



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Mutahi Kamau (Deceased) (Succession Cause  
743 of 2009) [2023] KEHC 3912 (KLR) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3912 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 743 OF 2009**

**FN MUCHEMI, J**

**MAY 4, 2023**

**IN THE MATTER OF THE ESTATE OF MUTAHI KAMAU  
(DECEASED**

**BETWEEN**

**KAMAU MUTAHI KAMAU ..... 1<sup>ST</sup> APPLICANT**

**MARY GATHONI GITHAIGA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**PATRICK WANJOHI MUTAHI ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPH MUTHIGA MUTAHI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Brief Facts**

1. The applications for determination are dated August 12, 2021 and October 12, 2021. The first applications seek for orders of revocation of grant issued to Loise Chaki Mutahi on 2<sup>nd</sup> June 2010 while the 2<sup>nd</sup> one seeks to revoke the grant, issued to the 1<sup>st</sup> respondent and the 1<sup>st</sup> applicant.
2. In opposition to both applications, the respondents filed Replying Affidavits sworn on September 20, 2021 and 15<sup>th</sup> July 2022 respectively.

**The Applicant's Case on application dated 12th August 2021**

3. The application was filed by the petitioner who deposed that the administratrix of the estate, one Loise Chaki Mutahi was issued with the letters of grant on June 2, 2010. The applicant states that the administratrix passed away on November 12, 2010. He further avers that she died before she could administer the estate and therefore the grant has become inoperative. The applicant further states that he is a son of the deceased and asks the court to revoke the said grant and appoint him as



the administrator. The applicant further states that he is the personal representative of the deceased administrator.

4. The applicant states he is not agreeable to the mode of distribution in the grant issued on 2/6/2010 and that he wants a fresh grant to be issued to him. The 1<sup>st</sup> applicant seeks for review of the mode of distribution.

### **The Respondents' Case**

5. The respondents contend that the application is an abuse of the court process and is premised on falsehoods. The respondents further contend that the applicant has deliberately failed to disclose that L.R. No. Nyeri/Island Farms/980 and L.R. No. Nyeri/Island Farms/977 are in the name of the 1<sup>st</sup> & 2<sup>nd</sup> respondents respectively, transmission having been done. The said parcels of land are the respondents' share in the estate and therefore the applicant is misleading the court when he states that he seeks to review the grant.
6. The respondents state that the deceased's estate was distributed thus the matter is fully determined. Furthermore, the respondents aver that the applicant was an active party throughout the proceedings.
7. The respondents further state that L.R. No. Nyeri/Island Farms/108 does not exist. Further, the respondents state that in the event there are any shares in the deceased's name, which they doubt, revocation is not the mode to distribute them. Additionally, the respondents contend that they are not aware of cows, cupboards etc that are still available for distribution, 15 years after the demise of the deceased.

### **The Applicant's Case on the application dated October 12, 2021**

8. The applicant, Mary Gathoni Githaiga, deposes that she is a daughter to the deceased. It is further deposed that the deceased was survived by the following beneficiaries:-
  - a. Loise Chaki Mutahi – widow
  - b. Mary Gathoni – daughter
  - c. Riccada Wanjiru – daughter
  - d. Kamau Mutahi – son
  - e. Munuhe Mutahi – son
  - f. Charles Maina – son
  - g. Joseph Muthiga – son
  - h. Patrick Wanjohi – son
9. It is further stated that the respondents did not involve the applicant in these proceedings nor did they seek her consent at the time of filing the petition or during distribution of the estate. As such, the grant issued on 2/6/2010 was obtained fraudulently by means of untrue allegations. The applicant further deposes that the administratrix of the estate made a false statement and concealed the fact that the applicant was a daughter to the deceased and thus a beneficiary to his estate.

### **The Respondents' Case**

10. The respondents state that in the event the applicant has any claim in the estate, it lies elsewhere but not by way of revocation of grant against them. The respondents further aver that the applicant was aware



of what was transpiring during the lifetime of the deceased and their mother. As such, the respondents state that the applicant is being misled by parties who have failed to have the grant dated 2//6/2010 either revoked, reviewed or the estate redistributed.

11. Parties disposed of the applications by way of written submissions.

### **The Applicant's Submissions**

12. The applicant submits that she was never invited or cited to participate in the proceedings by her deceased mother and that she only came to know about the matter after the issuance of the grant. The applicant further states that she and her siblings Joseph Muthiga and Riccada Wanjiru were disinherited as they were not involved in the distribution of their father's estate.
13. The applicant further submits that she supports the application for revocation of grant by Kamau Mutahi and his proposal that the assets of the deceased revert back to his name. The applicant thus seeks for orders to revoke the grant as it was obtained fraudulently by making false statements and concealing material facts of the case from the court.

### **The Respondents' Submissions**

14. The respondents submit that pursuant to the confirmed grant issued on 2<sup>nd</sup> June 2010, the applicant was entitled to L.R. No. Nyeri/Island Farm/981, the 1<sup>st</sup> respondent to L.R. No. Nyeri/Island Farm/980 and the administratrix to L.R. No. Nyeri/Island Farm/979. Upon transmission, the respondents contend that the administratrix transferred her interest to the 2<sup>nd</sup> respondent.
15. The respondents rely on section 76 of the *Law of Succession Act* and the case of *In Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR and submit that although the administratrix of the estate is deceased, she completed administering the estate before her demise. The respondents support their contention by annexing certificates of search in respect of L.R. No. Nyeri/Island Farms/979 and 980 which bear their names as registered proprietors.
16. The respondents further contend that the applicant intends to review the mode of distribution in respect of property L.R. No. Nyeri/Island Farms/108 however the said parcel of land does not exist and it was not one of the properties included in the schedule of assets in the grant. Moreover, the respondents state that the applicant has not attached anything to prove its existence.
17. The respondents submit that the application dated August 12, 2021 seeks revocation of the certificate issued on 2<sup>nd</sup> June 2010 and not the grant of letters of administration issued on 19<sup>th</sup> April 2010 to the 1<sup>st</sup> respondent and 1<sup>st</sup> applicant. To this argument the respondents argue that a certificate of confirmation of grant is not a grant of representation, but it is a certificate to the effect that the grant has been confirmed by the court. The respondents refer to Section 76 of the *Law of Succession Act* and the case of *In Re Estate of Kiberenge Mukwa (Deceased)* [2021] eKLR and submit that Section 76 of the Act provides for revocation of grants of representation, and not certificates that confirm those grants.
18. On the application dated October 12, 2021, the respondents submit that the applicant has not articulated in what respect there was fraud in obtaining the grant. Her case is that the grant was obtained fraudulently by making of false statements and by concealment of material facts. The respondents state that the applicant was included in the fling of succession cause as shown in the court record. The respondents further submit that the applicant is in connivance with the applicant, Kamau Mutahi as she has agreed with his mode of redistribution of the estate yet she has not been included in the purported distribution.



## The Law

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

19. 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.

20. The deceased died on December 2, 2007. He was survived by his widow and seven children as follows:-

- a. Loise Chaki Mutahi – wife
- b. Riccada Wanjiru – daughter
- c. Peter Kamau Mutahi – son
- d. Munuhe Mutahi – son
- e. Charles Maina Mutahi – son
- f. Mary Gathoni – daughter
- g. Joseph Muthiga Mutahi – son
- h. Patrick Wanjohi Mutahi – son



21. The administratrix herein is the widow of the deceased and she petitioned for grant of letters of administration intestate on 15/09/2009. The grant was confirmed on 02/06/2010 in the presence of only the applicant and before the expiry of the statutory period of six(6) month. To the application of confirmation of the grant was annexed a consent signed by three beneficiaries namely Mary Gathoni, Joseph Muthiga Mutahi and Patrick Wanjohi Mutahi. The P& A Form shows that the deceased was survived by eight (8) beneficiaries including the administratrix.
22. Upon the demise of the administratrix on 11/11/2010, the 1<sup>st</sup> applicant applied to be substituted in place of his mother. The application was opposed by the 1<sup>st</sup> respondent. The court eventually substituted the 1<sup>st</sup> applicant and 1<sup>st</sup> respondent as co-administrator's of the estate.
23. The 1<sup>st</sup> applicant filed summons for confirmation of grant on 22/11/2016 which was opposed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The court heard the protests and in its judgement delivered on 13<sup>th</sup> May 2020 whereas it directed that the new administrators were to take over from the administratrix and continue from where she had reached. As such, the court further directed that the schedule to the confirmation of grant application dated 02/06/2010. The court then distributed the estate based on the said schedule and issued a certificate of confirmation.
24. The two applications for determination herein were filed after the judgement of the honourable judge of the High Court Ngaah J. In essence, the applicants seek for revocation of the grant issued to the 1<sup>st</sup> and 2<sup>nd</sup> respondents on grounds that it was obtained through fraud and concealment of facts material to the case. The 2<sup>nd</sup> applicant in addition to seeking revocation of grant, also seeks for review of the mode of distribution of the estate.
25. A cursory look at the judgement of Ngaah J, it is evident that attempts to revoke the grant issued to the administratrix who is now deceased were declined by the honourable judge with valid reasons and the court confirmed the grant based on the application for confirmation filed by the administratrix. The applicants are seeking for revocation of the same grant because no new grant was issued to any other person. The 1<sup>st</sup> applicant and respondent were granted authority to proceed with distribution of the estate from where the deceased administratrix had reached. If this court was to entertain the two Summons for Revocation and review of the said grant, such a move would amount to sitting on appeal on the orders of the judge who has equal jurisdiction with this court which would amount to an exercise in futility. The applicants ought to have filed an appeal in a higher court against the orders of Ngaah J.
26. Although the 1<sup>st</sup> applicant Kamau Mutahi did not disclose that he had filed an appeal against the ruling of Ngaah J, there is on the court record a copy of Notice of Appeal dated 18<sup>th</sup> May 2020 received by the Court of Appeal on 22/06/2020 and by the High Court on 21/05/2020. It is likely that the 1<sup>st</sup> applicant appealed and probably had his appeal dismissed. If this be correct, then it is wrong for him to return to this court for the orders he is seeking.
27. It is my considered view that this court lacks the jurisdiction to review the orders of another high court judge. The two applications are, in my view misconceived and incompetent and ought not to be entertained.
28. Consequently, the two applications dated 02/08/2021 and October 12, 2021 are hereby struck out with no orders as to costs.
29. It is hereby so ordered.

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

**F. MUCHEMI**



**JUDGE**

**RULING DELIVERED THROUGH VIDEOLINK THIS 4TH DAY OF MAY, 2023**

