



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Muthuiru Ngoroi (Deceased) (Succession Cause
148 of 2015) [2023] KEHC 18273 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 18273 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 148 OF 2015
EM MURIITHI, J
FEBRUARY 16, 2023**

BETWEEN

GRACE KAUMO KIRIKO PETITIONER

AND

M'ARANGI MAORE 1ST OBJECTOR

MONICA KAARIO 2ND OBJECTOR

RULING

1. The Objectors filed an application for Revocation of Grant dated May 28, 2015 on the grounds that the Petitioner herein (i) had filed the succession cause secretly; (ii) that she did not seek the consent of other beneficiaries of the deceased upon filing and distributing the estate and (iii) that the grant had been obtained by the petitioner fraudulently by making false statements and concealment from court of something material for the same.
2. The factual basis of the application appeared from two supporting affidavits of the Objectors and witness statements to be that the succession cause was filed without notice to all the beneficiaries and that the deceased in the above succession cause held part of the only asset of the estate parcel of land Ithima/ Antuambui/580 upon trust for his brother the 1st Objector and that, although named in the Chief's Letter of introduction as a child of the deceased, the interest of the deceased's daughter the 2nd Objector was not catered for in the distribution of the asset allegedly to the Petitioner and her husband whom she married on separation with the deceased.
3. In reply, the Petitioner by her replying affidavits and witness statements asserted that she had summoned all her children including the 2nd objector before filing the cause and that the 1st Objector had no right to inherit the deceased's asset as he had his own parcel of land no. Athiru-Ruujine/1362, and that upon the death of her husband, the 1st Objector had chased her from the suit land and she had gone to live with her uncle M'Abuaya who gave her a place to build, and the objection had been brought



by the 1st Objector with the support of her daughter 2nd Objector so that they could share the land. She denied that Jospheh Mutuma M'Abuaya as alleged by the 1st objector and asserted that he was her son. She concluded that “during confirmation of grant all the beneficiaries including the 2nd Objector appeared before the Maua Chief magistrate J. Kingori and claim not to have any objection.” (sic)

4. Faced with the obviously serious discrepancies on the facts, the Court (Mabeya, J.) by ruling of April 17, 2019 directed cross-examination of the parties and their witnesses as follows:

“Ruling

On February 13, 2019 on the suggestion of Counsels for the parties, the court ordered that the Summons for Revocation dated May 28, 2015 be determined by way of written submissions on the basis of affidavits on record.

After retiring to write the Judgment I have realized that the affidavits contain disputed facts that cannot be resolved without cross-examination of the deponents.

Accordingly, I order that the Order made herein on February 13, 2019 is hereby varied.

I direct that the deponents of the Affidavits or makers of the statements on record do appear on a date to be agreed on for cross-examination.

Dated at Nairobi on April 17, 2019.

A. Mabeya, J.”

5. After a few failed hearings when the matter could not be reached, Counsel for the parties agreed to proceed by way of, and persuade the Court to take, the written submissions with oral highlighting, which they did on September 29, 2022 and ruling was reserved.
6. Upon considering the matter, this court takes the view that the question as to the revocation of grant on account of the principles set out in section 76 of the *Law of Succession Act* is simple as it involves a determination whether the persons beneficially entitled were involved in the proceedings for petition for the Grant for and provided for, or, in the alternative, whether there is evidence of knowledge of the proceedings and waiver of interest in the estate asset on the part of the 2nd Objector daughter of the deceased, and whether there was concealment of material facts. While the petitioner may not be taken to know of the 1st Objector's interest in the estate based on his claim on trust, she very well knew and accepted the 2nd Objector's interest as a daughter. Failure to involve the 2nd objector in the proceedings for the petition of the Grant would render the Grant open to revocation for being obtained in secrecy and concealment of the interest of the 2nd Objector as a child of the Deceased, in contravention of section 76 (b) of the *Law of Succession Act*.
7. Although the 2nd Objector's name was shown as having been included in the Chief's Letter of 16/12/2012 introducing the petitioner to court, there is no evidence that the affidavit in support of the petition included the daughter of the deceased as a surviving heir, and no consent to the making of the Grant or of the relevant application for confirmation of Grant indicating her participation and concurrence with sharing of estate asset. If she had been notified of the petition, the petitioner should have been able to demonstrate her consent to the filing of the petition and distribution of the estate. The court must find, on a balance of probability, that the petition was filed and obtained fraudulently in contravention of section 76 (b) of the *Law of Succession Act*, and it is due for revocation.
8. What is not as simple is the question as to who is entitled to share in the estate of the deceased because the persons shown as children of the deceased in the Chief's Letter on the matter, and who the petitioner asserts are her children with the deceased, are objected to as children of the Petitioner by her



marriage to another person after separation with the deceased. There is also a substantial question as to whether the person with whom the petitioner is named as heirs and the sole asset distributed to in the Confirmed Grant is a son of the deceased or the petitioner's new husband.

9. The estate of the deceased may not, therefore, lawfully be distributed if the heirs are not determined in accordance with the law of succession. The issue of the size or extent of the estate is also in dispute in view of the claim in trust presented by the deceased's brother in the application for revocation.
10. In these circumstances, having been satisfied that the 2nd Objector is a daughter of the deceased who has not been provided for and there is no evidence of her consent to filing and appointment of the mother as an administrator and or to the distribution of the estate as confirmed in the Certificate of Confirmation dated 20/5/2015, the court must order that the Grant herein obtained by the Petitioner on 5th February 2014 be revoked, and the certificate of Confirmation of the Grant shall be set aside.
11. The Court will then be free to appoint fresh administrator(s) to administer the estate pending the determination and distribution of the estate upon resolution of the disputed facts as to the heirs and existence of trust in the matter. The Court considers that an appointment should be made to the Petitioner and the 2nd Objector whose status as heirs, as widow and daughter, is indisputable as the administratrixes of the Deceased's estate.

Orders

12. Accordingly, for the reasons set out above, the Court makes the following orders:
 1. The Grant of Letters of Administration issued to the Petitioner on February 5, 2014 and subsequently confirmed on February 20, 2015 in Maua Chief Magistrate's Court Succession Cause No. 123 of 2012 is revoked.
 2. A fresh Grant of Letters of Administration shall be issued in the names of the Petitioner Grace Kaumo Kiriko and the deceased's daughter Monica Kaario.
 3. The matter shall proceed to hearing by oral evidence on distribution to determine the question whether there exists a trust in favour of the deceased's brother the 1st applicant herein, on a date to be fixed in consultation with the advocates.
13. There shall be no order as to costs.
Order accordingly.

DATED AND DELIVERED ON THIS 16TH DAY OF FEBRUARY, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mutembei Advocate for the Objector/Applicants

Mr. B. G. Kariuki Advocate for Petitioner.

