



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Stanley Karongo (Deceased) (Succession Cause
E126 of 2021) [2024] KEHC 14612 (KLR) (1 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14612 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE E126 OF 2021
DO CHEPKWONY, J
NOVEMBER 1, 2024
IN THE MATTER OF THE ESTATE OF STANLEY KARONGO (DECEASED)**

RULING

1. The court issued Grant of Letters of Administration Intestate to Jane Njeri Karongo, Mercy Wanjuhi Karongo and Mary Wairimu Karongo on 22nd December, 2021. Summons for Confirmation of Grant was filed on 8th February, 2022 and the Certificate of Confirmation of Grant dated 26th April, 2022 in respect of the Estate of the late Stanley Karongo duly issued.
2. Subsequently, two applications now before the court and subject of this ruling were filed. The 1st application is a Summons application dated 14th December, 2023 filed under Sections 95 and 83 of the [Law of Succession Act](#) and Rule 49 of the Probate and Administration Rules seeking the following orders:-
 - a. Spent.
 - b. That this Honourable Court be pleased to issue
Summons to the Administrator, Mercy Wanjuhi Karongo to appear before this court and explain why she should not be committed to civil jail for failure to comply with court orders.
 - c. That this Honourable Court be pleased to issue an order to allow the other two Administrators Jane Njeri Karongo and Mary Wairimu Karongo to execute their mandate of distributing the Estate of the Deceased to the exclusion of mercy who has refused/neglected to cooperate in distributing the estates in compliance with Section 83 of the Succession Act.
 - d. That this Honourable Court be pleased to direct the Land Registrar Kiambu to remove /set aside the caveat placed by the Respondent upon the Land Parcel LR Kiambaa/ Kihara/ T119 who is enjoying the rental income from the buildings erected thereon contrary to the schedule of distribution in the confirmed Grant.



- e. That in the alternative an Order be issued to the Deputy Registrar Kiambu High Court to sign all transmission documents on behalf of the Respondent pertaining to Land Parcel LR Kiambaa/ Kihara/ T119.
 - f. Any other relief this court will be pleased to grant .
3. The second application is a Summons application dated 6th February, 2024 seeking for Revocation or annulment of grant dated 26th April, 2022 under Section 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules. For clarity, the application specifically seeks the following orders:
- a. The Confirmed Grant of Letters of Administration Intestate made on the 26th April, 2022 (hereinafter referred to as Grant) to Jane Njeri Karongo, Mercy Wanjuhi Karongo and Mary Wairimu Karongo be revoked (or annulled).
 - b. All consequential orders premised on the said Confirmed Grant be set aside for being operative.
 - c. This Honourable Court do issue such orders and or directions as it deems fit in the circumstances and in the interest of justice. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Mercy Wanjuhi Karongo sworn on 6th February, 2024. The Applicant argues that the Deceased had two wives being Nyakuru Karongo and Jane Njeri Karongo as the first and second respectively. That the Applicant is a child of the said Nyakuru Karongo together with Damaris Nyathika Karongo (deceased) and is survived by Stanley Karongo Nyathika.
4. According to the Applicant, the deceased had two assets at the time of his death being L.R. Kiambaa/ Kihara/T.119 (hereinafter known as 119) and Kiambaa /Kihara/481 (hereinafter known as 481) and the first wife was living on parcel Number 119 because it was the matrimonial property and they wish to retain it. She holds that the confirmed grant bequeaths Jane Njeri Karongo (the 1st Administrator) the absolute right on matrimonial property together with rentals absolutely without specifying the extent of the said matrimonial property which is built on Parcel No. 481 measuring 3 acres.
5. It is the Applicant's case that the mode of distribution is skewed and allows the 1st Administrator to take half of the parcel of land Number 481 claiming the said portion to be matrimonial property to the detriment of the other beneficiaries. She has added that the 1st and 3rd Administrators have already issued tenants on Parcel Number 119 with notices to vacate without the 2nd Administrators' knowledge which triggered her to place a caution on the land.
6. In a nutshell , it is the Applicants view that the mode of distribution of the deceased's assets cannot be resolved amicably unless the grant is revoked in its entirety and pave way for the court's intervention. She avers that none of the parties will be prejudiced as if the grant is annulled given that all parties will have a chance to be heard. The Applicant emphasises that it would be in the interest of justice that the grant be revoked and a fresh one issued and/or the parties be allowed to settle their differences through Alternative Dispute Resolution Mechanisms.
7. The Summons application seeks for Revocation of the Grant was opposed through an Affidavit sworn by Jane Njeri Karongo and Mary Wairimu Karongo on 14th March, 2024. They deponed that the Applicant is the 3rd Administrator of the Estate and she has not raised any reasonable grounds for revocation of grant under Section 76 of the Law of Succession Act.
8. Their position is that the Applicants argument that Plot Number T.119 constitutes a matrimonial property is misplaced given that neither was she nor the said Karongo Nyathika was married to the



- deceased. They argued that in seeking the annulment of the Summons, the instant application is only meant to safeguard ulterior motives of continuing with intermeddling with the rent obtained from tenant in Plot Number T.119 to the exclusion of other beneficiaries or otherwise intimidate them.
9. The Respondents further contend that if the Applicant was aggrieved she ought to have filed an Appeal on the Certificate of Grant instead of defying the court orders which she should be held in contempt of. Consequently, they urge the court to order the Applicant to refund and/or account for funds received from tenants in the said plot. Although they admit that the Applicant together with Stanley Karongo are beneficiaries of the deceased they accuse them of having a grandiose belief about themselves which has resulted in their spiteful treatment of the other beneficiaries of the estate. Therefore, they urge the court to dismiss the Summons application for Revocation of Grant and proceed to cite the Applicant, Mercy Wanjuhi Karongo, for failing to observe the orders in the grant.
 10. The second application was canvassed by way of viva vice evidence. This Court heard the evidence of PW1, Jane Njeri, PW2, Mary Wairimu and the Administrator Mercy Wanjuhi Karongo.
 11. PW1 stated that the deceased was her husband and she is one of the Administrators of the Estate of the Deceased which was distributed equally among all the beneficiaries since the distribution has been done, she fails to understand why the Applicant is now seeking the annulment of the Grant. On cross examination, she stated that she would attend court with her children only as the others would refuse. On re-examination she confirmed that the beneficiaries from the 1st house refused to attend court.
 12. PW2, Mary Wairimu Karongo, stated that her prayer is for the court to assist them to finalise the Succession Cause which has now dragged in court for a long time. She confirmed that when they Petitioned for the Letters of Administration, the whole family went to the area chief and all beneficiaries and properties of the deceased were listed down. She confirmed that the grant was first issued in the presence of all the beneficiaries before the Magistrate court then later, due to pecuniary jurisdiction of Magistrates court, the High Court. She has stated that distribution of the property could not be done since she found that the Applicant had put caution on the subject land and has refused to remove the a caution. She argues that the Applicant is misleading the court in asserting that she did not know about the grant given that they had spoken on the day of Confirmation of the said Grant.
 13. PW2 stated that on the first day of Confirmation of the Grant the beneficiaries were not all present and the court ordered them to all appear before the court. She clarified that the Applicant is claiming land which has been leased to a church where she has never lived, save that their mother is buried on the said parcel of land. She urges the court to order the Applicant to remove the caution so that the said parcel of land can be sold and the proceeds thereof to cater for legal fees and surveyor fees, and the balance thereof to be distributed equally among the beneficiaries. She argues that the applicant has been collecting rent from the subject property and has refused to cooperate with the beneficiaries.
 14. On cross examination, she stated that the Applicant was always coming to court but stopped at some point. She confirmed that they all signed the Certificate of Confirmation of Grant but the Applicant and Stanley did not sign the documents. She confirms that the certificate clearly states that the estate should be distributed to all children of the deceased equally and the matrimonial property to be allocated to the widow, which the Applicant's mother has rightfully taken.
 15. On re-examination, she stated that Stanley is a son to her deceased sister and besides, that he had had a bad relationship with the deceased but she still included him in the distribution. She maintains that the Applicant should explain why she should not be committed to civil jail for failure to comply with court orders in administering the Estate and urges the court to remove the Applicant as an administrator of the estate. She also urges the court to remove the caveat placed on the subject parcel of land.



16. On the other hand, the Applicant Mercy Wanjuhi Karongo testified that she wants the grant revoked because they had not agreed to it. She states that the grant has not indicated how much land she is entitled to and emphasises that PW1 has taken a huge portion of the land and extended to built rental houses on the said land. She laments that PW1's land is almost three (3) times the land which she (Applicant) was allocated.
17. It is the Applicant's case that she had been living in the plot with her mother who moved to Tanzania to stay with the deceased. That her mother died during child birth and was buried in Tanzania. She then holds that she is the only surviving child from their house, hence the court should not to remove her as an Administrator of the Estate.
18. On cross examination, she confirmed that she indeed went to her advocate's office with the other beneficiaries and the Grant was issued after she had signed her consent. She reiterates that the reason she wants the grant revoked is because they did not agree and she did not sign it. She states that she is challenging the mode of distribution of the estate. Given that they did not agree on the same and blames her advocate for not putting her case forward. She argued that the deceased had told them to stay in the plot so that upon his death they would get the land although she did not have any proof on this.
19. She argues that in the grant she does not tell how much acreage each of them was to get as she did not get the surveyor. And further, she maintains that the plot is matrimonial property on which she has lived with their grandfather.
20. On re-examination, she stated that she opted to take another counsel because she did not agree with the manner of distribution and later without prior knowledge realized that the Grant had already been confirmed.

Analysis and Determination.

21. Having read the Summons for Revocation of Grant, the Affidavit and the submissions filed by the parties, this Court shall first address the Summons for revocation.
22. Having read through both Summons, the affidavits in support and in opposition thereof, the evidence adduced in support of the Summons for Revocation of Grant alongside the Submissions filed by either party, this Court has opted to address the 2nd application which seeks to revoke or annul the Grant since its determination is likely to affect the viability of the 1st application.
23. This Court has read through the grounds raised by the Applicant in the Summons for Revocation and finds the question for determination being whether they have satisfied the circumstances required to revoke and or annul a Grant.
24. Section 76 of the *Law of Succession Act*, Rule 44 and 73 of the Probate and Administration Rules deal with the issues of revocation of grant. Section 76 states:-

“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.”

25. In the case of *Jamleck Maina Njoroge –vs- Mary Wanjiru Mwangi* (2015) eKLR, the court discussed circumstances when a grant can be revoked. The court observed thus:-

[11]. 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.”

26. Having considered the grounds raised in the Summons for Revocation, this Court finds that none of the grounds envisaged under Section 76 of the Laws of Succession have been satisfied as there is no evidence that the grant was defective; that the grant was obtained through concealment of facts, that it was obtained through untrue allegations of facts; or the person to whom the grant was made to had failed in their acts to warrant the court to revoke the grant herein.

27. The reasons that have been advanced by the Applicant who is also an administrator of the estate are not sufficient to warrant the court revoke the Grant as they seem to be issues of distribution of the estate which can be resolved through alternative dispute resolution mechanisms as proposed by the Applicant herein.

28. In the resultant, the court proceeds:-

- a. To find that that the Summons of Revocation of Grant dated 6th February, 2024 lacks merit and the same is hereby dismissed.
- b. To direct the parties to seek Alternative Dispute Resolution Mechanisms of choice to determine the issues raised in the first application dated 14th December, 2021 for amicable resolution of the dispute.
- c. To direct the parties to appear before the Deputy Registrar to confirm any settlement between them within the next ninety (90) days.



d. Mention on

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 1ST DAY OF NOVEMBER, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Joan Njoroge holding brief for M/S Mary Mungai for 1st and 2nd Administrators

Mr. Ngugi counsel for the 3rd Administrator

Court Assistant - Martin

