



REPUBLIC OF KENYA



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**In re Estate of Karinga Njihia (Deceased) (Succession Cause 140 of 1988)
[2023] KEHC 20334 (KLR) (Family) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 140 OF 1988
MA ODERO, J
JULY 3, 2023**

IN THE MATTER OF THE ESTATE OF KARINGA NJIHIA (DECEASED)

BETWEEN

ALBERT MBURU KARINGA 1ST APPLICANT

JOHN GITONGA 2ND APPLICANT

AND

PETER MAMBO KARINGA 1ST RESPONDENT

EDWARD CHEGE KARINGA 2ND RESPONDENT

RULING

1. Before this court for determination is the Amended Notice of Motion dated August 5, 2022 by which the applicants Albert Mburu Karinga and John Gitonga seek the following orders:-
 - “1. That the Grant of representation issued to Peter Mambo Karinga, John Gitonga Karinga, Albert Mburu Karinga and Edward Chege confirmed on December 22, 1988 be revoked.
 2. That on revoking the Grant issued on December 22, 1988, this court do issue a fresh grant to John Gitonga Karinga and Albert Mburu Karinga and confirm the same.”
2. The application which was premised upon sections 76(ii) – (iii) of the laws of Kenya and all other enabling provisions of the law was supported by the affidavit of even date sworn by the 1st applicant.



3. The respondents Peter Mambo Karinga and Edward Chege Karinga were served with the application but did not file any reply thereto. The summons was canvassed by way of written submissions. The applicants filed the written submissions dated February 14, 2023. The respondents did not file any written submissions.

Background

4. This Succession Cause relates to the estate of the late Karinga Njihia (hereinafter ‘the Deceased’) who did intestate on December 7, 1986.
5. Following the demise of the Deceased Grant of letters of Administration were on May 6, 1988 made to Peter Mambo Karinga, John Gitonga, Albert Mburu and Edward Chege. Thereafter a certificate of confirmation of Grant was issued to the four (4) on December 22, 1988.
6. The applicants have filed this application seeking to have the Grant revoked on grounds that one of the beneficiaries Njihia Karinga has since died. They also allege that one Administrator Peter Mambo Karinga has mismanaged the estate and that another Administrator Edward Chege Karinga has passed away.
7. As stated earlier there has been no response to this summons.

Analysis and Determination

8. I have carefully considered the summons before this court, the written submissions filed by the applicants as well as the relevant law. The grounds upon which a Grant may be revoked are set out in section 76 of the *Law of Succession Act* 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 an 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 allegations 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 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) That the grant has become useless and inoperative through subsequent circumstances”.

9. The applicants have advanced several grounds upon which they seek to have the grant revoked. The first ground is that one of the beneficiaries named Njihia Karinga died in the year 2002. The death of a beneficiary to an estate is not a reason to revoke a grant. The share of the estate due to the deceased beneficiary can be redistributed or can devolve to the legal representative of his/her estate. I find no merit in this particular ground.
10. The second grounds upon which the applicants seek to revoke the Grant is that one of the Administrators Edward Chege has vanished from his home in Banana, Kiambu County and has not been seen or heard from for the past fourteen (14) years.
11. The applicants have not tendered any evidence to prove that this Administrator is indeed missing. No Chief's letter has been annexed. There is no evidence of a report made to any Police Station regarding a missing person.
12. If the said Edward Chege has truly been missing and incommunicado for fourteen (14) years then his family should have filed application to have him declared dead. No such steps have been taken by the family. As such I find no evidence to support the claim that Edward Chege is missing and cannot be traced. I reject this as a ground to revoke the Grant.
13. Finally, the applicants seek to have the Grant revoked on grounds that their Co-Administrator Peter Mambo Karinga has mismanaged the estate and that the said Co-Administrator has deceitfully registered part of the estate in his own name to the detriment of the other beneficiaries.
14. Once again the applicants have failed to tender any proof of such fraud and/or mismanagement. No particulars of the alleged mismanagement has been supplied. The 1st applicant claims to have annexed an order cancelling a Title allegedly fraudulently acquired by Peter Mambo. However the Annexure in question (Annexure AB '3') is in fact an order of injunction in respect of LR No. Kiambaa/Thimbigua/5162.
16. I note that the Deceased in this matter passed away way back in the year 1986. To date over thirty (30) years later the estate has not been distributed. The Administrators are urged to move with haste to conclude the distribution of the estate in terms of the certificate of Confirmation of Grant dated December 22, 1988. In the event the Administrators face problems in Execution of documents to transfer estate properly to the beneficiaries they are at liberty to file an application to have the requisite documents executed by the Deputy Registrar of the High Court.
17. Finally, I find no merit in this summons for revocation of the Grant. The same is hereby dismissed in its entirety. No orders on costs.

DATED IN NAIROBI THIS 3RD DAY OF JULY, 2023.

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MAUREEN A. ODERO
JUDGE

