



In re Estate of the Late Mwirichia Nkungi (Deceased) (Miscellaneous Succession Cause E012 of 2022) [2024] KEHC 4494 (KLR) (22 March 2024) (Judgment)

Neutral citation: [2024] KEHC 4494 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS SUCCESSION CAUSE E012 OF 2022**

LW GITARI, J

MARCH 22, 2024

IN THE MATTER OF ESTATE OF THE LATE MWIRICHIA NKUNGI (DECEASED)

BETWEEN

ALBERT KATHUNI 1ST INTERESTED PARTY

JAMES MUGAMBI KATHUNI 2ND INTERESTED PARTY

MARGARET KAGENI NYAGA 3RD INTERESTED PARTY

CATHERINE MARUTA 4TH INTERESTED PARTY

JOYCE CIAMBUBA KATHUNI 5TH INTERESTED PARTY

AND

GACELINA IGOKI MWIRICHIA PETITIONER

AND

JULIUS MUTEKI RUGWETO RESPONDENT

JUDGMENT

1. The matter pending before this court is the Summons for Revocation and/or Annulment of Grant dated 29/3/2022.
2. It is brought under Section 76 of the *Law of Succession Act* and Rules 44(1), 49 and Rule 73 of the *Probate and Administration Rules*. The applicants seek an order that the grant issued to the respondent on 13/12/2017 and confirmed on 22/8/2018 in Chuka Chief Magistrate Succession Cause No.252/2016 be revoked and or annulment on the following grounds:
 - a. That the procedure to obtain the grant was defective in substance.



- b. That the grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the cause.
3. The summons is supported by the affidavit of Albert Kathuni sworn on his behalf and on behalf of 2nd, 3rd, 4th and 5th Interested Party applicants and on other grounds to be adduced at the time of hearing. The applicant's case is that he is the brother of the deceased in this case Mwirichia Nkungi. That the deceased died on 5/5/1993 and was survived by the following:-
 1. Julius Mutegi Rugweto - Son
 2. Gacerina Igoki Mwirichia - Wife-remarried
 3. Kainyu Mwirichia - Daughter
 4. Muthoni Mwirichia - Daughter
 5. Njoka Mwirichia - Son
 6. Kirimi Mwirichia- Son - Deceased
4. The applicants contend that they were dependant on Land Parcel No.LR Karingani/Gitareni/202 which was registered in the name of the deceased. The applicant contends that the petitioner filed the cause secretly without involving the applicants. It is the contention by the applicant that the deceased was registered in trust for his benefit and that of his siblings. The applicants contend that they live on the suit land which is family and or ancestral land.
5. The applicants further contend that the petitioner failed to disclose that the applicants were beneficiaries of the estate of the deceased. The respondents opposed the summons. Gacelina Igoki Mwirichia filed affidavit evidence and contends that she is the wife of the deceased herein. They were blessed with nine children. She contends that the suit land was bought by the deceased from Paustina Kigwa. He avers that the applicants were not dependants of the deceased. The respondent relies on the affidavit of evidence of Ostacia Gakuthie Kigwa. She depones that the land in dispute was sold to the deceased by her husband Paustino Kigwa.
 1. The Petitioner/Respondent in further replying affidavit sworn on 3/8/2022 depones that the title deed is prima facie evidence that the land is owned by the deceased. That the children of the deceased are the rightful dependants within the meaning of Section 29 of the [Law of Succession Act](#). That the applicants are inter-meddlers.
 2. The parties proceeded and tendered oral evidence which I have considered. Summary of the Evidence PW1 – Albert Kathuni testified that the respondent filed Succession Cause without involving them. He testified that the land in dispute was in the name of the deceased at the time of his death. It was his evidence that the land belonged to his father. In cross-examination he admitted that he had no documentary evidence to prove that the land belonged to his father.
6. PW2 Margaret Kageni testified that the applicants are his brother and sisters. He told the court that the deceased herein is his brother Gacerina Mwirichia is the deceased's wife. She told the court that her father is Nkungi and her mother is Cianjoka. She told the court that the deceased who was his brother had his wife and children.
7. PW3 James Mugambi Kathuni testified that the land in dispute is owned by the deceased who is his father. He told the court that the land was registered in the name of the deceased and they did not challenge the title deed. He contends that his brother was registered in trust. He admitted that he had nothing to show that the land was family land.



8. PW4 Austecia Ciakuthi testified that the land in dispute was sold to the deceased by her husband.
9. PW5 Basilio Nyaga testified that the land in dispute was sold to the deceased by one Faustina Kathomi Kigwa.
10. DW1 Gacherina Igoki Mwirichia testified that the interested parties are brothers of the deceased, Mwirichia. She testified that the land was owned by the deceased and he had a title deed. He filed the succession cause but did not inform the interested parties.
11. DW2 testified that those who have sued them are brothers of his father. The parties had indicated that they would file written submissions. However at the time of writing this Judgment no submissions by either parties had been filed.
12. I have considered the submissions for revocation of grant and all the evidence adduced. The issues which arise for determination are:

Whether the applicants have made out a case for revocation of grant.

Analysis and determination:

13. The grounds upon which the court may order revocation of grant are anchored at Section 76 of the *Law of Succession Act*. The section provides:-

“ 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 has ordered or allowed; 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.”



14. The applicants are supposed to prove that the proceedings to obtain the grant were defective in substance that the grant was obtained fraudulently by making a false statement and that the grant was obtained by means of untrue allegations of a fact essential in point of law.
15. The section implies that a petitioner for a grant of letters of administration will be deemed prima facie to have obtained the grant fraudulently if he fails to issue notice to any of the dependants or beneficiaries of the estate of the deceased including obtaining their necessary consents as provided under the Act. In *Matheka & Another -v- Matheka* (2005) E.A 251. The court stated that;

“A grant may be revoked either by application or by an interested party or on the court’s own motion. There must be evidence that proceedings to obtain the grant were defective in substance or that the grant was obtained fraudulently by making a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegations of facts.”
16. The respondent is the wife of the deceased who filed the succession case. She obtained a chief’s letter dated 7/6/2016 and all the beneficiaries signed the consent for her to file the succession. She obtained the grant which was later confirmed and the estate was distributed. None of the beneficiaries has challenged the said grant.
17. Section 29 of the *Law of Succession Act* sets out an account on the definition and the hierarch of the dependants of the deceased who are bound to benefit from the estate. The applicants are contending that they were not informed when the succession cause was filed.
18. From the testimonies of the applicants, they are not dependants of the estate of the deceased. They claim that the deceased was their sibling and that he was registered in trust.
19. Section 29 of the *Law of Succession Act* provides as follows:-
 - (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
 - (b) such of the deceased’s parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
 - (c) Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.’
20. The applicants were therefore not direct dependants of the deceased. It follows that by dint of Section 26 of the Act their claim to the estate was time barred. The section provides:-
21. Section 26 & 27 of the *Law of Succession Act*:-

“Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased’s estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased’s net estate .



27. In making provision for a dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.”
22. The law is trite that such provision for dependants must be considered and determined before the grant is confirmed.
23. Section 30 of the *Law of Succession Act* provides: -
- “No application under this Part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided by section 71.”
24. It follows that the claim by the applicants is time barred and cannot be considered in these proceedings.
25. The respondents filed the succession for the benefit of the beneficiaries of the deceased. The respondent, annexed a certificate of official search dated 5/10/2010 for Land Parcel No. Karingani/Gitareni/202 showing that the deceased Mwirichia Nkungi was registered as the absolute proprietor on 28/6/1985 and Land Certificate was issued. This is further buttressed by the green card of the property which was produced by the respondent. The deceased was therefore the absolute proprietor of the suit property free of any encumbrance and was therefore available for distribution to his beneficiaries. I note that during the hearing, evidence was led that the deceased bought the land from one Faustino Kigwa. There is no prove by the applicants that the land was family land or ancestral land.
26. The applicants have contended that deceased was registered in trust. The applicants admitted that they had no evidence to prove that the deceased was registered in trust. The ownership documents which I have cited above have nothing to show that the deceased was registered in trust. That notwithstanding, this court has no jurisdiction to determine the issue of trust.

Conclusion:

27. For the reason stated, I find that the respondents obtained the grant of letters of administration lawfully and was confirmed procedurally. The applicants have failed to demonstrate any of the grounds set out under Section 76 of the *Act* to warrant this court to order the revocation or annulment of the said grant. The application lacks merits and is dismissed. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 22ND DAY OF MARCH 2024.

L.W. GITARI

JUDGE

