



In re Estate of M’njema Njagi alias Sospeter M’njiima Njagi (Deceased) (Succession Cause 63 of 2016) [2023] KEHC 20694 (KLR) (11 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
SUCCESSION CAUSE 63 OF 2016**

LW GITARI, J

JULY 11, 2023

**IN THE MATTER OF THE ESTATE OF M’NJEMA NJAGI ALIAS
SOSPETER M’NJIIMA NJAGI (DECEASED)**

BETWEEN

ELIZABETH MURUGI M’NJIIMA 1ST PETITIONER

HUMPHREY MBURIA NJAGE 2ND PETITIONER

AND

REGINAD L. MICHENI SOSPETER 1ST INTERESTED PARTY

FRANCIS MUGAMBI SOSPETER 2ND INTERESTED PARTY

NICHOLAS MWITI NJAGI 3RD INTERESTED PARTY

RULING

1. This matter relates to the estate of M’Njema Njagi alias Sospeter M’Njiima Njagi (Deceased). The application before me is a summons dated October 3, 2022 which is brought under Section 76(e) of the *Law of Succession Act* Cap 160 Laws of Kenya and Rule 49 of the Probate and Administration Rules. The substantive prayer in the summons is revocation and annulment/nullification of grant of the letters of administration issued to the Petitioners and fresh grant be issued to the second Interested Party (Francis Mugambi Sospeter and 3rd Interested Party Nicholas Mwiti Njagi.)
2. The summons is supported by the affidavit of Francis Mugambi Sospeter sworn on October 3, 2022. The main ground in support of the application is that the two administrators that Elizabeth Murugi M’Njiima and Humphrey Mburea Njagi are now deceased. The 1st Petitioner died on September 10, 2015 while the 2nd Petitioner died on July 1, 2022. The applicants avers that on February 5, 2010 a grant of letters of administration was issued to the Petitioners. It is the contention by the applicants that the grant has become useless and in operative by reason of the demise of the two Petitioners. The



applicants avers that with the exception of the 3rd Interested Party, the Nicholas Mwit Njagi the family members have agreed that himself and the 3rd Interested Party should be substituted as Petitioners and Administrators of the estate.

3. The Interested Party Reginald L. Micheni though conceding that the grant has become useless and in operative, he opposes the appointment of Francis Mugambi Sospeter and Nicholas Mwit Njagi as the joint administrators of the estate. His contention is that Francis Mugambi Sospeter is not fit to administer the estate as he has inter-meddled with the estate by disposing a portion thereof for valuable consideration. As for Nicholas Mwit Njagi it is the contention by the Interested Party that he is suitable as he is a permanent resident of Machakos town and the estate is in Tharaka Nithi. That he is a grandson of the deceased who ranks lower in the order of preference. That he has not taken out letters of administration in the estate of his late father. The Interested Party contends that he is best suited to administer the estate. The applicant Francis Mugambi Sospeter filed a supplementary affidavit and denied the allegations by the interested Party and contending that it is the Interested Party who had sold properties of the deceased and was sued by the administrator and the case is still pending.
4. The application was canvassed by way of written submissions. For the 1st and 2nd Interested Party it was submitted that the grant has become useless and inoperative through subsequent circumstances.
The 3rd Interested Party submits that he does not oppose the prayer for revocation of grant for the reason that the grant has become useless on account of the death of the administrators. He however opposes the appointment of 1st and Interested Parties administrators.
5. I have considered the application. I find that there is no dispute that the grant should be revoked. The parties are in agreement that the grant has become in operative on account of the death of the administrators. Section 76 of the [Law of Succession Act](#) provides:-

“ 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 has ordered or allowed; 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.”

6. The section gives the grounds upon which the court may order revocation of grant. Section 76 (e) states that the grant may be revoked where the same has become in operative through subsequent circumstances.

7. In this cause, it is my view that the grant has become in operative owing to the death of the two administrators. The grant is therefore only good for revocation. The only other issue in dispute is the appointment of the administrators. Section 66 of the Law of Succession Act provides:-

“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 of the intestate estate shall be granted to any executor or executors who prove the will.”

The Section is couched in mandatory terms. It is the Court which has the sole discretion and authority to appoint the person it considers best suited to administer the estate. The practice is that the petitions are filed in Court and the court moves to appoint the administrator. However where there a dispute, it is the court that has the power to appoint the administrator.

I have considered the averments by the parties. It is a maximum of equity that whoever comes to equity must come with clean hands. I note that the Interested Party Reginald Micheni Sospeter did not come to equity with clean hands. He alleged that Francis Mugambi had sold part of the estate and relied on an agreement which was not signed by Francis Mugambi.

Secondly he did not disclose that he had been sued by the administrator to recover land belonging to the estate of the deceased which he had sold. I also note that there is no consent by the other beneficiaries for Reginald Micheni to be appointed as an administrator. I find that he is not suited to be appointed as the administrator of the estate of the deceased owing to the fact that he had intermeddled with the estate. The Francis Mugambi Sospeter and Nicholas Mwiti Njagi have deponed that the other beneficiaries have consented to have the court appoint them as the administrators. I find that it is in the interest of justice that this court appoints administrators so that the cause can be disposed off expeditiously. For these reasons I order that:-

1. The grant issued on 16/2/2010 has become in-operative due to subsequent circumstances and is hereby revoked/annulled.
2. I appoint Francis Mugambi Sospeter and Nicholas Mwiti Njagi as the administrators of the estate of the deceased herein.



3. The two are at liberty to apply for confirmation of the grant before the expiry of six (6) months as the matter has been pending in court since year 2010.
4. Costs in the cause.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 11TH DAY OF JULY 2023.

L.W. GITARI

JUDGE

