



**In re Estate of Philip Gachirigua Thagana (Deceased) (Probate & Administration
525 of 2014) [2024] KEHC 15493 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15493 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION 525 OF 2014
MA ODERO, J
DECEMBER 6, 2024**

IN THE MATTER OF THE ESTATE OF PHILIP GACHIRIGUA THAGANA (DECEASED)

BETWEEN

PRISCILLA WANDIA GITHAIGA APPLICANT

AND

GITUKU MAINA RESPONDENT

RULING

Introduction

1. Before the Court for determination is the Affidavit of Protest dated 9th May 2024 filed by the Gituku Maina (the Protestor) against the Summons for Confirmation of Grant filed by the Petitioner Priscilla Wandia Githaiga.
2. The matter was canvassed by way of written submissions. The Protestor filed undated written submissions whilst the Petitioner relied upon her written submissions dated 30th October 2024.

Background

3. This Succession Cause relates to the estate of the late Gachirigwa Sagana (hereinafter ‘the Deceased’) who died intestate on 4th February 1976. A copy of the Death Certificate Serial Number 048633 was filed in court on 30th May 2011.
4. The Deceased had married two wives namely;-
 - Wanjiru Kirungi
 - Muthoni Kiambati



each of whom bore one child. The petitioner Priscilla Wandia Githaiga is the daughter of the Deceased by his second wife Muthoni Kiambati.

5. The Deceased's estate was said to consist of only one asset being the parcel of land known as Kiine/Nyangio/12 in Kirinyaga County measuring approximately 1.17 Hectares (herein after the 'suit land').
6. Following the death of the Deceased the Protestor Gituku Maina (as the Grandson of Deceased) filed at the Karatina Senior Resident Magistrates Court Succession Cause No. 9 of 2011 in which he sought and obtained Grant of Representation to the estate of the Deceased.
7. The Protestor in his Petition for Grant indicated that the Deceased was only survived by three Grandsons namely
 - (i) Gituku Maina (Protestor)
 - (ii) Joseph Maimbwa Maina
 - (ii) Daniel Gachirigwa Maina
8. The Protestor stated that his father Joel Maina Gituku was a son of the Deceased.
9. The Grant was issued to the Protestor on 30th November 2011 which Grant was later confirmed on 17th October 2017. Upon receiving the confirmed Grant the Protestor proceeded to subdivide the suit land into four (4) portions namely Kiine/Nyangio/1454, 1455, 1456 and 1457 which four parcels of land were then transferred to the protestor and his three siblings.
10. The Petitioner Priscilla Wandia Githaiga then filed a Summons for Revocation of Grant dated 13th June 2014. The Petitioner averred that as a daughter of the Deceased she ranked in priority over the Protestor and his siblings.
11. The Petitioner accused the Protestor of obtaining the Grant fraudulently by failing to involve her and by failing to reveal to the court that the Deceased had a living biological daughter.
12. The Summons for revocation of Grant was duly heard and vide a Ruling delivered on 20th July 2023 Hon. Lady Justice Muchemi allowed the Summons. The court in revoking the Grant that had been issued to the Protestor made the following orders:-
 - “(a) That the grant issued in favour of the respondent Gituku Maina on 30th November 2011 is revoked.
 - (b) That the titles issued upon subdivision of L.R Kiine/Nyangio/12 namely L.R Kiine/Nyangio/1454, L.R Kiine/Nyangio/1455, L.R Kiine/Nyangio/1456 and L.R. Kiine/Nyangio 1457 are hereby cancelled.
 - (c) That the land L.R Kiine/Nyangio/12 shall revert to the name of the deceased Gachirigwa Thagana.
 - (d) That the Applicant shall file Summons for Confirmation of grant within thirty (30) days.”
13. With a Grant issued in her favour the Petitioner filed a Summons for Confirmation of Grant dated 17th August 2023 in which she proposed that the estate of the Deceased be distributed in accordance with the Ruling of 20th July 2023.



14. The Protestor then filed this Affidavit of Protest challenging the Confirmation of the Grant issued to the Petitioner.
15. The Petitioner in his statement dated 9th May 2024 avers that being dissatisfied with the Ruling delivered on 30th November 2011, he has filed a Notice of Appeal dated 20th July 2023.
16. The protestor states that he and his siblings have lived and farmed on the suit land for the past forty (40) years and thus confirmation of the Grant in the terms proposed by the petitioner will be prejudicial to himself and his siblings.
17. That the confirmation of the Grant ought not to proceed pending hearing and determination of his Appeal.
18. The Petitioner submits that she is the rightful heir of the estate of the Deceased. She submits that an appeal cannot act as a stay of execution of a ruling. The Petitioner urges the court to dismiss this protest with costs.

Analysis and Determination

19. I have considered the Protest before this court as well as the written submissions filed by both parties.
20. It is not the duty for this court to comment on the merits or otherwise of the intended Appeal. Suffice to say that it appears that having filed a Notice of Appeal in July 2023 the Protestor has not taken any further steps to prosecute this appeal.
21. It is trite law that the fact of filing an Appeal cannot act as a stay of execution against any decree or orders of the court.
22. The Ruling delivered on 30th November 2011 revoked the Grant which had been issued to the Protestor. The court ordered that a fresh grant be issued to the Petitioner. This ruling was delivered by a court of competent jurisdiction. The same is binding and enforceable. No order of stay has been issued in respect of said ruling nor has the Protestor made a formal application for stay of execution of the said ruling.
23. In the premises I find no merit in this protest. The same is hereby dismissed in its entirety. Costs to be met by the protestor.

DATED IN NYERI THIS 6TH DAY OF DECEMBER, 2024.

MAUREEN A. ODERO

JUDGE

