



**In re Estate of Josphat Githutha Mutua alias Josphat Githutha
alias Josphat Githutha Mutua Kungu (Deceased) (Succession Cause
18 of 2016) [2023] KEHC 19278 (KLR) (19 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 19278 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 18 OF 2016**

A MSHILA, J

MAY 19, 2023

**IN THE MATTER OF THE ESTATE OF JOSPHAT GITHUTHA MUTUA ALIAS
JOSPHAT GITHUTHA ALIAS JOSPHAT GITHUTHA MUTUA KUNGU (DECEASED)**

BETWEEN

MAGDALENE NYAMBURA CHEGE 1ST APPLICANT

MARGARET NJOKI GITHUTHA 2ND APPLICANT

AND

KIMAMA GITHUTHA KUNGU ADMINISTRATOR

RULING

1. By the ruling of this Court dated the March 24, 2022, the court confirmed the Grant dated July 23, 2020 and distributed the estate of the deceased to the beneficiaries, aggrieved by the distribution the Applicants filed a summons for revocation/rectification of the Grant dated June 3, 2022 seeking to have the court stay the taking effect of the grant of letters of administration and restrain the Respondent from selling, or transferring or taking possession of his occupation as well as revoke, annul or rectify the Grant as confirmed.
2. The application was bought on the grounds that despite the 2nd Applicant having been pronounced as a wife of the deceased and as such a beneficiary, by the judgment of Justice Meoli on July 23, 2020, no provision was made to her in the confirmed Grant. The Respondent filed the summons for confirmation of the Grant without involving all beneficiaries and thus she was not aware of the application a reason why she did not object to the confirmation of the Grant. According to the applicants, the Respondent has lodged at the Land Registrar Kiambu the transmission forms executed by the court for the issuance of title deeds. The Respondent demanded the second house to vacate the house which was allocated to the first house.



3. According to the 2nd Applicant Margaret Njoki Githutha in her Supporting Affidavit sworn on June 3, 2022, she deposes that Ngenda/Nyamangara/289 comprising of 6 acres where her matrimonial home is built was acquired by the joint effort of her and the late husband. She proposes that the same be distributed to her. She also proposes that LR No 75/668 Buru Buru, Ngenda/Karai/T 188, and Ngenda/Karai/T 186 be distributed to the 2nd house. That Ngenda/Mangu/642 measures 50 by 50 and thus is not possible to distribute among her 7 children.
4. Kimama Githutha Kungu on June 27, 2022 filed a Replying Affidavit in response to the application stating that the Applicants actively participated in the proceedings through their legal representatives. The re-cause being sought is not available as the Applicant was represented. The application lacks merit and fails to meet the threshold of Section 76 of the *Succession Law*. The Applicants have sold most of the deceased property and the second house should be allocated the parcels already sold.
5. He states there was no problem in the distribution of the estate of the deceased as the same is equitable between the 2 houses. He denies the summons was filed without disclosing to the Applicant as the administrator of the 2nd house Jane filed an objection to the mode of distribution as proposed which the court dismissed.
6. The parties were directed to canvass the application by way of filing and exchanging written submissions.

Applicant's Submissions

7. The Respondent filed the summons for confirmation of grant prematurely before the lapse of the 30 days as directed by the court. The summons for confirmation of the grant was not served upon all beneficiaries to enable them to respond.
8. Interestingly it was acknowledged that Jane Njeri Githutha an administrator representing the second house responded to the summons for confirmation of the grant by filing an affidavit without consulting the beneficiaries of the 2nd house. He however contends that she did not have the knowledge that she was responding to the mode of distribution. The grant of the letters of administration completely disinherits the 2nd Applicant.
9. The applicants submitted that they were being evicted from the matrimonial home and they proposed that the first house should not benefit from the property with the matrimonial home.
10. Counsel urged the court not to disinherit the widow and reconsider the issue of them having to vacate the matrimonial home.

Respondents Submissions

11. The Respondent submits that the court lacks the power to revoke a certificate of confirmation of grant as the court confirming such a grant generally becomes *functus officio* as far as the confirmation of grant is concerned and cannot revisit the matters unless on review.
12. It was submitted that the Applicants ought to appeal against the orders that confirmed the grant if they were aggrieved by the distribution of the estate.
13. The court was urged to dismiss the application as filed.



Analysis And Determination

14. Having duly considered the application, the affidavits and the written submissions filed the issue framed for determination is;
- i. Whether the application meets the threshold for revocation, annulment, or rectification.

Analysis

15. The issue of revocation or annulment of the grant of letters of administration is stipulated in Section 76 of the *Law of Succession* which states that:
- “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 either-“
16. The 2nd Applicant seeks revocation of the grant on the ground that no provision has been made out to her and thus she has been disinherited from the estate of the deceased. The second issue the Applicant raised was that the Respondent filed a summons for confirmation of the grant exclusively without consulting other beneficiaries.
17. Having perused the ruling of the court of July 23, 2020, rendered by Justice Meoli, the court had appointed Magdaline Nyambura Chege and Jane Njeri Githutha as administrators from the 2nd house whilst the first house administrators were Mary Nyambura Kungu And Kimama Gathutha this was after the court found the 2 widows were of advanced age and considering their age and health this would have been a bar for effectively administering the estate of the deceased. The administrators of each house were to take out a summons for confirmation of the grant or each beneficiary was to take out.
18. The Respondent filed the summons for confirmation of the grant dated August 20, 2020 in which he proposed the mode of distribution of the estate. On the other hand, Jane Njeri representing the 2nd house filed her affidavit sworn on May 24, 2021 proposing her mode of distribution of the estate. Her mode of distribution seemed to confer the estate of the deceased only to the 2nd house and the court found that this was not proper.
19. From the record it is very clear that the 2nd House was represented and estates have been distributed to the 2nd House. They cannot, therefore, have alleged disinheritance. Also noted that Ngenda/ Nyamangara/289 was allocated to both houses in equal shares, a position which the 2nd house is not happy with as their wish was to have the property allocated exclusively to the second house.
20. In the circumstances, it is this Court’s considered view that if the Applicants are aggrieved with the mode of distribution the proper manner to address their grievances is through the filing of an appeal.



In the instant application the Applicants are calling this court to sit on its own appeal a position that is not tenable in law.

21. This court is thus satisfied that the application as filed does not meet the threshold of revocation of the Grant as stipulated in law as the Applicants have not demonstrated the manner in which the grant was obtained as being unlawful. It is noted that all the beneficiaries did participate in the proceedings and that the property has been equally shared between the two houses.

Findings & Determination

22. The upshot is that this court finds the application dated June 3, 2022, to be devoid of merit. It is hereby dismissed with no orders as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 19TH DAY OF MAY, 2023

HON. A. MSHILA

JUDGE

In the presence of:-

Mourice Court Assistant

Masore Nyangau for the 3rd Administrator/applicant

Kimama – in person

HON. A. MSHILA

JUDGE

