



**In re Estate of Paul Kamau Njoroge (Deceased) (Succession Cause
65 of 2009) [2023] KEHC 18833 (KLR) (21 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18833 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 65 OF 2009**

DK KEMEL, J

JUNE 21, 2023

IN THE MATTER OF THE ESTATE OF PAUL KAMAU NJOROGE

BETWEEN

DOUGLAS KARUGA KAMAU 1ST PETITIONER

NJENGA KAMAU 2ND PETITIONER

AND

LUCY WAITHERA KAMAU OBJECTOR

JUDGMENT

1. By summons dated September 1, 2021, the objector sought the revocation of grant issued to the petitioners. The application is supported by the applicant's affidavit where she depones that the process leading up to the issue and the subsequent confirmation of the grant was defective in that neither she nor her children were involved.
2. She depones that she was blessed with six children and that she had been given a parcel of land in Laikipia which she does not know and is not sure that the parcel even exists. She accuses the petitioners of being hostile towards her and her children.
3. The 1st petitioner filed a repluing affidavit deponing that indeed the children mentioned were sired by the deceased who thereafter parted ways with the objector and that the objector relocated to Mai Mahiu in Narok County where she lived until the death of the deceased.
4. He depones that the objector's children are well provided for in that they have been given four acres out of land parcel Laikipia/Sosian/Block 2/11594 which fact has never been contested by the beneficiaries. He south for the dismissal of the application.



5. The matter proceeded by way of viva voce evidence. The objector Lucy Waithera Kamau testified that she was the deceased's 4th wife and was dissatisfied in the manner in which the estate was distributed. She reiterated that she wanted the grant revoked.
6. Elias Karioki Kamau testified that he was the deceased's biological son and that the objector is his mother. He accused the petitioners of secretly taking out letters of administration. He also listed the deceased's properties and lamented that his mother's house had been neglected and his brothers given a portion of one acre each out of a parcel in Laikipia.
7. Gitau Kamau Njoroge testified that he was the deceased's son from the 1st house. His complaint was that the deceased's 4th house had been neglected and given a share in laikipia whose location is unknown.
8. Francis Karuga Kamau testified that he is the deceased's biological son born out of the 2nd house. He stated that neither himself nor his siblings were involved in the process of succession. He faulted the mode of distribution adopted by the petitioners as discriminatory.
9. For the petitioners, Douglas Karuga Kamau testified that the objector had since left the deceased's home and efforts by the deceased to bring her back had proved futile. He stated that before his demise, the deceased had instructed that the objector remains in occupation of the land in Laikipia. He stated that the objector is not a member of the family since she had left by choice.
10. Timothy Waweru stated that the deceased had stated that the objector's family should remain in Laikipia where there exists land belonging to the deceased.
11. Teresia Wambui Kamau stated that she was the deceased's widow but had left her matrimonial home and efforts by the deceased to bring her back home had been futile. She asserted that the objector had been given land elsewhere.
12. The parties also filed their written submissions which are on record and have been taken into consideration.

Analysis and determination

13. According to the submissions filed herein, the parties readily admit that the main issue for determination in these proceedings is whether the grant as issued is liable for revocation.
14. It is not in dispute that the legal provision governing the revocation of grant is provided for under section 76 of the *Law of Succession Act* which provides;

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
- (e) that the grant has become useless and inoperative through subsequent circumstances.
15. The objectors' main contention in these proceedings is that neither she nor her children were provided for in the distribution of the estate and that she was given a parcel of land she or her children do not know the location. The petitioners on the other hand contend that the objector left her matrimonial home and relocated elsewhere and efforts to have her come back to her house were in vain. It is thus their contention that the objector having left the matrimonial home never to come back is not entitled to a portion of lands in Bungoma but in Laikipia.
16. I have considered the documents filed herewith to ascertain whether the grant was indeed obtained through concealment of material facts. I take note of the fact that the petitioners and their witnesses admit that the objector was indeed married to the deceased only that she had left the matrimonial home never to come back.
17. According to the chief's letter dated July 8, 2009, the deceased was survived by 16 beneficiaries whose relationship to the deceased is not indicated by the chief who authored the letter. To the converse, in form P&A 5, the deceased was survived by 10 beneficiaries among them one widow and two daughters in law. As matters stand, there is no clarity on what relationship existed between the deceased and the said beneficiaries who appear in the documents filed in court.
18. I have also considered the assets of the estate as disclosed in the form above-stated and the following assets are disclosed; Laikipia/Sosiani Block 2/11594 & 11592, Kimilili.Kibingei/220 & 2327 and Elgon/Kapkateny/204 as well as shares at Standard Chartered Bank, Kenya Commercial Bank, Clay Works Githurai and proceeds from Nzoia Sugar Company.
19. Turning to the consent as contained in form P & A 38, I note that only two individuals signed the consent; that is, Paul Kamau Karuga and Jane W. Karuga.
20. From this, it is noted that there is a serious anomaly which ought to be addressed in the first place.
21. Rule 7 of the *Probate and Administration Rules* provides that application for grant of representation in relation to an estate of a deceased person to whose estate no grant or no grant other than those provided for under Section 49 or a limited grant under Section 67 of the *Act* has been made, the application shall be by petition and supported by an affidavit. The affidavit should contain inter alia the names, addresses, marital status and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with Section 39(1) of the *Act*.
22. Rule 26 provides that letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant. Further, in an



application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.

23. The effect of the above provisions is that where a person is applying for a grant of letters of administration intestate, he must get consent from persons of equal or lower priority than him. The petitioners having been step-children to the objector and other beneficiaries, means that all the remaining beneficiaries ought to have consented to them being given the grant of letters of administration in relation to the estate herein.
24. I have perused the court record and I note that consent to the making of a grant of letters of administration intestate which was filed contemporaneously with the petition was only signed by two beneficiaries (Paul Kamau Karuga and Jane W. Karuga).
25. This scenario played out in *In re Estate of Eston Nyaga Ndirangu (Deceased)* [2021] eKLR, where the learned judge held;

There is no consent as to the other brothers and sisters having consented to the grant being given to the 1st and 2nd respondent. It is my view therefore that the said grant was obtained pursuant to proceedings which were defective in substance. The respondents ought to have obtained consent from all the other brothers and sisters. In *Antony Karukenya Njeru v Thomas M Njeru* [2014] eKLR, a grant of letters of administration was revoked as persons with equal priority did not consent to the petitioners therein applying for grant of letters of administration. (See also *In the Matter of the Estate of Muriranja Mboro Njiri*, Nairobi HC Succ Cause No 890 of 2003).

26. From the evidence on record, it is clear that the other beneficiaries of the estate especially the objector's children were not involved on the process leading to the issuance of the grant.
27. I thus find that the grant as issued and confirmed in favour of the petitioners is wanting and fit for revocation. However, it is noted that the objector's grouse is to do with the distribution and not the grant itself. In that regard, I see no reason to revoke the grant issued to the petitioners but that the certificate of confirmation of grant must be cancelled so that a fresh summons for confirmation is filed wherein the objector and other beneficiaries will get an opportunity to participate in the exercise.
28. In the result, the objector's summons for revocation of grant dated September 1, 2021 has merit. The same is allowed to the extent that the certificate of confirmation of grant issued to the petitioners on the May 19, 2014 is hereby cancelled. The petitioners are directed to prepare a fresh summons for confirmation of grant, file and serve the same upon all the beneficiaries within 30 days of this ruling for them to register their objection to the mode of distribution. In the event that the properties of the deceased namely LR Kimilili/Kibingei/220, Kimilili/Kibingei/2264, Elgon/Kapkateny/204, Kimilili/Kibingei/2327, Shares at KCB and Standard Chartered Banks have been transferred, there be an order reverting them back in the name of the deceased Paul Kamau Njoroge pending fresh distribution among the beneficiaries. This being a family matter, each party shall bear their own costs.

Orders accordingly.

DATED at BUNGOMA this...21ST day of JUNE 2023

D.Kemei

Judge



In the presence of:

Masiga for Kassim for Objector

Wamalwa for Were for Petitioners

Kizito Court Assistant

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