



In re Estate of Jason Kamau Robert Gachie (Deceased) (Succession Cause 30 of 2020) [2024] KEHC 8553 (KLR) (29 April 2024) (Ruling)

Neutral citation: [2024] KEHC 8553 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 30 OF 2020
G MUTAI, J
APRIL 29, 2024**

BETWEEN

**MILLICENT MUTHONI KAMAU 1ST OBJECTOR
ROBERT GACHIE KAMAU 2ND OBJECTOR
JOE WANDU KAMAU 3RD OBJECTOR
ANN WANJIKU KAMAU 4TH OBJECTOR**

AND

**ANNIE WANJIKU KAMAU 1ST PETITIONER
MIRIAM WANJA KASHA 2ND PETITIONER**

RULING

1. Before this court is a Summons dated 20th June 2022 vide which the Objectors/Applicants seek the following orders:-
 - a. Spent;
 - b. Spent;
 - c. Spent;
 - d. The Honourable Court be pleased to revoke and recall the grant of letters of administration issued on 16th October 2022 by Hon Justice M Thande and confirmed on 4th October 2021 by Hon Justice J. N. Onyiego in favour of the Petitioner/Respondents;
 - e. The Honourable Court be pleased to order that all income of the estate be remitted in an estate account jointly held in the names of 1st Objector and the 1st Petitioner to avert further losses;



- f. The Respondents having obtained the letters of administration through falsehoods and misrepresentations of and concealment of material facts, this Honourable Court do decline to hear the Respondents any further on the said application so as to protect its own dignity and prevent an abuse of its process;
 - g. This Honourable Court be and is hereby pleased to order the Petitioner /Respondents to render a full inventory and account, and the extent of the distribution of the estate of the late Jason Kamau Robert Gachie (Deceased);
 - h. Costs be provided for; and
 - i. Any other order that the court may deem fit.
2. The said Summons was opposed by the Petitioners/Respondents.
 3. The Summons was canvassed through viva voce evidence. The matter was heard in open Court.
 4. The first witness for the Objectors/Applicants was Millicent Muthoni Kamau. Ms Kamau adopted her witness statement. She stated that she got married to the deceased customarily in 1978. They solemnised their vows in 1981 and never divorced. It was her evidence that she and her husband, together with their children, relocated to the United States of America in January 1994. The deceased came back in July 1997. She testified that she came back to Kenya once, in 1996, to bury her father. After leaving Kenya in 1996, she did not see the deceased again. The two of them were in constant communication until the time he died. She testified that she did not attend the funeral of the deceased but that her brother did and that she was the one who bought the coffin in which her husband's remains were interred. She stated that they acquired and developed properties together through loans and that they established businesses together, among which was MIMS Hotel before the deceased got involved with the 1st Petitioner/Respondent.
 5. She stated that Title No Kilifi/Mtwapa/1503 was purchased in 1997 after the deceased returned from the United States of America. It is upon that land that the matrimonial home was erected. She denied being aware of the relationship between the deceased and the 1st Petitioner/Respondent.
 6. During cross-examination, she stated that the insurance company paid the first Petitioner/Respondent.
 7. She stated that the Petitioners/Respondents obtained a grant of letters of administration through untrue/false allegations by omitting her and her children as beneficiaries, whereas they were aware of their existence.
 8. The 1st Petitioner/Respondent testified that the 1st Objector/Applicant was not a wife to the deceased. She averred that she lived with the deceased for 10 years and that she never saw her. She also denied that the 1st Objector/Applicant's children belonged to the deceased. When cross-examined she stated that the deceased informed her of his former wife and children and that they were divorced. She, however, failed to produce evidence of the alleged divorce. The Court notes that in her witness statement filed on 1st November 2022, in paragraphs 11 and 13 thereof, she acknowledged the existence of the 1st Objector/Applicant, her marriage to the deceased, and also the existence of her children and went ahead to state that the 1st Objector/Applicant was separated from the deceased.
 9. She stated that Title No Kilifi/Mtwapa/1503 is her matrimonial home. It was purchased in 1998, and construction started the same year after she started cohabiting with the deceased. CR 40155(original 3862/8) was purchased around 2000 and completed in 2004; however, it is marked for demolition as it is on a road reserve. LR 1373/1374 Mikindani was distributed to the deceased's son Robert Kamau.



10. It was her evidence that she was awarded Kshs 1,200,000/- by the Court as compensation. The said funds were left with the brother-in-law (now deceased). The deceased's son Robert used to work with his brother Philip at the MIMS hotel, which was vandalised during the post-election violence. She further testified that she did not omit any assets and that she followed due process as the gazetteement was done twice. It was her evidence that she was not aware of any other beneficiary at the time filed the Petition for grant of letters of administration.
11. The Objectors/Applicants, through their advocates, Triple NW & Co. Advocates LLP, filed written submissions dated 9 October 2023. Counsel submitted on two issues: whether the grant issued should be revoked and how the estate should be distributed.
12. On the first issue, counsel relied on Section 76 of the Law of Succession Act and submitted that the Petitioners/Respondents obtained the grant through untrue allegations as they did not mention all the beneficiaries of the estate of the deceased. That non-disclosure of material facts resulted in the issuance and confirmation of the grant to the prejudice of the Objector/Applicant and her house, who are also beneficiaries.
13. On the second issue, counsel relied on Article 27 of the Constitution and submitted that all persons are equal before the law and, as such, all beneficiaries are entitled to a fair share of the estate. It was urged that the estate should be shared equitably among all the beneficiaries, taking into consideration the fact that the 1st Petitioner/Respondent had benefited from the estate since the deceased died.
14. Counsel relied on Section 40 of the Law of Succession Act and urged the court to distribute the estate equally among the two households.
15. The Respondents/Applicants, through their advocates Kadima & Company Advocates, filed their written submissions dated 22nd November 2023. Counsel submitted on two issues, namely whether the grant issued should be revoked and whether the Objectors/Applicants are entitled to the prayers sought.
16. Counsel relied on Section 76 of the Law of Succession Act and submitted that the Objectors/Applicants did not tender any evidence to prove that they are children of the deceased. It was urged that the Petitioners/Respondents did not fail to disclose material facts.
17. On the second issue, counsels for the Petitioners/Respondents submitted that the Objectors/Applicants had not proved their case and urged the court to dismiss the Summons with costs.
18. I have considered the summons, the evidence tendered, and the rival submissions by both counsels. It is now my duty to determine whether the orders sought should be issued.
19. Section 76 of the Law of Succession Act lists down grounds that a party may rely on when applying to have a grant of representation revoked. The said section provides that:-
 - 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 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
- e. That the grant has become useless and inoperative through subsequent circumstances.”

20. *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR, the court expounded on the grounds for revocation of a grant under section 76 of the *Law of Succession Act* by stating as follows:-

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its 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 made 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.”

21. The court in the case of *In re Estate of Magangi Obuki (Deceased)* [2020] eKLR, in dealing with the issue of revocation of grant stated as follows:-

“In the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No 158 of 2000, Mwita J. made remarks on the guiding principles for the revocation of a grant. He stated;

“[13] Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court



to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

22. The Objectors/Applicants' case is that they were omitted from the list of beneficiaries, whereas the Petitioners/Respondents were aware of their existence. They argued, therefore, that in the circumstances, the grant was obtained using untrue allegations and concealment of material facts from the court. The Petitioners/Respondents, on the other hand, argue that they were not aware of the Objectors/Applicants' existence. They further urged that the Objectors/Applicants were not beneficiaries of the deceased.

23. Who is a beneficiary or a dependant of a deceased person? Section 29 of the [Law of Succession Act](#) which provides;

“For the purposes of this Part, "dependant" means—

- 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, grandparents, 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.”

24. From the evidence adduced it does appear to me that the 1st Petitioner/Respondent knew about the 1st Objector/Applicant. She was also aware that she had children with the deceased and thus knew, or ought reasonably to have known, that such children were the beneficiaries of the estate of the deceased. In my view, the Petitioners/Respondents ought to have disclosed this fact in the Petition. The Objectors/Applicants should have been involved as parties in the Petition. By not doing so, the Petitioners/Respondents failed to make material disclosure and thus obtained the grant fraudulently.

25. The court in the case of [In re Estate of Julius Ndubi Javan \(Deceased\)](#) [2018] eKLR observed as follows on non-disclosure of material facts from the court:-

“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (*uberimae fidei*) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law.”

26. I find and hold that the petitioners were aware of the Objectors/Applicants and failed to disclose their existence in the Petition. By so doing, they knowingly made false statements or concealed something material to the case from the court. Had they revealed the existence of the 2nd family, the Court would not have issued the grant.



27. Even if it is assumed that the deceased had divorced the 1st Objector/Applicant as a former wife, she remained a dependant under section 29(a) of the *Law of Succession Act* and ought to have been listed as such.
28. In light of my findings, I revoke the grant issued on 16th October 2020 to the Petitioners/Respondents, which grant was confirmed on 4th October 2021.
29. I will not determine whether a statement of accounts ought to be obtained at this point as the estate needs to be preserved first.
30. I direct the 1st Objector/Applicant, Millicent Muthoni Kamau, and the 1st Petitioner/Respondent, Miriam Wanjala Kasha, to jointly Petition this Court for letters of administration intestate within 30 days of the date hereof.
31. As this is a family matter, I decline to award costs.
32. It is so ordered

DATED AND SIGNED AT MOMBASA THIS 29TH DAY OF APRIL 2024. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Ms Mwangi, holding brief for Mr Kiroko Ndegwa for the Objectors/Applicants;

Mr Amadi, for the Petitioner/Respondents; and

Arthur – Court Assistant

