



REPUBLIC OF KENYA



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In re Estate of M'Ringera Nchebere (Deceased) (Succession Cause 161 of 2022) [2024] KEMC 89 (KLR) (12 February 2024) (Ruling)

Neutral citation: [2024] KEMC 89 (KLR.)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
SUCCESSION CAUSE 161 OF 2022
AT SITATI, SPM
FEBRUARY 12, 2024**

IN THE MATTER OF THE ESTATE OF M'RINGERA NCHEBERE (DECEASED)

BETWEEN

FAITH KANANU IRANDU 1ST APPLICANT

MERCY KAIRUTHI M'ITWARANDU 2ND APPLICANT

ROSE MWARI KARIMI 3RD APPLICANT

AND

JOHN KITHINJI M'RINGERA RESPONDENT

RULING

1. By a Summons dated 4th December, 2023 supported by an affidavit of similar date, the 3 applicants prayed for:
 1. That the letters of Administration issued to John Kithinji M'Ringera be revoked.
 2. That the Costs of this application be in the cause.
2. The applicants relied on 3 main grounds:
 - i. That the proceedings to obtain the grant were defective in substance.
 - ii. That the grant was obtained fraudulently by the making of fake statement or by the concealment from court of something material to the case.
 - iii. That the grant was obtained by means of an untrue allegation of fact essential in point of law to justify the grant.
3. The Respondent was duly served as per the affidavit of service dated 11th December, 2023.



The Applicants' Case

4. The Applicants gave viva voce evidence. They told the court that the Administrator is a brother to their deceased father and that he completely concealed the existence of the proceedings from them despite their being the survivors of their father's estate. Furthermore, the Administrator went ahead to give their deceased father's estate less than what the estate was entitled to.
5. The Applicants told the court that the Administrator deprived them of the equitable share out of the following estate properties:
 1. LR Abothuguchi/Katheri/3217 and 3597.
 2. 21 semi-permanent houses.
 3. Equity bank ltd a/c 014XXX39.
 4. Githongo Tea Factory a/c 02XXX99.
 5. KTDA Farmers SACCO allotment No 1/X7.
 6. KTDA Farmers SACCO allotment no.2X1/X.
 7. Shares in Mwigiki Farm allotment No 2XX1/X1.
6. The applicants further pointed out that persons who were not entitled to inherit shares were given shares as follows:
 - a. The Administrator's wife was given 2 semi-permanent houses yet the Administrator himself had already inherited 2 units for his rightful share of the houses.
 - b. Grandchildren were given shares out of the houses yet the applicants were completely denied even a single unit.
7. The Administrator did not file any responses. When he attended court he conceded to the grounds and admitted that the grounds relied on by the Applicants were true and correct.

Issue for Determination

8. The only issue for determination is whether or not the Applicants have made out a case for the revocation of Grant.

Determination

9. The Court found guidance from the authority of *In re Estate of Epharus Nduati (Deceased)* (2021)eKLR (C. Kariuki J.) where the learned Judge made the following pronouncement:

Section 76 of the *Law of Succession Act* states as follows:

“76. Revocation or annulment of grant

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.”

23. Section 76 was clearly expounded on by the court *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties



as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

24. The learned Mr. Justice Kariuki in the above-cited authority went on to rule:

“38. In light of the above, I invoke the inherent powers of this court granted under Article 159 of the Constitution and Section 76 of the Law of Succession Act and make the order to revoke the letters of grant of administration issued to the Petitioner and subsequent confirmation as it was obtained fraudulently by the making of false statement or by the concealment from court of something material to the case particularly in relation to the sale of the 2 acre portion of Nyandarua/Oljoro Orok Salient/1881 belonging to the Applicant’s husband.”

25. In the present case, as the Administrator conceded, he concealed the proceedings from the applicants who were the rightful heiresses of their deceased father’s share of the estate. The Administrator admitted that the applicants were deprived of their rightful shares and instead third parties inherited. In the result, the proceedings were defective in substance and the concealment gravely prejudiced the applicants. By giving third parties what they were not entitled to, the Administrator had breached his fiduciary duties.

26. In the result, the Application succeeds and the court hereby makes the following orders:

1. The certificate of confirmation of grant is revoked and set aside. The Administrator is ordered to surrender the certificate for cancellation forthwith but not later than 48 hours of this ruling.
2. The titles arising from subdivision of LR Abothuguchi/Katheri/3217 and LR Abothuguchi/Katheri/3597 as listed in the Certificate of the Confirmation of Grant are hereby cancelled and title reverts back to the name of the deceased awaiting the parties to agree on mode of distribution and /or court to determine same.
3. The share certificates arising out of Mwigiki Farm Limited Allotment No 2001/02 are hereby cancelled and the share names reverts to the deceased pending the redistribution after this ruling.
4. The sharing out of the 21 semi-permanent houses is revoked.
5. The sharing of any such funds in the Equity bank ltd a/c 014XXX39 is revoked.
6. The share certificates arising out of Githongo Tea Factory a/c 02XXX99 are hereby cancelled and the share names revert to the deceased pending the redistribution after this ruling.
7. The share certificates arising out of KTDA Farmers SACCO allotment No 1/X7 are hereby cancelled and the share names revert to the deceased pending the redistribution after this ruling.
8. The share certificates arising out of KTDA Farmers SACCO allotment no.2X1/X are hereby cancelled and the share names revert to the deceased pending the redistribution after this ruling.
9. The parties to file consent on distribution within 30 days from dates herein or file separate proposals on distribution within same span in default court to go ahead and make verdict with or without parties input.
10. Parties bear their respective costs.

DATED, READ AND SIGNED AT GITHONGO THIS 12TH DAY OF FEBRUARY, 2024



HON. T.A. SITATI
SENIOR PRINCIPAL MAGISTRATE
GITHONGO LAW COURTS

