



**In re Estate of Grace Nyambura Waruingi (Deceased) (Succession Cause  
1671 of 1993) [2023] KEHC 24368 (KLR) (Family) (16 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24368 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 1671 OF 1993**

**EKO OGOLA, J**

**OCTOBER 16, 2023**

**IN THE MATTER OF THE ESTATE OF GRACE NYAMBURA WARUINGI (DECEASED)**

**BETWEEN**

**JOHN WAWERU WARUINGI ..... 1<sup>ST</sup> APPLICANT**

**KAGAI WARUINGI ..... 2<sup>ND</sup> APPLICANT**

**LIVINGSTONE GICHERU WARUINGI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**NJUGUNA WAWERU ..... 1<sup>ST</sup> RESPONDENT**

**JANE WANJIRU NJERI ..... 2<sup>ND</sup> RESPONDENT**

**JOHN WARUINGI KAGAI ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**NICMAC CREST LIMITED ..... INTERESTED PARTY**

**ZION FORT LIMITED ..... INTERESTED PARTY**

**HERMON CREST LIMITED ..... INTERESTED PARTY**

**RULING**

1. What is before this Court are two Applications. The first is dated 10<sup>th</sup> February 2021 (hereinafter referred to as, 'first application') and the second application is dated 22<sup>nd</sup> July 2021 (hereinafter referred to as, 'second application').
2. In the first Application, the Applicant prayed for the following:-



- a. Spent;
  - b. That this honourable court be pleased to cancel, revoke and/or annul the registration of Kiambaa/Thimbugua/1750 and Kiambaa/Thimbugua/1777 into the name of Njuguna Waweru, in entries no. 13 and 12 of their green cards, respectively.
  - c. That this honourable court be pleased to cancel, revoke and/or annul the sub-division and subsequent transfer and registration of Kiambaa/Thimbugua/1750 (as subdivided into Kiambaa/Thimbugua/7890-10 parcels) and Kiambaa/Thimbugua/1777 (as subdivided into Kiambaa/Thimbugua/7891 to Kiambaa/Thimbugua/7902/12 parcels) by the 1<sup>st</sup> Respondent to interested parties.
  - d. That the honorable court be pleased to declare that the titles to the resultant parcels outlined in prayer (c) above are null and void, ab initio, for being tainted by the fraudulent acts of the respondent in the nullified proceedings before the Chief Magistrate's Courts in Kiambu, Succession Cause No. 47 of 2012.
  - e. That the honorable court be pleased to make such further orders or directions as may be necessary to protect and preserve the estate of Grace Nyambura Waruingi (deceased).
  - f. That the costs of this application be borne by the respondents.
3. The second Application are Summons for revocation or annulment of grant. The Applicant prays for the following:-
- a. Spent;
  - b. Spent;
  - c. Spent;
  - d. That this honorable Court be pleased to call and revoke/annul the grant of letters of administration intestate issued to the respondent herein on 1<sup>st</sup> October 2019 and subsequently confirmed on 25<sup>th</sup> February 2020 and any consequential action therefrom.
  - e. That the costs of this application be borne by the respondents.
4. To put matters into context, the deceased died intestate on 24<sup>th</sup> June 1993. She was married to one Paul Kagai Waruingi who pre-deceased her. The deceased was among the four wives of the late Paul Kagai Waruingi. The deceased and Paul Kagai Waruingi sired a son named Peter Kagai Waruingi who later died on 16<sup>th</sup> November 1998.
5. After the death of the deceased, Letters of administration were issued to Francis Muigai Waruingi in his capacity as the deceased stepson. The grant was later confirmed on 13<sup>th</sup> February 1995. According to Francis, the deceased was survived by his son Peter Kagai Waruingi and five stepchildren namely Francis Muigai Waruingi, Stephen Njenga, Livingstone Gicheru, Kagai Waruingi 'B', and John Wawere. Further to this, Francis listed properties known as Kiambaa/Thimbugua/1750 and Kiambaa/Thimbugua/1777 as properties forming the estate of the deceased. The properties were to be equally divided amongst the six aforementioned beneficiaries.
6. On 19<sup>th</sup> December 1997, through an Application by Peter Kagai Waruingi, the Letters of Administration issued to Francis Muigai Waruingi and confirmed on 13<sup>th</sup> February 1995 were revoked. At this point, entries had been made to the titles of Kiambaa/Thimbugua/1750 and Kiambaa/Thimbugua/1777. The court subsequently cancelled the said entries and restored the name of the



- deceased as the registered proprietor of the two properties. Peter Kagai Waruingi was thereby issued with the grant of letters of administration intestate for the estate of the deceased.
7. Sometime in 2012, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent instituted a succession cause in the Chief Magistrate's Court at Kiambu Cause No. 47 of 2012. They sought to be issued with grants of letters of administration for the estate of the deceased in their capacity as the deceased father and the deceased granddaughter. A grant was issued and confirmed on 3<sup>rd</sup> May 2013. It was later amended on 20<sup>th</sup> March 2014.
  8. When the Applicants herein found out about the proceedings in the Chief Magistrate's court, they approached this court praying for revocation of the confirmed grant on the ground of material non-disclosure. On 13<sup>th</sup> March 2019, this Court delivered its ruling revoking the grant issued to the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The proceedings in the Chief Magistrate's Court at Kiambu Cause No. 47 of 2012 were declared a nullity.
  9. On 25<sup>th</sup> March 2019, the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed an application to substitute the late Peter Kagai Waruingi with the 1<sup>st</sup> and 2<sup>nd</sup> respondents as the administrators of the estate. They deposed in support of their application that all the beneficiaries were in agreement. The Court 1<sup>st</sup> October 2019 granted the Orders as prayed. The grant was rectified on 1<sup>st</sup> October 2019 and confirmed on 25<sup>th</sup> February 2020.
  10. Back to the instant Summons. The Summons were based on the grounds set out therein and supported by the Affidavit sworn by Livingstone Gicheru Warungi.
  11. It is averred that by the said fraudulent grant issued in the Chief Magistrates Court's to the 1<sup>st</sup> and 2<sup>nd</sup> respondents, the properties known as Kiambaa/Thimbigua/1750 and Kiambaa/Thimbigua/1777 were subdivided and transferred to 3<sup>rd</sup> parties.
  12. Further to this, it is stated that before the Summons were determined, they discovered that the Respondents herein had, again fraudulently, covertly, secretly and in bad faith filed a Petition in this Court by way of Cross-Application for Grant dated 25<sup>th</sup> March, 2019. Through the said Cross Application, the Respondents made to be rectified on 18<sup>th</sup> October 2019, the Letters of Administration Intestate granted to the Applicants on 28<sup>th</sup> November 1997, through concealment of material facts and by uttering of false statements and misrepresentation before the Court. The grant issued on 1<sup>st</sup> October 2019 was later confirmed on 25<sup>th</sup> February 2020.
  13. The Applicants aver that the proceedings that led to the issuance and confirmation of the said grant were defective in substance as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents never served the Applicants with the pleadings despite knowledge of their existence and interest in this suit.
  14. Furthermore, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not file any objection to the Petition for Letters of Administration published on 19<sup>th</sup> December 1997 to enable them to file a Petition by way of Cross-Application for grant. According to the Applicants, they had a right to be heard substantively. The Applicants contend that the 1<sup>st</sup> and 2<sup>nd</sup> respondents failed to disclose to the Court that there was a Summons dated 28<sup>th</sup> December 2006 pending determination in which the Applicants herein sought the revocation and/or annulment of the grant issued to Peter Kagai Waruingi. Also, the 1<sup>st</sup> and 2<sup>nd</sup> respondents failed to disclose to the Court that there are other existing rightful dependents, being stepsons of the deceased and all of whom have beneficiary interests in the estate. It is the allegation of the Applicants that the deceased had no grandchildren therefore the 2<sup>nd</sup> respondent's allegation is false.



## Determination

15. By the time of writing this Ruling, the Respondents had not filed their response. There is an affidavit on record showing that they were duly served with the Applications and the hearing notice.

## The First Application

16. I have considered the Applications, the affidavits in support, and the entire record of the court. The first Applications seek orders to cancel all subsequent entries to the titles of the properties known as Kiambaa/Thimbigua/1750 and Kiambaa/Thimbigua/1777 which were as a result of the proceedings in the Chief Magistrate's Court at Kiambu Cause No. 47 of 2012. These proceedings were declared a nullity.

17. In the case of *Macfoy v United Africa Co. Ltd* [1961] 2 AII ER 1169 the court held as follows:-

“that a judgment founded on null and void proceedings is a nullity and any action stemming from it or rooted thereon is also null and void ab initio.”

18. The Court of Appeal in the case of *Wambui v Mwangi & 3 others* (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR) (19 November 2021) (Judgment) held similar views as in the Macfoy case. The Court stated that:-

“... the title was also tainted with nullity in that the court process on the basis of which the title to the suit property was anchored was subsequently declared null and void ab initio. The position in law as we have already highlighted above is that anything founded on nullity is also null and void and of no consequence. The title allegedly vested in the 3rd respondent and subsequently passed on to the appellant having stemmed from court proceedings that were subsequently declared null and void also stood vitiated by the same nullity and of no consequence.

19. In this case, the entries to the titles stemming from the decision of the Chief Magistrates Court's decision are subsequently void ab initio since every subsequent act premised on a nullity cannot accrue legitimacy or legality. The Application dated 10<sup>th</sup> February 2021 is thereby merited and it is hereby allowed.

## The Second Application

20. The second Application seeks to revoke the grant issued to the 1<sup>st</sup> and 2<sup>nd</sup> respondent. Revocation of a grant is premised on Section 76 of the *Law of Succession Act*. This provision gives the court the power to revoke a grant provided the conditions stipulated therein have been met. It states that:-

“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) 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 has ordered or allowed; 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
- f. The grant has become useless and inoperative through subsequent circumstances.”

21. In this instant case, the relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective or were attended by fraud and concealment of an important matter, or was obtained by an untrue allegation of a fact essential to the point.
22. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed a pleading titled ‘Petition by way of cross-application for a grant.’ The said pleading was supported by an affidavit. There is no affidavit of service on record that shows that the Applicants were served with these pleadings. Hence, they had no opportunity to respond to the veracity of the averments. The 1<sup>st</sup> and 2<sup>nd</sup> respondents stated in their pleadings that they should be issued with a grant of letters of administration since the administrator Peter Kagai Waruingi had passed away. When a sole administrator dies, the grant issued to him becomes inoperable through subsequent circumstances and is to be revoked. Therefore, the proceedings leading up to the making, issuance, and confirmation of the grant were defective.
23. Furthermore, according to the court’s record, there are several affidavits from the Applicants. There is also a letter from the chief that states that Peter Kagai Waruingi was not survived by any children, hence, the deceased had no children. It is unclear whether these averments are true. Nonetheless, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents averred that the only beneficiaries to the deceased estate were her grandchildren who have all consented to them being issued the grants of letters of administration. They failed to disclose to the court that there were other beneficiaries such as the Applicants who have been party to this suit since it was instituted.
24. In my view, there is something amiss. The 1<sup>st</sup> and 2<sup>nd</sup> respondent being able to file an application in this suit must have been aware of the existence of the Applicants and their interest in the deceased estate. The least that could be done is to serve them with the pleadings. All parties would have been heard and a determination issued by the court. The 1<sup>st</sup> and 2<sup>nd</sup> respondents therefore intentionally withheld material facts with the aim of misleading the court.
25. The upshot is that the grants of letters of administration issued to the 1<sup>st</sup> and 2<sup>nd</sup> respondent on 1<sup>st</sup> October 2019 and confirmed on 25<sup>th</sup> February 2020 are hereby revoked.
26. The Applications dated 10<sup>th</sup> February 2021 and 22<sup>nd</sup> July 2021 are hereby allowed with costs being in the cause.

It is so ordered.



**DATED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF OCTOBER 2023**

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**E.K. OGOLA**

**JUDGE**

In the presence of:

Mr. Mwathe for the Applicants

N/A for the Respondents

Gisiele Muthoni Court Assistant

