

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

SUCCESSION CAUSE NO. E001 OF 2024

**IN THE MATTER OF THE ESTATE OF JOSEPH NGIELA MBORI
(DECEASED)**

BETWEEN

MARY ACHIENG NGIELA.....PETITIONER/RESPONDENT

VERSUS

CAROLINE AWUOR NGIELA.....OBJECTOR/APPLICANT

JUDGMENT

A. INTRODUCTION

1. This judgment concerns the Summons for Revocation or Annulment of Grant dated 6th November 2023 filed by the Objector, Caroline Awuor Ngiela, seeking revocation of the grant of letters of administration issued in respect of the estate of Joseph Ngiela Mbori (Deceased).
2. The Objector seeks, inter alia, orders that the grant issued to the Petitioners and the subsequent certificate of confirmation of grant issued on 28th September 2017 be revoked and that the properties forming part of the estate revert to the name of the deceased pending lawful administration.
3. The application is premised mainly on the allegation that the grant was obtained fraudulently and through concealment of material facts, particularly the failure by the Petitioners to disclose all the surviving children of the deceased.

4. The Petitioners oppose the application and contend that the estate has already been distributed and that the Objector's application has been overtaken by events.
5. The court has considered the pleadings, the affidavits on record, the annexed documents and the written submissions filed by the parties.

B. BACKGROUND

6. From the material placed before the court, the deceased Joseph Ngiela Mbori died intestate leaving behind several properties including:

CENTRAL KASIPUL/KAMUMA/1950

CENTRAL KASIPUL/KAMUMA/1384

CENTRAL KASIPUL/KAMUMA/1371

CENTRAL KASIPUL/KAMUMA/474

PLOT NO. 202 OYUGIS TOWN

PLOT NO. 35 OYUGIS TOWN

7. The Petitioners applied for letters of administration intestate and subsequently obtained a confirmed grant on 28 September 2017.
8. The Objector contends that the Petitioners obtained the grant through false representation and concealment of material facts, particularly by representing themselves as the only surviving children of the deceased in Form P&A 5 and relying on a Chief's letter which did not disclose all beneficiaries.
9. According to the material presented by the Objector, the deceased had several surviving children and beneficiaries, including those from two houses, who were not disclosed to the court.

10. It is further alleged that the Petitioners proceeded to transmit the estate properties to themselves to the exclusion of the other beneficiaries.

C. ISSUES FOR DETERMINATION

11. From the pleadings and submissions, the court identifies the following issues:
 - a. Whether the grant was obtained through concealment of material facts and non-disclosure of beneficiaries.
 - b. Whether failure to disclose all beneficiaries contravened Section 51(2)(g) of the Law of Succession Act and Rule 26 of the Probate and Administration Rules.
 - c. Whether the grant should be revoked under Section 76 of the Law of Succession Act.
 - d. What orders should issue.
 - e. Who bears the costs of this appeal.

D. LAW AND ANALYSIS

(i) Duty to disclose all beneficiaries

12. Section 51(2)(g) of the Law of Succession Act provides that an application for grant must disclose:

“The names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased.”
13. This provision is mandatory and requires a petitioner to make full disclosure of all beneficiaries.
14. The purpose of this requirement is to ensure that all persons beneficially entitled to the estate are involved in the administration process.

15. From the documents before the court, particularly the pleadings and affidavits filed by the Objector, it is evident that several surviving children of the deceased were not disclosed when the petition for grant was filed.
16. The court notes that in the Form P&A 5 filed by the Petitioners, they described themselves as the only surviving children of the deceased, yet the evidence on record shows that the deceased had a total of 12 children.
17. The Chief's letter relied upon during the petition process also failed to disclose the full list of the deceased's children, thereby misleading the court as to the true composition of the family.

(ii) Failure to obtain consent of other beneficiaries

18. Rule 26 of the Probate and Administration Rules requires that where several persons are equally entitled to administration, the applicant must obtain their consent or renunciation.
19. In the present case, there is no evidence that the other surviving children of the deceased consented to the Petitioners applying for the grant. Failure to obtain such consent renders the proceedings defective in substance.
20. The court in *In Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR emphasized that the probate court must ensure that all beneficiaries are properly identified before distribution of an estate.

(iii) Grounds for Revocation of grant

21. Section 76 of the Law of Succession Act empowers the court to revoke a grant where:
 - i. the proceedings to obtain the grant were defective;
 - ii. the grant was obtained through fraud;

- iii. material facts were concealed from the court.
22. The Court of Appeal in *John Mundia Njoroge & Others v Cecilia Muthoni Njoroge & Another* [2016] eKLR affirmed that concealment of beneficiaries constitutes sufficient ground for revocation of a grant.
- I n the present case, the Petitioners:
- i. failed to disclose all beneficiaries
 - ii. described themselves as the only surviving children
 - iii. relied on a Chief's letter that omitted other beneficiaries
 - iv. These actions amount to material non-disclosure and misrepresentation to the court.
 - v. The court therefore finds that the grant was obtained through a defective process.

(iv) Jurisdiction of family court

23. Section 47 of the Law of Succession Act grants this court wide jurisdiction to determine disputes relating to estates of deceased persons and to make appropriate orders to ensure that the ends of justice are met.
24. The court also has inherent powers under Rule 73 of the Probate and Administration Rules to make orders necessary to prevent abuse of the court process. Inheritance is a birth right and non -disclosure of children of deceased or survivors is a serious anomaly as it may amount to disinheriting beneficiaries.
25. Where a grant is revoked, all consequential actions based on that grant are null and void.

E. DETERMINATION

26. Upon considering the evidence and the law, this court finds that:
- i. the Petitioners failed to disclose all beneficiaries of the deceased;

- ii. the petitioners represented themselves as the only surviving children in Form P&A 5;
- iii. the Chief's letter relied upon did not disclose all surviving children;
- iv. no evidence was produced showing consent of the other beneficiaries.

The court therefore concludes that the grant was obtained through material non-disclosure and misrepresentation, contrary to Section 51(2) (g) of the Law of Succession Act. Such conduct squarely falls within the grounds for revocation of grant under Section 7. (a) & (b) of the Law of succession Act.

F. ORDERS

27. Accordingly, the court makes the following orders:

- i. The grant of letters of administration issued to the Petitioners and confirmed on 28th September 2017 is hereby revoked.
- ii. The certificate of confirmation of grant issued in respect of the estate of Joseph Ngiela Mbori (Deceased) is hereby set aside.
- iii. All transactions and transmissions undertaken pursuant to the said revoked grant are hereby nullified.
- iv. The properties forming part of the estate i.e

CENTRAL KASIPUL/KAMUMA/1950

CENTRAL KASIPUL/KAMUMA/1384

CENTRAL KASIPUL/KAMUMA/137

CENTRAL KASIPUL/KAMUMA/474

PLOT NO. 202 OYUGIS TOWN

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shall revert to the name of the deceased pending lawful administration.

- v. A fresh grant shall issue to two administrators to be proposed by the family to represent each house each house of the deceased,
- vi. The Mary Achieng Ngiela 2nd Petitioner/respondent herein is disqualified from being an administrator of the estate herein
- vii. Mention on 28.4.26 for appointment of the administrators,
- viii. Mary Achieng Ngiela to file and serve a statement of accounts for the estate for the period between 29.9.2017 to 12.3.2026.
- ix. Each party shall bear his own costs this being a family matter.

T.A ODERA
JUDGE
13.3.26

Delivered, Virtually Via Teams Platform on this 13th day of March 2026, in the Presence of:

Mr. Langat for Petitioner

Mr. Kouko for the Objector

Court Assistant - John Ogendo