



**In re Estate of Mary Nyawira Ndungu alias Mary Nyawira Goko (Deceased)  
(Succession Cause 455 of 2011) [2023] KEHC 3933 (KLR) (4 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 3933 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 455 OF 2011  
FN MUCHEMI, J  
MAY 4, 2023**

**BETWEEN**

**MAGDALINE WAMBUI NDUNGU ..... 1<sup>ST</sup> APPLICANT  
JANE WANGARI MWANGI ..... 2<sup>ND</sup> APPLICANT  
MATHEW THUKU NDIRITU ..... 3<sup>RD</sup> APPLICANT  
SAMUEL NDUNGU NDIRITU ..... 4<sup>TH</sup> APPLICANT  
VERONICA NYAMBURA NDIRITU ..... 5<sup>TH</sup> APPLICANT**

**AND**

**JULIUS WARUI NDUNG’U ..... 1<sup>ST</sup> RESPONDENT  
PATRICK WARIAHE NDUNG’U ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. This Summons for Revocation of Grant dated 10<sup>th</sup> February 2023 is brought under section 76 of the *Law of Succession Act* and rule 44(1) of the *Probate & Administration Rules*. The applicants revocation of seek for the grant issued on 3<sup>rd</sup> November 2022 and confirmed on 7<sup>th</sup> December 2012 to the respondents be revoked as it was obtained by concealing material facts to the court.
2. The respondent was served with the Summons for revocation on 17<sup>th</sup> February 2023 but did not file any replying affidavit. The application was therefore unopposed.

**The Applicants’ Case**

3. The 1<sup>st</sup> applicant swore the affidavit in support of the summons of revocation and she deposed that the 2<sup>nd</sup> applicant and herself are daughters to the deceased while the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants are children of the late Lucy Wangechi Ndiritu, who was a daughter of the deceased.



4. The 1<sup>st</sup> applicant states that the respondents obtained the letters of administration on 3<sup>rd</sup> November 2011 which was confirmed on 7<sup>th</sup> December 2012. Pursuant to the certificate of grant, the respondents distributed land parcels L.R. No. Mugunda/nairutia/block1/115 and L.R. No. Mugunda/nairutia/block 1/181 among themselves.
5. The respondents obtained the grant by attaching the Chief's letter dated 8<sup>th</sup> March 2014 showing that the deceased was survived by four (4) beneficiaries. The 1<sup>st</sup> applicant states that the succession cause proceeded without her knowledge and it is not until 3/2/2023 that she heard from a neighbour that the respondents intended to sub divide the land between themselves. The 1<sup>st</sup> applicant further states that she went to the lands offices in Nyeri to ascertain the status of the suit property and learnt that the parcels of land were already in the names of the respondents.
6. The 1<sup>st</sup> applicant further contends that she and the other applicants reside on the suit property and they are entitled to an equal share with their siblings and that her husband, Paul Abdul Ellema, is entitled to one acre as agreed by all the heirs.
7. The 1<sup>st</sup> applicant states that she and the other applicants did not give their consent to the grant of letters of administration and neither did they participate in the distribution of the assets. During the confirmation of the grant the applicants were not invited to attend court by the respondents. As such, the proceedings for obtaining the grant of letters of administration and confirmation of the same were defective as the respondents failed to involve all the beneficiaries in the succession process.
8. The issues for determination are whether the applicants have presented sufficient evidence to warrant revocation or annulment of the grant and whether the applicants are rightful beneficiaries of the estate.

#### The Law

Whether the applicants have presented sufficient evidence to warrant revocation or annulment of the grant.

9. Section 76 of the *Law of Succession Act* gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It 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:-
  - i. To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; 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



- iv. The grant has become useless and inoperative through subsequent circumstances.
10. According to the 1<sup>st</sup> applicant, the respondents obtained the grant on 3/11/2011 which was confirmed on 7/12/2012. The process of the succession case was done without the knowledge of the applicants. The 1<sup>st</sup> applicant argues that the letter from the chief indicated that the deceased was survived by four(4) children and on the strength of that information the grant was issued to the respondents. The court record shows that the respondents applied for letters of administration of grant intestate vide their application dated 18<sup>th</sup> may 2011 and listed the beneficiaries as follows:-
- a. Lydia Wanjiku Ndungu – daughter
  - b. Julius Warui Ndungu - son
  - c. John Gachara Ndungu – son
  - d. Patrick Wariahe Ndungu – son
11. The respondents obtained consent for grant of representation from only two of their siblings. These are Lydia Wanjiku Ndungu and John Gachara Ndungu. Thereafter, the respondents applied for confirmation of grant on 15<sup>th</sup> August 2012 and they once more obtained consent to confirmation of grant from the same two siblings. It was proposed to that L.R. No. Mugunda/nairutia/block 1/115 and L.R. No. Mugunda/nairutia/block 1/181 be shared equally amongst the four of the beneficiaries. The grant was confirmed on 7<sup>th</sup> December 2012 as per the Summons for Confirmation of grant dated 15<sup>th</sup> August 2012.
12. A further perusal of the court proceedings show that the applicants were not present during the succession proceedings. The respondents did not oppose this application and neither did they deny that the applicants are both direct and indirect beneficiaries of the estate. The applicants annexed Chief's letter dated 06/02/2023 indicating that the deceased had nine (9)children and one of the children namely Lucy Wangechi is deceased and that she has three (3) children who are the grandchildren of the deceased.
13. It is not in dispute that Lucy Wangechi now deceased was the mother of the applicants. Being a rightful beneficiary, Lucy Wangechi was entitled to a share in the estate of her deceased father on equal footing with the other beneficiaries. The said beneficiary is now deceased and survived by her three children the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Applicants. The respondents did not disclose to the court that their late sister was deceased and had children who could take up her share. Neither did the applicants disclose that they had omitted to name and include the 1<sup>st</sup> and 2<sup>nd</sup> applicants who sisters in the distribution of the estate.
14. The applicants depose that they live on the land of the deceased together with the respondents. The respondents as administrators had a legal duty to inform all the beneficiary/interested parties as they embarked on filing this cause and seek their consent in petitioning for the grant. The applicants ought to have been summoned to attend court and participate in the distribution of the estate as required by the law. The respondents failed to carry out their obligations as administrators in that they left out the applicants from the inheritance of their father and grandfathers respectively.
15. It is my considered view that the acts of the respondents amounted to concealing material facts to the court. Disinheriting of the applicants was purely an act of fraud by the respondents designed to give themselves bigger shares in the estate that they were entitled to.



16. The 1<sup>st</sup> applicant mentioned in her affidavit that her husband Paul Abdul Ellema is entitled to one acre of land in the estate of the deceased. It was not expounded on what basis he was entitled. Paul being the husband of the 1<sup>st</sup> applicant did not file a claim in the estate and his interest remains unknown.
17. Consequently, I find that the applicants have proved fraud and concealment of facts material to the case on part of the respondents. The grant herein was no doubt obtained by fraud and by concealment of material facts. Had the court known that the 1<sup>st</sup> and 2<sup>nd</sup> applicants and three children of one beneficiary had been left out, it would not have confirmed the grant without calling for participation of the applicants.
18. In conclusion, the rightful beneficiaries of the deceased's estate are identified as follows:-
  - i. Jane Wangari Mwangi
  - ii. Susan Wangui Ndungu
  - iii. Magdalene Wambui Ndungu
  - iv. Lydia Wanjiku Ndungu
  - v. Teresa Wairimu Ndungu
  - vi. Julius Wami Ndungu
  - vii. John Gachara Ndungu
  - viii. Patrick Wariahe Ndungu
  - ix. Lucy Wangechi Ndungu - deceased

It is noted that Lydia Wangechi Ndungu was survived by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants namely Mathew Thuku Nderitu, Samuel Ndungu Nderitu and Veronica Nyambura Nderitu who are by law entitled to the share of the deceased mother.

19. Although the respondents are the children of the deceased and were qualified for appointment as administrators under Section 66 of the Act, it is my considered view that they can no longer be trusted in executing the orders of the court in fair and just distribution of the estate due to their past fraudulent acts. As such this court will consider the issue of appointing other administrators for that purpose.
20. For the foregoing reasons, I hereby make the following orders:-
  - a. That the grant issued to Julius Warui Ndungu and Patrick Wariahe Ndungu is hereby revoked.
  - b. That this court appoints Magdalene Wambui Ndungu, Jane Wangare Mwangi and Mathew Thuku Nderitu as the administrators of the estate of the deceased.
  - c. That the titles issued to the respondents or any other beneficiary or to a third party in respect of L.R.No. Mugunda/Nairutia/Block 1/115 and Mugunda Nairutia/Block 1/181 on the basis of the revoked grant are hereby cancelled and the parcels of land shall revert to the name of the deceased.
  - d. Having identified the rightful beneficiaries of the estate, I hereby order that the assets of the deceased L.R No. Mugunda/Nairutia/Block 1/115 and L.R. No. Mugunda/Nairutia/Block 1/181 shall be shared equally between the nine beneficiaries aforementioned and that the share of the late Lucy Wangechi Nderitu shall be bequeathed to her children Mathew Thuku Nderitu, Samuel Ndungu Nderitu and Veronica Nyambura Nderitu in equal shares.



e. That a certificate of grant shall issue in terms of the distribution hereby ordered.

21. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 4<sup>TH</sup> DAY OF MAY, 2023.**

**F. MUCHEMI**

**JUDGE**

**Judgement delivered through videolink this 4<sup>th</sup> day of May, 2023**

