



**In re Estate of Maimba Kiura (Deceased) (Succession Cause 1108 of 2013)
[2024] KEHC 14181 (KLR) (12 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14181 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 1108 OF 2013
RM MWONGO, J
NOVEMBER 12, 2024**

IN THE MATTER OF THE ESTATE OF MAIMBA KIURA (DECEASED)

BETWEEN

- NELIA NJERI KANGANGI 1ST APPLICANT
- JOSPHAT MURIUKI KANGANGI 2ND APPLICANT
- ALBERT CHOMBA KANGANGI 3RD APPLICANT
- MOSES MWANGI KANGANGI 4TH APPLICANT
- PETER WACHIRA KANGANGI 5TH APPLICANT
- DANIEL NGINGIKANGANGI 6TH APPLICANT
- SOPHIA WANJIRU KANGANGI 7TH APPLICANT

AND

- STEPHEN GICHANGI KANGANGI 1ST RESPONDENT
- JASIEL MAIMBA KINGANGI 2ND RESPONDENT
- LUCY MUTHONI KINGANGI 3RD RESPONDENT
- EMILY WANJIRU KANGANGI 4TH RESPONDENT
- JOSEPH CHOMBA KANGANGI 5TH RESPONDENT

JUDGMENT

1. The deceased died on 6th December 1975 aged 90 years. According to the petition papers filed, he was survived by five sons and two daughters viz: Jasiel Maimba Kangangi, Emily Wanjiru Kangangi, Joseph



Chomba Kangangi Stephen Gichangi Kangangi, John Gitari Kangangi, Peter Wachira Kangangi and Lucy Muthoni Kangangi.

2. Jasiel Maima Kangangi applied for letters of administration on 17th December 2013. A grant was issued to him on 25th July 2014. The deceased's property was indicated as LR No. Mutira/Kangai/195. The grant was confirmed on 10th March 2016.
3. The applicants, who claim to be from a second house of the deceased, are led by Nelia Njeri Kangangi the second and living wife of the deceased. Her children are the co-applicants.
4. The applicants filed an amended summons for revocation of grant dated 17th October, 2018 on the grounds that:
 - a. The grant was obtained fraudulently by the making of false statements.
 - b. The grant was obtained by concealment from the court of facts material to the cause that the Applicants of the of the estate are also beneficiaries and dependants the cause that the Applicants of the estate in equal rank with the Respondents.
 - c. The proceedings to obtain the grant were defective.
5. The application is supported by the annexed affidavit of Nelia Njeri Kangangi who made the following major averments:
 - i. That I am the mother of my co-Applicants.
 - ii. That I am a widow of Kangangi Wamwii Kiura (deceased), who had two wives, the other one being Naomi Wandunda (deceased), who was the mother to the Respondents.
 - iii. That the Respondents are therefore my step-children from my deceased husband's first house.
 - iv. That the proceedings herein relate to the estate of Maimba Kiura (deceased) who was the father of my deceased husband.
 - v. That my deceased husband was the only dependant of the estate herein
 - vi. That my deceased husband died in the year 2013 while intent on administering the estate herein as per the affidavit and letter to the area chief.
 - vii. That upon the death of my deceased husband, I as his widow intended to file succession proceedings to this estate.
 - viii. That I was engaged in other court proceedings with the 1st Respondent vide Kerugoya ELC Case No.143 of 2015 (formerly Nyeri High Court Civil Case No.190 of 2011), which was only concluded on 7th May, 2018.
 - ix. That I only became aware of these proceedings after delivery of the judgment in the said other case and particularly a copy of the register to the land forming this estate LR No. Mutira/Kangai/195 when as per the copy of the register attached marked(N'3'), I learnt that a grant had since been issued herein and the land distributed to the Respondents in exclusion of the Applicants.
 - x. That the Respondents did not notify me and my-co applicants on the filing of these proceedings, neither was our consent sought as required.
 - xi. That it is therefore plain and clear that the grant herein was obtained and confirmed by misrepresenting to the court that the Respondents were the only dependants and beneficiaries



of the estate, while concealing from the court that my Co-Applicants were also dependants and beneficiaries of the estate in equal ranking with the Respondents, while I rank higher than the other parties herein as the widow of my deceased husband.

6. The 2nd Respondent on behalf of the Respondents filed a replying affidavit dated 31st January, 2019 and made the following major averments:
 1. That the applicants are my step mother and step-brothers respectively.
 2. That my co-respondents are my brothers and sisters respectively.
 3. That the estate in issue hereto belongs to one Maimba Kiura comprised in LR NO.Mutira/Kangai/195 measuring about 6.9 acres.
 4. That the late Maimba Kiura was a step father to our late father Mr. William Kangangi Wamuii.
 5. That the late Maimba Kiura was unmarried and left no surviving children.
 6. That when he died, he bequeathed the whole parcel to me as I am named after him.
 7. That I later decided to share the land to my other siblings namely: 1st, 3rd, 4th & 5th respondents hereto during the succession cause.
 8. That our late father William Kangangi had only one known piece of land known and described to as Mutira/Kirimunge/196 measuring about 4.9 acres or thereabouts.
 9. That the applicants are settled on this land from 1988 up to date.
 10. That the applicants have never settled, occupied, utilized nor lived on our late step-grandfathers land as they have always lived with their mother save for the 1st respondents who has lived with them since 1988.
 11. That land parcel LR No.Mutira/Kangai/195 has never formed part of our late father's (William Kangangi) estate.
 12. That the applicants were settled on LR No.Mutira/Kirimunge/196 by our late father while I was given LR No.Mutira/Kangai/195 by our step-grandfather.
 13. That the cause was duly gazetted vide a Kenya gazette dated 14/2/2014.
 14. That before my father's demise he had denounced his claim in LR No.Mutira/Kangai/195.
 15. That our late father's father was called Wamwii Kiura and was a brother to Maimba Kiura i.e. our real grandfather is Wamwi Kiura.
 16. That the 1st applicant is a step-daughter -in law to the deceased hereto and cannot claim what his late husband never claimed for in his life time.
7. A hearing was held at which Nelia Njeri Kangangi testified as PW1, and Jasiel Maimba Kangangi as RW1. Parties filed written submissions are directed by the Court.

Applicant's Submissions

8. The applicants submit that Kangangi Wamwii Kiura (deceased) having been the only dependant of the estate and having died without administering the estate, his interest would have been administered within the estate first under Section 38 of the [Law of Succession Act](#) as the only surviving child of the deceased, if he was alive. That as he died without having administered the estate, that interest would



devolve to his spouses (s) and his children under the principle of representation. That if he had two or more houses, as in the present case, such administration should be as provided under Section 40 of the Act.

9. The applicants therefore submit that they are entitled to a half share of the estate as a spouse and children of Kangangi Wamwii Kiura (deceased) of one house, while the 1st Respondent would be entitled to the other share as a child of the said person from the other house, with the co-respondents not so entitled being grandchildren and represented by the 1st Respondent.
10. By excluding them in the administration of the estate, the applicants submit that the procedure to obtain the grant was defective as they were entitled to be notified of the process, and by excluding them all together, the 1st Respondent obtained that grant by material concealment of their entitlement.
11. The applicants finally submit that by distributing the estate to his children the co-respondents, the 1st respondent made a false statement to the court that they were so entitled to the estate. As such, the grant should be revoked as prayed and the estate to devolve to the 1st applicant and the 1st respondent in equal shares.

Respondent's Submissions

12. The respondent submits that the 1st applicant despite settling on her late husband's land feels as a widow she should have been the one to distribute her late step-father-in law land which the 1 family is settled hence this application. She has no reason to succeed her late step-father-in law estate for her own husband's estate is already given to her and her children.
13. The 1st respondent should not be faulted for sharing in both parcels since there was a judicial intervention which granted him the 2 acres and urge this court not to overturn that decision.
14. The respondents have explained that they could not involve the 2nd house since the land was not their father's but was where they have lived from time immemorial and the fact that they have no claim over the 2nd house land.
15. Furthermore, the estate was distributed way back in the year 2016 to the respondents, as is clear from the green card adduced by the applicants. No order or application has been made to cancel the title deed nor have new partitions and no concrete proposal has been put forward by the applicants to distribute the estate in the unlikely event of revoking the grant hereto. This means the applicants are not serious in their quest but are on a fishing expedition to test the court of the possibility to keep what they have.
16. The respondents urge this court to dismiss the application for confirmation of grant and affirm the grant as it is.

Issues for Determination

17. The sole issue for determination is whether the grant should be revoked.

Analysis and Determination

18. The applicants seek that the grant of letters of administration intestate issued and confirmed herein be revoked on the ground that it was obtained by concealment of the fact that the applicants were beneficiaries of the estate.
19. The estate in issue belongs to Maimba Kiura and comprises only LR No. Mutira/Kangai/195 measuring about 5.9 acres.



20. Section 76 of the *Law of Succession Act* was clearly expounded on by the court on revocation of grant. *In re Estate of Prisca Ong'ayo Nande (Deceased)* 2020 eKLR 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...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...”

21. At the hearing it emerged that: The late William Kangangi Wamwii had two wives 2 houses, namely the house of the applicants and the house of the respondents; That the house of the respondents is the 1st house comprising of the respondents and their deceased mother Naomi Wamugunda, whilst the 2nd house comprises of the 1st applicant and her children; That the 1st house comprised of the respondents is settled on the suit land LR No. Mutira/Kangai/195 measuring about 5.8 acres currently registered in the names of all the respondents hereto. It was originally registered in the names of one Maimba Kiura who is a step-father to the 1st applicant and a step-grandfather to the 2nd respondent.
22. It was also clear from the hearing that the 2nd house comprising of the applicants is currently housed/ settled on LR No. Mutira/Kirimunge/196 comprising of about 4.9 acres as confirmed by the ELC case earlier noted.
23. The 2nd Respondent/Administrator testified in cross-examination that the deceased had two wives, one being the 1st Applicant. He admitted that he did not notify the applicants when doing the succession of the deceased's estate; that when the deceased died in 1975, he was 15-16 years old, and that the deceased bequeathed the land in question to him.
24. It also emerged that the 1st respondent, despite having a share in the present suit land is settled on 2 acres out of LR No. Mutira/Kirimunge/196 courtesy of the ELC Court case noted above.
25. The Applicants' complaint is that the said Kangangi Wamwii Kiura (deceased) was the only dependant of the estate herein as the only child and therefore upon his death before administering the estate, such administration was supposed to be done with due regard to his two houses and children. However, the 1st Respondent administered the estate and distributed the suit land to his children, who are great grandchildren of the deceased herein, and to himself in exclusion of the applicants as per the copy of the attached register
26. The applicants submit that they are entitled to a half share of the estate as a spouse and children of Kangangi Wamwii Kiura (deceased) of one house, while the 1st Respondent would be entitled to the other share as a child of the said person from the other house, with the co-respondents not so entitled being grandchildren and represented by the 1st Respondent.
27. The respondents submitted that they could not involve the 2nd house since the land was not their fathers it's where they have lived from time immemorial and point to the fact that they have no claim over the land of the 2nd house.
28. The respondent's testimony that the suit land was bequeathed to him by his deceased grandfather when he was 15 years old, was not supported by any evidence. Further, his admission that he filed the succession cause for LR No. Mutira/Kangai/195 without informing the applicants, seals the fate of the grant since it is the applicants argument that the grant was obtained and confirmed by misrepresenting to the court that the Respondents were the only dependants and beneficiaries of the estate.



29. Section 51(2)(g) of the Law of Succession Act provides that:

“Every application (for grant) shall include information as to-

In cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased.”

30. The respondents knew about the existence of the applicants and should have informed them before filing the succession proceedings.

31. In re Estate of Magangi Obuki (Deceased) [2020] eKLR further guidelines on making of grants were pointed to under Part VII Rule 26(1) and 2 of the Probate and Administration Rules which provide as follows:

Rule 26

(1) Letters of Administration shall not be granted to any applicant without notice to any other person entitled in the same degree as or in priority of the applicant.

2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of communication, or written consent in Form 38 or 39, by all persons so entitled in equality or priority be supported by an affidavit of the applicant and such other evidence as the court may require.”

32. The applicants submit that the procedure to obtain the grant was defective as they were entitled to be notified of the process, and by excluding them all together, the 1st Respondent obtained that grant by material concealment of their entitlement.

Conclusion and Disposition

33. Ultimately, the 2nd Respondent’s admission that the obtained the grant without disclosing to the court the existence of the respondents who were equal beneficiaries is an admission that invokes the application of Section 76 Law of Succession Act on revocation.

34. In light of the foregoing discussion there is no doubt that the grant was obtained by concealment of material facts; namely that the deceased had two houses, each with children.

35. Accordingly, the application succeeds and the grant is hereby revoked; and any subdivisions from LR. No. Mutira/Kangai/195 are hereby cancelled.

36. The applicants and the respondents shall select one person from each house to be administrators of the estate of the deceased to whom a fresh grant shall be issued by the Court.

37. Orders accordingly.

DATED AT KERUGOYA ON THIS 12TH DAY OF NOVEMBER 2024

R. MWONGO

JUDGE

Delivered in the presence of:

1. King’ori - for Applicants



2. Mahandia holding brief for Chomba for Respondents

3. Murage, Court Assistant

