



In re Estate of Albert Kiarie Githua (Deceased) (Succession Cause 187 of 2016) [2023] KEHC 19453 (KLR) (4 July 2023) (Judgment)

Neutral citation: [2023] KEHC 19453 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 187 OF 2016
HK CHEMITEI, J
JULY 4, 2023**

IN THE MATTER OF THE ESTATE OF THE LATE ALBERT KIARIE GITHUA (DECEASED)

BETWEEN

HANNAH WARUGURU KIARIE 1ST APPLICANT

MONICA NJOKI KARIUKI 2ND APPLICANT

AND

ELIJAH GATUANJUA KIARIE RESPONDENT

JUDGMENT

1. The applicants herein filed summons for revocation dated 29th November 2021 and sought for an order that the Grant of Letters of Administration issued to the respondent herein on 7th April 2017 and any other grant of letters of administration flowing therefrom be revoked and/or annulled. Further, that the applicants be allowed to file out of time a notice of objection, answer to the petition and cross petition to petition for letters of administration intestate filed in this matter by the respondent herein. Additionally, that the costs of the summons be provided for.
2. The application is premised on the grounds on the face of it and the supporting affidavit of the 1st objector/applicant. She deposed that parties herein were all beneficiaries of the estate of the deceased and they had filed Succession Cause No. 571 of 2016 in which they included all the beneficiaries including the respondent and a grant was issued in the said succession cause and the estate was now ready for subdivision.
3. That at the time of filing of the said succession cause, the title deed for one of the parcels of land Bahati/Kabatini-Block 1/772 which was subject to the succession cause was being held at Kijabe hospital over a pending hospital bill for one Joseph Kiarie (deceased) who was also a beneficiary of the estate. Further, that the responded through misrepresentation went ahead and collected the said title from



the hospital, commenced a separate succession cause (this cause) and a grant was confirmed to him as the sole beneficiary of the whole parcel of land.

4. She deposed further that from the earlier grant in Succession Cause No. 571 of 2016 the subject parcel of land was to be shared between two beneficiaries, the 1st objector/applicant (5 plots) and the respondent (7 plots) but from his grant he takes the whole parcel. That the respondent had obtained a title deed in his name using his grant obtained in this cause and was likely to subdivide the said parcel of land and dispose it off. Further, that a caution had been placed on the suit parcel by one of the beneficiaries but the respondent was issued with a title despite the existence of the caution and a search on 15th June 2020 confirmed the same.
5. The 1st objector/applicant went on to depose that unless an injunction was issued and the registrar to ensure compliance, the respondent was highly likely to subdivide and sell the parcel of land. That there was an application dated 27th January 2020 for revocation of the grant issued in this cause.
6. The respondent did not file any response to the application. Additionally, none of the parties herein filed submissions.

Analysis and Determination

7. I have perused the summons for revocation, affidavit in support of the summons and the annexures therein. One issue falls for determination that is whether the applicants have met the threshold for revocation of a grant.
8. First and foremost, this court finds that the issues in the application herein are not rebutted and the application stands unopposed. However, though having held as such, the application by the objectors/applicants should not be deemed as having been allowed. This court has a duty to consider the application and proceed to determine it on its merits which it now proceeds to do.
9. In addressing the issue whether the applicants have met the threshold for revocation of a grant the Succession Act provides for revocation of grants under Section 76, (a), (b) and (c) 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 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;

10. On the other hand, Rule 44 of the Probate and Administration Rules provides as follows:

“44. Revocation or annulment of grant



(1) Where any person interested in the estate of the deceased seeks pursuant to the provisions of section 76 of the Act to have a grant revoked or annulled he shall, save where the court otherwise directs, apply to the High Court for such relief by summons in Form 107 and, where the grant was issued through the High Court, such application shall be made through the registry to which and in the cause in which the grant was issued or, where the grant was issued by a resident magistrate, through the High Court registry situated nearest to that resident magistrate's registry.

d.

(2) There shall be filed with the summons an affidavit of the applicant in Form 14 for revocation or annulment identifying the cause and the grant and containing the following particulars so far as they are known to him—

e.

(a) whether the applicant seeks to have the grant revoked or annulled and the grounds and facts upon which the application is based; and

f.

(b) the extent to which the estate of the deceased has been or is believed to have been administered or to remain un-administered, together with any other material information.

g.

(3) The summons and affidavit shall without delay be placed by the registrar before the High Court on notice in Form 70 to the applicant for the giving of directions as to what persons (if any) shall be served by the applicant with a copy of the summons and affidavit and as to the manner of effecting service; and the applicant, upon the giving of directions, shall serve each of the persons so directed to be served with a notice in Form 68, and every person so served may file an affidavit stating whether he supports



or opposes the application and his grounds therefor.

h.

- (4) When the persons (if any) so directed to be served (or such of them as the applicant has been able to serve) have been served with a copy of the proceedings, the matter shall be placed before the High Court on notice by the court to the applicant and to every person so served, and the court may either proceed to determine the application or make such other order as it sees fit.

i.

- (5) Where the High Court requires that notice shall be given to any person of its intention of its own motion to revoke or annul a grant on any of the grounds set out in section 76 of the Act the notice shall be in Form 69 and shall be served on such persons as the court may direct.”

11. In light of section 76 herein above, a court may revoke a grant based on the grounds listed therein. The revocation may be on courts own motion or on the application of a party.
12. *In the Matter of the Estate of Esther Wanjiru Mucheru (deceased)*, Nairobi High Court Succession Cause No.1996 of 1999, the court noted that Section 76 of the [Law of Succession Act](#) is discretionary in that it gives the court discretion whether to revoke or annul a grant. Further, in [Kennedy Opiche Olela v William Ogida Ochuodho & another](#) [2014] eKLR, the court was of the view that it is the duty of the applicant to prove that any of the grounds set out under Section 76 has been committed before the court can revoke a grant already issued.
13. In the instant case, the applicants have made an application for revocation of grant on the grounds that the court had already issued a grant in favour of all the beneficiaries including the respondent in Succession Cause No. 571 of 2016 prior to the one issued to the respondent. The applicants contend that through misrepresentation the respondent went ahead and collected the title for Bahati/Kabatini-Block 1/772 from the hospital where it was being held, commenced a separate succession cause (this cause) and a grant was confirmed to him as the sole beneficiary of the whole of that parcel of land.
14. Upon perusal of the court records I note that as alleged by applicants, a grant was indeed issued on 12th November 2018 to the 1st objector/applicant and two other administrators and a schedule of distribution to the beneficiaries of the estate including the respondent. Thereafter another grant was issued to the respondent on 7th April 2017 with the respondent as the sole beneficiary.



15. It is apparent that the grant issued on 12th November 2018 relating to the deceased estate captured all the beneficiaries of the deceased and mode of distribution of the estate to the said beneficiaries. The petitioner/respondent is also captured as a beneficiary and property allocated to him.
16. On the other the grant issued to the respondent on 7th April 2017 only captures the petitioner/respondent as the sole beneficiary. This and pursuant to the provision of section 76 (b) of the Law of Succession Act, amounts to the petitioner/respondent having obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.
17. The above provision was construed in the case of *Matheka and Another vs Matheka* [2005] 2 KLR 455 where the Court of Appeal laid down the following guiding principles.
 - i. A grant may be revoked either by application by an interested party or by the court on its own motion.
 - ii. Even when revocation is by the court upon its own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.”
18. In my view therefore the respondent was well aware that his siblings had already filed another succession proceeding. The taking of the original title from Kijabe hospital without the consent of the other members of the family smells suspicious.
19. At any rate the grant confirmed under Succession cause no. 571 of 2016 included all the deceased beneficiaries including the respondent.
20. For the foregoing reasons the application dated 29th November 2021 is allowed as hereunder.;
 - (a) The grant of letters of administration issued to Elijah Gatuanjau Kiarie dated 7th April 2017 is hereby revoked with all the attendant consequences.
 - (b) Land parcel number Bahati/Kabatini-Block 1/772 shall revert to the name of the deceased herein Albert Kiarie Githua and any other subdivision or transfer as a result of the above revoked grant is hereby set aside.
 - (c) This order be served upon the County Land Registrar Nakuru to effect these changes upon the receipt of this order.
 - (d) This file is hereby consolidated with file number Succession Cause No.571 of 2016 Nakuru and for avoidance of doubt the grant issued on 12th November 2018 under Succession Cause No 571 of 2016 takes precedence for all intend and purposes.
 - (e) The applicants shall have the costs of this application.

DATED SIGNED AND DELIVERED AT NAKURU THIS 4TH DAY OF JULY 2023.

H K CHEMITEI

JUDGE

