



REPUBLIC OF KENYA



**In re Estate of Justus Kipruto Sigilai (Deceased) (Succession Cause
351 of 2008) [2023] KEHC 23306 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23306 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 351 OF 2008
HM NYAGA, J
OCTOBER 11, 2023**

BETWEEN

GEOFFREY KIPCHIRCHIR ROTICH APPLICANT

AND

GILBERT LIMO SIGILAI 1ST RESPONDENT

EVANS KIPKEMBOI SIGILAI 2ND RESPONDENT

RULING

1. By a Chamber Summons dated 9th March, 2023 brought pursuant to Section 76 of the [Law of Succession Act](#), Chapter 160 of the Laws of Kenya, the applicant, Geoffrey Kipchirchir Rotich, seeks orders that:
 - a. Spent
 - b. The grant issued on 19th December, 2008 to Peninah Jeruto Sigilai and confirmed on 13th October, 2010 be annulled or revoked.
 - c. The beneficiaries do appoint an administrator to the estate as Peninah Jeruto Sigilai passed away on 29th March, 2020.
 - d. That costs be provided for.
2. The application is premised on the grounds on its face and supported by an affidavit of the Applicant sworn on the even date.
3. He averred that he is the son of the deceased herein and that his mother despite giving birth to him was not married to the deceased as it turned out that they were related.
4. He deposed that the whole family knows him as a son of the deceased but he was surprised to learn that the late Peninah Jeruto Sigilai filed the current succession and excluded him as a beneficiary of the estate.



5. It was his deposition that he has approached his brothers so that they may give him a share of his father's estate but the same has not borne any fruits even though they accept him as the son of the deceased.
6. He averred that the grant was obtained fraudulently and is defective in substance as the administrator concealed the fact that he was a bona fide son of the deceased whom he acknowledged during his lifetime.
7. He averred that the 2nd respondent convened a meeting with elders which he included him as beneficiary but later changed his mind. He accused the 2nd respondent of taking over the running of the estate without a court order and prayed that the grant be revoked and the beneficiaries to appoint another administrator.
8. Evans Kipkemboi Sigilai, the 2nd respondent, swore a replying affidavit in opposition to summons on 22nd May, 2023. He deposed that the applicant is a stranger to the estate of the deceased herein.
9. He averred that the estate has been distributed and the beneficiaries have already occupied their respective shares and some have already sold their remains and therefore there is nothing to distribute.
10. He contended that this Honourable court cannot entertain an application filed 13 years after confirmation of grant and stated that it is the beneficiaries of the estate who will decide who should replace the deceased administratrix.
11. The application was canvassed through written submissions.

Applicant's Submissions

12. The Applicant submitted that the respondents have not denied or denounced the minutes of a meeting held on 25th February, 2022 in which his name appears as no.17 in the list of beneficiaries and it was agreed that he would inherit 2 acres out of the parcel no. Lembus/Kabonyonyi/Moringwo/31 measuring 8.6 hectares.
13. The applicant submitted that pursuant to Section 81 of the *Law of Succession Act*, the beneficiaries upon death of the administrator have to agree on a new administrator who will complete the distribution.
14. The applicant contended that the family meeting to distribute the estate without an appointment of administrator is contrary to the law and whatever the decision arrived at on the distribution of the estate herein was null and void.
15. The applicant submitted that he was born out of wedlock but the deceased took him in his home and brought him up with the children of the late administratrix herein and as such he qualifies to be one of the beneficiaries, and that the fact that his name was omitted in the list of beneficiaries is a ground to revoke the grant. He cited the case of *In the matter of the Estate of Jonathan Mutua Misi (deceased) SUCCESSION CAUSE NO.95 of 1995* where the applicant sought for revocation of grant on grounds that it had been obtained by false statements as he was a son of the deceased and his name had been omitted from the list of survivors and instead of ordering a revocation, the court directed that his name be included in the list.
16. The applicant thus submitted that if the grant is not revoked his name should be included in the list of beneficiaries.
17. The applicant argued that an administrator cannot be substituted as it was held in the case of *Julia Mutune M'mboroki v John Mugambi M'mboroki & 3 others [2016] eKLR* and urged this court to



find that the administrator having passed away before the distribution of the estate the grant ought to be revoked.

Respondents' Submissions

18. The respondents submitted that the Applicant is guilty of laches and inordinate delay as he did not make any claim to the deceased when he was alive nor the administrator who succeeded the deceased for a decade.
19. The respondents argued that the current application has not been placed under any of the legal requirement for revocation of grant as set out in section 76 of the *Law of Succession Act*.
20. The respondents also submitted that the application herein runs afoul Rule 44 sub rule 2 of the Probate and Administration Rules as the applicant has omitted the fact that the estate was distributed a long time ago and the only pending issue is transfer of assets to individual beneficiaries.
21. In urging this court to dismiss the instant application the respondents relied on the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] eKLR & Albert Imbuga Kisigwa –vs- Recho Kavai Kisigwa, Succession Cause No.158 OF 2000* where both courts concurred that there has to be evidence led to establish the grounds under said section 76 for the court to revoke the grant.
22. The respondents submitted that the application herein is unmerited and prayed that it be dismissed with costs in their favor.

Analysis and determination

23. The issues that arise for determination are :-
 - a. Whether the applicant is a son of the deceased and whether he is entitled to a share of the estate.
 - b. Whether the grant issued to Peninah Jeruto Sigilai and Confirmed on 13th October 2010 should be revoked.

Whether the applicant is the son of the deceased and whether he is entitled to a share of the estate.

24. The *Law of Succession Act* under Section 3 (2) of *Law of Succession Act* provides as follows:

“References in this Act to “child” or “children” shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born of her out of wedlock and in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility”.
25. The Applicant averred that the deceased was his father even though he was not married to his mother as it turned out that they were related. This position has been disputed by the respondents who maintained that the Applicant is a stranger to the estate of the deceased.
26. It was incumbent upon the Applicant therefore to prove that the deceased was his father. In re *Estate of Patrick Mwangi Wathiga - Deceased [2015] eKLR* it was held that:

‘It is trite law that the burden of establishing all the allegations rested on the objector and in law he was under an obligation to discharge the said burden. It’s not enough to state that the deceased’s was his father. He ought to have supported the said allegation by adducing the necessary supporting evidence.



27. In re Estate of DMM (Deceased) [2018] eKLR the Court noted the following in that case:
- ‘The protestor has not even produced any documentary evidence to confirm whether they had sired any children with the deceased no witness had testified to this fact, putting to consideration that the protestor has testified that her fifth child was sired by another man apart from the deceased.
- It is not proved that the deceased was taking care of the protestor and her children before he died. They separated long before she sired the children she has now and never thereafter cohabited with the deceased. It is noted that the protestor has failed to call any of her children to confirm whether indeed they were taken care of by the deceased purposely to ascertain the point of being dependents.
- The court therefore holds that the protestor has failed to prove...that her children were sired by the deceased thus her and her children are not entitled to any portion of the deceased estate.’
28. In re Estate of James Njenga Gitau (Deceased) [2018] eKLR the court made the following finding on a child the deceased apparently took in as his own.
- ‘The second son (particulars withheld) was stated not to be a biological son of the deceased but the Citor’s son whom it was claimed that the deceased had taken into his family as his own. The evidence was not adduced to prove this fact. In this case, he is not a beneficiary of the deceased.’
29. In the instant case the applicant did not produce any evidence such a birth certificate, notification of birth or even baptismal cards to show that he was fathered by deceased. He did not disclose whether these documents were unavailable or whether there were any challenges in obtaining the same. In addition, no witness testified in support of his case. Not even his alleged mother swore an affidavit in support of his case. The applicant relied on the family meeting dated 28th February, 2022 in which he was listed as one of the beneficiaries. This evidence in my view is flimsy and insufficient to prove that the deceased was his father.
30. I therefore hold that the Applicant has failed to adduce sufficient evidence to prove that he was a beneficiary of the deceased’s estate.
- Whether the grant issued to Peninah Jeruto Sigilai on 19th December,2008 and Confirmed on 13th October 2010 should be revoked.
31. These circumstances under which a court will order revocation of grant are well laid out under Section 76 of the [Law of Succession Act](#).
32. For avoidance of doubt, Section 76 of the [Law of Succession Act](#) 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.”
33. A reading of the applicant’s application leaves no doubt that the grounds cited fall under section 76 (b) & (e) above.
34. The court, in the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] eKLR at paragraph 11 of its ruling in revoking a grant reiterated the grounds upon which a grant can be revoked. It stated as follows:
- “ . The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”
35. The applicant alleged that the respondents concealed a material fact, that he was a child the deceased. There is no evidence that the applicant was a child of the deceased. This ground therefore fails.
36. Under Section 76 (e) a grant will be revoked for having become useless and inoperative. In this cause, the grant herein has become useless and inoperative following the death of the administratrix, Peninah Jeruto Sigilai. This is because such a grant cannot be used at all. A grant is a certificate issued to a particular person or individual. It is personal. It can only be used or uttered by the person or individual named in it. In this cause it can only be used by Peninah Jeruto Sigilai. She cannot now possibly do so as she is dead. The estate cannot be left un-administered forever. (See- in the matter of the estate of Mwangi Mugwe alias Elieza Ngware (deceased) ; in the matter of the estate of Mary Wairimu Ngware (deceased) Nairobi H.C.succession no.2018 of 2001 and in the matter of the estate of Githaiga Gichuki (deceased [2014] eKLR.



37. The grant in question is therefore available for revocation, and I hereby do revoke it.
38. The respondents submitted that distribution of estate was distributed long time ago and the only pending issue is transfer of assets to individual beneficiaries. It is trite that Administration of the estate is complete once the assets are distributed. This position is unascertainable as no final accounts of administration have been filed in court.
39. Having revoked the grant, I direct the beneficiaries of the Estate of the Deceased herein to apply for a fresh grant within 45 days from the date hereof.
40. Each party to bear their costs.
41. It is so ordered

DATED, SIGNED AND DELIVERED AT NAKURU THIS 11TH DAY OF OCTOBER, 2023.

H. M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

Mr. Maina for Applicant

N/A for respondent

