



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT EMBU**

**MISC. SUCCESSION CAUSE NO. 34 OF 2018**

**IN THE MATTER OF THE ESTATE OF GICHUKI KAMMERU Alias GICHUKI KAMIRU (DECEASED)**

**DAVID MWAI GICHUKI.....APPLICANT**

**VERSUS**

**BEDAN MUTHEE.....1<sup>ST</sup> RESPONDENT**

**PURITY WANJIRU CUCU.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. This is a ruling on summons for revocation of grant dated 25<sup>th</sup> February 2016 based on grounds that the proceedings were defective in nature and substance. The second ground is that the grant was obtained fraudulently by making a false statement or by concealment of some facts material to the case.
2. The applicant states that he is the son of the deceased in this case who died on 13<sup>th</sup> March 2013. He further states that the succession proceedings in Runyenjes Succession Cause No. 89 of 2015 were conducted in secrecy by the respondents. The applicant rushed the proceedings in that the grant was issued on 15/09/2015 and confirmed on 22/09/2015 which is contrary to the law.
3. It is further argued that before the death of the deceased, he had pointed out to the beneficiaries their respective portions with the applicant getting ½ acre plot which he extensively developed single-handedly on Embu/Municipality/1112/69. He has been collecting rent from the premises since 2003 and has settled there with his family.
4. It was after the grant was confirmed that the applicant came to know of the said succession proceedings. He was not served with any summons or notified of the existence of this cause. The applicant successfully obtained a prohibitory order at the commencement of these proceedings to protect his interest in Embu/Municipality/1112/69.
5. The respondents opposed this summons on grounds set out in the affidavit of 1<sup>st</sup> respondent. It is deposed that the applicant was at all material times aware of the succession proceedings in Runyenjes Succession Cause No. 89 of 2015 and was present during the confirmation of the grant and never raised any objection on the mode of distribution.
6. The record reveal that the respondents are son and daughter of the deceased respectively. It is further deposed that the applicant has been collecting rent from the plot Embu/Municipality/1112/69 without accounting for it.
7. The respondents seek for orders that the applicant be ordered to account for the said rent that does not belong to him alone. It is the respondents' contention that this summons is vexatious, frivolous and an abuse of the due process of the court and ought to be dismissed.
8. The issue for determination is whether the applicant has satisfied this court on any one or more of the grounds set out under Section 76 of the Act so as to justify granting of the orders sought in his summons.
9. Section 76 of the Law of Succession provides for the following grounds for revocation of grant: -
  - i. That the proceedings to obtain the grant were defective in substance;*
  - ii. That the grant was obtained fraudulently by making a false statement;*
  - iii. That the grant was obtained through an untrue allegation;*

*iv. That the administrator has failed to perform his legal duties;*

*v. That the grant has become useless and inoperative through subsequent circumstances.*

10. These proceedings were commenced by the respondents on 22/09/2015 who were issued with letters of administration intestate on 15/09/2015. The grant was confirmed on 22/05/2015 just a week later with the beneficiaries named in Form P&A.5 benefiting from the distribution including the applicant and the respondents.

11. It is noted that the applicant according to the grant has no share in the only contested property Embu/Municipality/1112/69 but it is indicated that the respondents taken half share jointly. From the copy of official search, it shows that the deceased owned the land jointly with one Rose Wanjiru Gikandi.

12. On perusal of the Runyenjes court record I make the following observations: -

*i. That all the beneficiaries were recorded to be “all present” but their respective names were not indicated.*

*ii. That the order for confirmation of grant was made only seven (7) days after the respondents were appointed administrators, that is before expiry of six (6) months.*

*iii. That the reason for the rushed confirmation of grant in the summons (for confirmation) was indicated as: -*

*“That this honourable court be pleased to confirm the grant of letters of administration before the expiry of six (6) months as all the family members are in agreement of the mode of distribution as shown in the annexed affidavit”.*

*iv. That no consent signed by all the beneficiaries was annexed to the summons.*

*v. When the parties appeared before the court, it appears the 1<sup>st</sup> respondent addressed the court and gave a totally different reason for request for urgent confirmation that:*

*“Purity Wanjiru (2<sup>nd</sup> respondent) is unwell and intends to sell her share to pay hospital bills, and the court granted the application”.*

*vi. That the confirmation orders were granted on the same day the application was filed raising doubt that all beneficiaries were present in court.*

13. The applicant was represented by a counsel in this matter and despite being given time severally failed to file submissions.

14. The respondents in their submissions argued that the applicant was present in court during the confirmation of grant and that he signed “on the confirmed grant itself”.

15. It is further argued that the applicant’s argument that his father bequeathed to him his half share in Embu/Municipality/111/69 is untrue since the deceased died intestate.

16. I have perused the record including the confirmed grant. As I have already stated, there was no consent of the beneficiaries filed in court as required by the law. The fact that the court did not indicate the names of the beneficiaries present raises doubt as to whether they were all present and whether they consented to the mode of distribution.

17. This matter is further complicated by the fact that the respondents before the court gave a totally different reason for applying for urgent confirmation from the one contained in the summons. This leads me to the conclusion that the rushed confirmation of grant done within one week after issue of the letters of administration was motivated by ill-will of some of the beneficiaries.

18. It is interesting to note that the only developed asset with rental income was to be shared between the two respondents/ administrators while the other beneficiaries shared the other asset LR. Ngandori/Kirigi/1498 where there was no mention of any development that would produce income.

19. The value of the deceased’s assets was grossly underestimated to be Kshs. 100,000/= for two assets one situated in Embu town and the other in the outskirts of the town. This raises doubt as to whether the Resident Magistrate Runyenjes had jurisdiction to deal with the succession cause.

20. Both properties are situated in Embu. I take judicial notice that this cause fell within the jurisdiction of Embu High Court or Embu Chief Magistrate Court. The other factor to be considered was the value of the assets. The filing of the cause in Runyenjes court has not been explained and may have been aimed at keeping away from the proceedings some of the beneficiaries.

21. The evidence of the applicant that he was not aware of the succession proceedings until the grant was confirmed is further supported by his missing identity card number on the Chief’s letter of the list of beneficiaries while those of all other beneficiaries were entered.

22. The summons for confirmation was brought under certificate of urgency show that the orders were granted the same day. The question is how all the beneficiaries attended court on the date of filing and got the orders the same day. No evidence of service on the beneficiaries exists on record. This happened after only seven days of appointment of the administrators.

23. The respondents are children of the deceased and rank in priority with the applicant under Section 66 of the Act in applying for letters of administration intestate. The applicant does not dispute the capacity of the respondents as administrators. To my understanding, he has issues with the mode of distribution. Having established that he was not involved in the distribution, and fraud having not been proved on part of the respondents, I decline to revoke the grant.

24. However, I have identified a number of anomalies and omissions including the grounds relied on for the urgent confirmation. For these reasons, I make the following orders in the interest of justice: -

*a) That the confirmation of grant made on 22/09/2015 in favour of the respondents is hereby set aside.*

*b) That the respondents to file a fresh application for confirmation of grant upon involving all he beneficiaries within 30 days.*

*c) That each party to meet their own costs.*

25. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 16<sup>TH</sup> DAY OF SEPTEMBER, 2019.**

**F. MUCHEMI**

**JUDGE**

**In the presence of: -**

**Ms. Muriuki for Okwaro for Applicant**