



REPUBLIC OF KENYA



**KENYA LAW**

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**In re Estate of the Late Gabriel Ndetia Meoli (Deceased) (Succession Cause 45 of 2003) [2024] KEHC 5347 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 5347 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 45 OF 2003**

**MW MUIGAI, J**

**APRIL 26, 2024**

**BETWEEN**

**JOYCE MILANOI MEOLI ..... 1<sup>ST</sup> APPLICANT**

**RAPHAEL NZIOKA KILUVA ..... 2<sup>ND</sup> APPLICANT**

**JEANE MUTHEU KILUVA ..... 3<sup>RD</sup> APPLICANT**

**ALLAN MUTIE KILUVA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**MARGARET GABRIEL MEOLI ..... 1<sup>ST</sup> RESPONDENT**

**STEPHEN LUKEINE MEOLI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a Summons for Revocation or Annulment of Grant dated 13<sup>TH</sup> October 2023 the Applicants herein sought the following orders:-
  1. THAT the grant of letters of Administration intestate made and issued to Margaret Gabriel Meoli and Stephen Lukeine Meoli on 4<sup>th</sup> July 2003 and confirmed on 24<sup>th</sup> January 2009 be revoked or annulled
  2. THAT the costs of the application be provided for and be borne by the respondents.
2. The Chamber Summons is based on the following grounds:-
  - 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 and by concealment from the court of material facts to the case.
  - c. That the grant was obtained by an untrue allegations of facts essential in point of law to justify the grant notwithstanding that the allegations were made in ignorance and inadvertently
  - d. That the whole succession process was conducted in utter secrecy to the extent that the applicants had to take out citation proceedings at the High Court Kajiado to get a disclosure as to what transpired
3. The Summons is supported by the affidavit of Joyce Milanoi Meoli. According to the deponent, the deceased died on 20<sup>th</sup> September 1995 and letters of administration intestate were made to Margaret Meoli and Stephen Meoli by the court on 4<sup>th</sup> July 2003
4. The 1<sup>st</sup> Applicant averred that the proceedings to obtain the grant were defective in substance in that the administrators of the estate never included deceased's daughter one the late Phike Meoli and/ or her estate who was a daughter to the deceased survived by a husband, daughter and son who were also the applicants and are entitled to the estate of Gabriel Ndetia Meoli (deceased) and were left out of the proceedings
5. The Applicant averred that the grant was obtained fraudulently by the making of a false statement and by the concealment from the court of the material facts to the case. The respondents carried out the proceedings in secrecy, misinformation and non- disclosure of all the beneficiaries of the estate and thus attempting to disinherit them. The record shows that the 1<sup>st</sup> applicant's signature does not appear in any document in the proceedings for the letters of administration intestate and or confirmation of grant.
6. The Applicant further averred that in order to hide and or mislead the court, the respondents fraudulently indicated on the court documents- that the applicant refused to sign the documents when in fact they never conveyed the documents to her and involve her in the proceedings.
7. It was deposed that the grant was obtained by means of an untrue allegations of facts essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.
8. The applicant deposed that subsequently the property and or the assets of the estate of the deceased including Loitoktok/Olkaria/36 and 223 were registered under the names of the respondents as a trustee for the other beneficiaries. Full disclosure of the inventory of the estate has never been made to them as a family and beneficiaries of their deceased father.
9. The applicant averred that the 1<sup>st</sup> applicant is a daughter of the deceased, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicant are the son in law, grand daughter and grandson of the deceased and the latter being the 3 legal representatives of the estate of the late Phike Meoli Tale who was the late daughter to Gabriel Meoli.
10. According to the applicant, it was clear from the facts presented above, the respondents who were the confirmed administrators of the estate of the deceased had selfish intentions when they applied for the letters of administration and the confirmation thereof.
11. According to her, the whole succession process was conducted in utter secrecy to the extent that the applicants had to take out citation proceedings at the High Court in Kajiado to get disclosure as to what transpired.



12. She averred that it was in the interest of justice that the grant made and issued to the respondents be revoked and or annulled so that the proper grant can be sought for proper administration and distribution of the estate of the deceased to all beneficiaries as enshrined in law.
13. The court was urged to grant the prayers in the summons for revocation or annulment of the grant confirmed on 26<sup>th</sup> January 2009.

### **Replying Affidavit Sworn On 26/6/2023**

14. The 1<sup>st</sup> Respondent swore a replying affidavit on 26<sup>th</sup> June 2023 and deponed that she was the surviving spouse of the deceased and that she disputes the 1<sup>st</sup> applicant's false presentations that she was left out of the proceedings to obtain and confirm the subject grant and that she was well aware of the entire proceedings as her name was among the list of the beneficiaries surviving the deceased.
15. It was deponed that the 1<sup>st</sup> applicant's affidavit in support of the summons for revocation of grant should be discredited for lack of truth and merit and that where a child of a deceased has predeceased the deceased then that child cannot be a beneficiary and that the rightful beneficiary ought to be the spouse of the deceased child.
16. It was thus deponed that in view of the foregoing, the 2<sup>nd</sup> applicant had not tendered any documentation and or proof to show that he was married to the deceased child and that the 3<sup>rd</sup> and 4<sup>th</sup> applicants are also strangers as they are not known to her as son and daughter to her late daughter and have not produced any evidence to prove their blood relation with the deceased.
17. The 1<sup>st</sup> respondent deponed that the 2<sup>nd</sup> applicant was well aware of the petition to grant the letters of administration complained against as he himself signed the guarantee by personal sureties form P & A 57 as a personal surety as the affidavit of justification of proposed sureties.
18. She deponed that had the 2<sup>nd</sup> applicant known that his children and himself were entitled to the estate of Gabriel Ndetia, he could have advised his children to join him to ask for their inclusion as beneficiaries in the petition for grant and thus the allegation that the grant was obtained fraudulently by making of a false statement and by concealing from the court of material facts is misplaced and only meant to mislead the court. According to the respondent, the applicants ought to have challenged the proceedings which they alleged were defective back then instead of raising unsubstantiated and lack evidence.
19. It was deponed that the 1<sup>st</sup> Respondent had demonstrated that the grant was legally obtained with production of all material facts to the court and that the 1<sup>st</sup> applicant had filed a citation in the same Court.
20. It was deponed that there were correspondences between the applicant's advocates and respondent's advocates on the issue of who was the administrator or how the estate property was to be shared in the long run.
21. According to the 1<sup>st</sup> respondent, the court should dismiss the summons for revocation of grant with costs as the same lacks merit and evidence

### **Further Affidavit Sworn On 21/06/2023**

22. In her further affidavit Joyce Milanoi Meoli deposed that the respondents neither shared information concerning the said succession matter nor did they include them in the discussions concerning the estate of the deceased.



23. She averred that as applicants they were only aware of the chief's letter having been written and particularizing them as beneficiaries of the estate in which the respondents never shared any information thereafter.
24. She averred that the consent to the making of the grant does not contain her signature of the other applicants and that it was not true that she refused to sign as indicated and that the letters confirm that the Respondents without their knowledge had already taken out the letters of administration and succession matter concluded.
25. The 1<sup>st</sup> respondent deposed that the 2<sup>nd</sup> applicant is the spouse of the deceased child and thus a rightful beneficiary ought to be the spouse of the deceased child who holds the property given to him in trust for the children of the deceased's child and that therefore the capacity and standing of the 2<sup>nd</sup> applicant is completely proper and within the law as a beneficiary.
26. She averred that it was not normal for a mother to disown her children and that the 1<sup>st</sup> respondent was her mother and had suffered dementia and not in a proper state of mind and cannot be said to have been the one to have sworn the replying affidavit.
27. She further averred that she never took part in the petition for letters of administration and thus did not have any information to be able to join in as a beneficiary and that as the applicants they have not been enjoying any proceeds of the estate of the deceased ever since the grant was made and subsequently confirmed.
28. The 1<sup>st</sup> applicant averred that the respondents who were the confirmed administrators of the estate of the deceased only had selfish intentions when they applied for the letters of administration and their confirmation thereof.
29. She averred that it was in the interest of justice that the grant to the respondents be revoked and annulled so that the proper grant can be sought for proper administration and distribution of the estate of the deceased to all beneficiaries as enshrined under the law.

### **Applicant's Submissions**

30. On behalf of the Applicant, it is submitted that the issue for determination was whether the applicants have met the threshold for revocation or annulment of the grant herein within the meaning of Section 76 of the *Law of Succession Act*. Reliance was made to the provision of Section 76 of the *Law of Succession Act*.
31. It is submitted that the respondents never involved the applicants nor notified them of the proceedings to obtain grant as provided for in Rule 26(1) of the *Probate and Administration Rules*.
32. Reliance was placed on Section 51 (2)(g) of the *Law of Succession Act* which sets out the information that shall be included in mandatory terms in every application for grant of representation and that failure to include the applicants in the application for grant of representation goes against the provisions of the above section. Reliance was made to the case of *Estate of Monica Mirigo (deceased)*.
33. It is submitted that the 1<sup>st</sup> applicant being the daughter to the deceased has equal rights to inherit in accordance with Article 27 (3) of the *Constitution* of Kenya. Reliance was placed in the case of *Thomas Tito Nyachawo v Judith Akinyi Ndege* [2016] eKLR.
34. Reliance was placed in the case of *Christine Wangari Gachigi v Elizabeth Wanjira Evans & 11 others* [2014] regarding the principle of representation.



35. It is submitted that the respondents went against Section 76(d) of the [Law of Succession Act](#) by failing, neglecting and refusing to proceed diligently with the administration of the Estate and specifically in registering themselves as the absolute proprietors of the properties comprising of the estate and in so doing, the respondents were against the provisions of Section 45(1) and 2 of the [Law of Succession Act](#).
36. It was the applicant's submissions that they have never been accorded any profits from the properties of the deceased despite the grant stating that the respondents were to hold the property in trust for the other beneficiaries and urged the Court to revoke the grant issued to the respondents just like in the case of [Estate of Magangi Obuki](#) [2020]eKLR.
37. Reliance was placed in the case of [Estate of the Late Epharus Nyambura Nduati \(deceased\)](#)[2021] and that the confirmation of the letters of grant was done on 26<sup>th</sup> January 2009 being approximately 9 months after filing of the application for confirmation and that the proceedings were defective in substance and against the mandatory provisions of Section 71(1) of the [Law of Succession Act](#).
38. It was submitted that the applicants have shown that the respondents failed to make material disclosure concerning the beneficiaries in the estate of the deceased and have thus shown that the case fall within the provision of Section 76 of the [Law of Succession Act](#) and thus the grant and subsequent confirmation of the same is ripe for revocation or annulment.
39. The Applicants submitted that they have met the threshold set out under section 76 of the [Act](#) for the revocation of the grant issued to the respondents and consequently prayed that the court does grant orders sought in the summons for revocation of grant dater 13<sup>th</sup> October 2022.

### **Respondent's Submissions**

40. On behalf of the Respondents, it was submitted that the main issue for revocation is whether the prayer for revocation should be granted and that the applicable laws would be the [Constitution](#) of Kenya 2010, the [law of Succession Act](#) and caselaw.
41. The Respondents submitted that they wished to rely on the contents of their replying affidavit that the 1<sup>st</sup> applicant gave false information and that her supporting affidavit should be fully discredited for containing false and misleading information. Reliance was placed on section 11 of the [oaths and statutory declarations Act](#) which makes it an offence for any person to knowingly and willfully make any statement which is false in a statutory declaration and Section 108 of the [penal Code](#).
42. Reliance was placed in the case of David Omwenga Maobe v republic [2015] to buttress the meaning of perjury
43. It is submitted that section 76 of the [Law of Succession Act](#) provides that revocation can either be at instance of an applicant or can be by the court suo moto however it is a pre requisite that the conditions for revocation as set out in the said section must be proved. Reliance was made to the case of [Jamleck Maina Njoroge Vs Mary Wanjiru Mwangi](#) (20150 eKLR where the Court discussed the circumstances when a grant can be revoked.
44. Reliance was made to the case of [Albert Imbuga Kisigwa v Recho Kavai Kisigwa](#), Succession Cause No. 158 Of 2000 to buttress the discretionary power of the court to revoke a grant which must be exercised judiciously and only on sound grounds.
45. It was their final issue that the application for revocation of the grant of the letters of administration intestate should fail with costs to the respondents.



## Determination

46. The Court considered the pleadings and submissions filed by parties through learned Counsel and the issue that emerge for determination is;

- a. Whether the grant issued on 4<sup>th</sup> July 2003 and confirmed on 24<sup>th</sup> January should be revoked or not?

47. On the issue of whether the Grant issued on 4/6/2003 and confirmed on 24/1/2009 should be revoked: The Summons is premised on Section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya provides;

“

“76. Revocation or annulment of grant

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 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.”

48. That section provides that a grant of representation may at any time be revoked or annulled as long as the court is satisfied that the facts contemplated under the said section are proved.

49. In deciding whether or not to revoke grants, I associate myself with the position *In re Estate of Mukhobi Namonya (Deceased)* [2020] eKLR that;

“under section 76 of the Act, a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining the grant was attended by glaring difficulties, such as where the same was defective, say because the person who obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the



petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant. The second general ground is where the grant is obtained procedurally, but the administrator subsequently runs into difficulties during the process of administration of the estate. Such difficulties include his failure or omission to apply for confirmation of his grant within the period allowed in law, or where he fails to exercise diligence in administration of the estate, such as where he omits to collect or get in an asset, or where he fails to render accounts as and when he is required to do so by the law. The third general ground is where the grant has become inoperative or useless on account of subsequent circumstances, such as where the sole administrator died or loses the soundness of his mind or is adjudged bankrupt.

50. The applicants averred that the proceedings to obtain the grant were defective in substance, was obtained fraudulently by the making of a false statement and by concealment from the Court of material facts to the case and obtained by an untrue allegations of facts essential in point of law to justify the grant notwithstanding that the allegations were made in ignorance and inadvertently.
51. The Applicant averred that the 1<sup>st</sup> and 2<sup>nd</sup> respondents never included daughter of the late Phike Meoli Tale who was a daughter to the deceased and survived by a husband (son-in law), daughter and son who are the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants herein and are entitled to the Estate of Gabriel Ndetia Meoli (deceased) were left out of the proceedings were not even mentioned.
52. The question here is should the estate devolve only amongst the living children of the deceased? Where the deceased is survived by a child who subsequently dies before the estate is distributed, the estate of such child would be entitled to the share that would have gone to the said child were they alive at distribution. Their estate would be entitled to a share equal to that of his siblings. Where such a child was himself survived by a surviving spouse and a child or children, then, by virtue of section 35, his entitlement would go to the said surviving spouse and children. In the absence of a surviving spouse, the share would go to the child or children of the dead child by virtue of section 38. In the absence of such survivors, then the estate or share of the entitlement of the dead child would devolve as per section 39 of the *Law of Succession Act*.
53. In the context of the instant cause, the applicants have justification in seeking to have the share of their deceased mother's share devolve upon his estate so that they can thereafter share it. The law allows it. The deceased mother died before her father's demise, consequently the estate is entitled to a share in the deceased's estate.
54. The relevant portion of section 39 states as follows;-  
'(1) where the intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority –
  - (a) father; or if dead
  - (b) mother; or if dead
  - (c) brothers and sisters, and any child or children of deceased brothers and sister, in equal shares; or if none
  - (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares...'
55. The *Law of Succession Act* was enacted in 1981 and the deceased herein died on 20/9/1995. The grant was issued to Margaret Meoli and Stephen Meoli by the court on 4th July 2003 and confirmed on 24th



January 2009. The late Phike Meoli who was a daughter to the deceased survived by a daughter and son who are the applicants and are entitled to their late mother's share in the estate of Gabriel Ndetia Meoli (deceased) and were left out of the proceedings.

56. The *Constitution* of Kenya was promulgated in 2010 and provided vide Article 27 CoK for equality and freedom from discrimination and therefore from 2010, the Law of Succession provisions would be construed in light of the *Constitution* including all children of the deceased, predeceased, girls, boys and married girls etc are all included as per the law.
57. Conclusively, the Administrators, herein, did not fail to disclose, conceal from the Court any material or make any false statement, late Phike Meoli was the deceased's daughter and they deposed that they did/do not know the Applicants as her children and/or the Applicant as her husband.
58. At the time in the circumstances the law was not clarified as it is since 2010, all children of the deceased are eligible to inherit. I therefore find no proof of any grounds to revoke the grant under Section 76 LSA.
59. The Application to revoke the grant is dismissed.
60. However, if the Applicants are children of the deceased daughter Phike Meoli of the deceased, then the Administrators ought to/shall give them a share what their mother would have been entitled to from the deceased's estate particularly Loitoktok/Olkaria/36 and 223.

#### **Disposition**

1. The application for revocation/annulment of grant is dismissed
2. The Applicants son and daughter of the deceased's daughter the late Phike Meoli if proved to be such to be allocated by Administrators their late mother's share.
3. Administrators and beneficiaries may engage in Court annexed mediation with a view to resolve the matter amicably within 90 days.
4. This matter be consolidated with the mother file in Kajiado High Court and matter to be mentioned in Kajiado High Court after 90 days.

**RULING DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS ON 26<sup>TH</sup> APRIL, 2024 (VIRTUAL/PHYSICAL CONFERENCE).**

**M.W. MUIGAI**

**JUDGE**

