



**In re Estate of Karisa Baya Toya (Deceased) (Succession Cause
114 of 2016) [2023] KEHC 3135 (KLR) (13 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3135 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
SUCCESSION CAUSE 114 OF 2016**

SM GITHINJI, J

APRIL 13, 2023

**IN THE MATTER OF THE ESTATE OF KARISA BAYA TOYA
(DECEASED)**

BETWEEN

ALEX NGAO KASENA 1ST APPLICANT

THOYA KAHINDI KAINGU 2ND APPLICANT

AND

KACHE MWAGANDI 1ST RESPONDENT

ERICK MWAMURE 2ND RESPONDENT

FLORENCE KANZE LENGA 3RD RESPONDENT

FRANCIS KAHINDI KAZUNGU 4TH RESPONDENT

JUDGMENT

- 1 The Applicants vide an application for revocation of grant dated January 4, 2022 sought to have the grant of letters of administration issued to Erick Mwamure And Kache Mwagandi revoked on the following grounds;
 - a. That the proceedings to obtain the grant were defective in substance as the consent to appoint the administrator was obtained without consultation of other legal beneficiaries.
 - b. That the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant vide a chief's letter, Erick Mwamure and Kache Mwagandi alleged that the dependants left and agreed that Kilifi/ngerenyi/1031 be registered in their names.



- c. That the grant was obtained fraudulently by the making of false statements to the effect that the listed beneficiaries in the chief's letter dated July 6, 2016 were the only survivors thereby concealing the existence of other beneficiaries.
- 2 The application is supported by the affidavit sworn by the applicants on the same day. They deponed that upon the demise of Karisa Baya Toya on September 3, 2004, a grant of letters of administration intestate was issued to Erick Mwamure And Kache Mwangandi by this honourable court on the 15th day of November, 2016. That the estate is currently being administered by the above - mentioned administrators who have maliciously excluded other beneficiaries. They contended that the administrators never obtained the consent of other beneficiaries while applying for the grant. They further asserted that the said grant was obtained through fraud and concealment of material facts by maliciously excluding other beneficiaries of the deceased estate.
- 4 In response to the application, the 1st Respondent filed a Replying affidavit sworn by Erick Mwamure, on January 24, 2022. He deposed that the late Karisa Baya Toya had only two children, Kache Mwangandi Nguzo and himself. According to him, the persons named in the chief's letter dated November 18, 2021 consists of persons of the extended family and not the immediate family of the deceased. He also deposed that the 1st applicant, Alex Ngao Kasena is a grandson of Mwakamsha Baya Toya, a brother to the deceased and that he is not a dependant of his late father. That the 2nd applicant is equally not a dependant of the deceased as he is a son to his late father's cousin. He also asserted that one Larry Thoya who has been included in the chief's letter is his biological son and according to him, none of the persons listed in the letter dated November 18, 2021 has any right of claim from his deceased father's estate.
- 5 The 3rd Respondent on the other hand filed a Replying affidavit sworn on the 24th day of January, 2022. She stated that she was only involved in the matter at the confirmation stage where she was distributed 0.8 Ha of an acre from the share of Kache Mwangandi, having purchased the 2 acres from her share. That at the time of purchasing the said land, she was shown a grant of letters of administration and a letter from the chief that showed the beneficiaries of the deceased and as such, she was not aware of any other beneficiaries as claimed in the summons for nullification of the grant.
- 6 The 4th Respondent filed a Replying affidavit sworn on the 24th day of January, 2022. He contended that he was only involved in the matter at the confirmation stage where he was distributed 0.80 Ha of an acre from the share of Erick Mwamure and similarly at the time of purchasing the said land, he was shown a grant of letters of administration and a letter from the chief that showed the beneficiaries of the deceased and as such, he was not aware of any other beneficiaries as claimed in the summons for nullification of the grant.

Analysis and Determination

- 7 The applicants' contention here is that the proceedings leading to the issuance of grant and finally confirmation are defective in substance as the respondents did not disclose all the beneficiaries of the estate. They have in this instance produced a letter dated November 18, 2021 listing other 18 new beneficiaries.
- 8 Under Section 76 of the *Law of Succession Act* Cap 160, it is provided;
- “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;
- d. that the person to whom the grant was made has failed, after due notice and without reasonable cause...”

9 In one of the Leading judgments of the court in this area of Law, *Matheka and Another V Matheka* (2005) EA 251 it is clearly stated as follows:

“A grant may be revoked either by application or by an interested party or on the courts own motion. Even when revocation is by the court upon its own of motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegations of facts essential in point of Law or that the person named has failed to apply for Confirmation or to proceed diligently with the administration of the estate. The grant may also be revoked if it can be shown to the court that the person to which the grant has been issued has failed to produce to the court such inventory or account of administration as may be required”

10 This court has perused the affidavit in support of petition for letters of administration intestate and under paragraph 4 thereof, the applicants are not listed as beneficiaries. Upon a keen perusal of the application, it is noted that there is an annexed letter of the chief dated November 18, 2021 listing 18 new beneficiaries of the estate of the deceased. Further, this letter surprisingly does not indicate Erick Mwamure And Kache Mwagandi as beneficiaries to the estate, even when the fact has not been disputed by the applicants that they are a son and daughter of the deceased. The affidavit filed by the 1st respondent suggests that the 1st applicant is a grandson to the deceased’s brother Mwakamsha Baya Toya while the 2nd applicant is a son of Kahindi Kafula (deceased) who was a cousin to the deceased, Karisa Baya Thoya. The *Law of Succession Act* (Cap 160 Laws of Kenya) gives the court discretion to determine the person or persons to whom the grant of letters of administration should issue. In this case, it has not been disputed that the deceased was survived by a son and a daughter to whom the grant was issued. The applicants have alleged that they are sons of the deceased which allegation has not been substantiated noting that the grant was confirmed 5 years ago. The applicants have alleged fraud and concealment of material facts by maliciously excluding them as beneficiaries.

11 In my view, the allegation of fraud has not been proved by the applicants who in the circumstances are not beneficiaries to the estate of the deceased. In the analysis above, I make the finding that the applicants have not satisfied Section 76 of the *Law of Succession Act* and have also not made a case for the success of the application dated January 4, 2022. In the end, I find that the Applicants have not satisfied the court that:

- a. The grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case; or
- b. 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 and as such the application for revocation of the grant is dismissed.



RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 13TH DAY OF APRIL, 2023.

S.M. GITHINJI

JUDGE

In the Presence of; -

Ms Marubu for the Respondent

Mr Mwarumba holding brief for Mr Omondi for the Applicants

