



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Shadrack Kaburu (Deceased) (Succession Cause E116 of 2022) [2023] KEMC 297 (KLR) (17 November 2023) (Ruling)

Neutral citation: [2023] KEMC 297 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
SUCCESSION CAUSE E116 OF 2022
AT SITATI, SPM
NOVEMBER 17, 2023**

BETWEEN

CAROLINE KAGENDO KABURU APPLICANT

AND

LILIAN KABAKA KABURU RESPONDENT

RULING

1. By Summons dated 6th July, 2023 for Revocation or Annulment of Grant brought under section 76(a), 76(b) and 76(c) of the [Law of Succession Act](#) (cap 160) and Rule 44 of the Probate and Administration Rules, the Applicant prayed for the following reliefs:
 1. Spent
 2. That pending the hearing and determination of this application, the Honourable Court be pleased to order that an inhibition be placed over L.R. Nkuene/kathera/1678, L.R.nkuene/kathera/1679 and L.R. Kiamuri "A"/1764 or on subsequent titles as may have been subdivided therefrom.
 3. That pending the hearing and determination of this application, the Honourable Court be pleased to order that an injunction be placed restraining the Respondent from interfering in any manner whatsoever with the Pension and Benefits for the Deceased in Account number APN/PC/349393 and TSC No. 194673.
 4. That the Grant of Letters of Administration Intestate to Lilian Kabaka Kaburu made on 19th day of December, 2022 and confirmed on 29th May, 2023 in respect of the Estate of the Deceased upon the basis that the same was obtained fraudulently and by concealment from court of material facts relating to the Estate.



5. That all steps taken by the Respondent pursuant to the order granting the Letters of Administration and Certificate of Confirmation of Grant and which may have changed the assets of the estate subject to this application be declared a nullity in law.
6. That the Honourable Court be pleased to declare that the Applicant, being a beneficiary who was left out in the application for the Grant and is a beneficiary to the Estate is entitled share the assets of the Estate.
7. That the Honourable Court be pleased to cancel any registrations of L.R. Nkuene/kathera/1678, L.R. Nkuene/kathera/1679 and L.R. Kiamuri "A"/1764 and have the same revert to the name of the deceased.
8. That the costs of this application be in the cause.

The Applicant relied on the following main grounds:

1. She is a biological daughter of the deceased Shadrack Kaburu.
2. She was well known to the Petitioner and her family but she was deliberately excluded from the legal process.
3. The chief also deliberately excluded her from the introduction letter despite his full knowledge that she was a daughter and beneficiary of the deceased's estate.

She produced the following exhibits to support her claim:

- a. Eulogy showing that she was recognized as a daughter of the deceased during the burial.
- b. Petition for and Letters of Administration in which she was excluded.
- c. Certificate of Confirmation of Grant wherein she was excluded as a beneficiary.

The Respondent opposed the suit by a Replying Affidavit dated 7th August, 2023 opposing the application for revocation. The main grounds were:

- i. It was true that she included the Applicant in the burial Eulogy but she did so under persuasion of elders.
- ii. The after the burial, the Applicant had refused to participate in the Succession proceedings despite being notified.
- iii. The Applicant the Chief's invitation to a meeting to be included.
- iv. She was the registered owner of the L.R. Nkuene/kathera/1678, L.R. Nkuene/kathera/1679 and L.R. Kiamuri "A"/1764 which she had obtained jointly with the deceased prior to his demise.
- v. There was an extra parcel of land in Ruiru but the same could not be included as strangers had encroached on it.

2. In response, the Applicant filed a Supplementary Affidavit dated 14th August, 2023 buttressing the Summons. She pointed that although she had been introduced to the family, the deceased had been supporting her in secret till his demise. She added that it was a deliberate exclusion for the Respondent/Administratrix to omit her name completely in the court papers.



3. While the firm of Thurania Atheru & Company Advocates represented the Applicant, the Respondent was represented by Mwenda A.A.K. & Company, Advocates.
4. The Court directed the parties to file written submissions.

The Respondent's Submissions

5. 30th October, 2023 the Respondent/Administratrix lodged written submissions contending in summary that:
 - i. Since the Applicant was undisputably one of the daughters of the deceased, the proper relief would be a rectification of the grant as opposed to the revocation of the grant.
 - ii. It was the Applicant's own misconduct in disappearing and refusing to cooperate with the Administratrix that had led to the current conflict.
 - iii. The Administratrix as a widow of the deceased ranked in priority to the Applicant and there was no fraud in her proceeding as she did.The Respondent placed reliance on the following authorities which the court duly studied and perused:
 - a. In Re Estate of Prisca Ong'ayo Nande (Deceased)(2020)eKLR.
 - b. Section 66 of the [Law of Succession Act](#).

The Applicant's Written Submissions

6. On 18th October, 2023 the Applicant lodged written submissions contending that the case was ripe for revocation as there was clear concealment and misrepresentation of facts by the Administratrix who is the Respondent to the application. The authorities relied on were:
 - i. Section 29 of the [Law of Succession Act](#).
 - ii. Section 76 of the [Law of Succession Act](#).
 - iii. In Re Estate of Prisca Ong'ayo Nande (Deceased) (2020)eKLR
7. At the close of their respective submissions, the Court was called upon to determine if the application had merit or not.

Undisputed Issues

1. The Applicant is a daughter of the deceased.
2. The Petitioner/Administrator is a widow of the deceased.
3. The Letters of Administration and Certificate of Confirmation of Grant have been issued to the Respondent.
4. The Applicant did not participate in the Succession proceedings in Court until she filed the present application for revocation/annulment.



Disputed Issue

8. The only disputed issue that goes to the root of the application is whether or not the Respondent in her capacity as an Administratrix had concealed and/or misrepresented material facts from the court when she petitioned for the letters of Administration

Determination

9. From the material placed before the Court, the Court finds that the following facts have been proved:
 - a. The Applicant is a biological daughter of the deceased while the Respondent is the sole widow.
 - b. The Respondent did not either include or even mention the existence of the Applicant at the time of filing the Petition for Letters of Administration.
 - c. The Court is satisfied that there was nothing that prevented the Respondent from informing the court about the existence of the Applicant. The Respondent knew of the existence of the Applicant and included her in the Eulogy and even discussed her as a subject in the family meeting as captured in the Minutes annexed to the Respondent's Replying Affidavit in the present case.
 - d. The failure to name or mention the Applicant in the Petition for Letters of Administration, Consent to the Petition, Summons for Confirmation was therefore a deliberate concealment of material facts from the court. The Petitioner misrepresented the truth when she told the court that the only surviving children were her own children yet she fully knew that she had a step-daughter who is the Applicant herein.
 - e. Additionally, when the Respondent went to obtain the Chief's letter of introduction, she deliberately failed to have the name of the Applicant included. This suggested a collusion with the Chief because the Applicant was well known to the Chief and the Respondent.
10. The Court finds that the cited authority of *In Re Estate of Prisca Ong'ayo Nande (Deceased) (2020) eKLR (W.Musyoka J.)* is distinguished because the Applicant in that case was an alleged purchaser of land from the deceased and was unknown to the Estate while in the present case, the Applicant is a biological daughter of the deceased who is well known the Estate.
11. The more relevant authority which the Court had occasion to research on was the case of *Estate of Katana Vuko Wale v Hamisi Katana Vuko [2021] eKLR (Nyakundi J.)* wherein the learned Judge had this to say:

"An issue of revocation or annulment of grant of Letters of Administration and the jurisdiction of the court to entertain the application to revoke the grant is a matter properly expressed under Section 76 of the Law of Succession which states that:

"A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an interested party or its own Motion.

- (a) That the proceedings to obtain the grant were defective in substance,
- (b) That the grant was obtained fraudulently by making of a false statement or by concealment from the court of something material to the case



- (c) That the grant was obtained by means of untrue allegations of facts essential the point of Law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently. The revocation or annulment is also governed by Rule 26 of the Probate & Administration Rules which states that:-

“Letters of Administration shall not be granted to any applicant without Notice to every other person entitled in the same degree as or in the priority to the applicant. An application for a Grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation , or written consent, in the form 38 or 39, by all persons so entitled in equally or priority be supported by an affidavit of the applicant and such other evidence as the court may require”

12. The learned Judge went on to add:

“These sections signifies that a petitioner for grant of Letters of Administration will be deemed prima facie to have obtained a fraudulently grant, with respect of the state if he or she fails to issue notice to any of the dependents or beneficiaries to the estate of the deceased, including obtaining their necessary consents as mandatory provided in the Succession Act. Equally the grant of Letters turn out to be defective if the evidence shows that it was issued in error, misrepresentation of facts, concealment or nondisclosure of material evidence relevant and admissible for the making of the grant of representation. In one of the Leading judgment of the court in this area of Law in *Matheka and Another V Matheka* (2005) EA 251 it is clearly stated as follows:

“A grant may be revoked either by application or by an interested party or on the courts own motion. Even when revocation is by the court upon its own of motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegations of facts essential. In point of Law or that the person named has failed to apply for Confirmation or to proceed diligently with the administration of the estate.

The grant may also be revoked if it can be shown to the court that the person to which the grant has been issued has failed to produce to the court such inventory or account of administration as may be acquired”

I will also add that the crucial deficiency of a grant sufficient for the court to grant an order for revocation or annulment is as stated in the matter of the estate of *Ngaii Gatumbi alias James Ngaii Gatumbi (deceased) Nairobi Succession Cause No 783 OF 1993*.

In that court the application for revocation was brought by persons who were omitted from the Petition for Grant, of Letters of Administration although, they were equally entitled to apply, but were not notified of the Petition neither were their respective consents obtained. The court revoked the grant on the ground that it had been obtained by a defective or irregular process. (See also), in the



matter of the Estate _ Isaac Kireru Njuguna (deceased) Nairobi Succession Cause Number 1064 of 1994.

In the matter of the estate of Yusuf Mohamed (deceased) Mombasa High Court P & A No. 434 of 1995)_ Applying the above principles as it transpired in this instance Section 29 of the Law of Succession clearly sets out an account on the definition and hierachy of dependents of the deceased who are bound to benefit from the estate, subsisting at the time of his or her demise. Secondary, Section 35, 37, 38 and 39 of the said Act fundamentally and whether any contradictions sets out the order of priority of the persons entitled to inherit the deceased estate. The provisions point out first it is the spouse or spouses and their children.

Apparently, In the Petition for Grant of Letters of Administration and subsequent confirmation the respondent initiated proceedings without notice to the other beneficiaries or obtained their respective consents. In the respondent's own admitted facts, it's clear that there were no consents sought and or obtained from the Petitioner to this summons for revocation.”

13. From the foregoing authorities, the effect of such concealment and misrepresentation has been ruled to be an automatic revocation and annulment of the letters of Administration and Certificate of Confirmation of Grant.
14. In the result, the court allows the Application in its entirety as prayed with the additional order that the Respondent shall cause the Applicant Caroline Kagendo Kaburu to be included in a fresh letter of introduction to be written by the local chief within the next 30 days and also in the subsequent Petition for Letters of Administration (Intestate). It is so ordered. Right of appeal is 30 days.

DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 17th DAY OF NOVEMBER, 2023

HON. T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

