



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CIVIL APPEAL NO. E042 OF 2022

KELVIN MWANGI.....
APPELLANT

VERSUS

CHRISTINE WANJIRU WACHIRA.....RESPONDENT
(Being an appeal from the Ruling of Hon. G. W Kirugumi (P.M) in Kerugoya Succession Cause No. 135 of 2020 delivered on 9/5/2022)

JUDGMENT

- [1] On 18/8/2020, the Respondent filed Summons for Revocation of the Grant of Letters of Administration issued to the Appellant on 21/7/2020. She accused the Appellant of filing the cause secretly and omitting some beneficiaries from the chief’s introductory letter.
- [2] The Respondent swore a supplementary affidavit on 9/11/2020 in support of her application.
- [3] The Appellant swore a Replying Affidavit on 12/10/2020 in opposition to the application. He urged that the deceased herein was his father and his mother was called Beatrice Waguna Wachira (now deceased), and he had 3 sisters namely Alice Wambui, Lucy Njeri and Lorna Wanjiku. The Respondent, Jane Njeri Wachira, Josphine Muthoni Wachira and Catherine Wambui Wachira were never a part of the family of the deceased.
- [4] Jane Njeri Kamau, the Respondent’s mother and the 1st wife of the deceased swore an affidavit on 9/8/2021 in support of the application.
- [5] John Kinyua Mugo, a cousin of the deceased swore an affidavit on 9/8/2021 in support of the application.

[6] Upon *inter partes* hearing of the application, the trial court revoked the Grant of Letters of Administration Ad Litem issued to the Appellant.

The Appeal

[7] On appeal, the Appellant filed his memorandum of appeal on 26/5/2022 raising 7 grounds as follows:

1. *The Learned Principal Magistrate having given a grant Ad Litem to the appellant, subsequently erred and misdirected herself in revoking the same under section 76 of the law of Succession Act.*
2. *The Learned Principal Magistrate erred and misdirected herself in denying the appellant an opportunity to effect the objects of the grant by revoking it prematurely and capriciously.*
3. *The Learned Principal Magistrate erred and misdirected herself in law by allowing total strangers to interfere with the process of the provision of grant of letters of Administration Ad Litem which is by design ex-parte and self regulatory in management and dissolution.*
4. *The Learned Principal Magistrate erred and misdirected herself in violating the principle of the dominus Litis in the suit of the Appellant, and giving it to the respondent by the merely changing of the positions of the “Applicant” and the “respondent” and ignoring the Appellant as the Petitioner and therefore the dominus litis.*
5. *The decision and findings of the Learned Principal Magistrate were based on irrelevant evidence, caprice, speculation and conjecture.*
6. *The decision and finding of the Learned Principal Magistrate were contrary to the relevant law and justice.*
7. *The Learned Principal Magistrate erred in law and principle in condemning the Appellant to pay costs of the proceedings who at the material times was the legal administrator of the deceased’s estate and who the court denied that opportunity.*

Duty of the Court

[8] This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle v Associated Motor Boat Co. & others [1968] E.A. 123*).

Oral Evidence

[9] **AW1 Christine Wanjiru**, the Respondent herein adopted her affidavit sworn on 15/8/2020 and her supplementary affidavit sworn on 9/11/2020 as her evidence in chief.

[10] On cross examination, she stated that, *“My step brother kelvin was granted Letters Administration alone. I apply the grant Ad Litem to Kelvin be revoked. My application is dated 15.8.2020. He applied as a son of the deceased. He indeed a son of the deceased It was false. He did not involve us when applied. I am a daughter of the deceased. I should have been involved. I was tor on 17.8:1973. The deceased was my father. I have two affidavits. One dated 16.8.2020 and other dated 9.11.2020. I have not annexed a birth certificate. I have a birth certificate. I didn’t think I needed to annex it for the application. My mother is Jane Njeri Kamau. She says she separated in 1978 from the deceased. I was young. I don’t know when they separated. She says they divorced in 1985. I was born by then. I went to live with my maternal grandmother. I did not live with my father or mother. We kept in touch. I lived with her until I was of age. I did not live with my father since the divorce. I however used to see him. I was living on my father’s land when we were young when my parents were together. From 1985 I have not lived on that land. I have been visiting the place. My father invited me to visit. He died on 20.5.2019. I am not certain. He died at a hospital at Kibingo. He was admitted. He was discharged. He died at his home. The body was taken to the same hospital. I visited. I went to the mortuary. We were many siblings. I was with my sister. We were not involved with funeral preparations. We attended the funeral. I can’t recall the date of the funeral. I got a copy of the eulogy. It is in the respondent’s affidavit of 12.10.2020. It is annexure (6). We are not mentioned in the eulogy. They married in 1977. They lived in Murang’a. I was young. I don’t know what happened. We were living here then we went to live at Murang’a. He told a lie. The chief revoked his letter. Kelvin’s mother got married 1977.*

My mother was divorced in 1978. It is not only the birth certificate that can prove paternity. I have the right to petition. Before he died we went to court (2). Our step mother was living. We went to court until the order was given. Witness referred to court order annexure 3 of Christine's affidavit filed on 17.8.2020. That is the order the court gave in miscellaneous application No. 5 of 2018. It was an order to remove the caution that Beatrice had placed in the land I don't have a transfer. The land was never transferred. I did not know you can file a protest. There are two families. He can't be an administrator alone. The title is in the name of the deceased."

[11] In re-examination, she stated that, *"He went to the Chief. The Chief issued a letter. He did not involve us. He concealed our family. The second family prepared the eulogy. We were not involved in the funeral arrangements. They did not wish to involve us. The order was between my father and step mother. Order 2 was that land parcel INOI/KARIKO/792 be divided to David Wachira Ntui 1 acre, Beatrice Wagura Wachira, Alice Yvonne Wambui, Lucy Njeri Wachira, Kelvin Mwangi Wachira, Lorna Wanjiu Wachira, Jane Njeri, Christine Wanjiru Wachira, Josephine Muthoni, Catherine Wambui, John kinyua Mugo. Our house was recognized and the court gave a share."*

[12] **AW2 Jane Njeri**, adopted her affidavit sworn on 9/8/2021 as her evidence in chief. She went on to state that, *"Christine Wanjiru Wachira is my second daughter. The father is David Wachira Mbui. I know Kelvin the respondent. His mother was married to my late husband."*

[13] On cross examination, she stated that, *"We separated in 1978. It was 1978. We got divorced in 1985 under Kikuyu customary law. He came to my parents. He married in 1977. He came with her to my home. I did not leave. I later left. I took my children to my mother's home. I was supporting them. I got a job. I never went to live with him again. We would only take about his children. I paid fees for my children. He would get support from my children. We paid his bills. We supported him and his wife. The children used to visit at Kirinyaga. I don't have any receipt. They have notifications. We took the certificate later. We attended the funeral with the children and my aunt. He died in around May. I have a copy of the eulogy. They excluded us. They refused. We take photos. We did not speak at the funeral. I was not in the funeral committee I was not involved. I was present. I buried him. I don't have a matrimonial house there. They put*

up her house. They demolished mine. My children got a share from the father. He pointed it to us. I got a share too. We went to Court. The deceased had gone to the land board. He died. The shamba is in the name of the deceased. His family live there. Their father pointed out their share and our share.”

[14] In re-examination, she stated that, *“There is the parcel of land. I would attend court with our children.”*

[15] **AW3 Cosmas Mugo Mboi** adopted his affidavit sworn on 9/8/2021 as his evidence in chief. He testified that, *“David Wachira Mbui was my eldest brother. Christine Wanjiru was a daughter to my late brother.”*

[16] On cross examination, he stated that, *“Wanjiru has filed this case. Wanjiru Wachira. It is a dispute about inheritance. It is about who will be the Administrator. He has an interim grant. I did not know. There is nothing wrong with him being an Administrator. These children belong to my brother. They should be administrators. We are siblings. We lived well. We consulted regularly. He died on 28.5.2019. He died at home. He was taken to Mt. Kenya hospital in Kibingo. I live next to his house. I was called when he died. I took the body the mortuary. There was a funeral committee. I was a member. I prepared the eulogy. He married Kelvin’s mother. I did not prepare the eulogy. It was prepared and it was brought. We did not want Fracas. Kelvin prepared the eulogy. Kelvin and his sisters live on this land.”*

[17] In re-examination, he stated that, *“The committee did not do the eulogy. It was by Kelvin in Nairobi. I saw it on the day of the funeral.”*

[18] **AW4 John Kinyua Mugo** adopted his affidavit sworn on 9/8/2021 as his evidence in chief. He testified that, *“I am from Kibingo/Gakui. I am Business man. David Wachira Mbui is deceased. I knew him. He is my cousin. His mother and my father are siblings. Christine Wanjiru is known to me. David Wachira is the father to Christine Kelvin is a son to Wachira Mbui.”*

[19] On cross examination, he stated that, *“I was born 1960. When he married I was 14. He married Jane Njeri in 1970’s. She came to our home in 1974. He introduced his wife home in 1974. He later married Beatrice Wagura. They separated with the first wife and divorced. Wagura got married in 1977. He wanted to give each house I acre and measuring 0.6 acre. He told me this in 2018. I can’t recall the date. There was a letter in*

Court. I did not give it to my lawyer. He wanted to give me because we were friends. Wanjiru should be involved in distribution of the estate. I wish to claim the 0.6. I will state so.”

[20] In re-examination, he stated that, *“The Court ordered I get a share of 0.6.”*

[21] **RW1 Kelvin Mwangi Wachira**, the Appellant herein adopted his replying affidavit sworn on 12/10/2020 as his evidence in chief. He testified that, *“I am self employed. I do business. My residence is at Gakui Ndimi Location.”*

[22] On cross examination, he stated that, *“I was born on 24.10.1990. I was told about the family before. I am the third born. The first born is Alice Wambui. She was born in 1979. She may know all the more She has not sworn an affidavit. My mother was married under customary law. I am not very familiar in the process. I don’t have a witness to say my father had only one wife. I did not know Jane Njeri before this case. I know Cosmas. He took my father’s body to the mortuary. My father and Cosmas had disputes. He was not close to my father. I was not available to take him to the mortuary. John Kinyua is a cousin to the deceased. I have not filed any evidence to dispute. My parents had a case miscellaneous 5 of 2018. That does not exist. I found them in my father’s documents. I have attached them in my affidavit. One of them is fraudulent. I did not accompany my parents in court. I was in school. Lucy Njeri came to court with my mother for those cases. They lived together. There were other disputes. My parents had disputes. I wrote the eulogy. I consulted others. I did not want to disinherit the other family. I went to the chief. I saw the chief’s letter recording. I don’t know why she did. The Assistant Chief refused. The revocation done when the Chief summoned the sub chief. The chief has written that but it is not true.”*

[23] In re-examination, he stated that, *“In miscellaneous 5/2018 it was issues by Hon. Wambo. In annexure of CM CC 22 of 2015 parties are the same. The judicial officer was the same. The documents are different. They are issued weeks apart by same court. No. 22 was a case between my parents. My mother filed caution. My father wanted to sell land. My father sued. I did not mislead the chief. I was not aware of any other family.”*

Submissions

[24] The Appellant urges that no prejudice would have occurred had he proceeded to institute a suit on behalf of the estate of the deceased, and cites **Re estate of Jennifer Kusuro Musiwa (Deceased) eKLR and Re estate of Helena Wangechi Njoroge (Deceased) (2015) eKLR.**

[25] The Respondent did not file any submissions.

Analysis and Determination

[26] It is discernable from the grounds of appeal that the singular issue for determination is whether the revocation of the grant of letters of administration Ad Litem was justified.

[27] Section 76 of the Law of Succession Act sets out the requirements for revocation or annulment of grant as follows:-

“76. 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.”*

[28] The Court in *re Estate of Prisca Ong’ayo Nande (Deceased) [2020] KEHC 6553 (KLR)*, (W. Musyoka J.) considered the scope of the authority of the court under section 76 of the Act as follows:

“8. 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.”

[29] The Court takes note of the order in Misc. Application No. 5 of 2018 where the deceased herein had sued his 2nd wife, Beatrice Waguama. In that order, the court proceeded to distribute L.R No. Inoi/Kariko/492 amongst the deceased, his 1st house, 2nd house and John Kinyua Mugo. In obtaining the grant of letters of Administration Ad Litem without the consent and/or knowledge of the 1st house, the Appellant acted fraudulently and in contravention of the provisions of Section 76 of the Law of Succession Act.

[30] This court is, therefore, satisfied that the threshold for revocation of Grant under section 76 of the Law of Succession Act was met, and there is no basis for interference with the order of the trial court.

ORDERS

[31] Accordingly, for the reasons set out above, the Court finds that the appeal has no merit and it is dismissed.

[32] There shall be no order as to costs in the succession matter.

Orders accordingly.

DATED AND DELIVERED THIS 30TH DAY OF APRIL 2026.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Morris Njage of Morris Njage & Co. Advocates for the Appellant.

The Respondent in person.