



REPUBLIC OF KENYA



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In re Estate of Harriet Karura alias Harriet Karura Ndungi (Deceased) (Succession Cause 29 of 2019) [2023] KEHC 23287 (KLR) (6 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23287 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 29 OF 2019
A MSHILA, J
OCTOBER 6, 2023**

BETWEEN

EDITH NJERI MWAURA APPLICANT

AND

MINNIE WANJIKU NJENGA RESPONDENT

RULING

1. Before the court are summons for Revocation of Grant filed on 14th February, 2023 and brought under Section 76 of the Succession Act and Rule 44(1) & (2) of the *Probate and Administration Rules*.
2. The Applicant sought for orders that the grant of letters of administration issued to Minnie Wanjiku Njenga be revoked.
3. The Summons are premised on the grounds that the grant was obtained fraudulently by making false statement and by concealment to the court of material facts that the Respondent is a sister to the deceased. And that the deceased's children had filed a cause in Mombasa High Court No. 4 of 2009 Estate of Harriet Karura Ndungi wherein a grant of letters of administration was issued to Lois Njeri Ndicu on 2/6/2015. It was contended that the Respondent is not a beneficiary of the deceased's estate as such made an untrue allegation. There being two causes in regard to the deceased's estate, the proceedings herein were said to be defective in substance.
4. The summons are supported by the affidavit of Edith Njeri Mwaura. She deposed that she is a sister to the deceased as well as the Respondent herein. That her sister the deceased was survived by two children a fact well known by the Respondent. That the said children filed a succession cause being Mombasa High Court No. 4 of 2009 Estate of Harriet Karura Ndungi and grant of letters of administration were issued to Lois Njeri Ndicu on 2/6/2015 as such the Respondent filed this cause as an afterthought and that there was material non-disclosure. The cause herein was said to be contrary to the law due to the existence of the other.



5. Minnie Wanjiku Njenga filed a Replying Affidavit dated 2nd March, 2023 in opposition. She contended that the deceased was entrusted by their deceased mother to hold the title of land parcel no. Karai/Gikambura/653 and Karai/Gikambura T 111. That the children of the deceased herein only petitioned for the property owned by their mother and not the ones she was holding in trust for her siblings. She deposed that she came to realise that the Applicant had fraudulently transferred land parcel no. Karai/Gikambura/653 and Karai/Gikambura T 111 to her name even though she did not have letters of administration for the estate of the deceased herein. That the Applicant was charged in Kiambu Criminal Case no. 176 of 2012 for forgery and that there is a pending case at Thika ELC Case no. 127 of 2020 seeking cancellation of the titles issued to the Applicant. The court was urged to dismiss the summons herein as the Applicant is neither an administrator nor a dependant.

Applicant's Submissions

6. The Applicant submits that the estate of the deceased herein has two grants of letters of administration issued to two different people. The Respondent was accused of not following the proper procedure in attaining the grant as the deceased's daughter Lois Njeri Ndicu was left out in the Chief's letter. Reliance was placed in the case of *Re Estate of Shem Kitanga*. Further, the Applicant submits that the Respondent mischievously filed another succession cause which led to the confirmation of another grant as opposed to filing a revocation of grant in the High Court at Mombasa. The Applicant submits that she was acquitted of the criminal charges in the Kiambu Criminal Case no. 176 of 2012 as such she lacks ill motive towards the deceased's property. It was submitted that the second grant should be revoked as the first grant was obtained properly making the second grant illegal. Reliance was placed on the case of *In re estate of Magangi Obuki (deceased)* (2020) eKLR.

Respondents' Submissions

7. The Respondents submitted that the Applicant's summons are incompetent as the Applicant is neither an administrator nor a dependant as such she lacks the right to bring these summons. The administrators in the Mombasa Cause have not filed an application contesting that the properties filed herein were held in trust by the deceased. The Applicant's son was said to have fraudulently transferred a property belonging to the deceased. The Respondent contends that she only listed the property held by the deceased in trust and not the properties solely owned by the deceased.

Issues For Determination

8. After due consideration of the summons for revocation of grant, the replying affidavit and the rival submissions by both parties, the issue for determination is whether the confirmed grant should be revoked.

Analysis & Determination

9. The *Law of Succession Act* provides for revocation or annulment of grants under Section 76, which states as follows:

“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.”

10. In re Estate of *Prisca Ong'ayo Nande (Deceased)* [2020] eKLR in expounding Section 76 it was stated that:-

“Under Section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

11. The parties herein are sisters to the deceased. The Applicant contends that the children of the deceased being Patrick Ndicu Ndungi and Lois Njeri Ndicu have already filed a succession cause being Mombasa High Court P&A No. 4 of 2009 in relation to the deceased’s estate and a grant of letters of administration was issued to Lois Njeri Ndicu on 2nd June, 2015.



12. The Respondent on the other hand has petitioned this Honourable court for a grant of letters of administration in respect of the deceased's estate and the same was issued to her on 8th July, 2019. The Respondent's contention is that the deceased's children only listed the property owned by their mother, the deceased herein, and did not list the parcel of land which the deceased was holding in trust for her siblings being parcel no. LR No. Karai/Gikambura/653 and Karai/Gikambura T 111.
13. The Respondent further contended that the Applicant has fraudulently transferred parcel no. LR No. Karai/Gikambura/653 and Karai/Gikambura T 111 to her name as such the Respondent filed Kiambu Criminal Case no. 176 of 2012 where the Applicant was charged for forgery among other offences. She was later Acquitted of all the charges filed against her. Thika ELC Case no. 127 of 2020 seeking cancellation of the titles issued to the Applicant is still pending in court.
14. With regard, to the two parcels of land being parcel no. LR No. Karai/Gikambura/653 and Karai/Gikambura T 111, the Applicant submits that the same were legitimately transferred to her by the deceased before her demise as such she holds the title deeds to the said parcels of land.
15. The Applicant herein has applied to this court for the grant of letters of administration issued to the Respondent be revoked on the ground that the same was obtained fraudulently by concealment of material facts to the court. The Respondent is said to be a sister to the deceased hence not a beneficiary or a dependant.
16. In the case of *In re Estate of Prisca Ong'ayo Nande (Deceased)* (supra) the court therein stated that one of the grounds that could cause a grant of letters of administration to be revoked was if the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons.
17. In her petition for a grant of letters of administration intestate of the deceased's estate herein, the Respondent relied on a Chief's letter that did not include all the beneficiaries of the deceased's estate such as the deceased's daughter Lois Njeri Ndicu. This could be because the said daughter was issued with a grant of letters of administration on 2/6/2015 in another succession cause over the deceased's estate being Mombasa High Court No. 4 of 2009 Estate of Harriet Karura Ndungi.
18. Be that as it may, the Respondent petitioned for a grant of letters of administration for the estate of Harriet Karura Ndungi when the same had been successfully petitioned by her daughter Lois Njeri Ndicu in Mombasa High Court No. 4 of 2009 and a grant of letters of administration issued to her on 2/6/2015. Her excuse is that in the first succession cause only properties owned by the deceased were listed while in the second cause only two properties are listed which the deceased was holding in trust for her siblings.
19. Needless, to say, there is a pending suit at the Thika ELC Case no. 127 of 2020. The court herein being a probate court only deals with ascertained properties belonging to the deceased. The parties herein are in dispute as to who owns land parcel no. LR No. Karai/Gikambura/653 and Karai/Gikambura T 111. Disputes as to ownership of land fall within the jurisdiction of the Environment and Land Court where a suit in regard to the ownership of the two parcels of land is rightly pending.
20. Refer to the case *In re Estate of Obedi Ndwiga Rubarita (Deceased)* (2021) eKLR where the court had this to say:-

“ Further, the issue as to the ownership once raised in a succession cause, they must be resolved before such property is distributed. (See *In re Estate of Stone Kathuli Muinde (Deceased)*



[2016] eKLR). The applicant ought to have presented the instant issue before the court with competent jurisdiction which is the Environment and Land Court.”

21. Nevertheless, even if the issue of ownership of the two parcels of land is resolved by the ELC court, there cannot be two valid grants issued to two different people in the same Succession Cause in respect of the estate of the same deceased person.
22. The Respondent herein, should have made an application to revoke the first grant of letters of administration issued in Mombasa High Court No. 4 of 2009 Estate of Harriet Karura Ndungi (deceased) to Lois Njeri Ndicu on 2/6/2015 if some of the deceased’s properties had been left out therein.
23. Refer to the case of Joseph Karanja Ikumu & Another V Lucy Wambui Ikumu (2005) eKLR where the court revoked a grant where there existed two valid grants issued to two different people in relation to the same deceased person.
24. The Respondent ought to have disclosed to court that Lois Njeri Ndicu a daughter of the deceased had successfully petitioned for a grant of letters of administration in Mombasa High Court No. 4 of 2009 and the same was issued to her on 2/6/2015
25. In the end therefore, this court is satisfied that the Grant issued to the Respondent on 8th July, 2019 was obtained by concealment of material facts to the court and is satisfied that the application has merit.

Findings And Determination

26. For the forgoing reasons this court makes the following findings and determinations;
 - i. This court finds that the application to revoke the Grant dated 8/07/2019 is found to have merit and it is hereby allowed.
 - ii. The Grant dated 8/07/2019 is found to have been obtained by concealment of material facts’
 - iii. The Grant dated 8/07/2019 is hereby revoked.
 - iv. Each party to bear their own costs.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 6TH DAY OF OCTOBER, 2023

A. MSHILA
JUDGE

