



**In re Estate of Karanja Mbogo (Deceased) (Succession Cause  
335 of 2002) [2023] KEHC 19701 (KLR) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19701 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
SUCCESSION CAUSE 335 OF 2002**

**LM NJUGUNA, J**

**JULY 3, 2023**

**IN THE MATTER OF THE ESTATE OF KARANJA MBOGO (DECEASED)**

**BETWEEN**

**JOHN MURITHI GACHERU ..... 1<sup>ST</sup> APPLICANT**

**ROSE WANJA MISHEK ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JOHN FUNDI NJERU ..... 1<sup>ST</sup> ADMINISTRATOR**

**RENSON IRERI KARERE ..... 2<sup>ND</sup> ADMINISTRATOR**

**RULING**

1. Before this court is the summons dated 16.02.2022 and filed in court on 19.05.2022 which seeks revocation and/or annulment of the grant of letters of administration made to the 1<sup>st</sup> respondent in relation to the estate of the deceased herein.
2. The said summons is based on the grounds on its face and it's supported by the affidavit annexed to the application.
3. The applicants' case is hinged on the fact that the said grant was obtained by means of untrue allegations of facts, fraudulently by making of a false statement or by concealment from court of something material to the case and the proceedings to obtain the grant were defective in substance. It appears that the applicants' claim is that the grant is defective in nature and substance for concealment to the court the fact that the 1<sup>st</sup> respondent's father, Njeru Gacheru is the brother of the applicants. That the 1<sup>st</sup> respondent's deceased father who was the initial administrator did not inform the applicants of the institution of the present succession cause and the applicants just learnt of the same. Additionally, that the 1<sup>st</sup> respondent did not inform the applicants of his substitution and issuance of the amended grant.



4. The application is opposed by the 1<sup>st</sup> respondent via his affidavit of reply sworn on 01.07.2022 and wherein he stated that he is the son of Njeru Gacheru who had been appointed as the administrator of the estate of the deceased Karanja Mbogo which comprised of Land Parcel No. Kagaari/Kigaa/596 and whose proceedings this cause relates. That he substituted his father after he died and was issued with an amended grant and amended certificate of confirmation of grant distributing the deceased's estate to himself and the 2<sup>nd</sup> respondent herein. It was deposed that out of the sympathy of the 2<sup>nd</sup> respondent towards his father, the 2<sup>nd</sup> respondent allowed his father a half share of the land given that he had lived on the same land for a period of over fifty years. He contended that the Honourable Court having reached a determination that in the absence of any child of the deceased claiming inheritance, the 2<sup>nd</sup> respondent was the sole heir to the deceased's estate, the application herein should be dismissed for lack of merit.
5. The 2<sup>nd</sup> respondent via his affidavit of reply sworn on 01.07.2022 deponed that the proceedings relate to the estate of the deceased herein; that after a lengthy hearing and analysis of the evidence before the court, the Honourable Court found that he was the only heir to the deceased's estate, being a grandson. That the court found that Njeru Gacheru was not entitled to inherit from the estate herein and therefore, a logical conclusion shows that the applicants' claim cannot likewise succeed in their quest to inherit the same estate. That he only gratuitously shared Land Parcel No. Kagaari/Kigaa/596 with the Njeru Gacheru out of sympathy as he had occupied the deceased's land for a long time and therefore, extended sympathy to his son, the 1<sup>st</sup> respondent herein. It was stated that considering the fact that the said ruling has not been appealed against or reviewed, the application therefore is non-starter.
6. Directions were taken that the application be canvassed by way of viva voce evidence and thereafter parties file their written submissions and both complied with the said directions.
7. The applicants submitted that they are entitled to the estate of the deceased for the reason that only the 1<sup>st</sup> respondent is in occupation of the land and not the 2<sup>nd</sup> respondent. That the 1<sup>st</sup> respondent did not disclose to the court his relationship with the deceased and further, he did not mention his siblings to the Honourable Court. It was contended that as per the ruling delivered on 23.07.2019, the same proved the applicants' grounds that the proceedings were defective in substance and further, that the grant was obtained fraudulently by concealment from the court of certain facts material to this case. It was contended that the same contributed to the court reaching a wrong determination in that had Njeru Gacheru (deceased) disclosed the existence and the relationship between him and the applicants, the court could have reached a different finding. This court was therefore called upon to allow the application herein.
8. The respondents on the other hand submitted that the estate of the deceased herein was shared equally between the respondents not as a matter of right or lawful inheritance but from sheer generosity by the 2<sup>nd</sup> respondent whom the court had found to be the sole heir of the deceased's estate. That in cognizance of the court's ruling that Njeru Gacheru was not a grandson of the deceased, it therefore follows that the applicants who claim to be the brother and sister of Njeru Gacheru are not grandchildren of the deceased and therefore could not inherit from the deceased's estate. This court was therefore urged to dismiss the application herein given that the applicants lacked locus standing to approach this court in the proceedings herein.
9. I have perused the application and the response thereto by the respondents and it is my view that this court has been called upon to determine whether the orders sought for revocation of the grant issued to the petitioner/1<sup>st</sup> respondent can be granted.



10. The circumstances under which a grant of representation may be revoked are provided for under section 76 (a)- (e) of the [Law of Succession Act](#) and include;
- a. Where the proceedings to obtain the grant were defective in substance;
  - b. Where 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. Where 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. Where 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. Where the grant has become useless and inoperative through subsequent circumstances.
11. What is clear from the above provision is that when a court is dealing with an application for revocation of grant, it is supposed to consider only the process of obtaining the grant. Such that issues touching on the process of confirmation of the grant and distribution of the estate amongst the beneficiaries is beyond what the court should consider as it is not covered by section 76 and thus cannot form a basis of revoking a grant but ought to be challenged through a review or appeal. [In re Estate of Prisca Ong'ayo Nande \(Deceased\)](#) [2020] eKLR, W. Musyoka, J. after analyzing section 76 and discussing the meaning of a grant within the provisions of the laws governing succession in Kenya held thus: -
- “ 17. I have very closely perused through the provisions of the [Law of Succession Act](#), and I have not come across any provision that provides a remedy to a person who is aggrieved by confirmation orders. Sections 71, 72 and 73 of the [Law of Succession Act](#), which deal with confirmation of grants, do not address the question of redress for parties who are unhappy with the confirmation process, nor do they deal generally with flaws in the confirmation process. As stated above, section 76 has nothing to do with the confirmation process, and provides no relief at all to any person unhappy with the confirmation process. In the absence of any provision in the [Law of Succession Act](#), for relief or redress for persons aggrieved by such orders, the aggrieved parties have only two recourses under general civil law, that is to say appeal and review, to the extent that the same is permissible under the [Law of Succession Act](#). I would believe that one can also apply for the setting aside or vacating of confirmation orders, where the same are obtained through abuse of procedure.”
12. From the perusal of the application herein, the applicant’s ground for seeking the revocation is mainly that the 1<sup>st</sup> respondent obtained the grant fraudulently after having misrepresented to the court the fact that the 1<sup>st</sup> respondent’s father, Njeru Gacheru was the brother of the applicants. Additionally, that



- the 1<sup>st</sup> respondent's deceased father who was the initial administrator did not inform the applicants of the institution of the present succession cause.
13. Section 66 of the *Law of Succession Act* bestows this court with the discretion to as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made. The court in exercise of the said discretion is mandated to 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:
  14. Section 39 on the other hand stipulates that (1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—
    - a. Father; or if dead
    - b. Mother; or if dead brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none.
  15. Rule 26 provides that letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant. Further that in an application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.
  16. The effects of the above provisions is that where a person is applying for a grant of letters of administration intestate, he must get consent from persons of equal or lower priority than him; but in this case, could the same apply?
  17. The applicants stated that the 1<sup>st</sup> respondent's father, Njeru Gacheru was their brother; additionally, that the 1<sup>st</sup> respondent's deceased father who was the initial administrator did not inform the applicants of the institution of the present succession cause. The 1<sup>st</sup> and 2<sup>nd</sup> respondents on the other hand submitted that indeed, the court via a ruling delivered on 23.07.2019, reached a determination that in absence of any child of the deceased claiming inheritance, the petitioner, the 2<sup>nd</sup> respondent is the sole heir of the deceased's estate. That the petitioner (Nyaga Gacheru) did not establish blood relation with the deceased.
  18. The above being the position, and the applicants basing their claims on the alleged relationship between them and Nyaga Gacheru, it automatically stands that their claim cannot succeed for the reason that the court found that the Nyaga Gacheru was not a beneficiary of the deceased's state.



Matavo J (as he then was) in *Hellen Wangari Wangechi v Carumera Muthini Gathua* [2005] eKLR as follows:

“No Judge likes to decide case on the burden of proof if he can legitimately avoid having to do so. There are cases, however in which owing to the unsatisfactory state of the evidence or otherwise, deciding on the burden of proof is the only just cause to take.”

19. In view of the foregoing I find that:

- i. The application herein is devoid of any merit and I hereby dismiss it.
- ii. No order as to costs.

20. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 3<sup>RD</sup> DAY OF JULY, 2023.**

**L. NJUGUNA**

**JUDGE**

..... for the Applicant

..... for the Respondents

