



REPUBLIC OF KENYA



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**In re Estate of DNK (Deceased) (Succession Cause 8 of 2013)
[2025] KEHC 3202 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 3202 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 8 OF 2013
RM MWONGO, J
JANUARY 30, 2025
IN THE MATTER OF THE ESTATE OF DNK (DECEASED)**

BETWEEN

**WG 1ST APPLICANT
JMG 2ND APPLICANT
PNG 3RD APPLICANT
NNM 4TH APPLICANT
AWK 5TH APPLICANT
FKG 6TH APPLICANT
JMG (DECEASED) SUBSTITUTED BY GKK 7TH APPLICANT**

AND

**PWM 1ST PETITIONER
LWG 2ND PETITIONER**

JUDGMENT

Background and Application

1. The deceased died on 14th July 2010 aged 32 years. Letters of administration were taken out by the petitioners who are the wife and sister-in-law of the deceased. A grant of letters of administration intestate issued to the petitioners/ respondents on 23rd July 2012 and confirmed on 16th April 2013, be revoked and/or annulled; and



2. By a summons dated 13th August 2014, the applicants seek that the grant and confirmed grant be revoked. The application is supported by grounds appearing on its face and in the supporting affidavit thereof.
3. The deceased is the 1st applicant's son, and a brother to the 2nd -6th applicants. The 7th applicant is a purchaser for value of a part of land parcel number Baragwe/Thumaita/2XX3, which resulted from subdivision of land parcel number Baragwe/Thumaita/5X0. The 2nd applicant swore the supporting affidavit on behalf of the 1st -6th applicants, stating that said of land parcel number Baragwe/Thumaita/5X0 belonged to his father, one GN (deceased). He alleges that before his death, GN (deceased) had subdivided his land in several portions and he had given the deceased herein parcel number Baragwe/Thumaita/2XX3.
4. The 2nd applicant stated that the deceased herein lived within his parents compound together with his siblings and he occasionally cultivated parcel number Baragwe/Thumaita/2XX3. The deceased's siblings denied having witnessed him making any transactions on the land and that he was indeed never married to the 1st petitioner/respondent. That the respondents are strangers to the applicants. It was the applicants' argument that they instituted succession proceedings in the estate of the deceased at Gichugu Magistrate's Court, where the applicants objected to issuance of the grant and they filed a cross-petition.
5. The suit was transferred to Embu High Court where the parties were advised to await transfer of the matter to Kerugoya High Court. While the applicants were awaiting transfer of the file to Kerugoya, the respondents secretly prosecuted their petition and they were issued with the grant and the objection was never heard. It is at the time of filing the application that the applicants learned that a grant had been issued to the respondents without their knowledge. They thus filed the summons for revocation herein.
6. It was the applicants' case that the respondents, not being relatives of the deceased herein, fraudulently and secretly obtained the grant. They assert that before his death, the deceased herein sold 0.10 hectares of land parcel number Baragwe/Thumaita/2XX3 to the 7th applicant for a sum of Kshs.150,000/= and the deceased gave him the original title deed for him to procure subdivision but the process was not completed.
7. The 1st respondent filed a replying affidavit stating that she was the wife of the deceased, with whom she had 2 children. After the deceased's death, the 1st, 2nd and 3rd applicants chased her away from the deceased's land parcel number Baragwe/Thumaita/2XX3, destroyed her matrimonial home and then sold the land to the 7th applicant. She deposed that she reported the incident to the then District Officer who referred the matter to the area Chief. The 1st, 2nd and 3rd applicants were then summoned by the Chief who warned them against removing her from the land. The Chief also wrote an introductory letter for her to use in instituting the succession proceedings. She obtained a grant which was confirmed and she distributed the deceased's land to her to hold in trust for her children. She denied that the deceased ever sold the land to any 3rd party and that if the applicants received any money for the sale of the said land, that amounts to intermeddling.
8. The 7th applicant, who claimed a purchaser's interest, died and was succeeded in the proceedings by his wife GKK, who filed a replying affidavit. She deposed that her deceased husband had entered into an agreement with the deceased and he agreed to purchase 0.10 hectares of the deceased's parcel number Baragwe/Thumaita/2XX3 for Kshs.150,000/=. Her husband paid the deceased Kshs.100,000/= on 14th June 2010 and after the death of the deceased, another amount of Kshs.20,000/= was paid to the



1st applicant on 15th July 2010. She produced copies of the sale agreement and acknowledgment of the monies paid in the transaction.

9. The summons was canvassed by way of viva voce evidence.

The hearing

10. PW1 MWG, is the 1st applicant and the deceased's mother. She stated that parcel number Baragwe/Thumaita/2XX3 belonged to AG before it was transferred to the deceased herein. That the deceased was not married, and did not have any children. That when the deceased died, it was she who buried him since he had no family of his own. She denied any knowledge of the 1st respondent and stated that she did not demolish any house or kitchen belonging to her. She went to the chief to obtain an introductory letter for succession purposes she was asked to pay Kshs.5,000/=.
11. When she returned with the money, she discovered that the chief had already issued the letter to someone else. The succession cause was initiated at Gichugu law courts and she objected to the 1st respondent getting the deceased's land. Nevertheless, the 1st respondent was given the land, a fact that she heard from other people. This is what triggered the summons herein. On cross-examination, she denied knowledge of the 1st respondent and her children. She stated that the case in Gichugu had been transferred to Embu High Court and it was pending transfer to Kerugoya High Court.
12. She denied knowledge of a citation and stated that the 1st respondent colluded with the Chief to give her the letter, whose contents she was unaware of. The deceased had initiated the sale of land to the 7th applicant before his death and that the transaction documents available speak to that fact. She stated that after the death of the deceased, the purchaser of the land gave her Kshs.20,000/= which was part of the purchase price.
13. PW2 JMG, was the 2nd applicant and is the deceased's brother. It was his evidence that the deceased was not married and he had not built any house on the suit land. He stated that his father subdivided his land parcel number Baragwe/Thumaita/5X0 and gave his sons their portions. One portion measuring 1¼ acres was given to the deceased herein and he told PW1 that he was selling it for Kshs.150,000/= to the 7th applicant. After the death of the deceased, PW1 received Kshs.20,000/= from the purchaser who remained with a balance of Kshs.30,000/=. He stated that there were succession proceedings and orders were issued even though they opposed the petition.
14. He testified that the 1st respondent was trying to force her way onto the land by bringing a kitchen with the help of the local administration. It is that kitchen which was allegedly demolished and found on the road. He stated that the 1st respondent is their neighbor and that the Chief told him that the deceased's land belonged to the 1st respondent and her children.
15. In cross-examination, PW2 he denied having removed the 1st respondent from the land; he asserted that they had reported at the DC's office that the respondents were stealing the deceased's land; that the 1st respondent built a kitchen on the land and someone demolished it but when asked by the police she said she did not know who did it. The deceased had initiated a sale of the land but he was yet to complete the process by the time he died.
16. GKK, the 7th applicant, testified as PW3. She relied on her replying affidavit and the documents produced. In cross-examination, she stated that they were purchasing ¼ acre from the deceased for Kshs.150,000/=. They conducted a search of the title and then visited the ground. They agreed that they would pay the deceased Kshs.100,000/= and remained with a balance of Kshs.50,000/=. Kshs.20,000/= was thereafter paid to the deceased's mother to aid with burial arrangements, while the



- balance remains unpaid. At the time of the transaction, the land was unoccupied, and the deceased was not living on it. They were told that he, the deceased, did not have any family.
17. PW3 also testified that she got to know the 1st respondent when she purchased land from her brother but she did not know that the 1st respondent was a wife of the deceased. After the transaction, they took possession of the land but they did not have it transferred. The land had 120 stems of coffee which she harvests to date. She stated that there were no houses on that land thus it is not true that structures were destroyed following the death of the deceased. She denied forging any documents relating to the transaction as alleged by the 1st respondent.
 18. PW3 further stated in cross-examination that she did not know where the deceased resided. She had, however, heard he lived in Sagana town as there was no house on the land. She stated that when they wrote the agreement, the deceased took them to the land and told them they could start using it. She admitted that the agreement did not indicate that they were to take possession pending clearance of the balance. The agreement was for a ¼ acre and had not yet been sub-divided.
 19. Sophia Waguama Gakuru, the area chief of Karumandi Location, testified as RW1. Is was she who issued the introductory letter to the 1st respondent dated 8th November 2010. She stated that the deceased had a wife who is the 1st respondent and they had children together. She did not know when the deceased married the 1st respondent but she knew that at the time of death of the deceased, the children were minors. She used to find the deceased with the 1st respondent in their house together. She stated that she wrote the introductory letter in the presence of the Assistant Chief who was well versed with the area.
 20. In cross examination she admitted that she had never been the Assistant Chief of Kariru where the deceased came from, and that Julius Wambugu Muchira was the Assistant Chief as at 8/11/2010, when she wrote the introduction letter. She stated that the Death Certificate indicated the entry date as 14/10/2010, the date it was issued.
 21. RW2 PWM, is the 1st respondent. She relied on her replying affidavit as her evidence-in-chief. She stated that: She was married to the deceased in 2002 and together, they had 2 children; That when the deceased died, his family sold her matrimonial home and demolished her kitchen; That they also told her not to attend the burial or else they would kill her. She reported the threat to the police and local administration who warned the deceased's family against the threats. She then obtained a letter from the Chief and initiated succession proceedings which were opposed by the applicants who also cross-petitioned.
 22. She stated that the 1st applicant cited her through Embu High Court since the Gichugu petition was struck out and the matter was transferred to Kianyaga Law Court. The citation was addressing her as the wife of the deceased and all along, she did not raise the issue of the land having been sold to the 7th applicant. In cross-examination, she denied knowledge of the 7th applicant and stated that it was the 7th applicant who chased her away from the land after the death of the deceased. she said that she did not know her husband was selling the land.
 23. RW2 further testified that she met the deceased in the year 2000 but she never met his family nor was any traditional marriage ceremony conducted. By the time she met the deceased, she had already gotten a child named JM and she bore another child called D while she was living with the deceased. She stated that the deceased had been given land parcel number Baragwe/Thumaita/2XX3 by his father but they were living in a rented house in Muchagara.



24. RW3 Patrick Ndege Ndamburi, a village elder, stated that the deceased had married the 1st respondent and they had 1 child together. At the time of her marriage to the deceased, the 1st respondent already had 1 child. Upon the death of the deceased, the family of the deceased chased the 1st respondent away and forbade her to attend the burial of the deceased. In cross-examination, RW2 stated that the deceased was not living at his father's home because he was an illicit brew dealer who was at loggerheads with the local administration. That is why he was living in Muchagara in a rented house. He said that there was no marriage ceremony between the deceased and the 1st respondent but he knew the 1st Respondent as the deceased's wife. He admitted that the names of the 1st respondent's children were not consistent with the cultural naming practices of the deceased's clan.

Parties' Submissions

25. The 1st to 6th applicants submitted that from the evidence, it is clear that the grant was obtained fraudulently through concealment of a material fact. The respondent filed Gichugu Succession Cause No 79 of 2010 which was opposed by the applicants. The court found itself lacking jurisdiction and the suit was transferred to Embu HC, and renamed Succession Cause No. 120 of 2012. It was later transferred to Kerugoya as HC Succession Cause No. 8 of 2013 through which the grant was obtained. The applicants seek revocation of the grant on grounds that it was issued to a party who could not prove that she was the wife of the deceased. Further, the 2nd respondent who is a sister of the 1st respondent is not in any way related to the deceased. It was contended that none of the 1st respondent's children belong to the deceased.
26. The 7th applicant submitted that she and her deceased husband were purchasers of a part of the deceased's land for value and they are entitled to the land. She supports the summons for revocation because the respondents are strangers to her since the land was bought from the deceased who also gave them the original title document for them to hive out the portion purchased. She urged the court to grant her the portion of the land that was purchased for value.
27. The respondents, in their submissions, relied on the case of Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] KEHC 7143 (KLR). They argued that the court has discretionary power to revoke a grant under section 76 of the *Law of Succession Act*; That at the point of petitioning for a grant of letters of administration, they stated that the deceased was survived by his mother, wife and 2 children, which information was recorded by the Chief in her letter. She argued that the information was accurate and that the deceased's land was not encumbered in any way. That no portion of the land was sold thus the 7th applicant's claim is futile.

Issue for Determination

28. The core issue for determination is whether the grant issued to the respondents should be revoked.

Analysis and Determination

29. The respondents filed a petition for grant intestate in the estate of the deceased. The 1st respondent introduced herself to the court as the wife of the deceased while the 2nd respondent is the 1st respondent's sister and a sister-in-law of the deceased. According to the chief's letter dated 08th November 2010, the beneficiaries of the estate of the deceased are his wife, the 1st Respondent, and her 2 children. A grant was issued by Embu High Court under the hand of Ong'udi, J. on 27th July 2012. Thereafter, the respondents filed summons for confirmation of grant, proposing distributing of the whole share of the estate comprising of land parcel number Baragwe/Thumaita/2XX3, wholly to the



1st respondent to hold in trust for her 2 sons. A certificate of confirmation of grant was issued in such terms under the hand of Githua, J, in Kerugoya High Court where the matter had been transferred.

30. The 1st -6th applicants challenge issuance of the grant stating that the respondents are imposters who moved the court for a grant in the estate of the deceased and that they are not his relatives. A grant may be revoked at any point in time as provided under Section 76 of the Law of Succession Act, thus:

“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.”

31. The petition for grant indicates that the respondents petitioned as wife and sister-in-law of the deceased. The question is whether from the evidence adduced, the 1st respondent is shown to be the deceased's wife. The standard of proof in civil cases is on a balance of probabilities (see *Miller v. Minister of Pensions* (1947) 2 ALL ER 372.

32. The 1st respondent produced her children's birth certificates indicating that the deceased was the father of her 2 sons. PW1 testified that the deceased did not have a wife or any children. She stated that the 1st respondent is a stranger to her. At the time of obtaining the chief's letter, she stated that she went to the chief who demanded Kshs.5,000/= . She went to look for the money and when she returned, she found the letter had been issued to the 1st respondent. PW2 denied knowledge of any person as the deceased's wife. PW3 was present when her husband entered into an agreement to purchase the land from the deceased. She stated that the 1st respondent was not there and that the deceased's family said that the deceased did not have a wife. The land they were purchasing was vacant and nobody lived on it.

33. On the other hand, the RW1 the area Chief said that she had personally interacted with the deceased who was married to the 1st respondent and they had 2 sons, although she admitted that she was not the Chief of the deceased's area at the time of his death. On her part, the 1st respondent testified that she



was married to the deceased but no customary marriage rites were undertaken. This was corroborated by RW3.

34. The 1st respondent also stated that she had one son before she was married to the deceased and she bore another son during their marriage. However, curiously, the Birth Certificates produced for her children DM and JM, (PWM2 and PWM 3”) both indicate that the father was DN, the deceased.
35. The family of the deceased asserted that they did not know or acknowledge the 1st respondent as a wife of the deceased. The weight of the evidence speaks of this position. The evidence of the applicants was persuasive that the 1st respondent was not a wife of the deceased. It was also admitted by the 1st respondent that there were no marriage rituals, and that they never lived on the subject land.
36. Section 3 of the *Law of Succession Act* (the version applicable as at the time of death of the deceased) states: "wife" includes a wife who is separated from her husband and the terms "husband" and "spouse", "widow" and "widower" shall have a corresponding meaning.
37. In light of the foregoing, this court is of the view 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: the fact is that the 1st respondent cannot be shown to be a wife of the deceased. In the same breadth, the 2nd respondent is an imposter in the proceedings since she is not a sister-in-law of the deceased.
38. Section 66 of the *Law of Succession Act* offers guidance as to who may petition for a grant in the estate of the deceased, and provides:

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

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.”

Conclusion and Disposition

39. In this Court’s view, the evidence as to marriage is unproven; the evidence in the Birth Certificates as to the deceased being the father of both children of the deceased when the 1st respondent herself and her key witness assert that she had a child outside the alleged marriage, cast a shadow of doubt on the marriage. Further the fact that the Chief, RW1, admitted she was not the Chief of the area where the deceased came from, suggests that she intended to influence the court rather than to give credible evidence.
40. Had the 1st respondent been a legitimate wife of the deceased, she would have had strong grounds to petition for the grant. As the evidence stands however, the deceased must be deemed as though he died without a wife. The issue of whether the 1st respondent’s sons are to be held as children of the deceased,



will not be canvassed by this court in determining the summons for revocation. The issue should arise within summons for confirmation of a grant, should the successful parties herein decide to pursue it.

41. Ultimately, the summons for revocation succeeds and I hereby revoke the grant and confirmed grant issued by this court.
42. This being a family matter, each party shall bear its own costs.
43. Orders accordingly.

DELIVERED VIRTUALLY THIS 30TH DAY OF JANUARY AT KERUGOYA HIGH COURT.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Kahiga for Applicant.
2. Maringa holding brief for Gitari for 1st Respondent.
3. N/A - 2nd Respondent in person.
4. Francis, Court Assistant.

