



In re Estate of Joseph Njenga Gathii (Deceased) (Succession Cause 2764 of 2011) [2023] KEHC 24387 (KLR) (Family) (13 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24387 (KLR)

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

FAMILY

SUCCESSION CAUSE 2764 OF 2011

MA ODERO, J

OCTOBER 13, 2023

IN THE MATTER OF THE ESTATE OF JOSEPH NJENGA GATHII (DECEASED)

BETWEEN

AWN APPLICANT

AND

CMN 1ST RESPONDENT

PMN 2ND RESPONDENT

RULING

1. Before this Court for determination is the summons dated 29th March 2022 by which the Applicant AWN seeks the following orders:-

- “ 1. That the partial grant of letters of administration issued to CMN to represent the first house be revoked on account of gross misconduct and fragrant breach of the terms of the judgment of court on 16th September, 2016 and AWN be appointed by court to act in her place.
- 2. That a sum of Kshs.1,424,500/= payable by Kenya National Highway Authority (KENHA) to the first house held at the Applicant’s instance be released to her/administrator representing the first house for distribution amongst the members of the first house.
- 3. That MNM (the previous administrator representing the first house) be ordered to release the following monies to AWN (the Applicant);



- a) The Applicant's proportionate share from Kshs.800,000/= received from Limcrest Limited on behalf of the first house.
 - b) The Applicant's proportionate share from Kshs.2,038,000/= received on behalf of the first house in 2011 from Kirunje Investments on land sale.
4. That the Confirmed Grant of Letters of Administration herein be amended in the schedule of distribution to include all that land known as '20 acres to be excised from Longonot/Kijabe Block x/xxx (Ereri) and the same be distributed equally amongst all the dependants of the deceased.
 5. That CMN, ENK and AWN be appointed as trustees of CN, who is of unsound mind.
 6. That the costs of this application be provided for".
2. The summons is brought pursuant to Section 76 (d) (ii) of the *Law of Succession Act* Cap 160 and Rule 49 of the *Probate and Administration Rule* and is supported by the sworn Affidavit of even date sworn by the Applicant.
 3. The Respondent CMN opposed the application through the Replying Affidavit dated 4th July, 2022. The matter was canvassed by way of written submissions. The Applicant did not file any written submissions whilst the Respondent relied upon her written submissions dated 10th May, 2021.

Background

4. This succession cause relates to the estate of the late JNG (hereinafter the Deceased) who died intestate on 15th September, 2000. A copy of the Death Certificate Serial Number xxxx is annexed to the Petition for Grant of letters of Administration Intestate dated 28th January, 2010.
5. The Deceased who was a polygamous man with three wives was survived by three houses as follows:-

1st House

CMN

MNN

AWN

ENK

AMM

PMN

CA. J. NN

2nd House

MWN

SGN

RKN

NWN



3rd House

EWN

MNN

AGN

PKN

JWN

FMN

DBN

CM

RNN

6. The estate of the Deceased was said to comprise of the following assets:-
 - a) 15.989 acres - in LR No.xxxx/xx referred to as Kaggia farm.
 - b) 135 shares in Limuru Dairy Co-operative Society-Share Certificate No.xxxx.
 - c) Shares in Limcrest Farmers Co-Ltd. (Nairobi building).
 - e) 5½ Shares in Kenton Kijabe Block xx/xxxx.
 - f) The sum of Kshs.4,045.975 in K-Unity Finance Bank.
7. Several different Administrators have been appointed in this matter with some of the appointments later being revoked by the court. The current set of Administrators who were appointed on 16th November, 2016 are:-
 - a) CMN - representing the 1st House.
 - b) MWN - representing the 2nd House and;
 - c) EWN - representing the 3rd House.
8. There have been several rounds of litigation over this estate and on 19th October, 2022 this court referred the matter for Court Annexed Mediation in an attempt to compromise the present application. Unfortunately, the mediation was unsuccessful hence the hearing of this application.
9. By this application the Applicant AWN who is from the 1st House which is represented by the 1st Respondent, seeks to have the Grant issued to the 1st Respondent revoked. She alleges that the Respondent has breached the terms of the judgement delivered on 16th September, 2016.
10. It transpires that a sum of Kshs.1,424,500/= was due to be paid to the 1st House by the Kenya National Highway Authority (KENHA) – However, the Applicant wrote to KENHA demanding that they not release the funds to the Administrators. As such those funds are still being held by KENHA.
11. The Applicant now seek orders that the funds held by KENHA be released to herself as the representative of the 1st House for distribution amongst her siblings.
12. The Applicant further prays that the confirmed Grant be amended to include the parcel of land known as Longonot/Kijabe Block xx/xxxx (Eleri) comprising twenty 20 acres and that the said parcel of land be distributed equally amongst the beneficiaries.



13. The Respondent CMN opposed the application she asserted that she was lawfully appointed as Administrator of the estate to represent the 1st House in an exercise which was conducted by Hon. Lady Justice Muigai. That she has diligently carried out her duties as Administrator.
14. The Respondent states that it was at the instance of the Applicant that KENHA withheld the funds which were due to be released to the estate.
15. The Respondent concedes that the parcel of land known as Longonot Kijabe Block xx/xxxx does exist but states that the Administrators are awaiting the processing of the requisite documentation before the said land can be distributed.
16. The Respondent describes the Applicant as a vexatious litigant and prays that the application be dismissed in its entirety.

Analysis and Determination

17. I have carefully considered the application before this court. The Reply filed thereto as well as the written submissions filed by both parties.
18. The Applicant has prayed to have the Grant issued to the Respondent revoked and that she be appointed as Administrator to represent the 1st House. Firstly, if Applicant wanted to have the Grant revoked then she ought to have filed a substantive summons for Revocation of Grant.
19. Secondly, the Applicant is asking the court to remove the Respondent and to appoint her (the Applicant) as the representative of the 1st House. The Respondent in her Reply has detailed how she was appointed as Administrator to represent the 1st House following an exercise conducted by Hon. Justice Muigai. If the Applicant now wishes to replace the Respondent then she requires to have the endorsement of all her siblings. There is no consent and/or Affidavit exhibited by the Applicant to show that her siblings are in support of her prayer to remove the Respondent as their representative. It appears that the Applicant is trying to execute a coup against the Respondent through a court order – This amounts to an abuse of court process and the court will not condone this.
20. The grounds upon which a Grant may be revoked are provided for in Section 76 of the [Law of Succession Act](#) Cap 160, laws of Kenya 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”.

21. The Applicant has accused the Respondent of gross misconduct and of breaching the terms of the judgement delivered on 16th September, 2016. It must be remembered that the Respondent is not the sole administrator of the estate. She was appointed jointly with two (2) other Administrators who represent the other two Houses. Why would the Applicant single out the Respondent for removal and make no similar demand against the other two Administrators.
22. Moreover, the Applicant has not given specifics of which orders were allegedly disobeyed. If the Applicant truly believed that the Administrators had disobeyed court orders then the proper thing would have been to file an application seeking to have them cited for contempt.
23. It is clear to me that this prayer for revocation of Grant is not merited. The same arises from a personal vendetta which the Applicant has against the Respondent. That is why the Applicant has trained her guns on the Respondent but makes no mention about the other two (2) Administrators of the estate.
24. The Applicant has prayed that the schedule of Distribution be amended to including a parcel of land which she alleges was left out. Firstly, there is no evidence that the property in question belonged to the Deceased. The Applicant has not annexed any Title document in respect of this parcel of land. The Respondent on her part explained that the Administrators were awaiting the process of documentation before including that property. Where a party seeks to amend and/or review the mode of distribution of an estate then an application for rectification of Grant must be filed. The Applicant must also annex to such application a consent signed by all the beneficiaries indicating that they have no objection to the rectification of the schedule of Distribution. No such consent has been exhibited in this matter.
25. Furthermore, such changes would involve a re-distribution of the entire estate. This cannot be achieved through a review/amendment of the Grant. The Applicant must seek to set aside the current mode of distribution and have a new schedule endorsed by the court. Such changes cannot be effected through this application.



26. Finally, the Applicant seeks orders that ENK the Respondent and herself be appointed as trustees or CN who she alleges is of unsound mind. Not an iota of evidence has been placed before this court to prove these allegation that CN is of unsound mind.
27. If the Applicant wishes to be appointed as the legal Guardian of this CN then she must file a Miscellaneous Application under the *Mental Health Act* Cap 248 laws of Kenya, which will be heard and determined in the normal manner. The Applicant cannot seek orders of Guardianship in this Succession Cause.
28. Further the Applicant cannot apply for orders of Guardianship on behalf of any person other than herself. The role of a legal Guardian is an onerous responsibility and one must volunteer to take up such role. There is no evidence that the Respondent and/or EN are willing to be appointed as the legal guardians of CN.
29. Finally, I find no merit at all in this application. The Applicant appears to be on a fishing expedition of sorts, throwing out several accusations and hoping that one will stick. The summons dated 29th March, 2022 is dismissed in its entirety. Costs will be met by the Applicant.

DATED IN NAIROBI THIS 13TH DAY OF OCTOBER, 2023.

MAUREEN A. ODERO

JUDGE

