



In re Estate of the Late Kangangi Kairaria (Succession Cause 2 of 2020 & 251 of 2012 (Consolidated)) [2023] KEHC 3216 (KLR) (18 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3216 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
SUCCESSION CAUSE 2 OF 2020 & 251 OF 2012 (CONSOLIDATED)**

LW GITARI, J

APRIL 18, 2023

BETWEEN

M'NDAKA KANGANGI 1ST APPLICANT
MWITI M'NDAKA 2ND APPLICANT
BENEDICTOR NJIRU RIUNGU 3RD APPLICANT
MARTIN MIRITI M'NDAKA 4TH APPLICANT
CELINA KAIMENYI KIRUGARA 5TH APPLICANT
JEDIEL MURIUKI 6TH APPLICANT
ROBERT MUGENDI NABIA 7TH APPLICANT
SAULU NTHIGA MBIUKI 8TH APPLICANT

AND

PETER GITONGA MUTUAMWARI ADMINISTRATOR

AND

MAJANI GARDENS LIMITED RESPONDENT

RULING

1. This matter was coming up for a ruling on a summons dated 4/3/2021 which seeks revocation of grant under Section 76 of the *Law of Succession Act*.
2. I had earlier issued a ruling dated 27/7/2021 and cited Rule 44(3) of the *Probate and Administration Rules* which provides that upon filing a summons for revocation of grant and the supporting affidavits,



the court shall proceed to give directions on the person to be served with the application. The rule provides as follows:

“(3) Where the operation of sections 48 and 49 is suspended in any area, the High Court may make a grant of representation in respect of the estate of a deceased person whose last known place of residence was in that area, whether the value of the estate exceeds or does not exceed one hundred thousand shillings.”

3. This rule requires that once a summons for revocation of grant, the High Court which to my understanding means the Judge handling the matter, shall give directions on the persons to be served if any to be served by the applicant with the application and the affidavit and the persons so directed to be served with the notice in Form 68.
4. After I gave the ruling, the matter was adjourned several times as the counsel for the applicant sought to substitute the deceased applicant. This court gave directions that the application be heard by way of affidavit. However, no directions were given on service of person to be served by the applicant.
5. I note from the Record that there are interested parties who have filed affidavits (some) and no directions were given on their service. I also note that the 2nd respondent who has been mentioned in the affidavit of the applicant has not been served.
6. It is my view that it is pre-mature to give a ruling on the summons for revocation of grant when parties who are likely to be affected by the outcome of the summons for revocation of grant have not been served and be given an opportunity to be heard. It is a cardinal Rule of Natural Justice which in my view is the guarded by Rule 44(3) of the *Probate and Administration Rules*, that a person who is likely to be affected by a decision of the court must be given an opportunity to be heard. The Principles of Natural Justice are concerns procedural fairness and ensures that a fair decision is reached. None compliance with the Rules of Natural Justice would mean that the decision made would easily be challenged and only serve to prolong this dispute. For these reasons, since there are interested parties who have not been served, it is premature to give a ruling on the summons for revocation of grant.
7. I therefore direct that the applicants do serve all the interested parties as well as the 2nd respondent. The interested parties will be given twenty one (21) days upon being served to file their affidavits if need be. The court will then proceed to give a date of ruling upon confirmation that the interested parties have been served.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 18TH DAY OF APRIL 2023.

L.W. GITARI

JUDGE

