



REPUBLIC OF KENYA



**Kinyua & 3 others v Njoroge (Succession Cause E1209 of 2022)  
[2024] KEHC 12883 (KLR) (Family) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12883 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E1209 OF 2022  
PM NYAUNDI, J  
OCTOBER 18, 2024  
IN THE MATTER OF THE ESTATE OF NORMAN KINYUA WANJUKI (DECEASED)**

**BETWEEN**

**DAVID BONIFACE GICHUKI KINYUA ..... 1<sup>ST</sup> APPLICANT  
BELLAH WAGATWE KINYUA ..... 2<sup>ND</sup> APPLICANT  
TABITHA MURUGI KINYUA ..... 3<sup>RD</sup> APPLICANT  
MONICA WANJIRU KINYUA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**NANCY NJERI NJOROGE ..... RESPONDENT**

**RULING**

1. This matter relates to the estate of Norman Kinyua Wanjuki who died intestate on 7<sup>th</sup> December, 2020. Nancy Njeri Njoroge in her capacity as widow to the deceased petitioned for letters of administration of grant intestate. The grant was issued to her on 7<sup>th</sup> November 2022. The grant is yet to be confirmed.
2. In the affidavit in support of Petition for Letters of Administration Intestate, the deceased is said to be survived by the following;
  - a. Nancy Njeri Njoroge- widow.
  - b. Bellah Wagatwe Kinyua- son.
  - c. David Gichuki Kinyua- son.
  - d. Monica Wanjiru- daughter.



- e. Teresia Muthoni- daughter.
- f. Jane Wanjiru- daughter.
- g. Tabitha Murugi- daughter.

The Assets of the deceased are enumerated as hereunder:

- a. LR.2951/414 Lower Kabete (Portion Of It)
  - b. Land Reference No. 8343/24.
  - c. Title No. Tetu/Kabage/413.
  - d. Title No. Nyandarua/Ndaragwa Block 1(Kahutha)29 (Portion Of It)
3. The Applicants filed summons for revocation of grant dated 15<sup>th</sup> May 2023. In their supporting affidavit sworn on the same day, the 1<sup>st</sup> Applicant averred that the Respondent and the deceased got married on 24<sup>th</sup> July 2020, less than 5 months before the deceased died. That the proceedings to obtain the grant were defective in substance as no consent to the making of the grant was issued by the Applicants who are the beneficiaries of the deceased's estate. That the consent was signed by strangers who are not children or beneficiaries of the deceased. The consent was also witnessed by an advocate without the beneficiaries appending their signatures on it. That they were not involved or notified by the Respondent on the signing of the undated consent filed. They argued that the consent was in contravention to Rule 26 (1) of the Probate and Administration Rules as there was no notice by the petitioner to the beneficiaries of the deceased as persons entitled in priority.
4. That the grant was obtained fraudulently by making false statement or by concealment from the court of material facts to the case as Teresia Muthoni and Jane Wanjiru were and are not children of the deceased. They urged the court to revoke the grant issued on 7<sup>th</sup> November 2022.
5. The Respondent opposed the summons Vide a Replying Affidavit. She averred that she got married to the deceased on 24<sup>th</sup> June 2020 under the Marriage Act 2014. That she ranks first in priority to petition for letters of administration. She stated that Teresia Muthoni and Jane Wanjiru had been taken in by the deceased as his step children. This was captured in the chief's letter dated 25<sup>th</sup> January 2022. According to her, they had every right to be recognised as children of the deceased and that they have equal recognition as the deceased's children and are entitled to the process of intestate succession.
6. She averred that the applicants had the opportunity to object the issuance of the grant within the statutory 30 days after gazettelement. That the applicants should have proposed an alternative distribution instead of filing for summons for revocation. The applicants stand to suffer no prejudice because the grant has not been confirmed. She argued that she has not alienated, intermeddled or interfered with the deceased's estate. That the Applicants are children of the deceased's former spouse. That they are using the revocation proceedings to fight her because she filed a suit against their mother. She urged the court to dismiss the summons for revocation.
7. Parties adduced viva voce evidence.

### **Applicants Evidence.**

8. OW1, David Boniface Gichuki relied on the affidavit dated 15<sup>th</sup> May 2023 as his evidence in chief. He stated that the deceased was his father and the Respondent was married to the deceased. His evidence was that the process to obtain the grant was marred with irregularities; he and his three sisters were not involved in the succession process.



9. During cross examination he conceded that the Respondent's marriage to the deceased is valid. The Respondent had two children before she got married to the deceased; he does not recognize them as his step sisters. The only beneficiaries to the deceased's estate are his sisters and him. That the Respondent did not inform them that she had petitioned for the grant. The house on LR.NO 2951/414 Lower Kabete is not a matrimonial home. It was declared at 50% in the matrimonial property cause. He is not aware that the Respondent has sought to occupy the land. He is aware that the chief's letter included the Respondent's children as the deceased's children.
10. During re examination he stated that he objects to the inclusion of the Respondent's children as beneficiaries of the estate. The consent in court does not bear the Applicant's signatures. He did not consent to the Respondent obtaining the grant of letters of administration intestate.

### **Respondent's Evidence.**

11. The Respondent/ administrator, Nancy Njeri Njoroge testified as PW1. She relied on her Replying Affidavit sworn on 29<sup>th</sup> June 2023 and her written statement as her evidence in chief. Her evidence is that the deceased was her husband. She lived with the deceased at Lower Kabete LR 2951/414. She had two children from a previous relationship while the deceased had four children from a previous relationship. The letter from the chief enumerates all the six as children of the deceased. She presented the petition for grant as the deceased's wife. After the deceased's death, she was evicted by the deceased's former wife. She filed a suit against her in MCCC/E6161/2022. She does not live on the property. The deceased's ex-wife and the applicants who are her step-children have been hostile to her. She stated that her wish is to distribute the estate to all the beneficiaries.
12. During cross-examination, she stated that the consent was only signed by her and her two children. She did not involve the other children of the deceased. She did not have evidence to show that the deceased provided for her two children. She is aware that the deceased was entitled to 50% of LR.2951/414 Lower Kabete.
13. During re-examination, she stated that the 4 beneficiaries did not sign the consent because she was not on good terms with them. There are two houses on LR. 2951/414. She resides on the deceased's portion. She lived with the deceased and her two children who took parental rights over them. She supported the deceased. The applicants did not support the deceased.

### **Applicant's Submissions.**

14. The Applicant filed written submissions dated 11<sup>th</sup> July 2024. They framed the following as issues to be determined by this court;
  - i. Whether the Grant of Letters of Administration Intestate issued on 7<sup>th</sup> November 2022 was legally obtained.
  - ii. Whether the Respondent's children are beneficiaries of the Estate of Norman Kinyua Wanjuki.
15. On the first issue, it was submitted that the proceedings in obtaining the grant of letters administration intestate were defective and marred with fraud because the Respondent failed to obtain consent from the Applicants. That the Respondent during cross examination confirmed that the consent was only signed by her two daughters. Notice was not given to the Applicants as stipulated in Rule 26 of the Probate and Administration Rules. They sought to rely on the decisions in In re Estate of Magangi Obuki (Deceased) [2020] eKLR.



16. On the second issue, the Applicants submitted that the Respondent got married to the deceased with her two daughters. The Respondent did not prove that the deceased had taken over parental responsibilities of her daughters when he was alive. It was their submission that the Respondent's daughters are not beneficiaries of the estate of the deceased.

### **Respondent's Submissions.**

17. The Respondent's submissions are dated 13<sup>th</sup> August 2024. The Respondent submitted that the Applicants have failed to prove that the grant was marred by fraud. She argued that the allegation of fraud must be proved as was held in *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR. She submitted that the chief's letter and the petition for grant included the Applicants names. That the Applicants have frustrated the administration process because they do not recognize her as a wife of the deceased and that there is bad blood between the deceased's former wife who is the mother of the Applicants.
18. The Respondent further submitted that her two children were recognized as the children of the deceased through the chief's letter. That the chief's letter ascertains the beneficiaries and dependants of the deceased. In this case, she sought to rely on the decisions in *In re Estate of Ambutu Mbogori (Deceased)* [2018] eKLR and *In re Estate Shem Kitanga (Deceased)* [2018] eKLR. She submitted that the deceased had taken parental responsibility over her two daughters and thus they should be recognized as the deceased's children.

### **Analysis And Determination**

19. The Court has considered the Court record, pleadings and written submissions of parties through their respective Counsel and the main issue is whether the grant and confirmed grant should be revoked or not
20. The circumstances under which a grant of representation may be revoked are provided for under section 76 (a)- (e) of the *Law of Succession Act* Cap 180 of the Laws of Kenya. The said provision was explained by Musyoka J in *re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where he observed that;-

“ 8. Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative



following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.....”

21. Further, the Court of Appeal in the case of *Matheka and Another vs Matheka* [2005] 2 KLR 455 laid down the following guiding principles; -
  - i. A grant may be revoked either by application by an interested party or by the court on its own motion.
  - ii. Even when revocation is by the court upon its 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 the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.
22. The Respondent in her petition for grant of letters intestate listed six children of the deceased as the beneficiaries. The Respondent in her submissions argued that she was a wife to the deceased and her two daughters had been acknowledged by the deceased as his children and dependants thus they were entitled to a share of the estate. On the other hand, the Applicants claimed that the Respondent’s children were not the deceased’s children and had never been acknowledged as such.
23. In the interpretation Section of the *Law of Succession Act* Section 3(2) the term “child” refers to one’s natural child including, for a female person, a child born to her out of wedlock, and regarding a male person, a child whom “he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.”
24. Section 3 (3) goes on to state that:

“A child born to a female person out of wedlock, and a child as defined by subsection (2) as the child of male person, shall have relationship to other persons through her or him as though the child had been born to her or him in wedlock.”
25. In this case it has not been demonstrated to my satisfaction that the deceased had recognized and accepted the 2 children of the Respondent as his own. The Respondent had an obligation to prove that in addition to living together they were absorbed in the family of the deceased and the deceased assumed parental responsibility over them. As stated in *re Estate of Mathenge Gichobi (Deceased)* [2022] eKLR, the legal and evidential burden was upon the Petitioner to demonstrate that her children were dependant on the deceased. She did not discharge that burden.
26. It was therefore false for the Petitioner to state as she did in her affidavit in support of the Petition that her children were children of the deceased.
27. The Applicants contend that they were not involved in these succession proceedings; they did not sign the consent presented in court. The consent was signed by the Respondent and her two daughters.
28. The law under Rule 26(a) and (2) of the Probate and Administration Rules provides as follows:-
  - 26.



- (1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
  - (2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”
29. From the reading of the above rule, it is mandatory for every applicant who wishes to be an administrator to an estate to give notice to every person entitled in the same degree as or in priority to the applicant. Further that, such person of equal or lower priority must give consent or renunciation during filing of succession cause.
30. The applicants denied giving their consent under Form 38. I have perused the consent form. It is clear that the applicants did not give their consent or renounce their rights to petition for the grant.
31. Section 66 provides for the priority of parties to apply for grant of administration intestate. The section is clear that when a deceased dies intestate, the court has, save as otherwise expressly provided, a final discretion as to the person or persons to whom a grant of letters of administration should, in the best interests of all concerned, be made. Even then, and without prejudice to that discretion, the court will accept as a general guide the following order of preference; (a) surviving spouse or spouses, with or without association of other beneficiaries; (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V; (c) the Public Trustee; and (d) creditors.
32. In the circumstances of this case I consider this to be an appropriate case to have 2 administrators to represent the interest of each house
33. Accordingly, the orders below will issue;
- i. The grant of representation intestate made to the Respondents on 7<sup>th</sup> November 2022 is hereby revoked and annulled.
  - ii. That a fresh grant issue jointly to Nancy Njeri Njoroge and David Boniface Gichuki Kinyua.
  - iii. Teresia Muthoni and Jane Wanjiru are not children of the deceased within the meaning of Section 3(2) of the *Law of Succession Act*
  - iv. The Administrators shall present summons of confirmation within 60 days and in the event, they are unable to do so jointly, either may file the summons for confirmation with the other filing response within 14 days of service
  - v. Matter will be mentioned on 11<sup>th</sup> February 2025 to confirm compliance and take further directions
  - vi. Owing to the relationship between the parties there shall be no order as to costs

**DELIVERED ON THE VIRTUAL PLATFORM, DATED AND SIGNED AT NAIROBI THIS 18<sup>th</sup> DAY OF OCTOBER, 2024.**

**PATRICIA NYAUNDI**

**JUDGE**

In the presence of:



