10th December, 2020 was adopted as the mode of distribution which informed the Confirmation of the Grant. All the surviving beneficiaries signed the consent. At no point has the Objector stated that he was not aware of the process or that there was an illegality in



the process or the consent was entered into through fraud or coercion. The Objector was not listed in any of the pleadings including the summons for Confirmation of Grant he can therefore not claim to have been considered as a son of the deceased when his name appeared at the tail end of the. The Court is not convinced that the Objector is being candid.

21. Having considered the evidence placed before this Court, Objector has not proved the existence of any of the ingredients which would persuade this Court to revoke the grant. It is the Court's considered view that the Objector is attempting to have his cake and it.
22. The upshot of the above is that the application dated 22nd March, 2024 lacks merit and it's hereby dismissed.
23. The administrator should take steps to finalize the process as per the confirmed grant without any further delay.
24. No orders as to costs

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 3RD DAY OF OCTOBER, 2024.

MOHOCHI SM.

JUDGE.

