



In re Estate of Wellington Kariuki Echessa (Deceased) (Succession Cause 377 of 2010) [2023] KEHC 19673 (KLR) (6 July 2023) (Ruling)

Neutral citation: [2023] KEHC 19673 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 377 OF 2010
FN MUCHEMI, J
JULY 6, 2023**

BETWEEN

MARY NJOKI NGUGI APPLICANT

AND

PATRICIA GATHONI ECHESSA KARIUKI 1ST RESPONDENT

CATHERINE NJERI NGUGI 2ND RESPONDENT

BEATRICE KAMUYU MWAI (ADMINISTRATORS OF THE ESTATE OF WELLINGTON KARIUKI ECHESSA) 3RD RESPONDENT

RULING

Brief Facts

1. The application for determination dated December 10, 2022 brought under Section 76 of the *Law of Succession Act* and Rule 44 of the *Probate & Administration Rules*, seeks for orders of revocation of grant issued on November 2, 2021 to the 1st & 2nd respondents.
2. The 1st and 2nd respondents opposed the application and filed a replying affidavit dated February 18, 2022.

The Applicant

3. The applicant states that she is a legal wife to the deceased and that they were blessed with one issue of the marriage. It is further deposed that the applicant was not involved in the distribution of the deceased's estate and thus the respondents disinherited her by allocating her a share to hold in trust for her child. The applicant further states that LR No Chinga/Kagongo/677 is the land on which their matrimonial home with the deceased sits and that she has lived on the said land for over 19 years. It was further stated that the applicant and the deceased built a permanent home on the said parcel and



have greatly developed it. The distribution of the said property would not only be inconsiderate but unlawful and discriminatory.

4. The applicant further argues that had the respondents disclosed that the applicant is the legal wife to the deceased, the court would have taken into consideration of her location of her matrimonial home resides and allocate her a portion as an additional unit in accordance with the law. The applicant's prayer is for revocation of the grant and redistribution of the estate assets.

The 1st & 2nd Respondents

5. The 1st & 2nd respondents state that the application is frivolous, lacks merit and is an abuse of the court process. The 1st & 2nd respondents further state that the joinder of the 3rd respondent is mischievous as they are sisters, having been heard and determined in a well-reasoned ruling dated March 11, 2021. Further, the 1st & 2nd respondents state that the applicant has deliberately ignored to tell the court of her mischief and has occasioned delay of justice by filing several applications which she fails to prosecute hence the judgments entered against her.
6. The 1st & 2nd respondents argue that the instant application does not raise any new matter for consideration by the court and the same ought to be dismissed.
7. Parties disposed of the application by way of written submissions.

The Applicant's Submissions.

8. The applicant relies on the case of the Estate of Karia Getato Gicheru HC Succession Cause No 836 of 2015 and submits that the 2nd respondent and one Alice Wamaitha Kimani did not prove dependency or paternity to warrant them to inherit from the deceased. In light of there being no evidence to prove dependency or paternity, the applicant prays that the grant be revoked and land parcel number Chinga/Kagongo/667 devolves to her absolutely.

The 1st & 2nd Respondents' Submissions

9. The respondents submit that the applicant has not demonstrated any fraud or concealment of material facts in obtaining the grant. It is further submitted that both hearings for revocation of grant and confirmation of grant were heard and determined with the applicant's full knowledge. The respondents further argued that the applicant has not sufficiently indicated how and what makes her feel that she is entitled to be regarded as a separate entity or unit in the estate of her parent in law. The respondents submit that the estate to which she lays her claim is not that for a spouse but a share from a parent in law, which she automatically and naturally cannot be a beneficiary or dependant thereto as she does not fall in the category of persons listed under Section 29 of the [Law of Succession Act](#).
10. The respondents further submitted that the applicant holds the view that she was not considered as a legal wife or as a separate unit, yet she regards herself as a legal wife to the deceased who is a brother among five other children of the deceased owner of the property. It is further contended that the applicant is of the view that the mode of distribution of her spouse's share regards her as a child to the deceased beneficiary from which she assumes she would derive her right of inheritance. To support their contentions, the respondents rely on the case of HCSC 875 of 2012 Kakamega In the Matter of the Estate of Francis Andachila Luta.
11. The respondents submit that the applicant is not a legal wife of the deceased as she did not provide any proof of marriage and hence she cannot claim to be a legal wife to the deceased. The respondents do not deny that the applicant is amongst one of the many women the deceased cohabited with. The



respondents further reiterate that the issue at hand is not of the estate of the applicant's spouse but his share as one of the many other beneficiaries of their mother's estate.

The Law

Whether the applicant has presented sufficient evidence to warrant revocation or annulment of the grant.

12. Section 76 of the *Law of Succession Act* gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It states that:-

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
 - iv. The grant has become useless and inoperative through subsequent circumstances.

13. According to the Chief's letter Chinga Location dated March 19, 2010, the deceased herein died on December 13, 2009. He was survived by:-

- a. Mary Njoki – wife
- b. Beatrice Kamuyu – daughter
- c. Jeff Muthee senior – son
- d. Gregory Kimani – son
- e. Jeff Muthee junior – son

14. The applicant and the 3rd respondent herein applied for letters of administration intestate which was issued to them on December 9, 2009. The grant was hereby confirmed on October 14, 2011 making the applicant the sole beneficiary of the estate of the deceased. Subsequently the 1st & 2nd respondents herein filed summons for revocation of grant whereas the court rendered its decision on February 22, 2019. The court revoked the grant on the basis that at the time of the confirmation of grant, the court did not put into consideration the affidavits of Jeff Muthee Kariuki, Gregory Kimaru Kariuki and the 2nd respondent stating that they were disinherited as they were not involved in the succession process. Furthermore, the mother to Jeff Muthee and Gregory Kimani, one Alice Samantha Kimani swore



an affidavit as the estranged wife of the deceased. The court also considered the fact that these other beneficiaries never consented to the applicant being appointed as an administrator of the estate and did not waive their rights to inherit their father's estate. As such, the court came to the conclusion that the grant was obtained through defective proceedings for the other beneficiaries were not notified that there was concealment of material facts that would have affected the outcome of the petition and that there was no consent by the beneficiaries to the grant of letters of administration intestate to the two administrators nor to the mode of distribution.

15. The applicant and the 3rd respondent thereafter filed an application to review the orders of the court dated February 22, 2019 and have them set aside. The court dismissed the application and held that the court was correct in revoking the grant as it was very evident that the applicant herein had left out many beneficiaries of the deceased's estate in her petition.
16. It is not in dispute that the family of the deceased is a polygamous one and that the three widows of the deceased had children who are beneficiaries of the estate. This fact has been acknowledged by the applicant in her application for confirmation of grant where she has listed the beneficiaries as:- Beatrice Kamuyu – daughter, Jeff Muthee Senior – son, Gregory Kimani – son and Jeff Muthee junior – son. The mother of Jeff Muthee and Gregory Kimani, one Alice Samantha Kimani swore an affidavit as an estranged wife to the deceased. Therefore, the applicant cannot claim that there was concealment of material facts that she was the legal wife of the deceased. Furthermore, the applicant has fully participated in the proceedings in this succession cause and she has had legal representation. During the confirmation of grant on November 2, 2021, the applicant did not attend court stating through her counsel that she was unwell. Although the applicant contested the mode of distribution of the estate, she had not filed any protest in court. From perusal of the court record, it is evident that the applicant has no intention of completing this succession process in that she has been filing numerous applications and missing court attendances severally.
17. It is my considered view the applicant has failed to demonstrate that the grant confirmed on November 2, 2021 was obtained through fraud or concealment of facts material to the case. The record shows that the applicant has participated in these proceedings fully and that nothing has been kept from her knowledge by the respondents. The distribution of the property was in equal shares to the three beneficiaries which was in accordance with the law. The applicant holds the share of her family in trust for her minor son one Jeff Junior.
18. Consequently, I find no merit in this and dismiss it accordingly.
19. The applicant who has been filing application after application shall meet the costs of this application.
20. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 6TH DAY OF JULY, 2023.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 6th day of July 2023.

