



**In re Estate of Wainaina Icharia (Deceased) (Miscellaneous Application E214 of 2022) [2023] KEHC 24357 (KLR) (Family) (16 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24357 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**MISCELLANEOUS APPLICATION E214 OF 2022**  
**EKO OGOLA, J**  
**OCTOBER 16, 2023**  
**IN THE MATTER OF THE ESTATE OF WAINAINA ICHARIA (DECEASED)**  
**IN THE MATTER OF**  
**WILSON NGUGI WAINAINA ..... APPLICANT**

**RULING**

1. The Summons before the Court is dated 2<sup>nd</sup> December 2022. The Applicant prays for the following:-
  - a. That the honorable court be pleased to revoke the grant of letters of administration and certificate of confirmation of grant made to Virginia Wairimu Wainaina, Mary Warucu Wainaina, and Njeri Wainaina Icharia.
  - b. That Virginia Wairimu Wainaina, Mary Warucu Wainaina, and Njeri Wainaina Icharia have since passed on hence the grant issued to them has become useless and inoperative in the circumstances.
  - c. That fresh grant of letters of administration and certificate of confirmation of grant be issued to Wilson Ngugi Wainaina.
  - d. That the cost of this application be in the cause.
2. Wainaina Icharia died intestate on 10<sup>th</sup> September 1979. Grant of Letters Intestate was issued to Virginia Wairimu Wainaina, Mary Warucu Wainaina, and Njeri Wainaina Icharia on 20<sup>th</sup> May 1997. The grant was later confirmed on 23<sup>rd</sup> June 2001. The Applicant avers that the three administrators have since died and some properties such as Kiambaa/Kihara 3142 are yet to be distributed. He further stated that the deceased was survived by seven widows. Members of the seven households have consented to his appointment as administrator.



## Determination

3. The issue for determination herein is whether the Applicant's application meets the threshold for the revocation of a grant within the meaning of Section 76 of the *Law of Succession Act*. Section 76 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) 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.”

4. Having determined that the procedure set out in the act applies to these proceedings, I proceed to determine the issues raised in the application before me, namely, what is the effect of the death of administrators. Justice W. Musyoka, in discussing a similar issue In the matter of the *estate of Edward Kanyiri Kunyiba (Deceased)* {2013} eKLR had this to say:-

“Regarding the death of the co-administrator, the position is that the grant...has become inoperative. The grant was made jointly to the applicant and his mother, who has now died. It was intended that the two act together in the administration of the estate. A grant is a certificate. It is issued to a particular person or persons. If the holder of the grant dies the grant becomes useless, as it cannot be transferred to another person. If it was made to two



persons and one dies it becomes inoperative. Under section 76 of the Law of Succession Act such grant is liable to revocation. It should be revoked and another grant made.”

5. In this instant case, all three administrators have passed away. Since a grant is not transferrable, the said grant has become useless and inoperative through subsequent circumstances and should therefore be revoked under Section 76(e).

6. Should the grant be issued directly to the Applicant? Section 51 of the Law of Succession Act states as follows:-

“Every application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.”

7. Further to this, Section 67(1) provides that:-

“No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for such grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.”

8. Section 71(1) goes on to stipulate how a grant should be confirmed. It states that:-

“After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”

9. The Act is clear on the procedures to be followed to apply for a grant of letter of Administration intestate and how the said grant can be confirmed. This process should not be set aside because the Estate has been partially distributed.

10. From the foregoing, I hereby make the following Orders:-

- a. The grant of letters of administration issued to Virginia Wairimu Wainaina, Mary Warucu Wainaina, and Njeri Wainaina Icharia on 20<sup>th</sup> May 1997 and confirmed on 23<sup>rd</sup> June 2001 is hereby revoked.
- b. Applicant is at liberty to apply for the issuance of fresh grant of letters of administration intestate for the estate of Wainaina Icharia (deceased).
- c. The cost of the Application be in the cause.

It is so ordered

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

.....

**E.K. OGOLA**

**JUDGE**

**In the presence of:**

Ms. Ndavuta h/b for Mr. Mashua for the Applicant

Gisiele Muthoni Court Assistant

