



REPUBLIC OF KENYA



In re Estate of Geoffrey Kimandu Gitau (Deceased) (Succession Cause 1801 of 1995) [2023] KEHC 18582 (KLR) (Family) (12 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18582 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1801 OF 1995
MA ODERO, J
JUNE 12, 2023**

BETWEEN

JOHN GITAU NYOKABI APPLICANT

AND

DAVID GITUA KIMANDU OBJECTOR

RULING

1. Before this court is the summons for Revocation of Grant dated December 29, 2021 by which the applicant John Gitau Nyokabi seeks the following orders:-
 - “ 1. The Certificate of Confirmation of Grant dated March 27, 1998 and further re-amended on 5th December, 2017 to Margaret Wairimu Kimandu be revoked forthwith;
 2. That a Grant of Letters of Administration to the estate of Geoffrey Kimandu Gitau do issue to John Gitau Nyokabi and Johnson Gikandi Ngibuini.
 3. That a Certificate of Confirmation of the Grant of Letters of Administration do issue forthwith;
 4. That costs of the Application be in the cause.”
2. The summons was premised upon sections 66 and 75 of the *law of Succession Act*, and rule 44 and 499 the *Probate and Administration Rules* and was supported by the Affidavit of even date sworn by the Applicant.



3. The Objector David Gitau Kimandu filed an Affidavit in support of his objection dated May 22, 2022. In turn Johnson Gikandi Ngubuini filed an Affidavit in opposition to the objection dated January 26, 2023.
4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated September 26, 2022 whilst the Objector relied on the written submissions dated January 29, 2023.

Background

5. This Succession Cause relates to the estate of the late Geoffrey Kimandu Gitau (hereinafter ‘the Deceased’) who died intestate on October 8, 1993. The Deceased was survived by the following persons:-
 - (a) Margaret Wairimu Kimandu - Widow
 - (b) Damaris Wanjiru Kimandu - Daughter
 - (c) David Gitau - Son
 - (d) Mary Wambui - Daughter
 - (e) Jane Muthoni - Daughter
 - (f) Eunice Nyokabi - Daughter
6. Following the demise of the Deceased his widow Margaret Wairimu Kimandu sought and obtained Grant of letters of Administration Intestate which Grant was issued to her on November 14, 1995. The Grant was duly confirmed on March 27, 1998. The mode of distribution of the estate was agreed upon by all the beneficiaries.
7. Thereafter the Succession Cause remained active with various applications being filed by the parties. On July 9, 2020 the sole Administrator of the estate passed away. A copy of her Death Certificate Serial Number 0987222 is annexed to the supporting Affidavit of the Applicant dated December 29, 2021.
8. The Applicant who is the grandson of the Deceased Administrator being the son of Eunice Nyokabi a daughter of the Deceased then filed this summons seeking revocation of the Grant which had been issued to the late Administrator, on grounds that said Grant had been rendered useless and inoperative by the demise of the sole Administrator of the estate.
9. The Applicant prays that upon revocation of the Grant, he together with Johnson Gikandi Ngubuini (a son-in-law of the late Administrator) be appointed as Administrators ‘de bonis non’ to complete the distribution of the estate as set out in the confirmed Grant.
10. The Applicant states that the Objector will not in any way be prejudiced if the summons is allowed as the Objectors interest in the estate and will not be adversely affected.
11. The Objector David Gitau Kimandu in opposing the summons stated that the estate in question related to his late Father. The Objector concedes that his mother who was appointed as the sole administrator of the estate passed away on July 9, 2020.
12. The Objector strongly opposes the appointment of the Applicant and Johnson Gikandi Ngubuini as Co-Administrators to the replace the late Margaret Wairimu Kimandu. The Applicant states that as the only surviving son of the late Administrator it is he who ought to be appointed Administrator ‘de bonis non’.



13. The Objector alleges that the Applicant and Johnson Gikandi Ngubuini being the grandson and son-in-law respectively of the late Administrator do not rank in priority over him. That the two lack the requisite integrity to administer the estate. The Objector states that he is apprehensive that he may be denied his share of the estate.
14. Johnson Gikandi Ngubuini confirmed that he was a son-in-law of the late Administrator. He stated that he had no personal interest in the estate. That his only interest was to complete the administration of the estate to the benefit of all the beneficiaries.
15. All the beneficiaries to the estate save for the Objector signed a consent dated December 12, 2021 supporting the summons filed by the Applicant.

Analysis and Determination

16. I have carefully considered the summons before the court the Replies filed in response thereto as well as the written submissions filed by the parties.
17. It is common ground that following the death of the Deceased in this Cause his widow was issued with the Grant of letters of Administration Intestate. That Grant was duly confirmed on March 27, 1998. Several years later the sole Administrator of the estate also passed away.
18. The Grounds upon which ground may be revoked are set out in Section 76, of the [Law of Succession Act](#) as follows:-

“76. Revocation or annulment of grant

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.” [own emphasis]

19. Section 76 (e) provides for revocation of Grant if the same has become useless and inoperative. A Grant of Administration is issued to a particular individual in his personal capacity and cannot be transferred to another individual. Upon the death of the person/persons to whom the Grant was issued the said Grant becomes useless and inoperative and is for revocation.
20. In such circumstances the Grant may be revoked and a fresh Grant issued to a new Administrator *de bonis non* to enable the distribution of the estate to be concluded.
21. In this case all the parties agree that the sole Administrator passed away before completing the distribution of the estate. As such there is need to appoint a new Administrator(s) of the estate to conclude the task of distribution. In the preuses I do find that the Grant issued to Margaret Wairimu Kimandu has become useless and inoperative through subsequent events. I therefore revoke the Grant issued on November 14, 1995 and confirmed on March 27, 1998.
22. Whilst all the parties were agreed on the need to revoke the Grant there is no agreement on who should be appointed as the new administrator(s) of the estate. The Applicant proposes himself and Johnson Gikandi Ngubuini for appointment as Administrators to conclude the administration of the estate. The Objector on his part rejects this proposal and instead proposes that he be appointed as sole Administrator.
23. The Decision on who should be appointed as the new Administrators of this estate is one which ultimately lies within the discretion of the court. However in making that decision the court will be guided by section 66 of the *Law of Succession Act* which sets out the order of preference regarding issuance of Grants to an Administrator in cases of intestacy as follows:-

“66. Preference to be given to certain persons to administer where deceased died intestate.

Where a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors.”

24. Therefore under section 66 priority is given to the surviving spouse or spouses of the Deceased followed by the surviving children of the Deceased.
25. In this particular case the spouse of the Deceased having herself passed on, the next in rank of priority would be the children of the Deceased. The Objector is a son of the Deceased. Undoubtedly he would



rank in priority over the Applicant who is a grandson and Johnson Gikandi Ngubuini who is a son-in-law of the Deceased.

26. The Objector has the capacity to be appointed as Administrator. No evidence has been placed before this court to demonstrate the unsuitability of the Objector for such an appointment.
27. This court is however mindful of the fact that there appear to be some underlying tensions amongst the beneficiaries and no outright agreement on who should be appointed as Administrator. I do note beneficiaries support the appointment of the Applicant and Johnson Gikandi Ngubuini as the Administrators of the estate. Bearing in mind the special circumstances of this case the court appoints the Objector David Gitau Kimandu and John Gitau Nyokabi as joint Administrator de bonis non.

Conclusion

28. Finally the summons dated December 29, 2021 succeeds partially. This court hereby makes the following orders:-
 - i) The Grant of letter of Administration issued to Margaret Wairimu Kimandu on November 14, 1995 and confirmed on December 5, 2017 be and are hereby revoked.
 - ii) David Gitau Kimandu and John Gitau Nyokabi are hereby appointed as administrators of the estate of the Deceased.
 - iii) A Certificate of Confirmation of Grant be issued in the names of David Gitau Kimandu and John Gitau Nyokabi .
 - iv) This being a family matter, I make no orders on costs.

DATED IN NAIROBI THIS 12TH DAY OF JUNE, 2023.

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MAUREEN A. ODERO

JUDGE

