



**In re Estate of Paul Mwangi Nderito (Deceased) (Succession Cause
759 of 2010) [2023] KEHC 20618 (KLR) (Family) (7 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20618 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 759 OF 2010
MA ODERO, J
JULY 7, 2023
IN THE MATTER OF THE ESTATE OF PAUL MWANGI NDERITO (DECEASED)
BETWEEN
IRENE MUGURE NDERITU APPLICANT
AND
ELIZABETH WANJIRU MWANGI RESPONDENT**

JUDGMENT

1. Before this Court for determination is the summons for revocation of Grant dated 29th April 2020 by which the Applicant Irene Mugure Nderitu seeks the following orders:-

- “1. Spent.
2. Spent.
3. That the Grant of Letter of Administration Testate issued to Elizabeth Wanjiru Mwangi made on 06th October 2010 and confirmed on 11th March 2013 be revoked on grounds that the said Elizabeth Wanjiru Mwangi has failed, even after due notice and without reasonable cause to execute necessary documents including but not limited to the transfers of the respective properties to the beneficiaries.
4. That the Deputy Registrar to execute all documents requiring Elizabeth Wanjiru Mwangi’s signature and further, that production of her Identification documents be dispensed with.
5. That the costs of this Application be provided for.”



2. The summons was premised upon Sections 47 and 76, *Law of Succession Act* Rules 44, 47, 49 and 73 of the *Probate and Administration Rules* and was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent Elizabeth Wanjiru Mwangi opposed the summons through the Replying Affidavit dated 15th May 2020. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 17th February 2023 whilst the Respondent relied upon her written submissions dated 27th February 2023.

Background

4. The Succession Cause relates to the estate of the late Paul Mwangi Nderitu (hereinafter 'the Deceased') who died on 22nd November 2008. A copy of the Death Certificate is annexed to the Petition for Grant of Probate dated 13th April 2010.
5. The Deceased was survived by the following persons:-
 - (a) Elizabeth Wanjiru Mwangi - Widow
 - (b) Irene Mugure Nderitu - Daughter
 - (c) Benard Nderitu - Son
 - (d) Susan Wambui Nderitu - Daughter
6. The estate of the Deceased was said to comprise several assets worth approximately Kshs. 40 Million. The Deceased died testate having left behind a written Will dated 5th August 2008. In that written will the widow Elizabeth Wanjiru Mwangi and a daughter of the Deceased Irene Mugure Nderitu were named as the Executors of the will.
7. Following the demise of the Deceased the Executrix filed a Petition dated 13th April 2010 seeking for Grant of Probate. A Grant of Probate was made to the two on 6th October 2010. The Grant was duly confirmed on 11th March 2013. A copy of the confirmed Grant is annexed to the supporting Affidavit dated 29th April 2020 (Annexure IMN '1').
8. The Applicant alleges that her Co-Executrix who is her mother has failed /declined to execute several crucial documents thereby frustrating the distribution of the estate. That the Respondent has frustrated efforts of the Applicant to access one of the bank accounts left by the Deceased in order to enable the Applicant pay her rent. That as a result the Applicant is facing eviction from her residence.
9. The Applicant therefore prays that the Grant of Probate issued to her Co-Executrix be revoked to enable the Applicant proceed with the administration of the estate.
10. As stated earlier the summons was opposed. The Respondent confirms that both she and the Applicant were appointed as Executors with a mandate to distribute the estate of the Deceased in accordance with the written Will dated 5th August 2008.
11. The Respondent denies that she has failed and/or declined to execute documents required to facilitate the distribution of the estate. She avers that it is actually the Applicant who has been a stumbling block to the distribution of the estate by her refusal to execute requisite documents.
12. The Respondent alleges that the Applicant has been trying to arm-twist her into transferring estate funds to the Applicant. That the Applicant is neither an honest nor diligent administrator of the estate



as she wishes to use the estate assets to benefit herself. The Respondent urges the court to dismiss the summons in its entirety.

Analysis and Determination

13. I have considered the summons before this court, the reply filed thereto as well as the written submissions filed by both parties.
14. It is common ground that the Applicant and the Respondent were named as joint Executors of the Written Will left behind by the Deceased. The court proceeded to appoint the two as joint Executors through a Grant of Probate issued to them on 6th October 2010. The Grant was thereafter confirmed in the name of the two jointly on 11th March 2013.
15. The Applicant has come to court seeking that the Grant issued to the Applicant be revoked. As I have stated earlier the Grant as Probate was issued to the two jointly and not each individually. If the Grant is to be revoked then the Applicant will also have to be removed as an Executor.
16. The grounds upon which a Grant may be revoked are set out in Section 76 of the *Law of Succession Act* Cap 160 Laws of Kenya. In the case of *Re Estate of Prisca Ong'aya Nande (Deceased)* [2020] eKLR the court in expounding upon Section 76 stated as follows:-

“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, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and 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, but the administrator, thereafter, got into problems with the exercise administration, such as where he fails to apply for confirmation of grant within the time allowed, or he 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 circumstance, 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 an 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”.

17. The Applicant has not proved any of the grounds warranting the revocation of the Grant. It is clear that there has been a falling out between the two executors with each accusing the other of frustrating the administration of the estate. By this application the Applicant is inviting the court to descend into the arena of the dispute between the two Executors. I decline that invitation.
18. If one or both of the Executors feels unable or unwilling to carryout the duties of administering the estate then they are at liberty to resign. Revocation proceedings should not be used to settle scores between warring Executors.
19. This is a Probate Court with the mandate to supervise and oversee the distribution of the estate to the genuine beneficiaries. The Grant was confirmed in March 2013 and to-date ten (10) years later the estate is yet to be distributed. The squabbles between the Executors has hampered that distribution.



20. The Deceased left a Written Will in which he clearly stated how he wished his estate to be distributed. The duty of the Executors is to distribute the estate in accordance with that written will.
21. Given the circumstances of this case I find no valid grounds exist to revoke the Grant. The Executors are advised to work together in order to conclude the distribution of the estate failing which the court will revoke the Grant issued to the two and invite Public Trustee to oversee the distribution of the estate.
22. Finally, I find no merit in this application. The same is dismissed in its entirety. This court now makes the following Orders:-
 - (1) The Executors to work together to conclude the distribution of this estate within ninety (90) days.
 - (2) The Executors shall both sign all necessary transfer documents or instruments to facilitate distribution of assets to the beneficiaries in a accordance with the terms of the Written Will dated 5th August 2008.
 - (3) In default of (1) and (2) above the court shall appoint fresh Executors for purposes of completing the distribution of the estate.
 - (4) This being a family matter each party shall bear their own costs.

DATED IN NAIROBI THIS 7TH DAY OF JULY, 2023.

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MAUREEN A. ODERO

JUDGE

