



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamau & 5 others v Ngugi (Civil Appeal 49 of 2018)  
[2023] KEHC 20526 (KLR) (7 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20526 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL 49 OF 2018  
DO CHEPKWONY, J  
JULY 7, 2023**

**BETWEEN**

**WINNIE NYAMBURA KAMAU ..... 1<sup>ST</sup> APPELLANT  
PENINAH NJERI MAINA ..... 2<sup>ND</sup> APPELLANT  
VICTORIA WANJIRU MIRINGU ..... 3<sup>RD</sup> APPELLANT  
PHOEBE MUTHONI GACHATHI ..... 4<sup>TH</sup> APPELLANT  
MARY BETHA KIBET ..... 5<sup>TH</sup> APPELLANT  
MARY WAIRIMU GITARI ..... 6<sup>TH</sup> APPELLANT**

**AND**

**PETER MWEA DANSON NGUGI ..... RESPONDENT**

*(Being an application for Stay of Ruling of Chief Magistrate’s Court of Kenya at Thika made by Hon. B. J. Bartoo on 15<sup>th</sup> March, 2018 with respect to the Applicant’s Summons for Revocation of Grant dated 16<sup>th</sup> December, 2016)*

**JUDGMENT**

1. This appeal stems from the ruling of the Chief Magistrate Court at Thika delivered by Hon B.J Bartoo on March 15, 2018 with respect to the applicant’s summons for revocation of grant dated December 16, 2016.
2. By way of background, upon the deceased’s demise on August 21, 2018, the respondent petitioned and was granted grant of letters of administration intestate on October 17, 2005. The said respondent then filed summons for confirmation of grant dated December 19, 2006 and certificate of confirmed grant was issued dated June 6, 2007. The appellants then filed summons for revocation of grant dated December 16, 2016 on the basis that they had been left out in the distribution of the estate as the



daughters of the deceased. The trial court heard the summons for revocation and in a ruling of March 15, 2018 dismissed the same with costs to the respondent.

3. Being aggrieved with the ruling of March 15, 2018, the appellants filed the present appeal *vide* a memorandum of appeal and a notice of motion application, both dated April 5, 2018.
4. In the notice of motion application, they were seeking stay of the ruling of March 15, 2018 pending the hearing and determination of the appeal. On November 28, 2019, by consent of both counsel for the parties conservatory orders issued to conserve the estate against any alienation or adverse dealings pending hearing of revocation application. This judgment is in respect to the appeal.
5. On May 5, 2022, the court gave directions for the appeal to be disposed of by way of written submissions. The appellants submissions are dated November 1, 2022 while the respondents' are dated February 10, 2023. I will consider the said submissions in the court's determination.

### **Analysis and Determination**

6. It is trite that as a first appellate court, it is the duty of this court to reconsider, reevaluate and reanalyze the evidence afresh and come to its own conclusion on that evidence. The court should however bear in mind, that it did not see the witnesses as they testified and give due allowance to that. (see the case of *Selle & another v Associated Motor Boat Co Ltd & others* [1968] EA 123)
7. In determining this appeal, the original record of proceedings and submissions have carefully been read and considered in line with the grounds of appeal raised. This court finds that in summary the issue arising for determination is whether the trial court erred in dismissing the summons for revocation of grant.
8. The power of the court to revoke grants is enshrined under section 76 of the *Law of Succession Act* which states 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;
- d. ... or
- e. ....”

9. These grounds for revocation were discussed in the case of *Re Estate of Mukhobi Namonya (deceased)* [2020] eKLR, where the High Court stated as follows:-

“[11]. Under section 76 of the act, a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining the grant was attended by glaring difficulties, such as where the same was defective, say because the person



who obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant...

[12]. In the instant case, the applicant appears to anchor his

case on the first general ground, that there were issues with the manner the grant was obtained. He has raised arguments about the process of obtaining the grant having had challenges. He has not complained about anything that would bring the case within the second general ground, nor the third ground. My understanding of his case, therefore, is that the process of obtaining the grant was defective, as the administrator used fraud, misrepresentation and concealed matter from the court.”

10. In the instant case, it is common ground that the appellants are daughters of the deceased. The respondent also confirmed that indeed the appellants are daughters of the deceased but states that in a family meeting, they agreed that only the sons and wife of the deceased would inherit from the estate, which position the appellants disputed.

11. Today, unlike years ago, the law recognizes both boys and girls in succession process. The court in the case of *Daniel Mwongera M' Iringo v Lucy Karambu M' Ikiao* [2017]eKLR, held as follows:-

“Section 29 (a) of the Law of Succession cap 160 of the laws of Kenya in recognizing children does not classify them on the basis of gender or marital status. Makhandia, J. (as he then was) *In Re Estate of Solomon Ngatia Kariuki (deceased)*

[2008]eKLR, rendered himself inter alia thus:

“The *Law of Succession Act* does not discriminate

between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased's estate. In seeking to disinherit the testator under the guise that the testator was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father's estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father's inheritance because they are likely to enjoy inheritance of their husband's side of the family.”

12. At paragraph 8 of the further supporting affidavit sworn on November 22, 2019, Winnie Nyambura Kamau stated that one of their brothers, Charles Gitau Ngugi died and left behind a wife and children who have not been included in the list of beneficiaries. It is now trite that in instances where a child or children of the deceased is/are also deceased, then their children should stand in place of their deceased parents in succession cases. In such cases, the grandchildren of the deceased are also beneficiaries of an estate. The court in the case of *Cleopa Amutala Namayi v Judith Were*, succession cause No 457 of 2005 [2015]eKLR, Mrima, J. observed thus:-

“Be that as it may, under part v of the Act grandchildren have no automatic right to inherit their grandparents .... The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents indirectly through their own parents.... The children to the grandparents



inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the grandchildren's own parents are dead..."

13. In this case, it is therefore clear that since there was material concealment of all the beneficiaries of the estate, that is to say all the children of the deceased particularly daughters and grandchildren of the deceased (Charles Gitau Ngugi- deceased's children) or any other grandchildren whose own parent is deceased, who have been excluded the grant of letters issued to Peter Mwea Danson Ngugi should be revoked.
14. The upshot is that the appeal has merits and the same is allowed with the following orders issuing:
  - a. The grant of letters of administration issued to Peter Mwea Danson Ngugi on October 17, 2005//// be and is hereby revoked.
  - b. The certificate of confirmation of grant issued on June 6, 2007 be and is hereby annulled.
  - c. Fresh grant of letters of administration to be issued to the respondent and one of the objectors being Winnie Nyambura Kamau within 30 days from the date thereof.
  - d. Upon issuance of the fresh grant in (c) above, either of the administrators shall be at liberty to file summons for confirmation of grant which should include all the beneficiaries of the deceased both sons and daughters and in the event any of them is deceased, their wife or wives, child or children, if any to be included in place of the deceased husband or parent in the consent form with the proposed mode of distribution.
  - e. The other administrator or any other party will then be at liberty to file and serve a protest to the summons, if need be.
  - f. Mention on September 19, 2023 to confirm compliance and directions on the disposal of the application to be filed under (d) above.
  - g. This being a family matter, each party shall bear their costs.

It is so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 7<sup>TH</sup> DAY OF JULY \_\_, 2023.**

**D. O. CHEPKWONY**

**JUDGE**

**In the presence of:**

Mr. Ndungi holding brief for F. N. Njanja for Appellants

Court Assistant - Martin

