



**In re Estate of Alice Nyambura Wainaina alias Nyambura Wainaina Njau (Deceased)  
(Succession Cause 4 of 2019) [2023] KEHC 20038 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20038 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
SUCCESSION CAUSE 4 OF 2019  
CM KARIUKI, J  
JULY 13, 2023**

**IN THE MATTER OF THE ESTATE OF THE LATE ALICE NYAMBURA  
WAINAINA ALIAS NYAMBURA WAINAINA NJAU (DECEASED)**

**BETWEEN**

**CHARLES WANGARA NYAGA ..... 1<sup>ST</sup> APPLICANT**

**JAMES KARIUKI GITHUI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JOHN WABORO WAINAINA ..... 1<sup>ST</sup> RESPONDENT**

**JONNAH NDICHU WAINAINA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The matter before the court is an application by the Applicant dated 22<sup>nd</sup> September 2014 seeking orders that: -
  - I. Spent
  - II. Spent
  - III. That the grant of letters of administration made by John Waboro Wainaina & Jonnah Ndichu Wainaina on the 26<sup>th</sup> day of June 2012 and the certificate of confirmation of grant given on 17/12/2012 vide Nyahururu Principal Magistrate's Court Succession Cause Number 73 of 2012 be revoked and/or annulled forthwith.
  - IV. That this honourable court do order title no. Nyandarua/OI Kalou Central/87 is to be expunged from the assets of the late Nyambura Wainaina Njau.



- V. That alternatively, the proceeding and all orders issued in Nyahururu Principal Magistrate's Court Succession Cause Number 73 of 2012 be stayed pending hearing and determination of Nairobi High Court Civil Suit No. 2197 of 2007.
- VI. That the proceedings and all orders issued in Nyahururu Principal Magistrate's Court Succession Cause Number 73 of 2012 be set aside for want of pecuniary jurisdiction
- VII. The honourable court be pleased to grant any other or further relief that may be befitting in the circumstances.
- VIII. That costs of the application be provided for.
- IX. Which application is grounded on the affidavit of Charles Wangara Nyaga dated 2<sup>nd</sup> September 2014 and because: -
- X. The Principal Magistrates' Court at Nyahururu did not have jurisdiction to entertain the succession cause in issue in view of the monetary value of the subject matter, which was kshs. 1,100,000/- in the year 2012.
- XI. That the proceedings to obtain the grant were defective in substance as the grant was confirmed regarding title number Nyandarua/Olkalou Central/87, which was not in existence since subdivision of the said land had been done and new titles issued.
- XII. That the said grant was obtained fraudulently by making a false statement and by concealing material information from the court.
- XIII. That the grant was obtained using untrue allegations of facts.
- XIV. The interested parties herein had no notice of the proceedings, yet they own part of parcel number Nyandarua/Ol Kalou Central/87.
- XV. That title number Nyandarua/Ol Kalou Central/87 appears to have been restored in the lands register through fraudulent means since a suit by the deceased seeking to have the said title restored was still pending undetermined by the High Court of Kenya at Nairobi being Civil Suit No. 2197 of 2007.

**Applicant's Submissions were Unavailable at the time of drafting this decision.**

2. Respondents' Submissions
3. The Respondents submitted that critical to the determination of the application is the contention by the Respondents in paragraph 15 of their replying affidavit that the Applicants have no locus standi to challenge the grants issued in Nyahururu Principal Magistrate's Court Succession Cause No. 73 of 2012 as they are not beneficiaries of the deceased's estate.
4. It was asserted that most of the issues in contention in this matter were answered through the documentary exhibits tendered by the Respondent's witness (DW3) one Margaret Anita, a Land Registrar with the Ministry of Lands working at Nyandarua County Land Registry. She produced documents to show that land parcel no. Nyandarua/Ol Kalou Central/1396 & 1397 were still registered in the names of the 2<sup>nd</sup> and 1<sup>st</sup> Applicants, respectively. That she also confirmed that land parcel no. Nyandarua/Ol Kalou Central/87 was closed on a subdivision on 6<sup>th</sup> January 2001 to create land titles no. Nyandarua/Olkalou Central/1396, 1397, 2526.



5. The Respondents stated that the land parcels claimed by the Applicants were not listed in form P&A 5, which is part of the annexure ‘CW 16’ of the Applicants’ application; therefore, the Applicants had no cause of action against the Respondents in this case.
6. It was averred that the Applicants, not beneficiaries of the deceased’s estate, did not have the requisite locus standi to participate in the impugned succession proceedings and were not entitled to be notified or cited when filing the succession cause—the inclusion of land parcel no. Nyandarua/Ol Kalou Central/87, which had already been closed on subdivision, did not warrant filing the revocation of grant proceedings. All the Respondents need to do is apply for rectification of the certificate of confirmation of the grant to correct the parcel number. I, therefore, mean that revocation of grants issued therein is unnecessary more so with the enhanced pecuniary jurisdiction of the chief magistrate’s court to KShs. 20 million.
7. Reliance was placed on *Law Society of Kenya vs. Commissioner of Lands & Others* [2000] eKLR, *Alfred Njau & Others vs. City Council of Nairobi* [1982] eKLR.
8. The Respondents contended that the Applicants became registered as proprietors of their land parcels on 6<sup>th</sup> January 2005 and 4<sup>th</sup> June 2007 respectively, according to the copies of land registers produced by DW3. The deceased herein passed away on 30<sup>th</sup> March 2009, long after the registration. The witness confirmed that the Applicants’ registration as proprietors had not been interfered with. It, therefore, means they had no locus standi to institute the application for revocation of grants issued by the subordinate courts as they did not affect their interest in their respective land parcels. The said application is, to that extent, incompetent.
9. It was argued that the Applicants, not being beneficiaries of the deceased’s estate or creditors to the estate, were not clothed with the requisite locus standi to challenge the grants issued. In the absence of such standing, the application must fail.
10. Analysis and Determination
11. The issue for determination herein is whether the Applicant’s application meets the threshold for the revocation of a grant within the meaning of Section 76 of the *Law of Succession Act*.
12. For the avoidance of doubt, Section 76 of the *Law of Succession Act* states 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 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 using 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.”

14. The court In re *Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR expounded on Section 76 where it was stated that:-

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, the persons applying for representation were not competent or suitable for appointment, or the deceased died testate having made a valid will. Then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed, or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally. Still, after that, the administrator got into problems with the exercise of administration, such as when he fails to apply for confirmation of the grant within the time allowed, fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies, leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to the extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

15. Accordingly, the Applicants invited the court to revoke the grant of letters of administration because they purchased 2 acres out of the original Title No. Nyandarua/Ol Kalou Central/ 87 was subdivided to create Titles No. Nyandarua/Ol Kalou Central/ 1396, 1397 & 2526 (as per the annexure marked ‘CW 4- CW 14’), yet they were not included as beneficiaries to the estate when the grant was issued and confirmed.
16. The crux of the matter is the inclusion of land parcel no. Nyandarua/Ol Kalou Central/ 87 was closed on a subdivision on 6<sup>th</sup> January 2005, creating Titles No. Nyandarua/Ol Kalou Central/ 1396, 1397



& 2526, under which parcel 1396 had been registered in the name of the 2<sup>nd</sup> Applicant and parcel 1397 had been registered under the 1<sup>st</sup> Applicant's name as confirmed by DW3.

17. In my view, land parcel no. Nyandarua/Ol Kalou Central/ 87 should never have been listed as part of the deceased's assets. The same was known to the Respondents because they knew there had been disputes emanating from the Applicants' attempts to settle in their parcels where the Respondents were denying them access to their parcels, as testified by PW1 and PW2. The 1<sup>st</sup> Respondent denied ignorance about the sale and subdivision of Nyandarua/Ol Kalou Central/ 87. Still, from the record, the 1<sup>st</sup> Respondent had even lodged a caution on 18<sup>th</sup> November 1994, claiming beneficiary interest when the deceased sold a portion of the land to the 1<sup>st</sup> Applicant. Moreover, the record proves that the 1<sup>st</sup> Respondent was aware of Civil Case No. 2197 Of 2007, in which the parcel was an above-formed part of the subject matter. In any case, Nyandarua/Ol Kalou Central/ 87 had long been closed due to subdivision and was therefore not available for distribution as part of the deceased's estate.
18. In my view, it is clear that the Respondents concealed that Nyandarua/Ol Kalou Central/ 87 was not in existence, which is a ground for the revocation of a grant issued to a party in a succession matter. Furthermore, there was an untrue allegation of a fact by the Respondents concerning the existence of Nyandarua/Ol Kalou Central/ 87 while obtaining the grant, which in my view, was done to lock out the innocent purchasers, i.e., the Applicants from accessing their parcels of land.
- i. For the above reasons, I hereby allow the application to revoke the grant made in favour of the Respondents on 26/6/2012 and the subsequent certificate of confirmation of the grant given on 17/12/2012.
  - ii. Parties to bear their costs.

**DATED, SIGNED, AND DELIVERED AT NYAHURURU ON THIS 13<sup>TH</sup> DAY OF JULY 2023.**

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**CHARLES KARIUKI**

**JUDGE**

