



REPUBLIC OF KENYA



In re Estate of Kimani Gathu alias Gathu Kimani - Deceased (Succession Cause 4 of 2019) [2024] KEHC 2772 (KLR) (19 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2772 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 4 OF 2019
JK SERGON, J
MARCH 19, 2024
IN THE MATTER OF THE ESTATE OF THE LATE
KIMANI GATHU ALIAS GATHU KIMANI (DECEASED)**

BETWEEN

JANE WAKANYI NDUNGU APPLICANT

AND

MARTHA NJOKI NJENGA RESPONDENT

RULING

1. The application coming up for determination is a summons for revocation or annulment of grant dated 6th February, 2024 seeking the following orders;
 - (i) Spent
 - (ii) That pending the hearing and determination of this Application there be a stay of execution of all the consequential orders arising from the certificate of confirmation of grant issued on 6th May, 2022 (rectified).
 - (iii) That the certificate of grant of letters of administration made to Martha Njoki Njenga on the 6th May, 2022 (rectified) be revoked on the following grounds:-
 - (a) That the grant was obtained fraudulently by making of false statement or by the concealment from the court of some material facts.
 - (b) That grant was obtained by means of untrue allegation of facts essential in point of law to justify the grant particularly that the petitioner failed to disclose or seek consent to confirm grant from other survivors who had priority or equal right to apply as well.



- (c) That the petitioner deliberately omitted/or overlooked the consent of all the beneficiaries of the estate of the deceased in the schedule of assets presented before this Honourable Court.
- (d) That the mode of distribution of the estate of the deceased especially LR No. Kericho/Chilchila/Kunyak/Block2 (Urafiki)/306 measuring 3.72 Acres as deponed by the petitioner in her affidavit in support of summons of confirmation does not reflect the true wishes of the deceased herein.
- (iv) That the petitioner/respondent be ordered to pay costs.
2. The application is supported by grounds on the face of it and the supporting affidavit of Jane Wakanyi Ndungu the applicant herein.
 3. The applicant avers that she is the daughter-in-law of the deceased herein whereas the petitioner is her sister-in-law and further that that their deceased father-in-law died sometime on 23rd January, 2011 and left behind several dependents.
 4. The applicant avers that during the lifetime of the deceased, the estate comprising LR No. Kericho/Chilchila/Kunyak/Block2 (Urafiki)/306 measuring 3.72 Acres had been sub-divided by the deceased among the beneficiaries of the estate.
 5. The applicant avers that the grant of letters of administration was obtained fraudulently and/or by means of deceit and that the estate was absolutely allocated to her husband one Peter Kariuki Kimani (now deceased). The applicant was adamant that it rightfully belonged to her as she has been in occupation of the same.
 6. The applicant avers that she being the widow to the above mentioned eldest deceased was the administrator in the instant succession cause, however, the petitioner in collusion with one Peter Kimani Mwangi unlawfully removed her as an administrator.
 7. The applicant avers that during the confirmation of grant process and process of obtaining the consent on the mode of distribution, the petitioner herein failed to include the rightful beneficiaries.
 8. The applicant was adamant that she had been advised by her advocates on record that the grant was confirmed by the petitioner by means of untrue allegations, deliberate omissions and concealment of material facts and therefore ought to be revoked.
 9. The applicant maintained that the respondent/petitioner dealt with the estate of the deceased in a manner adverse to the interests of the beneficiaries.
 10. The applicant contended that the petitioner had made substantive efforts to effect distribution of the estate in line with the certificate of confirmation of grant (rectified) dated 6th May, 2022 and sought a surveyor to effect distribution, she was therefore apprehensive that she would suffer irreparably.
 11. At the time of writing this ruling the petitioner/respondent had not filed a replying affidavit in response to the summons for revocation and/or annulment of grant, hence the application is unopposed.
 12. Having considered the instant application, the sole issue for determination by this court is whether to revoke and/or annul the certificate of confirmation of grant (rectified) dated 6th May, 2022. The answer is in the negative. The applicant maintains that the grant was confirmed by the petitioner by means of untrue allegations, deliberate omissions and concealment of material facts and therefore ought to be revoked. The petitioner/respondent has not filed a response to the application for revocation and/or annulment. I find that the applicant is contesting distribution of the estate of



the deceased in particular LR No. Kericho/Chilchila/Kunyak/Block2 (Urafiki)/306 measuring 3.72 Acres. According to the applicant, the petitioner/respondent has dealt with the estate of the deceased in a manner adverse to the interests of the beneficiaries and inimical to her interests in LR No. Kericho/Chilchila/Kunyak/Block2 (Urafiki)/306 measuring 3.72 Acres. However, I find the applicant had the opportunity to lodge a protest or objection against the succession proceedings before the grant was confirmed. In any event this court upon confirmation of grant dated 6th May, 2022 is largely *functus officio*. *In re Estate of Juma Shitseswa Linani (Deceased)* [2021] eKLR the court held that where a person is unhappy with the process of confirmation of grant, such a person ought not to move the court under *section 76* for revocation of grant. Instead, the person should file an appeal against the orders made by the court on distribution or apply for review of the said orders. This is because the court confirming a grant largely becomes *functus officio* so far as confirmation of the grant is concerned, and cannot revisit the matter unless upon review.

13. Consequently, the summons for revocation and/or annulment of grant dated 6th February, 2024 is dismissed with no orders as to costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF MARCH, 2024.

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J.K. SERGON

JUDGE

In the Presence of:

C/Assistant – Rutoh

No Appearance for the Parties

