



REPUBLIC OF KENYA



**In re Estate of Zipora Ng'eno Gitiri alias Ziporah Ng'eno Gitiri (Deceased)
(Succession Cause 12 of 2020) [2023] KEHC 19267 (KLR) (19 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 19267 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 12 OF 2020**

A MSHILA, J

MAY 19, 2023

**IN THE MATTER OF THE ESTATE OF ZIPORA NG'ENO GITIRI
ALIAS ZIPORAH NG'ENO GITIRI (DECEASED)**

BETWEEN

**LUCY KAIRUTHI 1ST APPLICANT
ZAKAYO MURIUKI THURANIRA 2ND APPLICANT
HEZRON MUTUMA MBURUGU 3RD APPLICANT
ANN NKIROTE INANGA 4TH APPLICANT
WILSON MURIUKI MIRITI 5TH APPLICANT
ROBERT ISRAEL GITONGA 6TH APPLICANT
GEORGE GITHAIGA NDUMIA 7TH APPLICANT
GEOFFREY NDUNGU MBURU 8TH APPLICANT
BEATRICE WANJIRU 9TH APPLICANT
LEORNARD KIRUBI WANJIRU 10TH APPLICANT
ESTHER NDUTA MUKIMA 11TH APPLICANT
HANNAH WANJIKU 12TH APPLICANT
JACKSON ERERI MUINDI 13TH APPLICANT
TOGIKO SELF- HELP GROUP 14TH APPLICANT
FAUZ NGOTHO 15TH APPLICANT
ELAN WANGUI 16TH APPLICANT**

AND



RULING

1. Before the court for determination are two applications filed by the Applicants dated June 7, 2021 and July 13, 2021 seeking summons for Revocation/annulment of the Grant, the applications are brought under Section 76 of the Succession Act.
2. The applications are premised on the grounds that the Grant was obtained through the concealment of material facts of the existence of the ownership dispute of LR No Ruiru/Mugutha Block 1/21XX and LR No Ruiru/Ruiru East Block 2/19XX which is pending in Ruiru Senior Principal Magistrate. The issue of ownership ought to have been addressed before the grant was issued.
3. The application dated July 13, 2021 is supported by the annexed affidavit of Lucy Kairuthi, sworn on the same date, she disposes that the ownership of LR No Ruiru/ Mugutha Block 1/21XX is a dispute pending in court for determination, the parcel of land is claimed by 5 other applicants who acquired a residential plot excised from the parcel of land and built their home. The Respondent failed to disclose to this Honourable Court that the suit was initially filed in Ruiru but was withdrawn as the court lacked jurisdiction and proceeded to obtain an interim grant without citing the purchasers who also have an interest in the land.
4. The application dated June 7, 2022 is supported by the annexed affidavit of Robert Israel Gitonga sworn on the same date. He depones that LR No Ruiru/Ruiru East Block 2/19XX is claimed by 11 applicants who purchased the property and they have all settled in the suit property. The withdrawal of the succession case filed in Ruiru court was to conceal material facts. The Respondent took out letters of administration without revealing material facts to the court of the existence of the pending suit in Ruiru with the issue in contention being ownership of the land.
5. Opposing both applications Lucas Waweru Gitirifiled a Replying Affidavit and a Supplementary Affidavit in which he contends the applications are bad in law and frivolous and premature as the Grant has not been confirmed. The applicants are not beneficiaries of the estate of the deceased as no evidence has been attached as evidence of any land transaction with the deceased. The applicants are fraudsters and land grabbers having illegally bought the property from Njengi Investment Ltd. Filing the matter in Kiambu High Court was due to the court's jurisdiction in regards to the estate of the deceased. He denied concealing any material facts to the court when filing the Petition. The issue of ownership should not be a ground to revoke the grant. The applicants took advantage of his ailing condition to grab the deceased estate.
6. The parties were directed to canvass the applications by way of filing and exchanging written submissions, only the Respondent's submissions are in the court file.

Respondent's Submissions

7. The submissions filed on behalf of the Respondent on March 17, 2023, contend that the Respondent is the lawful beneficiary of the estate of the deceased, the Applicants have no legal interest in the land and their claim is made in bad faith. As to the Ownership of LR No Ruiru/Ruiru Eat Block 2/19XX has already been determined by the judgment of the court in Ruiru Senior Principal Magistrate's Case No ELC 37 of 2020 in which the Principal Magistrate declared that Defendant Lucas Waweru Gitiri is the lawful proprietor of the suit property, the court went ahead to cancel the titles of the Applicants in the application dated June 7, 2021. For LR No Ruiru Mugutha Block 1/T 21XX the court in Ruiru



ELC No 93 of 2021 found the title of the deceased had not been challenged and held that Ziporah Ngendo Gitiri as the registered owner, ordered the Applicants in the application dated July 13, 2021 to vacate the premises and demolish the structures thereon.

8. It was submitted that the Respondent had no obligation to consult or notify the Applicants in filing letters of administration of the Estate of Ziporah Ngendo Gitiri.
9. Counsel urged the court to find the applications as filed failed to meet the threshold of Revocation of the Grant as enshrined under Section 76 of the *Law of Succession Act*.

Issues for Determination

10. After due consideration of the application, the Replying Affidavit and written submissions, the only issue for framed by this Court for determination is;
 - i. whether the grant should be revoked.

Analysis

11. The succession cause relates to the estate of Zipora Ngendo Gitiri alias Ziporah Ngendo Gitiri who died on February 13, 1994. Following the demise, Lucas Waweru Gitiri petitioned the court for the Grant of Letters of Administration Intestate on March 9, 2020 in the capacity of the son of the deceased. Following the petition, a Grant of letters of administration intestate was issued on August 4, 2020.
12. According to Lucas the deceased was survived by three (3) beneficiaries namely: Lucas Waweru Gitiri, Mary Gathoni Kamau, and Agnes Wangui Nganga who are all children of the deceased. The estate of the deceased comprised of the properties Ruiru/Ruiru East Block 2/19XX, Ruiru Ruiru East Block 2/19XX, Gatunyaga/ Ngoliba Block 1/356, Ruiru/ Mugutha Block 1/T 21XX and Ruiru/ Mugutha Block 1/T 21XX
13. Before the Grant was confirmed the Applicants herein filed for Revocation or Annulment of the Grant claiming ownership of LR No Ruiru/ Mugutha Block 1/21XX LR.No. Ruiru/Ruiru East Block 2/19XX.
14. The *Law of Succession Act* provides for Revocation or Annulment of Grants under Section 76, which states as follows:

“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—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or



- (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.”
15. The gist of the above provision gives instances when a court can revoke a grant whether or not confirmed. The applicants seek to revoke the grant on the ground of concealment of material facts. According to the applicants the Respondent failed to disclose to the court the existence of the dispute of the ownership of LR No Ruiru/ Mugutha Block 1/21XX LR No Ruiru/Ruiru East Block 2/19XX, which was pending in court.
 16. The Respondent on the other hand submits that the applicants are strangers to the estate of the deceased and thus he did not conceal any material facts as he was not duty-bound to notify them while petitioning for the grant of letters of administration intestate. He submits the applicants are fraudsters who have grabbed the deceased estate.
 17. While it is not in dispute the ownership of the LR No Ruiru/ Mugutha Block 1/21XX, LR No Ruiru/ Mugutha Block 1/21XX and LR No Ruiru/Ruiru East Block 2/19XX was in dispute, where both parties agreed that the dispute be determined by the trial court. I have perused annexed copies of the trial court’s judgments in which Hon Kisiangani on August 25, 2022, in Ruiru ELC No 93 of 2021 found the Title of the deceased Ziporah was not challenged and thus she was the rightful owner of LR No Ruiru/ Mugutha Block 1/21XX. While in Ruiru ELC No 37 of 2020 Hon J Agonda on September 27, 2021 declared Lucas Waweru Gatiri as the lawful proprietor of the suit land known as LR No Ruiru/Ruiru East Block 2/19XX.
 18. In the circumstances, therefore, ownership having been determined this court is satisfied that the Respondent Lucas Waweru in petitioning letters of administration did not make fraudulent statements nor did he conceal material facts. He claimed he is the son of the deceased and listed the estates of the deceased.
 19. In the case of *Albert Imbuga Kisigwa v Recho Karai Kisigwa* [2016] eKLR stated: -
 - “ 13. Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
 20. This Court’s considered view is that the Applicants have not satisfied the conditions of annulment of the grant as set out in Section 76 of the *Succession Act*. They are not entitled as beneficiaries and their claim in the estate is illegal thus, the Respondent Lucas Waweru rightfully petitioned this court for the grant of letters of administration intestate.



Findings & Determination

21. For the forgoing reasons this court makes the following findings and determinations;

i. This court finds both applications dated June 7, 2021 and July 13, 2021 to be devoid of merit and both applications are hereby dismissed.

ii. The Applicants shall bear the 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

Mr. Kolobo h/b for Kamonjo for the respondent

For applicants – Robert Israel Gitonga in person

HON. A. MSHILA

JUDGE

