



**In Re The Estate of Josephat Wainaina Karuri (Succession Cause
132 of 2017) [2024] KEHC 242 (KLR) (25 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
SUCCESSION CAUSE 132 OF 2017
CM KARIUKI, J
JANUARY 25, 2024
IN THE MATTER OF THE ESTATE OF JOSEPHAT WAINAINA KARURI
(DECEASED)**

BETWEEN

STEPHEN MBURU WAINAINA & 6 OTHERS APPLICANT

AND

JANE WANJIRU GACHERU AND ANOTHER & ANOTHER RESPONDENT

JUDGMENT

1. The Applicant vide a summons for revocation of grant dated 13/6/15 sought the following reliefs against the respondents: -
 - i. Spent.
 - ii. Spent.
 - iii. That the grant of letters of administration issued to the respondents on 25/11/2009 and confirmed on 1/12/2010 be revoked.
 - iv. That the cost of this application be costs in the cause
2. It is sad, that this Succession cause lodged on 4/5/2009 is still pending fourteen (14) years now. The application is opposed by the 1st Petitioner Jane Wanjiku Gacheru vide a replying affidavit sworn by her on 28/8/2016. The 2nd petitioner Grace Mumbi Wainaina supported the summons for revocation and she filed a statement dated 7/7/2021.
3. The court has gone through the record and the proceedings. The court has also gone through the evidence tendered which is on record. The parties were directed to file a submission but according to



the record, only the Applicant lodged the same by the time this judgment was drafted without the benefit of the Respondent's inputs.

Applicant Case And Submissions.

4. The estate herein relates to Josphat Wainaina Karuri who died on 9/3/1984.
5. The deceased was survived by three (3) houses made up as follows: -
 - 1st House.
 - A) Margaret Njoki Wainaina - Widow (deceased).
 - B) Lucy Njeri Kuria - Daughter
 - C) Jane Wanjiru Gacheru – Daughter
 - D) Veronica Mumbi Njenga – Daughter
 - 2nd House
 - a) Monicah Nyambutu Wainaina - Widow (deceased)
 - B) Wanjiru Karanja Gachoka - Daughter (Deceased)
 - C) Joseph Karuri Wainaina - Son (Deceased)
 - D) Grace Mumbi Wainaina - Daughter
 - 3rd House
 - A) Helinah Mwihaki Wainaina - Widow
 - B) Stephen Mburu Wainaina - Son
 - C) Nahashon Chege Wainaina -son
 - D) Serah Wangui Kimani - Daughter
 - E) Mary Njoki Wainaina - Daughter (deceased)
 - F) Elizabeth Mumbi Wainaina - Daughter
 - G) Stanley Karanja Wainaina - Daughter
 - H) Felicinta Wanjiru Wainaina - Daughter
 - I) Benard Karuri Wainaina - Son (Deceased)
6. It is submitted that the respondents herein secretly filed the petition herein without the knowledge of the 3rd house who only became aware of the Succession Cause after the area Chief notified them on 9/6/2015 that the 1st respondent was to visit Parcel No. Nyandarua/Muruai /413 where the 2nd house and 3rd house are settled with a surveyor for purposes of executing a certificate of confirmation of grant.
7. The applicants contend that the petitioners presented a false position to this Honourable Court that before the filing of this petition, the applicants had been cited to petition for letters of administration.
8. No notice was given to the Applicants before and after the filing of the petition as required by rule 26 of the *Probate and administration rules*. No consent to confirmation of grant was sought or obtained from the applicants as provided in rule 40 (8) of the *probate and administration rules*. The petition



for letters of administration was done secretly without notice to the applicants. The respondents have left out some of the persons lawfully and beneficially entitled to the estate of the deceased from the list of beneficiaries.

9. It is submitted that, although the petition is said to have been presented jointly by the respondents, the 2nd respondent in her evidence in court denied ever engaging the firm of Gakuhi Chege & Co. Advocates to file the petition, filing the petition and participating in the process. She denied executing affidavits in support of confirmation of the grant and consenting to the mode of distribution proposed in the certificate of confirmation of the grant dated 1/12/2010.
10. The applicant contends that all the affidavits filed on behalf of the petitioners/respondents including the Affidavit in support of summons for confirmation of granted dated 22/9/2010 and filed in court on 23/9/2010 and it can be noted all are sworn by Jane Wanjiru Gacheru the 1st Petitioner.
11. It is contended that it is interesting to note that in the consent in support of confirmation accompanying the summons for confirmation dated 22/9/2020, the 2nd petitioner/respondent is listed as No: (g) and it is indicated that she was cited against her blank signature which confirms have not signed the consent and there is no evidence on record to prove that the summons for confirmation and a hearing notice was served upon them and they refused to attend court for confirmation.
12. The same case applies to the consent to the making of a grant. The same was only signed by It is submitted that the grant dated 25/11/2009 was obtained fraudulently by the making of false statement i.e. forging the signatures of the 2nd petitioner/respondent, was obtained by means of an untrue allegation of a fact essential in points of law that the Applicants had been cited and the 2nd house had consented to the issuance of the grant and the proceedings to obtain the grant were defective in substance. Therefore, pray for the grant to be revoked and for a fresh grant to be issued to Grace Mumbi Wainaina and Stephen Mburu Wainaina.
13. The Applicants and the 2nd respondent are opposed to the mode of distribution proposed in the Certificate of Confirmation of grant dated 1/12/2010. The certificate distributes the estate to deceased persons namely the 3 widows of the deceased Margaret Njoki Wainaina (1st wife), Monicah Nyambutu alias Monicah Wambui Karuri (2nd wife), and Helina Mwihaki Wainaina(3rd Wife).
14. The mode of distribution is submitted to be vague and cannot be enforced or implemented as it seeks to for example distribute land to Margaret Njoki Wainaina to hold the same in trust for herself and all the children of that house. The so-called children are not named or listed in the grant. The same case applies to the other houses.
15. The applicants and the 2nd respondent maintained that the only assets known to them belonging to the deceased are:-
 - a. LRNo. Nyandarua/Muruai/413 Of 2.9 Ha. (7.1 Acres)
 - b. LR No.Nyandarua/Kipipiri Lereshwa Blk (malewa Ranch/566 Of 2.57 Ha (6.3 Acres).
 - c. It was their evidence that the 1st house was settled by the deceased on LR No. Nyandarua/ Kipipiri Lereshwa Blk (malewa Ranch)/566 long before his demise. The deceased had settled the 2nd and the 3rd house on LR No. Nyandarua/Muruai/413 and the two houses occupy the land in equal shares.
16. DW3 one Peter Njuguna the secretary of Malewa Ranching narrated how the petitioner approached the Company in the year 2014 inquiring on the status of Parcel No. 566 as Ketraco was paying compensation for owners of land where they had constructed a power line and Parcel No: 566 was one of the affected properties.



17. He confirmed that the land was registered to the deceased in the Company's register and the Company transferred it to the 1st petitioner as the deceased's daughter he produced records held by the Company which confirmed that Parcel No: 566 belonged to Wainaina Karuri and that the title deed for the land was collected by the 1st petitioner and she signed for it. In a letter dated 23/3/2020 produced as DEXH NO. 1 (a), the witness confirmed that the land belonged to the deceased.
18. DWI did not disclose the existence of this parcel of land and the fact that the land was transferred to her directly by the company as the daughter of the deceased after she was introduced as such by the Area Chief to the directors of the company. On cross-examination by Counsel for the applicants, she denied there being such a parcel of land in Malewa ranch either owned by the deceased or by herself. Photographs of the Ketraco Power line and the grass thatched house referred to by DW2 were produced as exhibits.
19. From the official search of the property listed in the 2nd respondent list of documents dated 24/1/2022, a grant of easement to Ketraco for a sixty-meter-wide way leave is registered on the land which confirms that the parties were referring to the same land that belonged to the deceased.
20. The 1st petitioner did not adduce any evidence to prove that she was a member of Malewa Ranching Company that the land was allocated to her by virtue of her membership to the Company and that the same did not initially belong to the deceased.
21. The 1st petitioner concealed the existence of this property which was transferred to her as a daughter of the deceased after his death to enable her and her siblings to get a share of the land reserved for the 2nd and the 3rd houses.
22. Parcel No. 566 was acquired by the deceased as a member of Malewa Ranching Co. Ltd and it forms part of his estate and it should be considered while distributing the deceased estate.
23. The mode of distribution proposed by the Applicants and the 2nd respondent is equitable. The 1st house constituting 3 children gets a share of the estate in Parcel No: 566 of 6.3 acres whereas the 2nd and 3rd houses constituting a total of 11 children are to share 7 acres equally in Parcel No: 413.
24. The applicants and the 2nd respondent are not aware of the property described as Plot No. 799, Malewa Ranch Co. Ltd in the Certificate of Grant, and no document was produced by the 1st petitioner to prove its existence. It is believed that this particular property was listed to bring confusion and deceive others into believing that the deceased's land at Malewa Ranching Company had been included in the assets to be distributed.
25. Allowing the 1st house to share a 1/3rd of Parcel No. 413 which is fully occupied by the 2nd and 3rd houses shall result in an injustice and unfair distribution of the deceased's estate and they shall retain the land at Malewa of 6.3 acres and get a share of the 7 acres at Muruai.
26. The proposed estate is to be distributed as follows: -
 - 1st House
Jane Wanjiru Gacheru Veronica Mumbi Njenga LR No. Nyandarua/Kipipiri Lucy Njeri Kuria Lereshwa BLLK 1 (Malewa Ranch/566(2.57 Ha) – Jointly
 - 2nd House
Grace Mumbi Wainaina Children of Joseph Karuri ½ Share of LR No. Nyandarua Wainaina (Deceased) Muruai /413
 - 3rd House



Stephen Mburu Wainaina Nahashon Chege Wainaina Serah Wangui Kimani Alfred Wainaina Njoki ½ share of LR No. Nyandarua/ Muruai/413 Elizabeth Mumbi Wainaina Stanley Karanja Wainaina Felicinta Wanjiru Wainaina

27. The Respondent via Affidavit of Jane Wanjiru Gacheru sworn 28/8/2015 opposed the application. Their case is that the deceased herein died intestate on 9th March 1984 and had three houses.
28. Before filing the Succession proceedings herein, there was a family meeting held on 4th November 1995 where it was agreed that the deceased's estate be shared equally among the three (3) houses (annexed hereto and marked JWG I (a) and (b) respectively is a copy of minutes of the said meeting and an English translation thereof). All three (3) houses of the deceased participated in the said deliberations and meeting. Another family meeting was held on 6th February 2004 where it was again resolved that the deceased's properties be shared equally among the three houses of the deceased (annexed hereto and marked JWG 2 is a copy of the minutes thereof).
29. The third widow of the deceased the Applicants' mother Helina Mwhiki Wainaina agreed with the proposed manner of distribution of eke estate and thumb printed on the minutes of the family meeting aforesaid.
30. All the Applicants are members of the deceased's third house and are bound by the family agreements aforesaid. That Respondent was advised by their Advocate on record and verily believes the advice as correct that the application for revocation of grant does not meet the threshold for granting such an order in that: The Applicants were duly cited before filing the instant succession cause.
31. The application for confirmation of grant was served upon their mother Helina Mwhiki Wainaina as a representative of the third (3) house and no objection was filed against the confirmation. The cause had been duly gazetted and there was no objection raised by the Applicants. All the necessary procedural steps were taken in the cause before confirmation of the grant.
32. No contrary mode of distribution of the deceased's estate is suggested by the Applicants. There is no basis upon which the grants can be revoked. The Application has been overtaken by events as the land parcel forming the estate is already registered in my name as an administrator thereof and I am ready and willing to give Applicants their one-third (1/3) share out of the estate in terms of the certificate of confirmation of grant h) (annexed hereto and marked JWG 10 is a certificate of official search thereof).

Issues, Analysis And Determination

33. After going through the record and the submissions on record, I find the issues are; whether the applicants have established the threshold of revocation of grants. If the above is affirmative, what is the suitable mode of distribution and costs?
34. Section 76 of the *Law of Succession Act* (LSA) states the following;

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 motion—

that the proceedings to obtain the grant were defective in substance 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 the due notice and without reasonable cause either—
- to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allows;
- or
- to proceed diligently with the administration of the estate; or
- 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.

Sealing of Commonwealth and Foreign Grants

35. The estate herein relates to Josphat Wainaina Karuri who died on 9/3/1984.
36. It is not disputed that; the deceased was survived by three (3) houses made up as follows: -
- 1st House.
- a) Margaret Njoki Wainaina Widow (deceased).
- B) Lucy Njeri Kuria Daughter
- C) Jane Wanjiru Gacheru Daughter
- D) Veronica Mumbi Njenga Daughter
- 2Nd House
- A) Monicah Nyambutu Wainaina Widow (deceased)
- B) Wanjiru Karanja Gachoka Daughter (Deceased)
- C) Joseph Karuri Wainaina Son (deceased)
- D) Grace Mumbi Wainaina Daughter
- 3rd House
- A) Helinah Mwihaki Wainaina Widow
- B) Stephen Mburu Wainaina Son
- C) Nahashon Chege Wainaina Son
- D) Serah Wangui Kimani Daughter
- E) Mary Njoki Wainaina Daughter (deceased)
- F) Elizabeth Mumbi Wainaina Daughter
- G) Stanley Karanja Wainaina Daughter



- H) Felicinta Wanjiru Wainaina Daughter
- I) Benard Karuri Wainaina Son (Deceased)

37. The respondents herein filed the petition herein and apparently from the record, the 3rd house became aware of the Succession Cause after the area Chief notified them on 9/6/2015 that the 1st respondent was to visit Parcel No. Nyandarua/MURUAI /413 where the 2nd house and 3rd house are settled with a surveyor for purposes of executing a certificate of confirmation of grant.
38. The applicants set out the grounds in support of the summons for revocation of grant to the effect that, the petitioners presented a false position to this court that before the filing of this petition, the applicants had been cited to petition for letters of administration.
39. No notice was given to the Applicants before and after the filing of the petition as required by rule 26 of the Probate and administration rules. No consent to confirmation of grant was sought or obtained from the applicants as provided in rule 40 (8) of the probate and administration rules. The petition for letters of administration was done secretly without notice to the applicants. The respondents have left out some of the persons lawfully and beneficially entitled to the estate of the deceased from the list of beneficiaries.
40. Although the petition is said to have been presented jointly by the respondents, the 2nd respondent in her evidence in court denied ever engaging the firm of Gakuhi Chege & Co. Advocates to file the petition, filing the petition and participating in the process. She denied executing affidavits in support of the confirmation of the grant and consenting to the mode of distribution proposed in the certificate of confirmation of the grant dated 1/12/2010.
41. All the affidavits filed on behalf of the petitioners/respondents including the Affidavit in support of summons for confirmation of granted dated 22/9/2010 and filed in court on 23/9/2010 were sworn by Jane Wanjiru Gacheru the 1st Petitioner. It is worth noting that in the consent in support of confirmation accompanying the summons for confirmation of grant dated 22/9/2020, the 2nd petitioner/respondent is listed as No: (g) and it is indicated that she was cited against her blank signature which confirms have not signed the consent and there is no evidence on record to prove that the summons for confirmation and a hearing notice was served upon them and they refused to attend court for confirmation.
42. The same case applies to the consent to the making of a grant. The same was only signed by Margaret Njoki, Lucy Njeri, and Veronica Mumbi from the 1st house. Thus, the court makes a finding that the grant dated 25/11/2009 was obtained fraudulently by the making of a false statement i.e. forging the signatures of the 2nd petitioner/respondent, was obtained employing an untrue allegation of a fact and the proceedings to obtain the grant were defective in substance. Thus, the grant herein impugned is amenable to be revoked.
43. The Applicants and the 2nd respondent are opposed to the mode of distribution proposed in the Certificate of Confirmation of grant dated 1/12/2010 in that the certificate distributes the estate to deceased persons namely the 3 widows of the deceased Margaret Njoki Wainaina (1st wife), Monicah Nyambutu alias Monicah Wambui Karuri (2nd wife) and Helena Mwihaki Wainaina (3rd Wife). The court finds the objection valid in that only living persons legal or natural can get shares of the deceased person's estate.
44. The mode of distribution is also unclear and lean in particulars and cannot be enforced or implemented as it seeks to for example distribute land to Margaret Njoki Wainaina to hold the same in trust for



herself and all the children of that house. The children are not named or listed in the grant. The same case applies to the other houses.

45. The applicants and the 2nd respondent maintained that the only assets known to them belonging to the deceased are:-LRNo. Nyandarua/muruai/413 Of 2.9 Ha. (7.1 Acres)LR No. Nyandarua/kipipiri Lereshwa Blk (malewa Ranch/566 Of 2.57 Ha (6.3 Acres).It was their evidence that the 1st house was settled by the deceased on LR No. Nyandarua/kipipiri Lereshwa Blk (Malewa Ranch)/566 long before his demise. The deceased had settled the 2nd and the 3rd house on LR No. Nyandarua/muruai/413 and the two houses occupy the land in equal shares.
46. DW3 one Peter Njuguna the secretary of Malewa Ranching narrated how the petitioner approached the Company in the year 2014 inquiring on the status of Parcel No. 566 as Ketraco was paying compensation for owners of the land where they had constructed a power line and Parcel No: 566 was one of the affected properties.
47. He confirmed that the land was registered to the deceased in the Company's register and the Company transferred it to the 1st petitioner as the deceased's daughter he produced records held by the Company which confirmed that Parcel No: 566 belonged to Wainaina Karuri and that the title deed for the land was collected by the 1st petitioner and she signed for it. In a letter dated 23/3/2020 produced as DEXH NO. 1 (a), the witness confirmed that the land belonged to the deceased.
48. DW1 did not disclose the existence of this parcel of land and the fact that the land was transferred to her directly by the company as the daughter of the deceased after she was introduced as such by the Area Chief to the directors of the company. On cross-examination by Counsel for the applicants, she denied there being such a parcel of land in Malewa ranch either owned by the deceased or by herself. Photographs of the Ketraco Power line and the grass thatched house referred to by DW2 were produced as exhibits.
49. From the official search of the property listed in the 2nd respondent list of documents dated 24/1/2022, a grant of easement to Ketraco for a sixty-meter-wide way leave is registered on the land which confirms that the parties were referring to the same land that belonged to the deceased.
50. The 1st petitioner did not adduce any evidence to prove that she was a member of Malewa Ranching Company that the land was allocated to her by virtue of her membership to the Company and that the same did not initially belong to the deceased.
51. The 1st petitioner concealed the existence of this property which was transferred to her as a daughter of the deceased after his death to enable her and her siblings to get a share of the land reserved for the 2nd and the 3rd houses.
52. Parcel No. 566 was acquired by the deceased as a member of Malewa Ranching Co. Ltd and it forms part of his estate and it should be considered while distributing the deceased estate.
53. The mode of distribution proposed by the Applicants and the 2nd respondent is said to be equitable. The 1st house constituting 3 children gets a share of the estate in Parcel No: 566 of 6.3 acres whereas the 2nd and 3rd houses constituting a total of 11 children are to share 7 acres equally in Parcel No: 413. However, it is not agreed by both sides of the contest.
54. The applicants have contended that the 2nd respondent is not aware of the property described as Plot No. 799, Malewa Ranch Co. Ltd in the Certificate of Grant, and no document was produced by the 1st petitioner to prove its existence. The court did not see any evidence to prove the existence of such land.



55. Without belaboring any further, I find that the grant issued and confirmed herein cannot stand and is invalid and so is the distribution reflected in the certificate of confirmation of the grant herein. Thus, the court makes orders;
- a. The grant of letters of administration issued to the respondents on 25/11/2009 and confirmed on 1/12/2010 be and are hereby revoked.
 - b. The transfer of Parcel No. Nyandarua/Muruai /413 and LR NO. Nyandarua/Kipipiri Lereshwa Blk (malewa Ranch/566 from the names of the deceased herein and title documents issued thereof be and are hereby nullified and to be reinstated into the Josephat Wainaina Karuri, (deceased) names.
 - c. Each house is to propose one person for the appointment as three administrators of the estate herein within fourteen (14) days.
 - d. Each house is to file a proposed mode of distribution in line with section 40 of the Succession Act and serve within 45 days.
 - e. The court is to give directions on a date after 45 days.
 - f. Parties are at liberty to enter into a consent.
 - g. No orders as to costs.

DATED, SIGNED, AND DELIVERED AT NYANDARUA ON THIS 25TH DAY OF JANUARY 2024

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C KARIUKI

JUDGE

