



**In re Estate of Simeon Kegesa (Deceased) (Succession Cause
399 of 2012) [2023] KEHC 20240 (KLR) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20240 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 399 OF 2012
REA OUGO, J
JULY 12, 2023
IN THE MATTER OF THE ESTATE OF SIMEON KEGESA (DECEASED)**

BETWEEN

PACIFICA MWANGO PETITIONER

AND

JOEL SIMION NYATUGA OBJECTOR

RULING

1. Joel Simion Nyatuga the Objector filed a summons for revocation dated the June 4, 2019. The application is brought under 76 of the *Law of Succession Act*, Cap 160, Rules 44 & 59 of the *Probate and Administration rules*. He seeks that the grant of letters of administration issued to Pacifica Mwango the Petitioner/ respondent on the January 24, 2013 be revoked and annulled. That the costs be borne by the respondent.
2. The application is supported by the affidavit of the objector/ applicant dated the June 4, 2019. The application was opposed. The respondent filed a replying affidavit dated the August 7, 2019.
3. The background of this matter is as follows; Simeon Kegesa the deceased died on the March 1, 2000. Pacifica Mwango a daughter of the deceased filed a petition for letters of administration intestate on the June 26, 2016. Her affidavit in support of the petition lists the following persons as the persons who survived the deceased; Biriya Mokerira(widow), Pacifica Mwango(daughter), Esther Kemunto Gichana (daughter in law), Mellen Mochi Onsongo(daughter), Kennedy Amwoma Simeon (son), Jane Moraa Simeon (daughter), Maricellan Kerubo Nyaanga (daughter) and Clemensia Ruth Simeon (daughter). As per her petition the estate of the deceased comprised of land parcel Kisii Town Municipal/ Block 111/648 measuring 3.348Ha A grant of letters administration intestate was issued to Pacifica Mwango on the January 24, 2013. A certificate of confirmation of the grant was issued to the petitioner/respondent distributing the only asset left by the deceased on the December 20, 2018.



4. This matter was canvassed by way of *viva voce* evidence. The objector adopted his affidavit in support of the application. He depones as follows; the deceased was married to 3 wives namely; the late Sukari Ondieki Kegesa, 1st wife, Late Esther Nyachera Kegesa, 2nd wife and Bilia Mokeira Kegesa, 3rd wife. The 1st wife (Sukari) had five (5) children, the late John Ayienda Kegesa (son), the late Nyangocho Kegesa(father to Roenard Oseko), (son), the later Oroko Kegesa (son), Elimelida Kemuma Kegesa (daughter) and the later Nyaboke Kegesa (daughter). The 2nd wife had five (5) Regina Kemunto Kegesa(daughter), Joel Nyatuga Simion (son, the applicant), Edward Onchwangi Kegesa(son), Evans Morira Kegesa (son) and Catherine Moraa Kegesa (daughter). The 3rd wife had seven(7) children namely; the late James Gichana Simion (son), Keremencia Ruth Simion (daughter), Pacifica Mwangi (daughter), Mellen Moochi Onsongo(daughter), Jane Moraa Simion (daughter), Marcella Kerubo Nyaanga(daughter) and Kennedy Amwoma Simion (son).
5. The 1st and 2nd wife passed and the deceased was survived by the 3rd wife the sons and daughters. That in a letter dated the April 27, 2012 the Kisii Township chief left out the names of the other family members. The petitioner/ respondent in her petition filed in court concealed the full particulars and identities of all the beneficiaries/ heirs of the deceased. The petitioner obtained the grant through untrue and fraudulent allegations that LR No Kisii Town Municipality/ Block 111/648 belonged to their late father net estate. That the petitioner ought to have informed and sought the consent of the ten members of the family that she deliberately left then out.
6. That the petitioner left out Title Number West Kitutu Mwakibogendi/130 that belonged and forms part of the estate of the deceased. That on the May 13, 2019 the deceased's family except the children of the 3rd house passed a number of resolutions over the deceased's estate. That the petitioner is not capable of administering their father's estate because of her errors of omissions and commissions. In his oral evidence in court Joel testified that his mother too has died. That his mother was buried in Moscho. Bilia was buried in her shamba in town. The shamba was in the deceased's home. He admitted that he did not do a search of the said shamba. That the shamba belonging to the 1st house has not been sold. That they have a land matter in the ELC court which is not concluded. That his main issue is that they were not included in this succession cause.
7. The petitioner filed a replying affidavit dated the dated August 7, 2019, which she adopted as her evidence at the hearing. She testified that the property mentioned by the objector does not form the estate of the deceased ad that is why it was left out. That it is true that the deceased had 3 wives. That the children of the 1st and 2nd house were all bequeathed their fair share of the inheritance which they have wasted. That the minutes attached by the applicant did not take place. That the parcels of land referred to in the minutes of the meeting purportedly held on the May 13, 2019 do not exist as far as the office of the Registrar in Kisii is concerned. That her mother Bilia is still alive and has donated a power of attorney to her. That she has been advised that section 66 of the Laws of Kenya provides that the court has the final discretion to give preference to the surviving spouse of the deceased first with or without association of other beneficiaries. That the grant cannot be revoked because all the necessary procedures for acquiring the same was followed and consent was dully sought from the next of kin.
8. Parties opted to file written submissions at the close of the petitioner's case. The objector cited the provisions of section 76 and submitted that he has proved the said principles an urged the court to grant the application. He cited the following authorities to support his case; Eldoret High Court Misc P& A Cause No 1 of 2015; *Prisca Jengetich Tanui & Prisca Jepkolum Malei & 2 others, Stephen Kipkirui Malel & Jackline Jebet Malei* and Kapenguria High court Succession Cause No 12 of 2015; *James Kipkorir vs Kirarei Arap Chumo* . The petitioner did not file any submissions.



ANALYSIS AND DETERMINATION

9. The issue for determination is whether the grant issued to the petitioner/ respondent should be removed. Section 76 of the *Law of Succession Act* Cap 106 (the Act) empowers this court to revoke or annul a grant if any of the conditions set therein are proved by the applicant/ objector. Section 76 provides as follows;

"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"

10. There is no dispute that the deceased had three wives. Each wife had children with the deceased. The petitioner does not deny that she filed a petition before this court and that she did not include the other beneficiaries. The applicant seeks a revocation on grounds that the grant was obtained fraudulently by making a false statement or concealment from the court of something material to the case. I do note that section 76 of the Act does not impose any time of limitation within which the application for revocation of grant ought to be filed.

11. The respondent's argument is the beneficiaries from the other houses have wasted their inheritance and that the property, LR No Kisii Town Municipality / Block 111/648 she sought to administer belong to her family that is her mother and her siblings. That the property Title Number West Kitutu/ Mwakibagendi/130 does not form part of the estate of the 3rd wife hence the reason for exclusion of it from the grant. That each wife had a home. She also claims that the parcels of land mentioned in the minutes attached by the objector do not exist.

12. The petitioner's averments and oral evidence is clear that she did not include the other beneficiaries from house no 1 & 2, when she filed her petition for grant of letters of administration intestate (see Rules 7(1)(e) *Probate and Administration Rules* . In my view this amounts to concealment of material



facts. It was her duty to disclose in her petition that the deceased had three wives and was survived by the beneficiaries listed by the objector. It was also her duty to include all properties, if any, belonging to the deceased (see Rule 40 (3) (b) of the Probate and Administration Rules. Further she has failed to prove that she had the consent of all the beneficiaries to file the petition of letters of administration intestate of the estate of Simon Kegesa.

13. The grant of letters of administration intestate issued on the January 24, 2013 and confirmed on December 20, 2018 is hereby revoked pursuant to section 76 (a) of the Law of Succession Act Cap 160. A fresh grant to issue in the names of Joel Simion Nyatuga and Pacifica Mwangi forthwith. Any of the administrators may file an application for confirmation of the grant within 60 days from the date of issuance of the grant. Each party to bear its own costs. It is so ordered.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12TH DAY OF JULY 2023.

R.E.OUGO

JUDGE

In the presence of:

Mr. Bigogo For the Objector

Mr. Ratemo For the Petitioner, Aphline C/A.

