



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 296 OF 1989

IN THE MATTER OF THE ESTATE OF PETER NJOROGE KARANJA

SAMUEL NDIRANGU NJOROGE.....BENEFICIARY/APPLICANT

VERSUS

MOHAMMED KARANJA NGOROGE.....ADMINISTRATOR/RESPONDENT

R U L I N G

1. Before me is the Summons for Revocation of Grant dated 20th March 2014. It seeks orders;

1. Spent

2. Spent

3. THAT the Grant of Letters of Administration issued to the Respondent MOHAMMED KARANJA NJOROGE on 4th March 2005 be revoked.

4. THAT Grant of Letters and confirmation of 16th April 1991 be restored.

5. THAT costs of this application be provided.

2. The application is supported by the affidavit of Samuel Ndirangu Njoroge on the grounds *inter alia*;

1. That the grant of confirmation was issued on 4th March, 2005 without applicant's participation.

2. That an earlier grant had been issued on 16th April, 1991 in which the Applicant was given 60 acres of land from L. R. No. 9195.

3. That the 2nd grant deprived the applicant of his entitlement as a beneficiary as per the earlier grant since in the earlier grant the applicant was granted 60 acres.

4. That between the time the earlier grant was granted on 16th April, 1991 and the purported 2nd grant on 4th March 2005 it was well over 14 years which offence the limitation period as regards judgment and orders from the court hence there was nothing to rectify.

5. That this is a clear case of fraud and the applicant pray that the 2nd grant be set aside and nullified and the court to go ahead and confirm the earlier grant issued on 16th April, 1991 for which all the beneficiaries appended their signatures.

6. That the proceedings to obtain the grant were fraudulent in substance.

7. That the applicant has a prima facie case with probability of success.

8. That it is thus in the best interest of justice that the grant issued on 4th March, 2013 to the administrator herein be revoked and/or annulled.

3. It is also supported by the applicant's affidavit sworn on 20th March 2014 and the submissions filed by his counsel, the firm of Maragia and Company Advocates dated 14th November, 2019.

4. The same is opposed vide the Replying Affidavit of Joyce Muthoni Njoroge sworn on 2nd March 2015, on the grounds *inter alia* that;

“4. (a) The application is belated and ought not to be granted as it has been filed nine (9) years after the impugned grant was issued.

(b) The applicant has no basis to claim sixty (60) acres out of the deceased's estate pursuant to the original grant which was revoked and he is not entitled to any special treatment as my child.

(c) The original grant was revoked on account of non-provision for all my children and myself.

(d) I had been appointed as a trustee of the applicant and my two (2) other sons who were minors pursuant to an application made by the estate administrator without my involvement or consideration of my other children.

(e) I did not oppose the application for revocation of the grant made by my daughter one MARY WANGARI NJOROGE on 9th May 2002 to include all my children.

(f) It is selfish and unfair for the applicant to seek revocation of the grant made on 4th March, 2005 so that he can get 1/3 share of the land to which my house is entitled to the detriment of my other thirteen (13) children.”

The petitioners counsel Mirugi Kariuki & Company Advocates filed submissions dated 6th December 2019.

5. From the record **Peter Njoroge Kamau** died intestate on **28th August 1977**. **Mohamed Karanja Njoroge** was issued with grant of letters of administration intestate on **19th March 1990** and the same was confirmed on 8th October, 1990 where he inherited the whole share of title number **Githunguri/Githangari/T. 620**.

6. Thereafter he filed a Chamber Summons for rectification of grant dated 4th December 1990 to include a property LR 9195, to be distributed as follows;

- **Him – 115 acres**
- **Peter Ndung'u Njoroge – 95 acres**
- **Karanja Njoroge – 70 acres**
- **Maina Njoroge – 60 acres**
- **Ndirangu – 60 acres**
- **Remaining 26 acres, to be sold to cover the costs of conveyance.**

7. Later on, he filed another summons dated 25th March 1991 seeking orders;

“1. That the grant of letters of Administration issued to the said MOHAMMED KARANJA NJOROGE in this matter on the 8th October, 1990 be rectified to include MUTHONI NJOROGE, the widow, as one of the Administrators of the estate of the late PETER NJOROGE KARANJA in trust of the minor herein.

2. THAT property namely Plot Number L. R. 9195 erroneously omitted be included in the schedule and be distributed to the heirs accordingly.

3. THAT the costs of this application be costs in the cause.”

8. The grounds for the application were set out in his affidavit.

“1. A grant of letters of Administration was made to me by this Honourable Court on the 8th October 1990.

2. The said grant contains errors as to the identification and shares of all persons beneficially entitled to the said estate was not properly ascertained as one of the property was erroneously omitted.

3. That the identification and shares had now been ascertained as follows:-

9. He proceeded to propose the mode of distribution.

<u>Name</u>	<u>Description of property</u>	<u>Share</u>
1. Mohammed Karanja Njoroge	L. R. 9195	115 Acres
2. Peter Ndungu Njoroge	”	95 Acres
3. <u>Muthoni Njoroge in trust of the of the</u>		
Minors herein;		
Karanja Njoroge	”	70 Acres
Maina Njoroge	”	60 Acres
Ndirangu Njoroge	”	60 Acres

4. The remaining 26 acres to be sold by the Administrator to cover transfer and conveyance fees.

6. That the said Muthoni Njoroge be joined as one of the Administrators in trust of the minors herein, Karanja Njoroge, Maina Njoroge and Ndirangu Njoroge.

7. That the said grant was confirmed on the 8th October, 1990.

8. That it is desirable in all the circumstances of the case that the said rectification and amendment be made accordingly by this court.

10. A Certificate of Confirmation of Grant was issued accordingly on 16th April 1991 as requested.

11. On 9th May 2002, Mary Wangari Njoroge filed Summons for Revocation of Grant as confirmed on 16th April 1991 on the grounds set out in her affidavit sworn on 9th May 2002.

“2. The said grant was obtained through defective proceedings in view of the following facts:-

(a) The Respondent did not by his application satisfy the requirement on the issue of dependants.

(b) The question relating to identities and shares of all persons beneficially entitled to the estate was not tackled by the court.

3. The grant was obtained fraudulently by making of a false statement and concealment from the court that there were more than eleven (11) other beneficiaries of the estate apart from those listed in annexure MW1 above.

4. The Respondent failed to disclose to the court that the following other children of the deceased by the second wife (one JOYCE MUTHONI NJOROGE) survived the deceased.

(i) MARY WANGARI NJOROGE Daughter (unmarried)

(ii) GRACE NDUTA NJOROGE Daughter (unmarried)

(iii) NANCY NYAGUTHII NJOROGE ”

(iv) JOHN MWANGI NJOROGE ”

(v) PETER GATHERU NJOROGE ”

(vi) CECILIA WANJIRU NJOROGE ”

(vii) MARY WAMBUI NJOROGE ”

(viii) PENINA WAITHIRA NJOROGE ”

(ix) MARY WANGECHI NJOROGE ”

(x) HANNAH NYAWIRA NJOROGE Daughter married

(xi) TERESIA NJOKI NJOROGÉ

Daughter married

5. That as a result of the said fraudulent concealment of facts the issued herein was confirmed and the estate ordered to be distributed as follows:-

- (a) Mohamed Karanja Njoroge 115 acres
- (b) Peter Ndungu Njoroge 95 acres
- (c) Karanja Njoroge 70 acres
- (d) Maina Njoroge 60 acres
- (e) Ndirangu Njoroge 60 acres

6. That the first two beneficiaries belong to the first house of the deceased while the last three belong to the second house of the deceased to which I belong with the persons listed in paragraph 4 above.

9. That the distribution has become useless and inoperative owing to the fact that my brothers i.e. KARANJA NJOROGÉ, MAINA NJOROGÉ & NDIRANGU NJOROGÉ now of majority age have insisted on being registered absolute owners of their respective shares as per the certificate of confirmation of grant marked MWN 1 and have threatened to eject us out of the estate."

12. On 14th March 2003 a consent was entered into by all parties compromising the application, to the effect;

"(1) By consent the certificate of confirmation of grant issued on 16th April 1991 in favour of MOHAMED KARANJA NJOROGÉ be altered and amended to read JOYCE MUTHONI NJOROGÉ to be registered proprietor of 190 acres to hold in trust for herself and her 14 children."

(2) THAT each party bears own costs of the application dated 9th May 2002."

13. A fresh grant was issued on 4th March 2005 distributing LR 9195 as follows;

<u>Name</u>	<u>Description of property</u>	<u>Share of heirs</u>
1. Mohammed Karanja Njoroge	L. R. 9195	115 Acres
2. Peter Ndungu Njoroge	"	95 Acres
3. Joyce Muthoni Njoroge	"	190 Acres

(In trust for herself and her 14 children)

14. It is upon this background that the Summons for Revocation of Grant dated 20th March 2014 is premised.

15. The only issue for consideration is whether the grant falls within the parameters of **Section 76** of the **Law of Succession Act** which provides;

"S. 76. 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 has ordered or allowed; 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.”

16. The applicant is one of the fourteen (14) children of the deceased Peter Njoroge, and the respondent is his mother. It is obvious from the record that at the time the administrator was distributing the estate, he dished out the estate to three sons of the deceased leaving out the other eleven (11) children. The applicant has not demonstrated any reason why he should be getting sixty (60) acres out of the family's share of 190 acres, except that there was an earlier grant saying so, yet the whole family consists of 15 persons including his mother. The original grant was lawfully revoked after the self-evident non-disclosure was noted because it disinherited the other members of the family including his own mother.

17. What fraud was committed against him? It is noteworthy that the only thing the applicant is crying for is the sixty (60) acres he claims was allocated to him by the earlier grant. He claims that that revocation of that grant was without his consent. But, it is evident that at that time his mother the respondent, was the administrator of the estate. His other siblings had been disinherited. On that basis the court could have, *suo motu*, gone ahead and revoked the grant as is allowed by s. 76 “ **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**” . With respect, in these circumstances his consent was not required. In fact it is evident that if it had not been for his mother's intervention, even this 190 acres for his family would still be in dispute.

18. During the 2nd revocation, the only issue in dispute was the share for the whole of the applicant's family, not the shares for the individual beneficiaries. As matters now stand the share for his family and his own share is intact, and the only thing that remains is for his mother's house to agree on the distribution of their share among themselves.

19. He has not stated that the other thirteen (13) children of the deceased are strangers to the estate, he is only one of them. There is no evidence of fraud anywhere in the whole process. In fact the applicant has a recourse, not in revocation of the grant, but in the lifting of the trust now that he is of age so that he can get his share of the estate. This is provided for under **Section 41** of the **Law of Succession Act**.

“S.41. Where reference is made in this Act to the “net intestate estate”, or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.”

20. Having considered the submissions and the evidence on record and the affidavit by parties and the authority cited, **Augustine Johnstone Moi Kirigia v Catherine Muthoni Isimali Kirimi [2017] eKLR** for the proposition that having alleged fraud it was upon him to establish the same by cogent evidence, I find that the applicant has not established any of the grounds for revocation of the grant.

21. The application is driven not by a quest for justice, but the desire to have more than his share of the estate to the detriment of his own mother and other siblings.

22. The application must fail with costs to the respondents.

Dated, delivered and signed at Nakuru this 9th April, 2020.

Mumbua Matheka

Judge

In the presence of; Via ZOOM

Edna Court Assistant

Mr. Kahiga for Applicant

For Respondent: Mongeri & Company Advocates N/A (Ms. Moenga appeared later and was informed the ruling had been delivered.)