



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 1596 OF 2015
IN THE MATTER THE ESTATE OF GEOFFREY NGIGI
NG'ANG'A (DECEASED)

IRENE NGIGI

APPLICANT/PROTESTOR

VERSUS

PETER NG'ANG'A 1ST

RESPONDENT/ADMINISTRATOR

WINNIE WAHU 2ND

RESPONDENT/ADMINISTRATOR

RULING

1. This ruling relates to the application dated **1st August, 2023** filed by the Applicant, Irene Ngigi; seeking for **ORDERS THAT:**

1. ***Spent.***

2. **The honourable court do revoke and annul the grant of representation and certificate of confirmation of grant issued to Peter Ng'ang'a,**

Winnie Wahu and Irene Ngigi on 25th November, 2020 by Hon. A. O. Muchelule.

3. The grant issued on 25th November, 2020 be revoked and/or annulled in its entirety for reasons that *inter alia*:

i. The Applicant's children have totally been prejudiced and are losing on getting a share of their deceased father's estate. This is to state that they have not been assigned existent properties of the estate, hence they are not part of the distributed estate of their late father.

ii. This is totally against the deceased's wishes, being bonafide children of the deceased.

iii. That the suit property KISERIAN PLOT NO. 83/ BUS is exclusively for the Applicant which is one suit property not A and B, the court was misled by the Respondents.

4. The court do order redistribution of the deceased's estate to include children of the Applicant who had been allocated non - existing properties during distribution in accordance to the law.

5. Pending the hearing and determination of this application inter - partes or until further orders of this honourable court, an order do issue restraining the Respondents, their agents,

assigns, servants or any person purporting to act under their instructions from any form of interference with the estate of the deceased, till the matter is heard and determined.

6. Cost of this application be provided.

2. The application is based on the grounds thereof and supported by affidavits sworn by Irene Wambui Ngigi on **1st August 2023, 20th August, 2023** and **30th August, 2023**.
3. She avers *inter alia* that she is the deceased's second wife and only learned about the succession proceedings when the Respondents tried to evict her. She argues that the confirmed grant was obtained by hiding important facts, such as assigning non-existent properties to her children, which effectively disinherited them.
4. Additionally, she claims that the suit property, **Kiserian Plot No. 83B/Bus**, is her rightful matrimonial property that was legally transferred to her during the deceased's lifetime and should not be included in the estate. She insists that the Respondents misled the court by presenting fake or already sold assets, failed to distribute the estate according to the deceased's wishes and left out crucial information, leading to injustice.
5. She believes the grant should be revoked to allow for a fair and fresh distribution of the estate among all beneficiaries. She emphasizes that the succession process was riddled with fraud and carried out without the proper involvement or consent of all beneficiaries, including herself and her

children. She points out inconsistencies in the distribution schedule, especially regarding the allocation of assets that do not exist and claims that her children were left with no significant share, while the first house profited from valuable income-generating properties.

6. Additionally, she accuses the Respondents of meddling and failing to disclose important information, including assets that should not have been part of the estate. She reaffirms that the Kiserian property rightfully belongs to her, having been transferred by the deceased and argues that the grant was obtained through deceit, misrepresentation and procedural errors, which justifies its revocation.
7. She counters the Respondents claims by denying any involvement or consent in the succession proceedings, reiterating that her signature, along with those of other beneficiaries, was not obtained as legally required. She reiterates that the Kiserian **Plot No. 83B/Bus** is her personal property, transferred willingly by the deceased and that she has been quietly enjoying possession of it.
8. Furthermore, she claims that the estate has not been distributed fairly and that her children have been unjustly excluded. She stresses that the grant was secured through significant non-disclosure, irregularities and misrepresentation, urging the court to revoke the grant and mandate a fair redistribution of the estate in line with the law and the deceased's true intentions.

9. The application is opposed vide replying affidavit sworn by Peter Ng'ang'a on **23rd August, 2023** who avers *inter alia* that he is a Co-Administrator and acknowledges that while some of the introductory statements are correct, he believes that many of the Applicant's key claims are either misleading or outright false. He states that, contrary to what the Applicant claims, most of the children involved are actually adults and not solely under her care.
10. He also points out that the Applicant has been actively involved in the succession proceedings as a properly appointed administrator. She was given all the necessary notices and had plenty of chances to object to the confirmation of the grant, but she didn't take advantage of those opportunities. He references previous court decisions that confirm the Applicant was aware of the process and engaged in it, yet she failed to raise any objections in a timely manner.
11. Furthermore, the Respondent argues that the Applicant has not proven her ownership of **Kiserian Plot No. 83B/Bus**. She did not provide a sale agreement, proof of payment or any financial records, even after being asked to do so. He claims that the Applicant had control over the estate documents, managed the title deeds selectively and even sold off estate property, like the posho mill, after the grant was issued.
12. He insists that the Applicant had mostly agreed to how the estate would be distributed, aside from a few minor

objections, but she never formally contested it. He highlights that the court had previously dismissed her request for a review or correction of the grant due to lack of merit, clarifying that any corrections discussed were only about clerical errors, like names and descriptions, not about changing the distribution itself.

13. In conclusion, he asserts that the grant was properly issued, the Applicant's claims lack foundation and her current application is without merit.
14. The parties have not filed written submissions on the application dated **1st August, 2023**.

ANALYSIS AND DETERMINATION

15. I have read the application before this court, the responses thereto and the rival submissions.
16. In **In re Estate of Joshua Githiari Kibui (Deceased) [2021] eKLR** the court stated as follows:

“18. For avoidance of doubt, Section 76 of the Law of Succession Act states as follows:

a. “76. Revocation or annulment of Grant

b. 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—

20. Further, In the Matter of the Estate of L A K - (Deceased) [2014] eKLR the court held that;

(a) 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.

32. The court in the case of Jamleck Maina Njoroge v Mary Wanjiru Mwangi (2015) eKLR at paragraph 11 of its ruling in revoking a grant reiterated the

grounds upon which a grant can be revoked. It stated as follows:-

a. “11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own 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 of 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.”

33. In the case of Matheka and Another vs Matheka [2005] 2KLR 455 the Court of Appeal laid down the following guiding principles as to revocation of grants.

(a) “i. A grant may be revoked either by application by an interested party or by the court on its own motion.

(b) ii. Even when revocation is by the court upon its own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case

or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.”

17. The application seeks for the revocation of the grant under **Section 76** of the Law of Succession Act, which include fraud, hiding important facts and flawed proceedings.
18. The Applicant argues that her children were left out due to the allocation of assets that do not exist and that land parcel number **Kiserian Plot No. 83B/Bus**, was mistakenly included in the estate even though it is her personal property, allegedly transferred to her by deceased during his lifetime.
19. It is the Applicant’s obligation to prove, with evidence, that the grant was obtained through fraud, misrepresentation or the concealment of key facts. While there have been claims about lack of disclosure and unfair distribution, the Applicant has not provided the court with enough documentary evidence, like proof of the transfer of the Kiserian property or any evidence of the alleged non-existent assets, to back up these allegations.
20. In contrast, the respondent has shown that the Applicant was a co-administrator who actively participated in the succession proceedings. She was properly notified and given the chance to object to the confirmation of the grant but chose not to. The records indicate that the issues being

raised now were either known to her at the time of confirmation or had already been addressed by the court, including previous attempts to review or correct the grant that were dismissed.

21. In her ruling of 28th July 2023 my sister Odero J stated as follows;

“The Applicant has all along participated in these succession proceedings. She is in fact one of the administrators of the estate. The Applicant was allowed an opportunity to file an objection to the summons for confirmation of grant. She took no action. Why wait for the grant to be confirmed if she believed that a non-existent property had been included for distribution.?”

22. The Applicant's delay in raising objections, along with her involvement in managing the estate, weakens her claims of concealment and procedural wrongdoing. Additionally, her assertions of sole ownership of the property in question lack proof without supporting evidence.

23. Given these circumstances, the grounds for revocation under **Section 76** of the Law of Succession Act have not been satisfied, as there is no adequate evidence of fraud, concealment or flawed proceedings. I find no merit in the application.

24. The court also notes the application dated **10th August 2024** in which the Applicant herein **Irene Wambui Ngigi** prays for a raft of prayers significant of which touches on this

application and asking the court to issue some temporary injunction against the Respondents including Sawwiliis Rongai Properties Agencies.

25. The same touches on properties number **LR A67** formerly **Kiserian 83/BUS**.
26. I have perused her supporting affidavit sworn on 10th August 2024 and in my view the same does not raise any novel issue save to regurgitate what I have already observed in the application of 1st August 2023 above.
27. I have perused the replying affidavit dated 16th September 2024 by Peter Nganga in opposition to the said application together with the annexures thereto.
28. It is only fair to state that the said application dwells on the implementation of the confirmed grant. The Applicant had all the time and chance to challenge the grant but she failed.
29. I have perused the proceedings of my earlier colleagues on record and to be fair the Applicant as a co administrator had the best chance to defend her rights but she failed.
30. As found earlier there is no iota of evidence that the deceased transferred the property to her before his demise. The letters from the County Government of Kajiado were written post confirmation of the grant.
- 31. In the premises both the applications dated 1st of August 2023 and 10th August 2024 are hereby dismissed with no order as to costs.**

**Dated signed and delivered at Nairobi via video link this
9th day of April 2026.**

H K CHEMITEI
JUDGE