



In re Estate of Paul Njane Njengi alias Paul Gitau Njengi (Deceased) (Succession Cause 349 of 2001) [2023] KEHC 22394 (KLR) (19 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22394 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 349 OF 2001
SM MOHOCHI, J
SEPTEMBER 19, 2023
IN THE MATTER OF THE ESTATE OF PAUL NJANE
NJENGI ALIAS PAUL GITAU NJENGI (DECEASED)**

BETWEEN

**JANE WANGARI NJANE 1ST APPLICANT
PETER NJUGUNA NJANE 2ND APPLICANT
ANN WANJIKU NJANE 3RD APPLICANT
ELIZABETH NJERI NJANE 4TH APPLICANT
JOYCE WAMBUI NJANE 5TH APPLICANT**

AND

**MARTHA WAIRIMU NJANE 1ST RESPONDENT
MARY NAYIKO NJANE 2ND RESPONDENT
SAMUEL NJENGI NJANE 3RD RESPONDENT
JAMES NJENGI NJANE 4TH RESPONDENT**

RULING

1. It is now over Twenty-Three (23) years since the Deceased passed away on the 5th of July 2000. His estate is yet to be settled and his two polygamous houses are in disagreements as to the mode of distribution. Sadly, it cannot be said that, “the deceased is resting in peace”.
2. What is before this Court for determination is the Applicants’ Summons for Revocation of Grant dated 29th November, 2021 filed under certificate of urgency under Sections 76(a), (b) and 47 of the



Law of Succession Act and Rues 44(1), (2), 49 and 73 of the Probate and Administration Rules where the Applicants who are also the Objectors are seeking;

- i. That this Application be certified urgent and be heard ex-parte in the first instance.
 - ii. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue a restraining order to the Administratrix/Respondents herein from dealing in whatsoever manner with the Estate of the deceased herein either in person or through their servants and/or dependents
 - iii. That pending the hearing and determination of this Application this Honourable Court be pleased to order no proceeds from the estate of Paul Njane Njengi be released to any of the Parties
 - iv. That this Court be pleased to revoke the Grant and Certificate of Confirmation of Grant issued to Martha Wairimu Njane and Mary Nyakio Njane on 25th January, 2021.
 - v. That the determination of the division of the estate proceeds for full hearing and determined on the basis of each individual as a unit as per the Law of Succession Act
 - vi. That the widows of the deceased be awarded a life interest of the estate awarded which is to be devolved back to the estate.
 - vii. That cost of this Application to be bore by the Administratrix/Respondents.
3. The Respondent's in opposing the Application filed a Replying Affidavit sworn by Martha Wairimu Njane dated 21st March 2022.
 4. The Application proceeded by way of viva voce evidence on 18th April, 2023. The Court thereafter directed parties to file written submissions. The Administrator filed their submissions on 29th May, 2023 and dated on even date. The Objector filed submissions dated 29th May, 2023 on 30th May, 2023.

Objector's Case & Submissions

5. By the oral evidence of Samson K. Njane the Objectors testified that they were never involved in the conversation leading to the distribution, that not all properties of the deceased were included, that the adopted consent dated 25th January 2021 is distinguishable from their signed consent dated 9th June 2016 which according to them had an equality clause. That their initial consent was for issue of grant and not its confirmation, that the distribution formula should be 50:50 and that should the grant be revoked a fresh Probate and Administration process should commence.
6. Mary Nyakio Njane testified in support of the application that she never consulted her children before entering the consent and that the grant should be revoked. That her Co-administrator sold her portion and that what is remaining is what she is holding and that the agreed formula shall not apply. She agreed that the valuation has not been done since 2021 but denied being the one resisting the same.
7. The Objector submits that the Applicant are biological children of the deceased and hence qualify to benefit from the estate.
8. The Applicant also submits that the confirmed Grant was obtained by fraudulent means and only came to know of the grant on confirmation on 25th January, 2001 which was confirmed without the consent of the other beneficiaries. That the mode of distribution was not fair and thus liable for revocation.



Administrators' Submissions

9. The last witness to testify was Mr Samwel Njengi Njane the 3rd Respondent who admitted entering into the consent and that it was adopted by the court, that the 2nd house has resisted the valuation of the estate in implementation of the distribution and that the consent should not be set aside
10. In submission the Respondents admitted to the Applicants being the biological children of the deceased and contended that, vide a consent dated 28th February, 2020, there was an agreement that the 1st house was to get 30% and the 2nd house 68%. The consent was adopted in Court on 25th January, 2021. It is the Administrators' submission that the revocation of grant was an afterthought.

Analysis & Determination

11. This Court observes that, Martha Wairimu Njane and Mary Nyakio Njane are the administrators of the estate of the late Paul Gitau Njengi alias Paul Njane Njengi. On 25th January 2021, a Certificate of Confirmation of Grant was issued by this Court pursuant to a consent arrived among the parties on 28th February 2020 through mediation. The consent was adopted as an order of this Court.
12. An attempt at reopening and reviewing this consent was dismissed by this court on the 17th March 2023.
13. The Application for revocation of the grant is a “red herring” by the 2nd House and Mary Nyakio Njane to review the consent or set it aside all together.
14. The Court finds that no fraud has been demonstrated as a basis of revocation of the grant.
15. It is Trite Law that consent orders should rarely be disturbed and if so then it should be on extremely narrow parameters;
16. The Court of Appeal in the case of *Kenya Commercial Bank Ltd v. Specialized Engineering Co. Ltd* (1982) KLR P. 485 held that:

“A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or by an agreement contrary to the Policy of the Court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the Court to set aside an agreement.

In the same case the Court further held that:

“An advocate has general authority to compromise on behalf of his client as long as he is acting bona fide and not contrary to express negative direction. In the absence of proof of any express negative direction, the order shall be binding”.
17. On the 17th of March 2021, this court pronounced itself on the adopted consent and parties should accordingly be aware.
18. That the conduct by Mary Nyakio Njane is despicable and she is reminded that her appointment as an administrator flows from the law and as such she is obligated to ensure compliance of all court directives and orders. Her attempt at renegeing on her own consent is regrettable.
19. The Court finds no merit in the Application and accordingly dismisses the same.
20. Parties shall bear their own costs.



It is so Ordered.

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 19TH SEPTEMBER 2023

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MOHOCHI S.M

JUDGE

