



**In re Estate of Kenneth Ng'ang'a (Deceased) (Succession Cause
E027 of 2022) [2024] KEHC 16650 (KLR) (1 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 16650 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
SUCCESSION CAUSE E027 OF 2022
JL TAMAR, J
OCTOBER 1, 2024**

IN THE MATTER OF THE ESTATE OF KENNETH NG'ANG'A (DECEASED)

BETWEEN

MARY NYAMBURA MBATHIA APPLICANT

AND

LUCY NANCY WAITHIRA RESPONDENT

RULING

1. This ruling is in respect of three applications variously filed in this matter. The first application is dated 20th may 2022 and filed in court on 23rd may 2022 and the second application is dated 12th July 2022 both of which seeks revocation/annulment of Grant issued to the respondent dated 11th may 2022
2. The third application is dated 16th of September 2022 and is filed by the respondent in opposition to the two applications for revocation and annulment of the aforesaid Grant.

Application dated 20th may 2022

PARA 3.

This application is brought under section 76 of the *Law of Succession Act* Cap 160 Laws of Kenya and Rule 44 of the *Probate and Administration Rules* 1980. The applicant Mary Nyambura Mbatia asked the court to revoke the Grant of letters of administration issued to the applicant and in the alternative render it inoperative and/or nugatory. The application is premised on the grounds set out in the body of the application and the affidavit of Mary Nyambura Mbatia in support of the application.

Application dated 12th July 2022

4. This application by Lydia Njeri Karanja expressed under the same provision of the law as the first application above, similarly seeks the revocation of the same Grant issued to the respondent and that



the applicant herein, Lucy Nancy Waithira and Mary Nyambura Mbatia execute a petition for Grant of letters of administration intestate as co-administrators over the estate of the deceased.

5. The applications are premised on the grounds that the respondent fraudulently obtained the Grant of letters of administration intestate by concealing the fact that there were other beneficiaries entitled to inherit from the deceased estate; that the respondent never notified the applicants nor sought their consent before obtaining the Grant and that the respondent attempted to access funds that were in the bank account under the deceased name without a confirmed grant.
6. Further, the respondent omitted a large part of the estate that is rightfully due to all the beneficiaries with the aim to disinherit the beneficiaries who are listed as well as those that were not listed in the petition for letters of administration.
7. Mary Nyambura Mbatia depones in her affidavit sworn on 20th May 2022, that upon the passing of the deceased on 25th December 2018, the family held a meeting and it was agreed that she together with the respondent Lucy Nancy Waithira being widows of the deceased representing the two houses do petition for letters of administration. Unknown to the applicants and reneging on the earlier understanding, the respondent proceeded on her own and petitioned for letters of administration intentionally and deliberately leaving out the other beneficiaries. She avers that the chief's letter used to petition for letters of administration is different from the one that was jointly sought by the applicant and the respondent.
8. Lydia Njeri Karanja, depones that she is the daughter and beneficiary of late father's estate and remembers that the Respondent and Mary Nyambura Mbatia her mother was tasked in a family meeting to take out letters of administration. When the two failed to petition for letters of administration, she filed a citation to have them compelled to do. She recalls the respondent requesting family members/beneficiaries for their digital signatures for purposes of presenting them to the chief, but used the signatures procured to petition for letters of administration excluding her and the other applicant. She avers that it would be in the best interest of the family that the applicant Lydia Njeri Karanja, the respondent Lucy Nancy Waithira and Mary Nyambura Mbatia be appointed jointly as Administrators of the estate of Kenneth Ng'anga.

Application dated 16th September 2022

9. The respondent/applicant opposed the two applications for revocation/annulment of the Grant dated 20th May 2022 and 12th July 2022 and filed summons to strike out the two applications and sought the following orders;
 - i. That the court be pleased to strike out the Applicant/Respondents objection to making of grant dated 16th May 2022 (sic).
 - ii. That the court be pleased to strike out the Applicant/Respondents summons for revocation or annulment of Grant dated 12th July 2022
 - iii. That the court be pleased to issue such further directions and/or orders as may be just and expedient
10. The application is based on the grounds on the face of it and on the supporting affidavit of Lucy Nancy Waithira sworn on 16th September 2022. The applicant contends that the objection to the making of grant is improper having been lodged outside the time lines prescribed by section 68 (1) of the [law of succession Act](#) and without the leave of this court. That vide Gazette Notice no 4049 published on 8th of April 2022, in Vol.CXXIV No 63 it was clear that the application for grant of letters of administration



in respect of the deceased estate had been lodged in court and that letters of administration issued to the applicant were lawful and proper. The applicants further state that the applicants are groundless, and discloses no cause of action in law or inequity. The same is brought in bad faith and for improper motive. That there are no issues raised in the applications which are incapable of being addressed prior to confirmation of grant and may be addressed by section 26 to 29 of the Law of succession Act to make provisions for the dependants not adequately provided for on intestacy.

11. The respondent /applicant supporting affidavit sworn on 16th September further buttressed the grounds upon which the application is premised.
12. As regards the application for revocation/annulment of Grant dated 20th May 2022, the Respondent/applicant urges the court to find that the same irregular and inadmissible having been premised on perjury, fabrications and forged documents. The chief's letter is mentioned as one such document forged. That this court cannot therefore countenance an invitation to adjudicate matters or sustain proceedings founded on falsified documentation and outright forgeries.

Submissions.

13. The cause came up for directions on several occasions before my Sister S.N. Mutuku J. as parties sought more time to engage their respective clients with a view to having the matter settled outside the court. The efforts came to nought hence the directions that the three applications do proceed by way of written submissions.
14. I have given due considerations to the three applications the subject of this ruling as well as the submissions on record. From the court filings and in my view, the facts are not in dispute. The deceased Kenneth Ng'ang'a died intestate on 25th December 2018 domicile in the republic of Kenya within this court's jurisdiction. He left behind two surviving spouses Lucy Nancy Waithira and Mary Nyambura Mbatia. I say this because throughout the corpus of documents filed in court by both parties there is not a single averment by the respondent to the contrary. The reference to Mary Nyambura Mbatia as the other wife of the deceased has not been controverted whatsoever nor is there any denial that the other beneficiaries left out are children of the deceased. Indeed, in the petition for letters of administration filed by the respondent on 17th March 2022, the applicant Lydia Njeri Nganga is listed as a daughter of the deceased.
15. The respondent Lucy Nancy Waithira's contention is procedural and technical in nature. That the applicants filed the application for revocation of the Grant outside the time provided for by section 68 of the law of succession. This submission by the respondent in my view relates to the application dated 16th May 2022 which is not the subject of this ruling. The court had on 31st January 2023 and on 15th July 2024 directed the parties to submit on the three-applications set out earlier in this ruling.
16. The respondent contends that the documents in support of the applications are forgeries and therefore inadmissible and cannot be a basis for annulment of the Grant. The letter annexed to the applicant affidavit being a purported letterhead of an assistant chief is one such forgery according to the respondent. It is not possible at this stage of the proceedings to determine whether or not the documents relied upon by both parties were forged or obtained fraudulently. This can only be done *vive voce*. The respondent has not denied or refuted the averment contained in the sworn affidavit of Lydia Njeri Karanja and the annexure marked Ink/ra/ 01 of a meeting held on 3rd May 2019 in Kitengela, the deceased residents, where among other things it was agreed that the wives of the deceased will be administrators. The respondent according to the minutes of the meeting was present.
17. The law of succession Act Cap 63, Laws of Kenya provides for revocation of Grant under section 76, which states as follows;



- a. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decide, either on application by interested party or of its own motion;
 - b. That the proceedings to obtain the grant were defective in substance;
 - c. That the grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case;
 - d. That the grant was obtained by means of untrue allegations of fact essential in point of law to justify the grant notwithstanding that the allegations was mad in ignorance or inadvertent
 - e. That the person to whom the grant was made has failed, after due notice and without reasonable cause either; to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order allow; or to proceed diligently with the administration of the estate ;or to produce to the court, within time prescribed, any such inventory or account of administrations is required by the provisions of paragraph (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particulars; or
 - f. That the grant has become useless and inoperative through subsequent circumstances.
18. The grounds upon which a Grant may be annulled is set out clearly in law and a party moving the court seeking that the Grant be revoked must bring himself/herself within the parameters of the law and demonstrate interest in the cause and establish the existence of the grounds upon which the Grant is impugned. In the context of a probate an interested person is one who has an interest in the estate of a deceased person and includes; spouse(s) beneficiaries, heir devisee, child, creditor and any other person that has a right in or claim against the estate of the deceased. The black law dictionary defines an ‘interested party ‘as one who has a recognizable stake in a matter. There is no doubt that both Mary Nyambura Mbatia and Lydia Njeri Karanja being wife and daughter of the deceased are such interested as to have a standing to apply for revocation orders.
19. Applying the above test on the matter at hand, the following are then issues for determinations
- i. Whether the Grant dated 11th may 2022 was obtained fraudulently by of false statement or by concealment from the court of something material to the case.
 - ii. Whether the Grant was obtained by means of untrue allegations of facts essential in point of law to justify the Grant notwithstanding that the allegations was made in ignorance or inadvertent.
20. A perusal of the court file and specifically the petition for grant of letters of administration dated 15th march 2022 and filed in court on 17th march 2022 by the respondent Lucy Nancy Waithira outrightly left out the applicant Mary Nyambura Mbatia as one of the surviving windows of the deceased. This is despite there being clear and uncontroverted evidence that applicant was one of the deceased spouses. Failure to disclose the identity of all persons beneficially entitled to the estate of the deceased and especially the applicant being the other wife of the deceased is a serious concealment of material fact essential in point of law and amounts to fraudulently making a false statement envisaged by section 76



of the law of succession. In *Samuel Wafula wasike vs Hudson Simiyu Wafula* C.A 161 OF 1993 the court of appeal observed that

“ A Grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable to revocation”

21. Accordingly, I find that the applicants have made sufficient cause for revocation of Grant made on 11th may 2022 in favour of the respondent Lucy Nancy Waithira on the grounds that;
 - i. The Grant dated 11th may 2022 was obtained fraudulently by false statement or by concealment from the court of something material to the case and
 - ii. The Grant was obtained by means of untrue allegations of facts essential in point of law to justify the Grant notwithstanding that the allegations was made in ignorance or inadvertent.
22. The Grant of letters of administration dated 11th may 2022 issued to Lucy Nancy Waithira be as is hereby Revoked/Annuled. The applications dated 16th September 2022 to strike out summons for revocation/annulment of grant is dismissed.

Section 66 of the law of succession provides that;

‘When the deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interest of all concerned, be made, but shall, without prejudice to the discretion, accept as a general guide the following order of preference; surviving spouse or spouses with or without association with other beneficiaries and other beneficiaries entitled to the intestacy’

23. And pursuant to the above provision of the law, I appoint the applicants Mary Nyambura Mbatia, Lydia Njeri Karanja and one other adult child to be identified by Lucy Nancy Waithira as joint administrators with the Respondent (Lucy Nancy Waithira) of the estate of Kenneth Ng’aNg’a.
24. That the joint administrators herein appointed do file within 30 days of today’s order affidavits on the mode of distribution in readiness for confirmation of the grant.
25. The matter shall be mentioned on 25th November to confirm compliance.
26. This being a succession matter, there shall no adverse order as to cost.

DATED AND DELIVERED AT KAJIADO THIS 1ST DAY OF OCTOBER 2024

JOHN. T. LOLWATAN

JUDGE

