



REPUBLIC OF KENYA



**In re Estate of Gitau Muroki (Deceased) (Succession Cause 916 of 2009)
[2024] KEHC 1746 (KLR) (Family) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1746 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 916 OF 2009
HK CHEMITEI, J
FEBRUARY 22, 2024
IN THE MATTER OF
FRANCIS NDUNGU NJENGA APPLICANT**

RULING

1. This ruling relates to the summons for revocation of grant dated June 19, 2023 filed by, Francis Ndungu Njenga, who is nephew and beneficiary of the deceased's estate seeking for an Order That the grant of letters of administration made to Hannah Wanjiru Gitau (Deceased) and Hannah Njambi Gitau (Deceased) – the deceased's widows - on November 20, 2009 be revoked (or annulled) on the ground that the grant of letters of administration has become useless and inoperative through subsequent circumstances and that the Court do issue the applicant herein with letters of administration de bonis non.
2. The application is not objected to.
3. The applicant was granted leave of court to file and serve written submissions if he wishes wished on November 7, 2023 when the matter came up in court for hearing. At the time of writing this ruling there were no such submissions.

Background

4. This matter relates to the Estate of Gitau Muroki (hereinafter “the deceased”) who died intestate on November 24, 1993.
5. There were summons for substitution dated October 17, 2019 filed by the Applicant in this matter. It was found to be incompetent and struck out on August 6, 2021 by this court. The Applicant was granted liberty to re – apply using the correct procedure given that this Court had not considered the merits of the application.



6. The impugned summons for substitution dated October 17, 2019 was supported by affidavit sworn by the Applicant on October 17, 2019, supplementary affidavit sworn on April 13, 2021 and written submissions dated May 29, 2021.
7. The impugned summons for substitution dated October 17, 2019 was opposed by replying affidavit sworn by Benjamin Mago Kimani and John Wamaingi Gitau on March 4, 2021 and written submissions dated May 13, 2021.

Analysis and Determination

8. The applicant is the nephew to the deceased and his interest is with respect to a portion of LR No Muguga/ Gitaru/ 175 which belongs to his father John Njenga Muroki alias Gathamua Mara who is now deceased.
9. It is not disputed by all the parties that:
 - a) The applicant is the administrator of the estate of John Gathamua Mara alias John Njenga Muroki who is his father and brother to the deceased in the instant matter. A grant of letters of administration intestate in this regard intestate was issued on 31st January, 2019 by Hon. Z. W. Gichana.
 - b) The grant of letters of administration intestate of the estate of Gitau Muroki, the deceased in the instant matter, should be revoked because the administrators in it, Hannah Wanjiru Gitau and Hannah Njambi Gitau are now both deceased. This grant of letters of administration intestate was issued on November 20, 2009.
 - c) The certificate of confirmation of grant issued by Judge W.Musyoka on September 25, 2014 allocated an equal portion of LR No Muguga/ Gitaru/ 175 to John Njenga Muroki alias Gathamua Mara who is now deceased, father to the Applicant in this matter, Francis Ndungu Njenga and brother to Gitau Muroki, the deceased in this matter.

The following assets belonging to the deceased have not been captured in the certificate of confirmation of grant issued on September 25, 2014:

 - i. LR No Maela/ Ndabibi Block 3/ 332.
 - ii. Ngodi Commercial Plot – 0. 045 acres.
 - iii. Money in KCB Naivasha Account No 1150xxxxxx – Kes 16, 620. 70/=.
 - iv. Shares in Karagita Farmers Society valued at approximately Kses 120, 000/=.
10. Benjamin Mago Kimani, in opposing the applicant vide his replying affidavit sworn on March 4, 2021, contends that:
 - a. The Applicant has not followed the order of consanguinity in applying to be appointed administrator of the estate of the deceased and that he has not sought for consent from the deceased's children who are higher up in priority.
 - b. The new grant should be issued to John Wamaingi Gitau who is the deceased's eldest son and that the family has always preferred for him handle its affairs.
 - c. All the beneficiaries in the certificate of confirmation of grant issued on September 25, 2014 have since passed away hence the need to substitute the beneficiaries and their respective shares.
11. The applicant, in his supplementary affidavit sworn on April 13, 2021:



- a. Inter alia has a slight change of tune to the effect that he be appointed one of the new administrators to the estate of the deceased's estate.
- b. He further avers that revocation of the whole grant cannot be addressed in this application since he is seeking substitution of administrators to complete administration without any variations to the substantive grant.

Determination

12. Seeing that all the parties agree that the grant be revoked and a fresh one be issued with new administrators, I find that this Honourable Court has jurisdiction to make a determination on the instant application by invoking its inherent jurisdiction as was done by Judge S. N. Mutuku in the [*Estate of Robert John Sumbi \(Deceased\)*](#) [2021] eKLR where she stated, at paragraphs 10 and 11 as follows:

“...To deny a Probate Court such powers would be akin to denying litigants justice in a succession matter. Section 47 of the [*Law of Succession Act*](#) comes into place to address this issue. It provides as follows:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.” [Emphasis mine]

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

In addition to section 47, this court has inherent powers under Rule 73 of the [*Probate and Administration Rules*](#). This rule 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 [Emphasis mine] or to prevent abuse of the process of the court.”

13. For the above reasons I do not see any prejudice to be suffered by any of the parties if the application is allowed. In any case the administrators have since passed on and the estate is yet to be completed.
14. It is noted that there are other properties which are still pending distribution including the applicant's interest.
15. For the above reasons the applicant together with John Wamaingi Gitau should be appointed joined administrators so as to oversee the conclusion of the estate. The applicant's interest shall be taken care of now that he is in the matter. The same shall apply to the rest of the beneficiaries now that they have a representative as well.

Conclusion

16. The application is hereby allowed as hereunder;
 - (a) The grant issued to Hannah Wanjiru Gitau and Hannah Njambi Gitau dated November 20, 2009 is hereby revoked.
 - (b) Fresh grant is hereby issued jointly to Francis Ndungu Njenga and John Wamaingi Gitau.
 - (c) The two administrators are hereby directed within six months from the date herein to conclude the distribution of the deceased estate herein.
 - (d) Costs shall be in the cause.



**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 22ND DAY OF
FEBRUARY 2024.**

H K CHEMITEL.

JUDGE

