



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 123 OF 1993**

JOHN MARANGU

NYAGA.....ADMINISTRATOR/RESPONDENT

VERSUS

LYDIA KANINI PHARES.....1<sup>ST</sup>

APPLICANT

ROSEMARY KANGAI PHARES.....2<sup>ND</sup>

APPLICANT

**RULING**

1. This ruling is in respect to the summons for revocation of grant dated 6<sup>th</sup> September,2021 filed by the Applicants. Through it, the Applicants seek that the letters of Administration of the estate of Phares Nyaga granted to the Respondent be revoked on the grounds that: -

- a. The proceedings to obtain the grant were defective in substance as they omitted some substantial information about the estate of the deceased.

- b. The grant was obtained fraudulently by making of false statements and or concealing from the court something material to the case specifically the value of the estate and other dependants of the estate of the deceased.
  - c. That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.
2. The summons is supported by an affidavit jointly sworn by the Applicants herein on the even date.
3. They deponed that they are the daughters of the deceased and that the deceased's estate comprised of the following assets: -
- a. Mwimbi/Chogoria/1548
  - b. Mwimbi/Chogoria/1544
  - c. Mwimbi/Chogoria/1545
  - d. Mwimbi/Chogoria/1546
  - e. Plot No.120 Chuka Township
  - f. Plot No.9 Kabeche Market.

4. They asserted that the Respondent herein filed this cause secretly and completely failed to provide for them.
5. The Respondent did not respond to the summons.
6. The Application was urged through written submissions.

### **The Applicant's Submissions**

7. The Applicants reiterated the contents of their affidavits in their submissions. They added that the deceased did not leave any instructions on how his property was to be shared.
8. They asserted that land parcel Mwimbi/Chogoria/1548 was allocated to their mother as her share of the estate and not to hold the same in trust for them.
9. The Applicants asserted that there was no inordinate delay in filing the instant summons for reasons that they had earlier filed Chuka MC ELC No. 4 of 2020 to establish how the deceased's estate had been distributed without their knowledge and that upon being served with the certificate of confirmation of grant herein, they promptly filed the present summons. In buttressing their submissions, the Applicants relied on the cases of **In Re Estate of Moses Wachira Kimotho (Deceased) [2009] eKLR** cited **In re Estate of**

**Magangi Obuki (Deceased) [2020] eKLR & In re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR**

**Respondent's Submissions**

10. The Respondent submitted that due process was followed in instituting the matter, and that the Applicants had full knowledge of it and therefore the grant should not be revoked.
11. The Respondent submitted that the deceased had subdivided his main land into four parcels. Namely; L.R. Mwimbi/Chogoria/1548, 1544, 1545, and 1546 with the intention of transferring them to his sons and their mother but passed away before doing so.
12. He contended that L.R. Mwimbi/Chogoria/1548 was given to their mother to hold in trust for all her children, and that after receiving her portion, their mother subdivided it and allocated it to her children, including the Applicant, who received L.R. Mwimbi/Chogoria/5794.

13. The Respondent further submitted that this summons has been brought with inordinate delay considering the matter was finalized 30 years ago. To support his submissions, he cited the case of **Mwangi S. Kimenyi v Attorney General & another [2014] eKLR**
14. He therefore urged the Court to dismiss the summons.

### **Analysis & Determination**

15. The sole issue for determination is whether the Court should revoke the grant dated 4<sup>th</sup> August, 1994.
16. Revocation of grant is provided for under section 76 of the Act. This section provides as follows: -

**“76. Revocation or annulment of grant.**

**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.”**

17. The court, in the case of **Jamleck Maina Njoroge vs 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:

***“. 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.”***

18. **Section 51(2)(g)** of Law of Succession Act prescribes;  
**“In cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased”**
  
19. Rule 26 of Probate and Administration Rules prescribes;
  1. **Letters of administration shall not be granted to any applicant without notice to every other person entitled in the name degree as or in priority to the applicant.**
  
  2. **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 Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.**

20. From the foregoing provisions, the Petitioner must disclose all surviving children of the deceased as well as the children of any deceased child of the deceased. Additionally, written consents from all beneficiaries of the deceased's estate, nor any renunciations, must be submitted.
21. A reading of the Applicant's application leaves no doubt that the grounds cited fall under **section 76 (a) & (b)** above.
22. In this case the letters of Administration intestate were issued to the Respondent on 9<sup>th</sup> November,1993 and the same was confirmed on 4<sup>th</sup> August,1994.
23. The evidence on record, shows that the deceased was survived by the following beneficiaries: -

a) Jessica Mukwanyaga (Deceased)- Spouse

- b) Charles Kithinji Nyaga (deceased) son, survived by Anthony Muiruri.
- c) Edith Muyia- Daughter
- d) Catherine Kagendo Mutegi- Daughter
- e) John Marangu- Son
- f) Gerald Kinyua Mutunga-Son
- g) Ashford Bundi Nyaga- Son
- h) Rose Kangai-Daughter
- i) Lydia Kanini- Daughter
- j) Lucy Kainyu- Daughter

24. When the respondent petitioned the court for letters of administration, he duly listed the applicants and other children of the deceased. However, he never obtained any consent from them as is required. He only obtained a consent from one Jessica Mukwanyaga Nyaga, who appears to have been his mother.

25. In his summons for confirmation of the grant, the respondent did not list the applicants nor seek their consent. The Respondent also did not disclose all the beneficiaries of the deceased's estate particularly one Charles Kithinji

Nyaga, who is deceased but was survived by his son, Anthony Muiruri.

26. As a result, only the respondent and his three brothers were bequeathed shares in the estate.
27. The Respondent is therefore guilty of non-disclosure of a material fact by not indicating all the beneficiaries in the petition.
28. According to **section 51(2) (g)** of the **Law of Succession Act** and **rule 7(1)(e)** of the **Probate and Administration Rules** the process leading to the grant was defective in substance. Pursuant to Section 76 (a) & (b) of the Law of Succession Act, the grant issued to the Respondent is liable to revocation.
29. Matters are made worse by the fact that in his summons for confirmation of the grant dated 5<sup>th</sup> July 1994, the respondent listed only the following properties in his affidavit;
  - a) Plot No. 120 Chuka Township
  - b) Plot No. 9 Kabeche Market
  - c) Shares in Kenya Commercial Bank Limited.

30. Surprisingly, the subsequent Certificate of Confirmation of the Grant dated 4<sup>th</sup> August 1994, signed by the Deputy Registrar, listed the above property, and also the following;
- a) Mwimbi/Chogoria/1548
  - b) Mwimbi/Chogoria/1544
  - c) Mwimbi/Chogoria/1545
  - d) Mwimbi/Chogoria/1546
  - e) A/C No. 195021395 at KCB Chuka Branch
  - f) Motor Vehicle KLS 834
  - g) Three (3) share certificates in Kenya Commercial Bank
31. Unsurprisingly, the property listed as (e) (f) and (g) above went to the respondent alone.
32. The High Court has inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process under Rule 73 of the Probate and Administration Rules, 1990.
33. The said Rule 73 of the Probate and Administration Rules provides that: -

***“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make***

***such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”***

34. The parties were referred to mediation to resolve the distribution of the deceased's estate. During the proceedings, they agreed only on Plot No. 120 in Chuka Township, which was to be sold and the proceeds shared among eight siblings, whom they did not specify, as reflected in the mediation settlement dated 15<sup>th</sup> March, 2024.
35. It is evident from the foregoing that not all beneficiaries of the deceased have been provided for. The applicants, Lydia Kanini Phares and Rosemary Kangai Phares, together with Anthony Muiruri, Edith Muyia, and Catherine Kagendo Mutegi, have not been allocated any portion of the deceased's estate.
36. The material before me paints the respondent as a very dishonest person. Instead of owning up to his mistake, he cites the age of the matter as a reason not to revoke the grant. An injustice done in a succession matter cannot be

defeated by time. The applicants are entitled to a share of their father's estate.

37. The certificates of search filed indicate that the registered owners of the four parcels, including all subdivisions, are currently as follows: -

- a) Mwimbi/Chogoria/1544.-0.405 Ha- John Marangu Nyaga
- b) Mwimbi/Chogoria/5800- 0.385- Ashford Nyaga
- c) Mwimbi/Chogoria/5801- 0.729 Ha- Gerald Mutunga
- d) Mwimbi/Chogoria/5802-0.052 Ha- Ashford Nyaga
- e) Mwimbi/Chogoria/5803-1.300Ha- Gerald Mutunga
- f) Mwimbi/Chogoria/5794-0.110 Ha- Lucy Kainyu Phares
- g) Mwimbi/Chogoria/5795-0.21 Ha- John Marangu Nyaga
- h) Mwimbi/Chogoria/5796-1.275 Ha- John Marangu Nyaga
- i) Mwimbi/Chogoria/5797-1.839 Ha- Ashford Nyaga
- j) Mwimbi/Chogoria/5798-0.154Ha- Ashford Nyaga
- k) Mwimbi/Chogoria/5999-0.401 Ha- Gerald Mutunga

38. Since the property is still in the names of the sons of the , and one daughter of the deceased the best course is for the grant to be revoked.
39. Pursuant to the ruling dated 27<sup>th</sup> July 2023, the respondent was to file ownership documents for Plot No. 120 Chuka Township, Plot No. 9 Mabeche Market, and share certificates No. 00042687, 00106827, and 00168747 but he has failed to do so.
40. It is therefore uncertain whether these properties and the share certificates in question exist so as to form part of the deceased's estate.
41. In view of the above and so as to prevent the abuse of the court process and for the ends of justice, the court should issue orders to safeguard the interests of the estate of the deceased and those of the beneficiaries.
42. In conclusion, I find that it is in the interest of justice to make the following orders: -

**i. The grant of Letters of Administration made to John Marangu Nyaga on the 9<sup>th</sup> November,1993 is revoked and all**

**consequential orders including the Certificate of Confirmation of Grant 4<sup>th</sup> August,1994 are hereby annulled.**

- ii. A Fresh Grant of letters of Administration issue upon application to any other child/children of the deceased other than John Marangu Nyaga, the respondent herein.**
- iii. The proposed administrators to move the court for their appointment within 60 days.**
- iv. The respondent shall give an account of all the other property that he clandestinely distributed to himself within the next 60 days.**
- v. The matter to be mentioned to confirm compliance and take further directions.**
- vi. Each party will bear their own costs.**

43. It is so ordered.

**Dated, Signed and Delivered at Meru this 7th day of May, 2026.**

**H. M. NYAGA,**

**JUDGE.**