



In re Estate of Samuel Mwaniki Wamutitu (Deceased) (Succession Cause 366 of 2008) [2024] KEHC 2808 (KLR) (20 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2808 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 366 OF 2008
MA ODERO, J
MARCH 20, 2024**

IN THE MATTER OF THE ESTATE OF SAMUEL MWANIKI WAMUTITU (DECEASED)

BETWEEN

DAVID MATHENGE NYARUAI APPLICANT

AND

ISAAC MATHENGE MWANIKI RESPONDENT

JUDGMENT

1. The Objector herein one David Mathenge Nyaruai filed in this court a summons for Revocation of Grant dated 20th April, 2023. The summons were premised upon Sections 47, 76 (a & b) *Law of Succession Act* Cap 160, Laws of Kenya and Rules 44, 73 and 74 of the Probate and Administration Rules and any other enabling law/ and was supported by the Affidavit of even date as well by the Supplementary Affidavit dated 9th August 2023, both sworn by the Objector.
2. The Administrator/Respondent Issac Mathenge Mwaniki opposed the summons for Revocation of Grant through the Replying Affidavit dated 26th June, 2023. The summons were disposed of by way of written submissions. The objector filed the written submissions dated 1st August, 2023 whilst the Respondent relied upon her written submissions dated 28th, August 2023.

Background

3. This Succession Cause relates to the Estate of the late Samuel Mwaniki Wamutitu (hereinafter ‘the Deceased’) who died intestate on 24th August, 1995. A copy of the Death certificate Serial number 12068 is annexed to the petition for Grant of letters of Administration intestate filed on 21st July 2008. The Deceased was survived by the following persons;-
 - i. Teresa Nyambura Mwaniki - (widow now deceased)



- ii. Joseph Wamutitu Mwaniki - (Son now deceased)
 - iii. Susan Nyaruai Muriithi - (Daughter now deceased)
 - iv. Isaac Mathenge Mwaniki - Son
 - V. John Nderitu Mwaniki - (Son now deceased)
 - vi. Chibua Wangari Wanguya - Daughter
 - vii. Mary Nyangendo Kahugu - Daughter
4. The estate of the Deceased comprised of two assets being the property known as L R Nyeri/Mweiga Plot No. 194 comprising approximately 3.0 Hectares and LR No. Laikipia/Nanyuki West Timau Block 21896 (Matanya Marira).
 5. Following the demise of the Deceased one of his sons Issac Mathenge (the Respondent herein) applied for and obtained a Grant of Letters of Administration Intestate which Grant was made on 23rd July, 2008. That Grant was duly confirmed on 24th November, 2022.
 6. In the confirmed Grant it was indicated that the estate would be distributed in the following manner;-

Schedule

Name	Description of Property	Share of Heirs
Susan Nyaruai Mwaniki	L.R. No. Nyeri/Mweiga/194	1 Acre
Isaac Mathenge Mwaniki	L.R. No. Nyeri/Mweiga/194	3 Acres
Jane Wambui Nderitu	L.R. No. Nyeri/Mweiga/194	3 Acres
Isaac Mathenge Mwaniki	L.R. NO. Laikipia/Nanyuki West	Wholly
	Timau 2/896 (Matanya Marira)	
 7. Following the issuance of the confirmed Grant one of the beneficiaries to the estate of the Deceased namely Susan Nyaruai Mwaniki (hereinafter referred to as “Susan”) also passed away. The said Susan died on 9th January, 2023 and a copy of her Death Certificate is annexed to the summons for revocation of Grant (Annexure DNM ‘J’).
 8. The objector herein is one of the sons of the late Susan and he has filed these summons on his own behalf and on behalf of his siblings who through the Affidavit dated 20th April, 2023 have authorized the Objector to file suit on their behalf.
 9. In the Summons for Revocation of Grant the Objector seeks the following prayers;-
 - a. That the Grant of Letters of administration intestate made to the said Petitioner in the matter dated 18th July 2022 and confirmed on 24th November, 2022 be revoked and a fresh one be issued.
 - b. That the beneficiary Susana Nyaruai Mwaniki (deceased) be replaced by the name of David Mathenge Nyaruai to hold her share on his own behalf and of his siblings.
 - c. Spent
 - d. That the cost of the application be in the course.



10. The summons for revocation of Grant is premised upon the following grounds:-

- “ 1. That the Petitioner has concealed material facts and has petitioned for the confirmation of Grant contrary to the decision of the Clan Members dated 7th April, 2010.
2. That Teresa Nyambura and Joseph Wamutitu beneficiaries of the Estate had passed on; way before the estate could be distributed as per the wishes of the deceased and expressed by the Clan members in regard to LR No. Nyeri/Mweiga/194.
3. That the Surviving beneficiaries ought to share equally the portion of the inheritance given to Teresa Nyambura and Joseph Wamutitu by the clan members as there were no other beneficiaries left behind to inherit their portion.
4. That the Petitioner has since been doing things by himself without involving his sister Susana Nyaruai Mwaniki (may her soul rest in peace) thus not signing any court documents before this Honourable court.
5. That the object of the power to revoke a grant is to ensure that due and proper administration of an estate and protection of the interests of those beneficiaries interested.”
6. That it is well within the inherent Powers of this Honourable Court as provided for by Rule 73 of the Probate and Administration to grant the orders sought.

11. As stated earlier the summons for revocation of Grant was opposed by the Administrator/Respondent who maintained that the Grant was issued to him procedurally and in accordance with the law. The Respondent categorically denies having obtained the said Grant through concealment of material facts.

12. According to the Respondent the Objector herein has no “locus standi” in this matter. Further that the person who had the right to object to the making of the Grant during her lifetime was ‘Susan’ but she did not file any objection at all.

Analysis and Determination

13. I have carefully considered the summons for revocation of Grant and the Affidavit filed in support thereof. I have also put into consideration the Reply filed by the Respondent as well as the written submissions filed by both parties.

14. The first issue to be determined is whether the objector has ‘Locus standi’ in this matter Locus Standi is a latin term which literally means ‘place of standing’ and refers to the right of a party/parties to act in a particular matter.

15. It is trite law that pleadings filed by a person who has no Locus Standi are void ab initio. In *Ibrahim v Hassan & Charles Kimenyi Macharia* [2019] eKLR it was stated as follows:-

“Locus standi is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, he means that party cannot be heard despite whether or not he has a case worth listening to. The issue herein is whether the Applicant lacks the requisite Locus Standi to seek relief from the court to



revoke the grant in question issued to the Respondent. {In my view issues regarding locus standi are critical preliminary issues which must be dealt with and settled before developing into other substantive issues} [own emphasis].

16. Therefore if the Objector is found to be without locus in this succession cause then all other arguments raised will be moot.
17. As stated earlier the objector and his siblings are the children of ‘Susan’ who being a daughter of the Deceased to whom this succession cause relates was a bonafide beneficiary to the estate.
18. The Respondent submits that the objector’s mother ‘Susan’ was fully involved and participated in this succession cause in her capacity as a direct beneficiary to the estate. He terms the objector as a ‘stranger’ to this current matter.
19. In a succession matter for one to be deemed to have sufficient locus standi he or she must be a direct beneficiary to the estate of the Deceased or must be one who holds letters of Administration in respect of a beneficiary to the estate.
20. In this case the objector’s mother ‘Susan’ being a daughter of the Deceased was a direct beneficiary of the estate. Indeed it is evident from the record that the objector’s mother was included as a beneficiary and was also provided for in the distribution of the estate.
21. However following the confirmation of the Grant in November 2022, ‘Susan’ passed away on 9th January, 2023. It is pertinent to note that Susan passed away after the Grant had been issued and confirmed in favour of the Respondent.
22. The Objector is a grandchild to the Deceased. The courts have held that in certain circumstances a grandchild may be considered as an heir and may inherit from a Deceased person. However this is only possible where the parents of the said grandchild have pre-deceased the Deceased. In such a case the grandchildren are permitted to step into the shoes of their Deceased parents for purposes of inheritance.
23. In *Re Estate of Wabome Njoki Wakagoto* [2013] eKLR the court held that
“Be that as it may, under Part V of the Act, grand children have no automatic right to inherit their grandparents who died intestate after 01/7/1981 when the Act came into operation. The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit from their grandparents indirectly through their own parents, the child of their grandparent. The child to the grandparent inherit first and thereafter the grandchildren inherit their parents. The only time the grandchildren can inherit directly from their grandparents is when the grandchildren’s own parents are dead. Those grandchildren can now step into the shoes of their parents and take directly the share that ought to have gone to the said parents. Needless to say, such grandchildren must hold appropriate representation on behalf of their own parents. [Own emphasis]
24. Similarly in Re: *Estate Of Folorence Mukari, Kinyua (Deceased)* [2018] eKLR, Hon Lady Justice Matheka stated that
“A grandchild is a direct heir to the estate of the grandparents where the parent has predeceased the grandparents. The grandchildren get into the shoes of their deceased parents and take the parents share in the estate of their grandparents” [own emphasis]



- 25. In this case ‘Susan’ (the objector’s mother) did not pre-decease the Deceased. She was alive when the Deceased died and was alive when the succession cause was ongoing. As such the children of ‘Susan’ cannot be said to be direct heirs to the estate of the Deceased.
- 26. The other situation in which a grandchild may be considered a direct Heir/beneficiary is where such grandchild was a dependant of the Deceased in terms of Section 29 of the *Law of Succession Act*. Neither the objector nor his siblings have claimed that they were dependent on the Deceased immediately prior to his death.
- 27. Finally it is clear that the objector has filed this summons on behalf of the estate of his late mother Susan Nyaruai Mwaniki. The Objector alleges that the Grant was obtained irregularly by concealment of material facts. I do agree with the Respondent that if this was the case – if indeed ‘Susan’ had a problem with the issuance of the Grant to the Respondents or if she had a problem with the mode of distribution of the estate then having been alive and aware of the succession cause the said ‘Susan’ would have moved to file a summons to revoke the Grant. The children of ‘Susan’ are only entitled to their late mother’s share of the estate.
- 28. If the Objector wishes to challenge the share allocated to their late mother then he must have proper legal basis to do so. In other words he must hold a Grant of letters of Administration in respect of the estate of his late mother. In this case of the objector herein does not hold any Grant to the estate of the late ‘Susan’ / and as such he has no mandate and/or authority to file suit on behalf of that estate. The Objector must first obtain a Grant in respect of the estate of his late mother to enable him challenge the allocation made to her.
- 29. Finally the Objector has made much about the mode of distribution proposed by the clan elders urging that the same ought to be adopted. The clan elders though respected individuals are not beneficiaries to the estate of the Deceased nor are they Administrators of the estate. Their proposals on distribution are mere suggestions and cannot be binding on the court or on the beneficiaries.

Conclusion

- 28. Finally I find that the Objector has no locus standi in this matter. The summons for revocation of Grant has no basis and the same is hereby dismissed in its entirety.
- 29. This being a family matter each side will bear its own costs.

DATED IN NYERI THIS 20TH DAY OF MARCH, 2024

.....

MAUREEN A. ODERO
JUDGE

