



REPUBLIC OF KENYA



**In re Nicasio Njeru Njagi (Deceased) (Succession Cause 8 of 2019)
[2023] KEHC 20260 (KLR) (19 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20260 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 8 OF 2019
LM NJUGUNA, J
JULY 19, 2023**

BETWEEN

LUCY KARIMI MURIITHI APPLICANT

AND

**YUNICE MUTITU NJAGI (SUBSTITUTING) NJAGI KOVI
(DECEASED) RESPONDENT**

AND

JOSEPHINE NJOKI NJIRU BENEFICIARY

JUDGMENT

1. The applicant has filed an undated summons for revocation and/or annulment of grant with reference to a grant dated 06 February 2014. The application is premised on section 71 of the Laws of succession Act and Rule 44(1) and 73 of the *Probate and Administration Rules* and on the following grounds:
 - a. That the proceedings to obtain the grant and subsequent confirmation were fraudulent and false as the respondent did not disclose to the court that the applicant herein was also a beneficiary of parcel number Mbeti/Kiamuringa/2990;
 - b. That the respondent did not inform the applicant of the succession cause before this court knowing that the applicant was also a beneficiary of the estate of the deceased;
 - c. That the respondent has already implemented the grant and confirmation while excluding the applicant;
 - d. That the succession was filed in secret; and
 - e. That there is a pending subdivision of the land to its beneficiaries.



2. The court on 01 December 2020 allowed an application by Yunice Mutitu Njagi to substitute the respondent herein following his death.
3. The grant dated 06 February 2014 was issued by this court but the summons for revocation of the same was initially filed at Principal Magistrate's Court at Runyenjes Succession Cause no. 140 of 2013. The matter was referred back to this court for adjudication because the subordinate court lacked jurisdiction to entertain the summons.
4. The court directed that the matter be disposed of by viva voce evidence and thereafter parties filed their written submissions, directions which all the parties complied with including the beneficiary.
5. Fides Njura Njagi who is a biological sister to the deceased and the beneficiary testified that upon the death of the deceased, her father called a meeting which was attended by all her siblings and her mother and informed them about his intentions to file a succession cause for the estate of her brother. That she was not present at the meeting because she was out of the country. That the proceedings of this meeting were reported to her by one of her sisters namely Daisy Ruguru Njagi who told her that their father had planned that at the end of succession, all her daughters would inherit the deceased's property equally. That the responsibility to follow up and distribute the property was left to the beneficiary herein and she was aware of this position. That the beneficiary herein changed the story and claimed the land to herself.
6. The applicant in her sworn statement stated that since her brother, the deceased had died leaving behind no spouse or children, their father tasked the beneficiary herein with the responsibility to ensure that all the daughters received an equal portion of the suit land. That they all trusted the beneficiary and let her complete the court process, only for her to claim all the land. That the beneficiary harassed their father to release the original title document of the land to her but her father gave the title to the applicant herein.
7. According to the witness statement by the respondent, which was also produced in court, she claimed that the beneficiary was merely tasked with the responsibility to pay the expenses for the succession process and then subdivide the land to her sisters. That instead, she went ahead and claimed the whole portion to herself.
8. In the statement filed by the beneficiary, she produced proof of settlement of some Kshs. 22,000/= to one Njeru Njue being debt that was related to the estate of the deceased. That the money was supposed to be refunded by her sisters but none of them paid her back. She argued that settlement of the money by herself made her the sole beneficiary of the estate.
9. Daisy Ruguru Njagi appeared before the court and confirmed that she has no interest in the estate of the deceased and the same was recorded by the court.
10. In her submissions, the applicant cited sections 39 and 66 of the *Law of Succession Act* and Rule 7(7) of the *Probate and Administration Rules* and the case of *In re Estate of Gamaliel Otieno Onyiego (Deceased)* (2018) eKLR to make his argument on the power of the respondent to be appointed administrator over the estate of the deceased. She argued that the grant failed to recognize all the intended beneficiaries under Section 39 of the *Law of Succession Act* whose interpretation gives the applicant the right to inherit a part of the estate. In making her case on revocation of the grant under section 76 of the *Law of Succession Act*, reliance was placed on the case of *Jamleck Maina Njoroge vs. Mary Wanjiru Mwangi* (2015) eKLR which breaks down the circumstances under which a grant can be revoked, being that the proceedings for obtaining the grant were defective in substance and that the grant was obtained through fraud or concealment of a material fact. She urged the court to allow the application in order to give a chance for all the beneficiaries to inherit.



11. The beneficiary, Josephine Njoki Kariuki, in her submissions also outlines the circumstances under which a grant may be revoked under section 76 of the [Law of Succession Act](#) and added that there is no reason for the grant to be revoked as it was obtained legally. It is her case that all the beneficiaries who are also her siblings were aware that the succession proceedings had been filed by their father. That upon her father's request, she paid for all the expenses required in the succession proceedings and in obtaining the title document in her name. It is her case that her father who was administrator of the estate had put the property for sale and that she sourced the money to buy the land in place of strangers.
12. The respondent, in her submissions stated that the beneficiary was fully aware that she was supposed to obtain the property through succession and thereafter subdivide it so that she and her 2 sisters all get equal shares. The respondent stated that this was in fact the wish of her husband before he died.
13. Upon perusal of the testimonies and the submissions herein, in my view the issues for determination are:
 - a. Whether or not there was fraud in the process of application for the grant according to Section 76 of the [Law of Succession Act](#); and
 - b. Whether the applicant has a legitimate right to claim the estate of the deceased.
14. The circumstances under which a grant can be revoked are encapsulated in Section 76 of the [Law of Succession Act](#) which provides:
 - a. Where the proceedings to obtain the grant were defective in substance;
 - b. Where 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. Where 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. Where 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. Where the grant has become useless and inoperative through subsequent circumstances.
15. On the applicant's allegation that she was not included in the list of beneficiaries, I find that the same is a valid claim. I say this because upon perusal of the petition, the administrator did not list any



beneficiaries besides the creditors of the estate. The applicant did not consent to the application for grant Rule 7(7)(b) of the Law of succession act provides for this as follows:

- “(7) Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has—
- (a) renounced his right generally to apply for a grant; or
 - (b) consented in writing to the making of the grant to the applicant; or
 - (c) been issued with a citation calling upon him either to renounce such right or to apply for a grant.”

16. In addressing my first issue for determination, I have perused the initial file where Njagi Kovi (deceased) who was appointed administrator of the estate of the deceased submitted his petition for letters of administration together with the accompanying documents at the Principal Magistrate’s Court at Runyenjes in succession cause no. 140 of 2013. The petition was filed on 23 July 2013. It is stated in the petition that the petitioner petitions in his capacity as the son of the deceased. This information is seen filed as such throughout all the supporting documents to the petition. More so, the notice dated 23 July 2013 issued by the same court terms the administrator as the son of the deceased. Whether or not this is an inadvertence, it contravenes section 76(c) of the Law of Succession Act. By the reason of this false statement, the court was misled into issuing the grant of letters of administration to the father of the deceased who in fact filed his petition purporting to be the son of the deceased. I find that the grant fails as it was obtained by means of an untrue allegation.

17. On the second issue of legitimacy of the applicant’s claim, I shall be guided by sections 66 and 39 of the Law of Succession Act:

- “66. 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)

39.

- (1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority-
 - (a) father; or if dead



- (b) mother; or if dead
- (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
- (d)”

18. These sections are definite when it comes to determination as to who may claim the estate of the deceased. In the present case, the deceased was not survived by a spouse or any children. This means that the person next in line to claim inheritance is his father who according to the court records, failed to claim in his capacity, neither did his mother. It follows that the next legitimate claimants to the estate are the immediate siblings of the deceased who per section 39(1)(c) ought to claim the inheritance in equal share.

19. In light of the foregoing, I am convinced that application has merit and is hereby allowed.

20. I do order as follows:

- a. That the grant dated 06 February 2014 is hereby revoked and certificate of confirmation of grant issued on 29 October 2015 is hereby set aside;
- b. No order as to costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF JULY, 2023.

L. NJUGUNA

JUDGE

.....**Applicant**

.....**Respondent**

.....**Beneficiary**

