



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. E380 OF 2021
IN THE MATTER OF THE ESTATE OF RAMZAN NOOR
KIBARABARA (DECEASED)

JUMA FARIDI RAMADHAN 1ST
APPLICANT
FARUK RAMADHAN NOOR2ND
APPLICANT
TERESIAH MUTHOKI3RD
APPLICANT

VERSUS

ZAKIA ZUHURA RAMZAN 1ST
RESPONDENT
ISSAQUE RAMZAN NOOR 2ND
RESPONDENT

JUDGMENT

1. Before this Court is the summons for revocation dated **10th March 2023** in which the Applicants sought the following orders:
 - 1) Spent.
 - 2) **THAT the grant of administration granted by this Honourable Court on 25/06/2019 and confirmed on 07/07/2021 be revoked/ annulled.**
 - 3) Spent.
 - 4) **Costs of this application be provided for.**
2. The summons is premised upon Section 76 of the Law of Succession Act Cap 160 Laws of Kenya and under Article 159 of the Constitution of Kenya 2010 and was supported by the

Affidavit of even date sworn by the 1st Applicant on behalf of the 2nd and 3rd Applicants.

3. Zakia Zuhura Ramzan, the 1st Respondent opposed the summons through her Replying Affidavit sworn on 8th May 2023.
4. The summons was canvassed by way of *viva voce* evidence.

BACKGROUND

5. This succession cause relates to the Estate of **Ramzan Noor Kibarabara** (hereinafter **the deceased**) who is said to have died testate on **25th March 2017**. The Deceased is said to have left a will dated **25th August 2015** where he appointed **Zakia Zuhura Ramzan** as the Executor of his will.
6. Initial grant of probate with written will was issued to **Zakia Zuhura Ramzan** on 3rd October 2017 and subsequently confirmed on 7th July 2021. An additional grant of letters of administration intestate was issued with respect to the same estate to **Zakia Zuhura Ramzan** and **Issaque Ramzan Noor on 25th June 2019**. That grant is yet to be confirmed.
7. The Applicants submit that they are the children and spouse of the deceased and the basis upon which they seek to revoke the grant is that the administrator (s) failed to disclose that the deceased had a spouse and other children. The Children of the deceased are stated to be; Juma Faridi Ramadhan Noor, Farouk Ramadhan Noor, Zakia Zuhura Ramzan, Issaque Ramzan Noor, Salma Ramzan Noor, Zubeda Ramzan Noor and Prince Jamal Ramzan. The deceased had three wives: Asha Muthoni Ramadhani (deceased), Beauty Wamuyu (deceased) and Teresia Muthoki.
8. The applicants also challenge the validity of the will contending that at the time the impugned will was executed the deceased was critically ill and therefore not capable of executing a will. Further they submit that the deceased being a Muslim his estate ought to be administered in accordance with Islamic law.

9. In response the Respondent avers that the will is valid and she was duly appointed as executrix of his will. The subsequent grant was issued to enable them administer a property that was not included in the will of the deceased.; Title Number Thika Municipality Block 10/295.
10. She avers that she had no obligation to notify the applicants of the will and states that since she is a Christian it is the High Court that has jurisdiction and not the Kadhi's Court.
11. The summons was canvassed by way of *viva voce* evidence.

EVIDENCE

12. **PW1, Juma Faridi Ramadhan Noor** He stated that he was the deceased's son. His evidence was that they were not included as beneficiaries in the administration. He asked the court to allow the summons and he be allocated a fair share of the deceased's estate.
13. On cross examination, he stated that the alleged will was authored by the 2nd house through their advocates. The deceased did not leave a will. The will dated 25th August 2016 is not the will he saw in the court file. He was not with the deceased on that day. He is not aware if the deceased went to the advocate's office to execute the will. He had a cordial relationship with the deceased. he would have informed him of his plans. He did not avail a report from a document examiner. He was not informed when the petitioner moved to court. He doesn't know about the Kenya Gazette. The court annexed mediation was unsuccessful.
14. **PW2, Teresia Muthoki Makiti** She stated that she was married to the deceased and together, they had one child called Prince Jamal Ramzan. She lived with the deceased in Donholm. When the deceased died, she was evicted and the deceased's belongings were also taken. She followed up the matter and that is when she realized that there was a will. She lived well with the other members of the

family. She and the deceased's child are entitled to a share of the deceased's estate.

15. On cross examination, she stated that the petition was fraudulent as they were not involved in the succession process notwithstanding that they are family of deceased. The will dated 25th August 2016 only provides for the children of one house; Zakia, Issaque, Ramzan and Zubeda. According to her, the deceased did not write a will. After their marriage 2002, the deceased took her to his other house in Mathare North. The deceased was also married to Beauty Wamuyu until 2014 when she died. The deceased lived with Beauty in Donholm. She moved back to Donholm with the deceased in 2014 and lived there until he died. She took care of the deceased when he was ailing. She was evicted from the house by Zakia and Issaque. She is aggrieved because the deceased did not provide for his other children.

16. **PW3, Farouk Ramadhan Noor** told the court that he is the eldest son of the deceased. His mother and the deceased separated when he was in class 4. The deceased used to visit them when his mother was alive. When the deceased fell ill, he asked him to visit him. He went to visit him in Donholm. The deceased needed a kidney. They travelled together to India and donated his kidney. He went to see the deceased three days before his death. He wanted to tell him something but he died before telling him. They met 40 days after the deceased's burial. He was informed that there was an outstanding bill at Nairobi Hospital and the assets would be utilized to pay off the debt. He later learnt that his siblings had filed a succession cause.

17. On cross examination, he stated that the deceased sold some land to facilitate his travel to India. He travelled to India with the deceased in 2015. He doesn't know the support Zakia gave to the deceased. While in India, she failed to support his children as agreed. He is contesting his exclusion from the will. No reasons were given for his exclusion.

18. The applicants closed their case and the administrator testified next.
19. **DW1, Zakia Zuhura Ramzan**, she is the deceased's daughter. Her mother was called Beauty Wamuyu. They are four siblings: Issaque, Noor Ramzan, Salima Ramzan and Zubeda Ramzan. The deceased executed a will dated 25th August 2016. She learnt of the will after the deceased's death. The will is legitimate. The deceased lived with her at Mountain View. He was in and out of hospital. The deceased previously lived alone in Donholm. They all grew up in Donholm. The deceased was of sound mind when he wrote the will. Eleven days before his death, he was admitted at Nairobi Hospital.
20. She met Juma and Farouk when her mother died in 2014. Juma did not take care of the deceased. Farouk donated his kidney to the deceased. The deceased sold his property to cover travel expenses to India. She and her husband also contributed. She and her sister, Salama met the costs and paid off liabilities on behalf of the deceased which included medical bills at Nairobi Hospital and outstanding rates at Nairobi County amounting to Kshs. 1. 7 million because of a 90% waiver (the initial amount was Kshs. 3m each property). The others did not contribute. The estate should refund her what she spent. She has acted in accordance to the will.
21. On cross examination, **she** stated that her brother stays on the property bequeathed to him by the deceased. She does not recognize him because he was not recognized in the will. It was not her responsibility to alert him of the existence of the will. The lawyer only summoned those who were mentioned in the will.
22. Further, she stated that she agreed with her siblings that she collects rent and has been doing so since 2017. It was the lawyer's responsibility to invite her. She does not recognize Teresia Muthoni as a wife to the deceased. She only recognizes Jamal and Farouk as her

brothers. She suggested that she was prepared to support Farouk as a brother.

23. On reexamination, she confirmed that the rental income is shared between her and her other siblings.

SUMMARY OF THE APPLICANTS SUBMISSIONS.

24. The applicants submit that the will presented before Court is not valid. The deceased was unwell at the time he is alleged to have executed it. Further he failed to provide for his other children and spouse. They were not informed of the Petition for the grant.

25. I am unable to refer to the authorities as the citations are incomplete.

SUMMARY OF THE RESPONDENT'S SUBMISSIONS.

26. Relying on the decisions of **In the matter of the Estate of Harun Kirunge Mwangi (Deceased), Nairobi Succession No. 1615 of 2013** and **In the matter of the estate of MKK (Deceased) Nairobi Succession No. 2413 of 2011**, the Respondent submitted that the burden of proof on the allegation that the deceased was of unsound mind when he wrote the will has not been proved. In both cases, the court held that there was no medical evidence to prove that the deceased was of unsound mind.

27. The Respondent submitted that the allegation that the will was obtained fraudulently has not been proved. She relied on the decisions of **Pius Mbogo Oduma vs Brian Ochieng Owino & 2 others, Siaya ELC Appeal Case No. 22 of 2021** and **Mary Wanjiru Kihugu & 6 others vs Regency Co-operative Savings & Credit Society Limited, Civil Appeal No. 56 of 2019 (as consolidated with Civil Appeal No. 5 of 2019)** where the courts held that the standard of proof should be beyond reasonable doubt. In this case, the applicants had not provided any evidence that the will was obtained fraudulently.

28. Relying on the decisions of **The matter of the Estate of MKK(Deceased) Nairobi Succession Cause No. 2413 of 2011, The matter of the Estate of Charles Ngotho Gachunga (Deceased) Nairobi Succession Cause No. 607 of 1984 and Re Estate of Jason Munyi Migwi (Deceased) Miscellaneous Succession Application No. 80 of 2013 [2023] KEHC 2462 (KLR)**, the Respondent submitted that even if the court was to find that the applicants were not provided for in the will, they have not demonstrated how they should be provided for in the will. Further, that where a grant has been confirmed, a party cannot file an application for reasonable provision.
29. The Respondent further submitted that the applicants had not presented evidence of their past, present or future capital or income, existing and future needs for the court to make a provision for them. Reliance was placed on the decision in **Re Estate of Ezekiel Mabeya Kegoro (Deceased) Kisii Succession No. 22 of 2014**.
30. Lastly, the Respondent submitted that she had faithfully administered the estate as per the deceased's wishes and that she should be reimbursed Kshs. 5,625,149.42 by the estate money used to pay hospital bills and land rates to Nairobi City Council.

ANALYSIS AND DETERMINATION

31. The issues for determination are-
- a. Whether the Grants issued herein should be revoked pursuant to the provisions of Section 76 of the Law of Succession Act?
 - b. Dependent to the answer to (a) above whether the Estate of the Deceased should be administered in accordance with Islamic Law?
 - c. What if any are the consequential orders that this Court should make?

32. **Section 76 of the Law of Succession Act** gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It 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 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

iv. The grant has become useless and inoperative through subsequent circumstances.

33. The circumstances in which a grant can be revoked were discussed in the case of **In the Matter of the Estate of L.A.K. (Deceased) [2014] eKLR :-**

“Revocation of grants is governed by Section 76 of the Law of Succession Act. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”

34. Notably, the power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the persuasive decision in **Albert Imbuga Kisigwa vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000** where Mwita J stated:-

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

35. I will cut straight to the chase. In evidence it became apparent that the Administrator, was aware that apart from her siblings the deceased had other children. Namely Juma Faridi Ramadhan, Farouk Ramadhan Noor, Prince Jamal Ramzan. In the Petition for Probate of Grant of Letters of Administration dated 9th June 2017 and the subsequent summons for confirmation of that Grant dated 24th February 2021 she did not disclose that the deceased had other dependants.

36. The procedure for applying for grant of letters of administration and the confirmation is provided for under Section 51, Section 71 of the Law of Succession Act and Rules 7 and rule 40 of the Probate and Administration

Rules. There is a requirement under Rule 40 that the application for confirmation of grant shall be in Form 108 and where the deceased died testate an affidavit in Form 8 of the Schedule shall be sworn in Support.

37. Paragraph 2 and 3 of Form 8 require that the executor of the will depone as to the children and dependants who survived the deceased. This requirement is for good reason as it would avoid the scenario we are faced with in the current case wherein the process of the administration of the estate has proceeded without the participation of the children and dependants of the deceased.

38. As stated the Executor was well aware that the deceased had other children. The same fate would necessarily befall the subsequent Petition presented by the Respondent herein and Issaque Ramzan Noor on 19th February 2018 for grant of letters of Administration Intestate.

39. Section 51(g) is clear that the applicants had to disclose the names and addresses of all the surviving spouses, children, parents, brothers and sisters of the deceased...

40. Failure to provide this information leads me to the inescapable conclusion that the respondent and her co-administrator intended to mislead the Court. I must now consider whether pursuant to the provisions of Section 76 of the Law of Succession Act, I should revoke the grant.

41. The revocation of a grant has potential major ramifications and it is for this reason that it was said in **Albert Imbuga Kisigwa vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000** by Mwita J stated:-

Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and

order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.

42. In **Re Estate of the Late Mwaura Makuro (Deceased) [2021] eKLR**, faced with almost similar circumstances where the administrators of the estate failed to comply with mandatory provisions of Section 83 of the law of succession Act, the Court while noting that the applicants had made a good case for revocation of grant and removal of the administrator, proceeded to find that no useful purpose would be served in revoking the grant. The Court proceeded to invoke the inherent powers donated by rule 73 of the probate and administration rules and instead of revoking the grant directed that the administrators finalise administration within a specified period of time.
43. In the case before me, there is evidence that the deceased left a written will in which he appointed the respondent as executrix. The Applicants have challenged the validity of the will. The test to be applied in testing the validity of a will is found under Sections 5 and 11 of the Law of Succession Act. That is did the deceased have the capacity to execute the will and is the will in a compliant format.
44. As was stated in **In Re Estate of Gatuthu Njuguna (Deceased) [1998] KEHC 6 (KLR)**, where a party alleges that the testator lacked the capacity to execute the will the burden of proof is upon the party challenging to present evidence as to the lack of capacity.

45. In the instant case no such evidence was adduced, the will is witnessed. There is no basis upon which I would invalidate the will. However, we need to resolve the issue of beneficiaries not provided for and the validity of subsequent grant issued on 25th June 2019 to Zakia Zuhura Ramzan and Issaque Ramzan Noor.
46. First Section 66 of the Law of Succession Act provides for what the Court should do in cases such as this one where in addition to the estate under testate succession, the deceased also has some assets that fall under intestate succession. The Law provides-
- Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.**
47. There cannot be 2 grants with respect to the same estate. Accordingly, the grant issued on 25th June 2019 to Zakia Zuhura and Issaque Ramzan Noor is revoked.
48. Having found that the Will was executed by the deceased, I will not revoke the grant issued to Zakia Zuhura on 3rd October 2017, on account of the fact that the will does not provide for all the children of the deceased. I set aside the orders of 7th July 2021 confirming the grant.
49. Having found that the Estate of the deceased will have to be distributed among his rightful beneficiaries and other dependants not earlier provided for, the issue now for determination is whether as the applicants have stated the applicable law is Islamic Law or whether as the respondents contend, the estate should be administered in accordance with the Law of Succession Act as not all the members of the family of the deceased are Muslims.
50. Section 2(3) and (4) of the Law of Succession Act provides-

(3) Subject to subsection (4), the provisions of this Act shall not apply to testamentary or intestate succession to the estate of any person who at the time of his death is a Muslim to the intent that in lieu of such provisions the devolution of the estate of any such person shall be governed by Muslim law.

(4) Notwithstanding the provision of Subsection (3), the provisions of Part VII relating to the administration of estates shall where they are not inconsistent with those of the Muslim law apply in case of every Muslim dying before, on or after the 1st January, 1991.

51. It is not disputed that at the time of his death the deceased professed the Muslim religion, in fact in his will he directed that he be buried in accordance with Islamic Law. The Court of Appeal pronounced itself as follows in **Re the estate of Ismail Osman Adan (deceased), Noorbanu Abdul Razak v Abdulkader Ismail Osman Mombasa Civil Appeal No. 285 of 2009-**

There should not be any confusion between the jurisdiction of the High Court to entertain a dispute relating to testamentary or intestate succession to estates of Muslims and the substantive law applicable in the High Court in such disputes. Section 47 makes it clear that the High Court has jurisdiction to entertain any application and determine any dispute under the LSA [Law of Succession Act]. However, by section 48(2) the jurisdiction of the High Court is not exclusive as Kadhi's Courts have also jurisdiction to entertain disputes relating to the estate of deceased Muslims. However, if the High Court assumes jurisdiction to the estate of a deceased Muslim, then by virtue of section 2(3) of the Law of Succession Act, the law applicable in the High Court as to the devolution of the estate is the Muslim law and not the LSA. ... (Emphasis Supplied)

52. It find therefore that the deceased being a Muslim, his estate ought to be transmitted in accordance with Islamic law. The Cause is referred to the Kadhi' Court in Nairobi for computation of how the estate of the deceased is to be distributed; In accordance with Islamic Law, having regard to Article 24 (4) of the Constitution of Kenya.
53. The matter will be mentioned on 26th November 2025, to receive the computation by the Kadhi's Court and to take further directions.
54. The final orders are as follows
- a. The grant issued on issued on 25th June 2019 to Zakia Zuhura and Issaque Ramzan Noor is revoked.
 - b. Grant issued to Zakia Zuhura on 3rd October 2017 is upheld.
 - c. Orders issued on 7th July 2021 confirming the grant are set aside.
 - d. Matter is referred to Kadhi's Court to compute the manner in which the estate of the deceased will be devolved to beneficiaries, mention before me on 26th November 2025 to receive the Computation
 - e. This being a family dispute there shall be no order as to costs.
55. Leave granted to appeal. Any party exercising their right to appeal to do so within 30 days.

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 23rd DAY OF OCTOBER, 2025.

**P.M. NYAUNDI
JUDGE**

In the presence of:

Fardosa Court Assistant
No appearance by parties

ORIGINAL