



REPUBLIC OF KENYA



**In re Estate of Daniel Gichuki Wambugu (Deceased) (Succession Cause  
46 of 2017) [2023] KEHC 20353 (KLR) (19 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20353 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 46 OF 2017**

**TA ODERA, J**

**JULY 19, 2023**

**BETWEEN**

**MARGARET WANJIRU GICHUKI ..... 1<sup>ST</sup> APPLICANT**

**LUCY NYAGUTHIE GICHUKI ..... 2<sup>ND</sup> APPLICANT**

**MARY WACEKE GICHUKI ..... 3<sup>RD</sup> APPLICANT**

**NAOMI WANJIRU GICHUKI ..... 4<sup>TH</sup> APPLICANT**

**AND**

**ESTHER NJOKI GICHUKI ..... RESPONDENT**

**RULING**

1. The applicants herein filed summons for Revocation of grant dated brought undersections 76 of the [Law of Succession Act](#) and Rule 44 of the [Probate and Administration Rules](#).
2. They seek for orders of revocation of grant confirmed in favour of the respondent on 17.2.19.
3. Applicants also sought for orders that the administratrix be ordered to furnish accounts in respect of all the properties forming part of the estate of deceased.
4. The application is based on the annexed joint affidavit of the applicant and the grounds that they are children of deceased, they did not consent to making of the grant of administration to the administratrix and that they did not consent to distribution of the estate to the administrator, further that the said failure to obtain consent is fatal to this cause , the administrator is disposing off the estate of the deceased without input of the applicants and that she has not given any account with respect to the said estate .
5. The applicants jointly swore the supporting affidavit dated 27.12.22 the reiterated the ground in the face of the application herein and a copy of the grant – “MLMN1”letters of administratrix and gazette



notice, “MLMN3”. They also annexed a copy of certificate of the confirmed grant MLMN4. They told this court that the administrator obtained the grant fraudulently and though non – disclosure of material facts. They asked this court to remedy the illegalities by preserving the estate and revoking the grant.

6. No reply was filed in opposition to the application. The application was thus not opposed

### **Issues For Determination**

7. From a careful analysis of the Summons, the supporting Affidavit, the only issue that arises for determination is whether the applicant have presented sufficient evidence to warrant revocation or annulment of the grants herein.

### **The Law**

8. 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 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
9. What the above provision implies is that a grant may be revoked where the proceedings leading up to its making were defective, or where the grant was obtained fraudulently and by concealment of an important fact, or was obtained by an untrue allegation of a fact that is essential. Secondly, where the grant has not been confirmed within the stipulated time, where the administrator fails to diligently administer the estate and where the he fails to account for the estate upon being called upon to do so. A grant can also be revoked where the sole administrator dies or becomes incapable of continuing with the administration due to illness among other reasons.
  10. Notably, the power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the case of Albert Imbuga Kisigwa v Recho Kawai Kisigwa Succession Cause No. 158 of 2000.



11. In this case applicants deponed that they are daughters of the deceased and that they neither consented to the issuance of letters of administration to the administratrix herein nor the confirmation of the said grant. I have seen the chief's letter herein which introduced the applicants as daughters of the deceased, the administratrix as his widow and Charles Kamau as his son. I have perused the record of 3.12.18 when the case came up for confirmation of grant and the court noted that some of the beneficiaries refused to sign the consent and were ordered to file affidavit of protest to the proposed mode of distribution within 60 days from that date and mention was slated for 26.2.19 . On the said 26.2.19 the matter came up for confirmation of grant and it is only counsel for respondent who was present in court and the court proceeded to confirm the grant as per the orders dated 3.12.18.
12. I have carefully considered the application, the law and the record herein.
13. On the issue of consent to issuance of letters of administration and lack of notice of the petition applicants, the applicants faulted the administratrix for not obtaining their consent before applying for the letters of administration and not informing them of the same. Section 66 of the [Law of Succession Act](#) provides that “66. Preference to be given to certain persons to administer where deceased died intestate, when 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: Provided that, where there is partial intestacy, letters of administration in respect.”.
12. It is clear that the administratrix is a widow to the deceased and thus had priority in administration of the estate of deceased over the applicants who are the children of deceased. She was thus not at fault to take out letters of administration without the consent of the applicants. In any event the same was advertised in the Kenya Gazette as required by law and this is deemed to be sufficient notice to all interested parties.
13. On whether the administratrix concealed the existence of the applicants during confirmation of grant. I have perused this court file and I note that all the beneficiaries appeared in court on 3.12.18 but refused to sign the consent for distribution. They were ordered to file protests within 60 days but they did not. The summons for confirmation of grant herein was also accompanied by a consent which bears signatures said to be for some of the applicants but there was no denial of the said signatures by the applicants herein. The applicants cannot now come to complain that they were not involved in the confirmation process. I find no evidence of concealment of any material fact as envisaged by section 76 of the [Law of Succession Act](#).
14. The applicants also accused the administratrix of selling off the property of deceased without their knowledge but they did not adduce any evidence to support the said allegation and this ground.
15. Further, the applicants accused the administratrix of failing to account for the estate but there is nothing to show that they made that request and it was not acted upon.



16. I have seen the confirmed grant herein and I note that the estate of deceased devolved upon the administratrix absolutely. She is the widow of the deceased.
17. Section 35 of the *Law of Succession Act* provides that “35. Where intestate has left one surviving spouse and child or children
- (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—
    - (a) the personal and household effects of the deceased absolutely; and
    - (b) a life interest in the whole residue of the net intestate estate: Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.
  - (2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.
  - (3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.
  - (4) Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so, what order, shall have regard to—
    - (a) the nature and amount of the deceased’s property;
    - (b) any past, present or future capital or income from any source of the applicant and of the surviving spouse;
    - (c) the existing and future means and needs of the applicant and the surviving spouse;
    - (d) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;
    - (e) the conduct of the applicant in relation to the deceased and to the surviving spouse;
    - (f) the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any); and
    - (g) the general circumstances of the case including the surviving spouse’s reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section.



- (5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children. Where intestate has left one surviving spouse but no child or children.”
18. Section 35 (1)(b) of the *Law of Succession Act* is thus clear that a widow of a deceased has priority over the children in the estate of a deceased but this is limited to life interest in the estate save for personal effects of the deceased. It thus follows that the children of deceased would be entitled to inherit the estate of deceased upon the demise or remarriage of their mother. In the case of the *Estate of Peter Ambani Mataywa (Deceased)*[2019] eKLR Justice Musyoka held that “29. The administratrix is the surviving spouse of the deceased. So she is entitled to priority at distribution over the children. According to Part V, a surviving spouse is entitled only to a life interest where the deceased is survived by children, and not to the property absolutely, unless, of course, the children consent to taking her absolutely. In the instant case, the surviving spouse had the property devolved absolutely to her, instead of her being assigned a life interest. That did not comply with section 35 of the *Law of Succession Act*. However, that defect alone cannot be a basis for revocation of the grant.
19. I find that the process of confirmation of the grant herein was proper though the whole estate devolved to the administratrix and no ground for revocation of grant under section 76 of the law of succession has been established to warrant revocation of grant. Application dated 27.10.22 lacks merit and is thus dismissed.
20. Turning to section 35 of the issue of estate devolving to the administratrix absolutely, this court has a duty to administer justice to all the parties before it under article 159 of the *Constitution* of Kenya.
21. I have noted with concern that the administratrix inherited the entire estate absolutely and thus the applicants risk being disinherited of their birth right to inherit the estate of deceased. I proceed exercise my discretion herein in the interest of justice and review the confirmation of grant dated 26.2.19 to indicate that the administratrix shall have a life interest in the estate of the deceased in conformity with section 35 of the *Law of succession Act* to protect the interest of the children of the deceased. For avoidance of doubt this order will apply to the following land parcels;
- A. Kiambogo/Kimbogo/Block 2/17813
  - B. Kiambogo/Kimbogo/Block 2/17812
  - C. Othaya/Kiahugu/2305
  - D. Unregistered lease No. Nakuru /Municipality Block 27/396
  - E. Unregistered lease No. Nakuru /Municipality Block 27/397
  - F. Unregistered lease No. Nakuru /Municipality Block 27/808
22. Thereafter, the said estate shall devolve to the children of deceased in equal shares.
23. The certificate of confirmation of grant be amended accordingly and each party to bear his own costs as this is a family matter.

**T.A. ODERA - JUDGE**

**19/7/2023**

**DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF;**



**Aziz Annan for Applicant**

**No appearance for Respondent.**

**Court Assistant; Bor.**

**T.A. ODERA - JUDGE**

**19/7/2023**

