



REPUBLIC OF KENYA



In re Estate of Kirira Rungare Gathenge (Deceased) (Succession Cause E019 of 2021) [2024] KEHC 3244 (KLR) (20 March 2024) (Judgment)

Neutral citation: [2024] KEHC 3244 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE E019 OF 2021
MA ODERO, J
MARCH 20, 2024**

IN THE MATTER OF THE ESTATE OF KIRIRA RUNGARE GATHENGE (DECEASED)

BETWEEN

AGATHA WANGECHI KIRIRA APPLICANT

AND

MUTINDE WANGUI GITARI RESPONDENT

JUDGMENT

1. The Objector/Applicant herein AGATHA WANGECHI KIRIRA has filed in this court a summons for Revocation/Annulment of Grant dated 17th May, 2023, seeking to have the Grant of letters of Administration Intestate issued to the Respondent revoked on the following grounds;-
 - “(i) The grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case.
 - “(ii) 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”
2. The summon was supported by the Affidavit of even date as well as the Further Affidavit dated 8th November, 2023 both sworn by the objector.
3. A second Protestor Lucy Wahu Kirira also filed an Affidavit of protest dated 8th June, 2023 challenging the confirmation of the Grant on grounds that the proposed mode of distribution was unfair.
4. The Administrator/Respondent opposed the summons through her Replying Affidavit dated 29th June, 2023.



5. The summons was canvassed by way of written submissions. The Objector filed the written submissions dated 8th November, 2023. The Respondent filed the written submissions dated 13th October, 2023 whilst the protestor through her Advocate indicated that she would not be filling any written submissions.

Background

6. This succession cause relates to the estate of the late Kirira Rungare Gathege who passed away at Nazareth Hospital on 1st October, 2018. A copy of the Death Certificate Serial Number 0904438 appears as Annexure 'AWK – 5' to this summons for revocation of Grant.

7. According to a letter dated 2nd March, 2020 written by the Chief of Mweiga Location the Deceased was survived by the following persons:-

Name Relation Age

1st Wife

- (i) Rose Nyokabi Maina Daughter 59 Yrs

2nd Wife

- i. Mutinde Wangui Gitari Wife 76 Yrs
ii. Susan Nyokabi Gitari Daughter 55 Yrs
(iii) Jane Wanjiru Gitari Daughter 52 Yrs
(iv) Jane Wanjiru Muraya Daughter in Law 49 Yrs

3rd Wife

- i. Agatha Wangeci Kirira Wife 72 Yrs
ii. Margaret Wanjiru Kirira Daughter 51 Yrs
(iii) Lucy Wangari Kirira Daughter 49 Yrs
(iv) Susan Njoki Kirira Daughter 48 Yrs
(v) George Muraya Kirira Son 46 Yrs
(vi) Charles Wahome Kirira Son 44 Yrs
(vii) Grace Wairimu Kirira Daughter 41 Yrs
(viii) Caroline Mumbi Kirira Daughter 39 Yrs
(ix) Elizabeth Wambui Kamau Grand Daughter 25 Yrs

4th Wife

- i. Lucy Wahu Kirira Wife 44 Yrs
ii. Peter Muraya Kirira Son 24 Yrs
(iii) Rose Nyokabi Kirira Daughter 20 Yrs
(iv) Michael Kigera Kirira Son 19 Yrs



- (v) Lawrence Maina Kirira Son 19 Yrs
 - (vi) Francis Macharia Kirira Son 17 Yrs
 - (vii) Catherine Wangari Kirira Daughter
8. Following the demise of the Deceased the 1st Respondent Mutinde Wangui Gitari filed a petition in the High Court at Nyeri dated 31st August, 2021 seeking a Grant of letters of Administration in respect of the estate of the Deceased. On 6th December, 2021, a Grant of letters of Administration Intestate was issued to the Respondent. (Annexure “AWK-4”)
9. Thereafter on 6th March, 2023 the Respondent filed a summons for confirmation of Grant to which as stated earlier the protestor objected.
10. The objector on her part seeks to have the Grant which was issued to the Respondent revoked.

Analysis And Determination

11. The Objector avers that she is a wife to the Deceased. The Objector concedes that the Respondent was at one time married to the Deceased but states that the Respondent deserted the matrimonial home in the year 1968 leaving her four (4) children behind and never returned upto the time when the Deceased passed away.
12. The Objector states that she married the Deceased and took care of the four children left behind by the Respondent, That she and the Deceased bore eight (8) children together. That they acquired property together over which the Respondent has no claim and that the matrimonial home was at Honi Farm in Nyeri.
13. The Objector complains that the 1st Respondent in her petition for Grant only mentioned herself and her four (4) children as survivors of the Deceased and totally ignored and / or disregarded the existence of the objector and her children.
14. The Objector states that the Respondent had no knowledge and/or concern for the Deceased during his illness. That the family did not recognize the Respondent as a wife and she was not included in in the funeral arrangements nor was she mentioned in the Eulogy.
15. Accordingly the Objector concludes that the Respondent obtained the Grant irregularly by misleading the court and by concealing material facts.
16. In opposing the summons the Respondent avers that she is the only legal wife of the Deceased having gotten married to the Deceased through a church wedding conducted at the Consolata Church in Nyeri on 1st August, 1964. That she and the Deceased never at any time divorced and neither did she remarry.
17. Accordingly the Respondent contends that the Deceased had no legal capacity to marry another wife as his marriage to the Respondent was still subsisting at the time of his demise.
18. Nevertheless the Respondent recognizes and concedes that her husband did have relations with other women and bore children with them.
19. The Respondent insists that as the only legal wife of the Deceased she ranks first in priority in securing Grant of letters of Administration.



20. The Respondent denies having obtained the Grant through concealment and by misleading the court. She states that she did issue citations to both the Objector and the Protestor Lucy Wahu in Nyeri Succession Cause No. 57 OF 2020.
21. That upon hearing the citation the court directed the two to file cross-petitions but they failed to do so. The Respondent then filed her Petition on 6th September, 2021 which petition she served upon the Objector.
22. The Protestor on her part objects to the mode of distribution of the estate. She claims that the Respondent is unaware of how the Deceased wished to have his estate distributed and complains that one of her children was not included in the mode of distribution proposed by the Respondent. The protestor in her Affidavit of protest proposed an alternative mode of distribution of the estate.
23. The main issue for determination in this matter is whether sufficient grounds have been advanced to warrant the revocation of the Grant issued to the Respondent on 6th December, 2021.
24. The Grounds upon which a Grant may be revoked are set out in Section 76 of the [Law of Succession Act](#) Cap 160 Laws of Kenya as follows:-

“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 of its own motion -

- i. that the proceedings to obtain the grant were defective in substance;
 - ii. 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;
 - iii. that the grant was obtained by means of an untrue allegation of a fact essential in point in law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- iv. 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
 - iv. that the grant has become useless and inoperative through subsequent circumstances.
25. Section 76 was well articulated by the court In re Estate of Prisca Ong’ayo Nande (Deceased) [2020] eKLR where it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for



representation was not competent or suitable for appointment, or the deceased died testate having a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.” [Own emphasis]

26. The Objector contends that the Respondent did not have the legal capacity to take out letters of Administration in respect of the estate of the Deceased. The Respondent counters that she is the only Legal wife of the Deceased/ and therefore ranks in priority over both the Objector and the Protestor neither of whom the Respondent asserts could have married the Deceased whilst his marriage to herself still subsisted.
27. In my view the questions of the validity of the Respondent’s marriage to the Deceased as well as the question as to whether the Objector and / or the Protestor could be deemed to be ‘wives’ of the Deceased are issues which cannot be determined by way of Affidavit evidence.
28. There are critical issues which would require an oral hearing at which parties would be invited to call witnesses and adduce evidence in support of their respective positions. As such this is a matter which in my view is yet to be conclusively determined.
29. The Objector has accused the Respondent of obtaining the Grant by way of misrepresentation and/ or concealment. She alleges that the Respondent deliberately misled the court in failing to reveal that the deceased had other wives and / or children. As stated earlier the question of whether or not the Objector was a wife to the Deceased is yet to be determined.
30. The Respondent on her part claims that she served the objector with citation in Succession Cause number 57 of 2020.
31. Rule 22 (1) of the Probate and Administration Rules provides that:-

“ A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.”
32. In *John Osicho v Hana Omolo Osewe & Another* [2013] eKLR, Hon. Justice Sitati (retired) stated as follows:-

“ A Citation is a document issued by the Probate Registry, whereby the person being the claimant (Citor) calls upon the person cited (Citee) to provide a reason why a particular step should not be taken;..... Citations occur in both contentious probate. In non-contentious Probate, they serve the purpose of bullying along or fast tracking the issue of a grant of letters of administration.”



33. Further in Josiah Muli Wambua [2024] eKLR, Hon. Musyoka, J. expounded further as follows:-

“In intestacy, citations issue only in cases where no petition has been lodged in court. Citations are intended to trigger the process of applying for letters of administration intestate in circumstances where the persons entitled to apply are not willing or are slow in moving the court in that behalf. The citor should not be a person who has himself already applied for the grant, for the citor should only apply for grant after the citee fails to so apply.”

34. It is pertinent to note that the citation which the Respondent claims to have issued was filed in the Lower Court and was not filed in this High Court Succession Cause.

35. Upon perusal of this lower court file it is apparent that the Respondent issued citation to the Respondent and the protestor. However the two did not enter appearance in that matter. The Respondent later withdrew the matter on 15th September, 2021. It is not entirely clear whether the Respondent and/or the Protestor were ever served with the citation filed in the lower court.

36. I have carefully and anxiously perused this present Succession Cause which was filed by the same Respondent in the High Court. In the Affidavit in support of her Petition for Grant of letters of Administration intestate dated 31st August, 2021, the Respondent at Paragraph h listed herself and her three daughters as the only persons surviving the Deceased.

37. By her own admission the Respondent was fully aware of the existence of the Respondent and the Protestor as well as the existence of other children sired by the Deceased. Her action in failing to include them in her Petition for Grant was a deliberate attempt to mislead the court by concealing the existence of the other beneficiaries.

38. In Re Estate of Ndinguri Karugia (Deceased) [2017] eKLR
Hon. Lady Justice Muigai held as follows:-

“From the detailed chronology of the documents that the Respondent lodged for grant of letters of administration intestate, she did not disclose all the children and family of the Deceased.

The non disclosure of all beneficiaries of the deceased’s estate amounted to concealment of material facts. The Grant and the confirmed Grant were fraudulently obtained by means of an untrue allegation or fact essential in point of law to justify the Grant [Own Emphasis].

39. Similarly in Re Estate of Wahome Mwenje Jackson [2016] eKLR Mativo J held that

“The evident deliberate failure by the Respondent to involve the applicants at the time of filing these proceedings, failing to list them among the beneficiaries or seek their consent or renunciation was in my view bad faith and amounted to concealment of material facts. My conclusion is that the proceedings leading to the issuance of the grant are defective in substance and that material information was not disclosed to the court in that had the court been made aware that there were other beneficiaries who were interested in the deceased’s estate the court would have hesitated to issue the grant” (own emphasis).

40. The Respondent did attempt to rectify this deception by later including the other wives and children in her supporting affidavit dated 6th March, 2023 annexed to the summons for confirmation of Grant.



41. However it is quite clear that the Respondent only did so because she had become aware that there a challenge had been mounted to the Grant originally issued to her. This action to include the other beneficiaries came too late in the day.
42. Furthermore the correct procedure to remedy the exclusion of the other beneficiaries is not to belatedly slip in their names at the point of seeking to confirm the Grant. The Respondent ought to have applied to have the original Grant issued to her rectified so as to include a representative from each house as an Administrator.
43. In her Affidavit support at page (6) the Respondent deponed that her husband was survived by 3 wives and twenty (20) children. In a situation where a Deceased had more than one wife then it is desirable that each house be represented in the administration of the estate.
44. It appears that the aim of the Respondent is to be the Sole Administrator of the estate to the exclusion of the other Houses.
45. The fact of the matter is that in seeking and obtaining the original Grant which was issued to her on December 6, 2021, the Respondent misled the court by deliberately concealing the existence and identities of the other beneficiaries of the estate. This directly contravenes Section 76 of the [Law of Succession Act](#). In the premises the Grant so issued to the Respondent is for revocation.
46. Finally I find merit in this summons for revocation of Grant and make the following orders;-
 - i. The Grant issued to the Respondent Mutinde Wangui Gitari on 6th December, 2021 be and is hereby revoked.
 - ii. The family to sit down and appoint fresh Administrator (s) to the estate to represent each House within forty (40) days.
 - iii. In the event no agreement is reached, then the court will hear the parties on the question of appointment of Administrators.
 - iv. This being a family matter I make no orders on costs.

DATED IN NYERI THIS 20TH DAY OF MARCH, 2024.

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MAUREEN A. ODERO

JUDGE

