



**In re Estate of Igogo Wangai Kihango (Deceased) (Succession Cause 2508 of 2009)  
[2024] KEHC 14613 (KLR) (Family) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14613 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2508 OF 2009  
PM NYAUNDI, J  
NOVEMBER 21, 2024  
IN THE MATTER OF THE ESTATE OF IGOGO WANGAI KIHANGO (DECEASED)**

**BETWEEN**

**MARGARET NGINA IGOGO ..... APPLICANT**

**AND**

**ALLAN MBUGUA IGOGO ..... RESPONDENT**

**RULING**

1. This matter relates to the estate of Igogo Wangai Kihango who died intestate on 25<sup>th</sup> January 2002. Allan Mbugua Igogo in his capacity as son of the deceased petitioned for letters of administration of grant intestate. The grant was issued to him on 9<sup>th</sup> March 2010. The said grant was confirmed on 16<sup>th</sup> September 2011.
2. Margaret Ngina Igogo (the Applicant) then filed summons for revocation of grant dated 19<sup>th</sup> September 2023 seeking the following orders;
  1. The grant of letters of administration intestate dated 9<sup>th</sup> March 2010 and the certificate of confirmation of grant dated 16<sup>th</sup> September 2016 in the estate of Igogo Wangai Kihango known as KIAMBAA/RUAKA/102 both issued to ALLAN MBUGUA IGOGO be revoked/annulled.
  2. That the county Land Registrar Kiambu Registry be ordered by this honourable court to revert back the title number KIAMBAA/RUAKA/102 to the proprietorship of Igogo Wangai Kihango (deceased).



3. That inhibition be registered against all the Title Numbers that resulted from subdivision of KIAMBAA/RUAKA/102 being Title Numbers KIAMBAA/RUAKA/4616,4617,4618,4619,4620,4621,4622,4623,4624,4625,4626,3446,3016,3015,3036,3105,3106,399
4. The costs of this application be provided for.
3. In her supporting affidavit sworn on 14<sup>th</sup> August 2023, she averred that the letters of administration was fraudulently applied by the Respondent without disclosing to this Honourable Court the existence of the other beneficiaries of the deceased. She avers that the deceased was survived by a widow, Grace Wambui Kamau and four children namely; Hannah Nduta Kamau, Rosemary Njoki(deceased), Allan Mbugua Igogo and Margaret Ngina Igogo.
4. In her further affidavit sworn on 1<sup>st</sup> July 2024, the applicant averred that the senior assistant chief who wrote an introduction letter for the Respondent admitted that the Respondent misled him that he was the only beneficiary of the estate of the deceased. The surviving widow of the deceased, Grace Wambui Kamau has been chased away from her house and is currently homeless. The Respondent denied her a share of the deceased's estate. She and her two sisters were omitted from the grant, dispossessing them of their rightful share of the estate of the deceased.
5. She further reveals that the Respondent has transferred TITLE NO. KIAMBAA/RUAKA/T.76 to his name and subdivided it into two portions.  
That the said transfer and subdivision was done illegally, unlawfully and unprocedurally; the transfer was effected in 2010 while the confirmed grant was issued on 16<sup>th</sup> September 2016. She urged the court to cancel the ownership of TITLE NO. KIAMBAA/RUAKA/T.76 and the title do revert back to the deceased's name for equal distribution to all the beneficiaries.
6. The Respondent did not participate in these proceedings.
7. The hearing of the summons was by viva voce evidence. The Applicant filed written submissions.

### **Applicant's Evidence**

8. The Applicant testified as PW1. Her evidence was that the deceased was married to her mother, Grace Wambui Kamau. Her siblings are Hannah Nduta Kamau and Allan Mbugua Igogo. The deceased had two properties namely, Kiambaa/Ruaka/102 and Kiambaa/Ruaka/T.76. Kiambaa/Ruaka/T.76 was not included in the list of assets. The property was transferred before the grant was confirmed. The property has been subdivided and sold to a third party. Her mother was evicted from Kiambaa/Ruaka/102. The chief's letter dated 21<sup>st</sup> August 2009 erroneously states the Respondent was the sole beneficiary. No provision was made for herself, her mother and sister. She asked the court to revoke the grant and that the title revert to the deceased and all the beneficiaries get their rightful share.

### **Applicant's Submissions**

9. The Applicant filed written submissions dated 9<sup>th</sup> August 2024. She submitted that the threshold for revocation of grant is provided under Section 76 of the Succession Act. She also sought to rely on the decision of Re Estate of the late Epharus Nyambura Nduati (deceased) [2021] eKLR where the threshold of revocation was further elaborated. She argued that the Respondent obtained the confirmed grant by way of concealment of material facts as to the existence of the widow and by uttering false statement that he was the sole beneficiary of the estate of the deceased, a fact that he knew was false.



10. It was further submitted that the Respondent/Administrator did not have legal capacity to transfer Kiambaa/Ruaka/T.76 to his name and sell it before the grant was confirmed as stated under Section 82 of the *Law of Succession Act*. She relied on the decision in *Re Estate of the Late Epharus Nyambura Nduati (Deceased) [2021] eKLR* where court held that the sale of the deceased's property before the grant was confirmed was contrary to Section 45 and 82(b) (ii) of the *Law of Succession Act* and was invalid for all purposes.

### **Analysis and Determination**

11. 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*.
12. 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.”



13. Section 76 was clearly expounded on by the court In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR where 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.”

14. The Applicant invited the court to revoke the grant of letters of administration for the reasons that the Respondent obtained the confirmed grant by way of concealment of a material fact that he states that he is the only beneficiary of the estate of the deceased. The chief's letter dated 21<sup>st</sup> August 2009 states that the deceased is only survived by the Respondent. The Applicant has produced a letter dated 26<sup>th</sup> January 2024 by the same Chief, stating that the Respondent misled him that he was the only beneficiary of the estate of the deceased. The letter states that the deceased was survived by a wife and four children.
15. There is no doubt that the Respondent obtained the Grant of Letters of Administration intestate to the estate of the deceased Igongo Wangai Kihangu without involving the applicant or the beneficiaries. Suffice to note, the Affidavit in support of the petition for letters of administration intestate is missing in this file. While petitioning for letters of administration of grant, the Respondent attached a consent form which shows that Grace Wambui Kamau consented to him being appointed administrator of the estate of the deceased.
16. When he filed summons for confirmation of grant, he introduced a new party by the name George Kariuki Munyua who filed a consent to the mode of distribution. In the affidavit in support for confirmation of grant, the Respondent states that the deceased left a will dated 15<sup>th</sup> June 2016. It is thus clear that the proceedings to obtain the grant were defective in substance.
17. Furthermore, when the respondent applied for confirmation of grant and the grant was confirmed, the schedule of distribution of the estate places him as the sole beneficiary of the entire estate of the deceased. Again, that is not true because the deceased was survived by a wife and children who are beneficiaries. The applicant also claimed on oath that Kiambaa/Ruaka/T. 76 was left out of the petition. She produced a copy of a green card which shows that the deceased was registered as owner



on 8<sup>th</sup> June 1971. The property was then transferred and registered in the name of the Respondent on 2<sup>nd</sup> November 2010. The property was then sub-divided on 19<sup>th</sup> November 2010. This evidence was not controverted.

18. The issue of the suit land being sold in contravention of Section 82 of the *Law of Succession Act* was raised by the Applicant. She argued that the property had been sold to third parties. I am guided by the finding of the court In re Estate of Jamin Inyanda Kadambi (Deceased) [2021] eKLR where it was stated that;

“A valid sale of estate property can only be by those to whom the assets vest by virtue of section 79, and who have the power to sell the property by virtue of section 82. Even then, immovable assets, like land, such as Kakamega/Kegoye/30, cannot be disposed of by administrators before their grant has been confirmed, and if land has to be sold before confirmation, then leave or permission of the court must be obtained. That is the purport of section 82(b)(ii) of the *Law of Succession Act*. Clearly, the sale transaction that was carried out by the administrators was contrary to sections 45 and 82(b) (ii) of the *Law of Succession Act*, and was invalid for all purposes. It cannot be asserted at all, and am surprised that persons to whom administration of the estate herein can purport to support a sale transaction that was carried out contrary to the very clear provisions of the law.

19. For avoidance of doubt, sections 45, 79 and 82 of the *Law of Succession Act* provide as follows:

“45. No intermeddling with property of deceased person

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall —

be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

“79. Property of deceased to vest in personal representative

The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

“82. Powers of personal representatives

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—



to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative; to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that—

- ii. no immovable property shall be sold before confirmation of the grant...”

20. In the case of *Morris Mwiti Mburungu –vs- Denis Kimathi M’Mburungu* [2016] as follows:-

“.... Where any person interferes with the free property of the deceased or deals with an estate of a deceased person contrary to the provisions of section 45 and 82 of the Act that is intermeddling, is unlawful and cannot be protected by the court. The transaction is subject to be nullified and set aside at the instance of innocent beneficiaries who may have been affected by the act but were not involved in the same.”

21. The upshot of the above is that the applicant has satisfied the conditions to warrant the revocation of the Grant of Letters of Administration intestate issued on 9<sup>th</sup> March 2010 and confirmed on 16<sup>th</sup> September 2011.

22. Thus the court makes the order that;

- i. The grant of letters of administration intestate issued on 9<sup>th</sup> March 2010 is revoked and all orders arising therefrom vacated.
- ii. Consequently, the certificate of confirmation of grant issued on 16<sup>th</sup> September is nullified.
- iii. The titles arising from subdivision of Kiambaa/Ruaka/T.76 are cancelled and title to revert back to the name of the deceased.
- iv. Land known as Kiambaa/Ruaka/102 transferred to the Respondent herein, Allan Mbugua Igogo shall revert back to the deceased’s name.
- v. Fresh grant will Margaret Ngina Igogo. The Administrator will present Summons for Confirmation of grant within 60 days. Mention before the Deputy Registrar, Family Division on 5<sup>th</sup> February 2025 to confirm compliance and take directions on the hearing of the Summons.
- vi. As the Summons was not defended there shall be no order as to costs.

**DATED, SIGNED AND DELIVERED ON THE VIRTUAL PLATFORM, AT NAIROBI THIS 21<sup>st</sup> DAY OF NOVEMBER, 2024.**

**PATRICIA NYAUNDI**

**JUDGE**

In the presence of;

Fardosa Court Assistant

