



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 157 OF 1992

IN THE MATTER OF THE ESTATE OF MWANGI KIRAGU JOSEPH (DECEASED)

LILIAN MUTHONI MWANGI.....APPLICANT

VERSUS

JAMES MAINA KIRAGU.....1ST RESPONDENT

PETER KIRAGU MWANGI.....2ND RESPONDENT

JUDGMENT

1. The deceased herein **Mwangi Kiragu Joseph** died in Nairobi on the 5th of August, 1991.
2. On the 7th of February 1992 Peter Kiragu and James Maina Kiragu petitioned this court for a grant of representation.
3. A grant was issued on the 8th of April 1992 and confirmed on 11th October 1992. The only asset of the estate Plot No. 371 Mathare was to be registered in the names of Peter Kiragu and James Maina Kiragu “whole and in trust for other brothers and sister”.
4. By an application dated 5th December 1995 Damaris Ngendo Mwangi moved the court seeking for injunctive orders and blaming the petitioners of having obtained the grant fraudulently. She brought the application as a widow of the deceased. The application was objected to. Upon hearing the same Interim orders were issued which orders were later vacated.
5. The application subject of this ruling is dated 30th July 2018 filed by Lilian Muthoni Mwangi, and seeks for the following prayers:
 - **Revocation or annulment of the grant issued to James Maina Kiragu and Peter Kiragu Mwangi.**
 - **An order to include the Applicant as one of the administrators.**
 - **An order to have the Applicant and her brother James Kiragu Mwangi included in the list of beneficiaries.**
6. The application is predicated on grounds that the Applicant is a daughter of the deceased with his 3rd wife Damaris Ngendo Mwangi, she further claims that the administrators have excluded her mother’s house which includes the applicant and her brother from these proceedings and more particularly the list of beneficiaries.
7. In the supporting affidavit the Applicant annexed a marriage certificate and photographs of their parents wedding. She further states that when their late mother learnt of the existence of grant of representation filed an application in court, placed a caution on the property, but died before the matter was disposed of. Further she states that upon the death of their mother the Administrators have been cruel to them.
8. The above application was to objected by way of a replying affidavit dated the 5th of November 2018 sworn Peter Kiragu one of the administrators who claimed that the Applicant is a stranger and not even an administrator of the estate of Damaris Ngendo.

Further that the application is an attempt to open a closed matter and to cover up for the applicant’s brother who has failed to comply with an order of this court

9. The 2nd respondent however confirms that Damaris Ngendo (deceased), the children did reside on **plot No. 371/Mathare North** and that there are orders directing James Kiragu Mwangi a brother to the applicant from ceasing to collecting rent from the said Plot.

10. The 2nd Respondent further denies having obtained the grant of representation secretly. He urges that no concrete reason has been adduced to support the prayer that the grant be revoked, and that application lacks merit.

11. Having considered the application, replying affidavit and submissions by counsel on record the issues for determination are as follows:

a. Whether there has been inordinate delay in filing this application.

b. Whether the grant was obtained by concealment of material facts.

c. Whether the Applicant and her brother are beneficiaries of the estate of the deceased.

d. Whether or not to revoke the grant issued herein.

12. It is the contention of the Respondents that there was inordinate delay in bringing this application as the grant herein was issued in 1992.

13. In answer to the contention the Applicant asserts as if to explain the delay that her mother had filed an application in 1995 against the Respondent. Their mother died on 15th July, 2016 during the pendency of the matter after which she filed this application.

14. This being a succession matter the operational law is the Law of Succession Act (the Act) and particularly **Section 76** of the **Act** which deals with revocation and annulment of grant. The said Section provides:

“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;

15. Though the Respondents claim that the Applicant is a stranger, the Respondents are silent on the Applicant's claim that the Applicant and her brother were sired of a union between the deceased Mwangi Kiragu and their mother Damaris Ngendo who celebrated a Christian marriage on the 3rd of January 1989.

16. The Respondents are equally silent to the assertion that Plot No. 371 Mathare North was the matrimonial home of the Applicant's parents and where they were both born and bred, and to the allegation that the Respondents are to out to disinherit the two.

17. The Applicant has brought this application in her capacity as a daughter of the deceased and therefore a beneficiary of the Estate. She has proved to the court vide the marriage certificate of her parents that they were married. This evidence was not rebutted.

18. The assertion that the Applicant and her brother are children of Damaris and her husband Mwangi Kiragu has not been challenged either.

19. It has taken the Applicant many years to seek justice. Her mother came to court 3 years after the grant was issued, the Applicant 24 years after the death of her father the period is certainly long, however, the question in the circumstances of this case, is whether the Respondent who all along knew that their father had a wife whom he lived with on the land subject of this inheritance and whom they locked out of this inheritance together with her children should be allowed to get away with such an injustice.

20. In my view succession matters are '*sui generis*' and cannot be treated like other civil matters in times of time lines; they are emotive and could have far reaching effect to families of deceased persons. Section 76 of the Act seems to address this issue. The section addresses the issue of revocation without putting a time limit and precisely for this reason no time limitation is pegged to the Section. The discretion is left to the court.

21. I find that the grant of representation herein was defective in that several other beneficiaries were left out as will be informed by pleadings on record and no consents filed at the time of confirmation of the grant. Further the administrators failed to disclose facts that were material to the granting of the letter of administration to wit that the deceased had a widow alive and two children.

22. Further it is noted that the Applicant as a daughter of the deceased does not need to obtain a grant of representation for the estate of her mother in order to file her claim, she claims as a beneficiary in her own right.

23. For the above reasons the grant dated 8th April 1992 and confirmed on the 11th November, 1992 cannot stand and it is hereby revoked.

24. The 1st Respondent James Maina Kiragu and the Applicant herein Lillian Muthoni Mwangi are hereby appointed as joint administrators.

25. The new administrators are tasked to ascertain the extent of all assets left behind by the deceased, income from the same, list of all beneficiaries of the Estate and thereafter file for confirmation of grant within the next 90 days of the date hereof.

Dated and Delivered in Nairobi on this 7th day of NOVEMBER, 2019.

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ALI-ARONI

JUDGE