



In re Estate of Naomi Waithera Kiarie (Deceased) (Succession Cause 216 of 2020) [2024] KEHC 5886 (KLR) (24 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5886 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 216 OF 2020
RN NYAKUNDI, J
MAY 24, 2024**

BETWEEN

NASON MWANGI KIARIE PETITIONER

AND

PETER KARIUKI KIARIE OBJECTOR

RULING

1. What is pending before this court is the Summons dated 14/07/2023 seeking the following orders;
 - a. The ruling made on 15th June 2023 be set aside or reviewed
 - b. The grant of letters of administration issued to Nason Mwangi Kiarie be revoked.
 - c. Costs be provided for.
2. The application is premised on the grounds set out therein and the contents of the affidavit in support of the same.
3. The objector contends that the grant issued to the petitioner on 17/12/2023 was obtained fraudulently by making false statements as there was no family meeting that was held to discuss the filing of the succession petition of the estate of their late mother and the mode of distribution. He averred that they were not informed of the filing of the petition and further, that there was no consent filed on the mode of distribution showing that they agreed to the petitioners' proposed mode of distribution.
4. The objector avers that the petitioner did not inform the court that Stephen Kamau Kiarie, Jonah Kinyanjui, John Njagi Kiarie and Daniel Karangi Kiarie who are the children of the deceased have since passed on and are now survived by widows and children. He contended that the petitioner did not make any distribution to the widows despite them being beneficiaries to the estate. He proposed that



Peter Kariuki Kiarie, Miriam Muthoni Kiarie and Ibrahim Karanja Kiarie be the new administrators of the estate.

5. Additionally, the objector proposed the mode of distribution as follows; That they are not aware of the existence of parcel no. Nyandarua/Kirima Settlement Scheme/1318 as it does not form part of the estate. That parcel no. KAPSARET/KAPSARET BLOVK 1(YAMUMBI) 587 measuring 1.7 acres was sold to Tai enterprises and is not available for distribution, the same ought to be distributed to Tai Enterprises. That parcel No. BAHATI/KABATINI BLOCK 1/11004 measuring 0.25 acres be distributed to Peter Kariuki Kiarie and Miriam Muthoni Kiarie to hold in trust for themselves and all beneficiaries in equal shares. That a portion measuring 1 acre in parcel no. KAPSARET/KAPSARET BLOCK 1 (YAMUMBI) 584 was sold to John K. Lelei and the same be distributed to him. That the remaining portion measuring 3 acres be distributed equally to the sons of the deceased and share for the sons who are now deceased be distributed to the widows so as to hold in trust for their children.
6. The objector filed submissions on 07/03/2024 citing section 76 of the Law of Succession Act which provides for revocation of grant. Counsel reiterated the contents of the supporting affidavit and additionally, urged that Section 38 of the Law of Succession Act provides that where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of Section 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.
7. Counsel reiterated that Nyandarua/Kirima Settlement Scheme/1318 does not form part of the estate of the deceased, and further, that the Respondent admitted in paragraph 21 (1) of the replying affidavit to having purchased the said parcel of land. The Respondent thus, cannot distribute a parcel of land that does not belong to the deceased and there is no evidence of the existence of the said parcel of land to warrant distribution of the same to the beneficiaries. Counsel cited Section 3 of the Law of Succession Act which defines free property and maintained that the Respondent purchased the said land in his capacity as the sole purchaser and not on behalf of the family. He cited the case of Adan Chuda Sode v Madina Oshe Jira & another (2021) eKLR in support of this submission. Counsel urged the court to allow the application as prayed.

Analysis & Determination

8. The following issues arise for determination
 - a. Whether the Ruling issued on 15/07/2023 should be reviewed
 - b. Whether the Grant of Letters of Administration issued to the Petitioner should be revoked

Whether the Ruling issued on 15/07/2023 should be reviewed

9. Review of decisions of a probate court is governed by Rule 63 of the Probate and Administration Rules, which provides as follows: -

“ 63. Application of *Civil Procedure Rules* and High Court (Practice and Procedure) Rules

- (1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.



- (2) Subject to the provisions of the Act and of these Rules and of any amendments thereto the practice and procedure in all matters arising thereunder in relation to intestate and testamentary succession and the administration of estates of deceased persons shall be those existing and in force immediately prior to the coming into operation of these Rules.”

The substantive provisions of Order 45, state as follows:

“ 1.

(1) Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

10. Notably, the objector has not submitted on the prayer for review of the ruling. The threshold for orders of review to issue are that the applicant must prove to the court that there is;
 - a. New and important information which was not within the knowledge of the applicant by the time the order was made.

- b. An error apparent on the face of the record.

11. It follows that in the absence of proof of any of the above, the order for review cannot issue. Additionally, counsel did not attempt to submit on these issues and appears to have abandoned this prayer completely. In the premises, the orders for prayer 1 cannot issue.

Whether the Grant of Letters of Administration issued to the Petitioner should be revoked

12. Revocation of grant is governed by section 76 of the [Law of Succession Act](#) which provides 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 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.”

13. The present objection is premised on the grounds that the grant was obtained by making fraudulent statements. The objector contends that there was no meeting to agree on the distribution of the estate. Further, that there was no consent as to the distribution and the siblings were not aware of the petition. I have perused the file and in form 38, there is a consent to the making of the grant of letters of administration intestate to a person of equal or lesser priority, which consent contains the signatures of the petitioner, the objector, Joseph karaoke Kiarie, Stephen Kamau Kiarie, Abraham Karanja Kiarie, Lillian Njoki and Miriam Muthoni. The same was signed on 23/09/2010 and filed on 30/09/2010. This therefore dispels the notion that there was no consent by the other beneficiaries to the taking out of the grant. However, with regards to the mode of distribution, the petitioner proposed a mode of distribution vide a supporting affidavit dated 13/02/2023. A perusal of the same reveals that there is no proof that any meeting was held as alleged in paragraph 7 of the affidavit. Further, there is no consent on the mode of distribution annexed to the same. The petitioner merely stated that they met and agreed to the same. At the very least, a copy of the minutes of the meeting would have sufficed as proof of the same. it is my considered view that this is within the purview of what would be considered making of false statement under section 76 of the *Law of Succession Act*. In the case of *Goods of William versus Loveday (1900) AC P 154*, the object of the power to revoke a grant is to ensure the due and proper administration of an estate and protection of the interests of those beneficiaries entitled to the estate. Thus;

“The real object which the court must always keep in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto, and I can see no good reason why the court should not take fresh action in regard to the estate where it is made clear that the previous grant has turned out abortive or inefficient. If the court has in certain circumstances made a grant in the belief and hope that the person appointed will properly and fully administer the estate, and it turns out that the person so appointed will not or cannot administer, I do not see why a court should not revoke an inoperative grant and make a fresh grant.”

14. With regards to the property known as Nyandarua/Kirima Settlement SCHEME/1318, the same does not form part of the estate as the title deed that was annexed to the affidavit clearly indicates that the same was registered to one Daniel Nderitu Waiganjo. Further, the same was sold to the petitioner vide



a sale agreement dated 15/03/2011. There is no plausible reason as to why it should be considered part of the estate of the deceased. Section 3 of the [Law of Succession Act](#) provides that;

“free property”, in relation to a deceased person, means the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death;

15. In order for the deceased to have been able to dispose of the property in her lifetime the same is required to have been registered in her name which in this particular instance was not the case as evidenced by the title deed. Therefore, the inclusion of the said property as part of the estate of the deceased was making of a false statement.
16. The objector alleges that the petitioner failed to notify the court that the petitioner failed to inform the court that Stephen Kamau Kiarie, Jonah Kinyanjui, John Njagi Kiarie and Daniel Karangi Kiarie are children of the deceased have since passed on. However, the objector has not availed any proof of the same which would be in form of death certificates and therefore on this issue the court cannot determine whether there was concealment of material information.
17. In the premises, it follows that the prayer for revocation of grant is merited as it has satisfied the threshold under section 76 of the [Law of Succession Act](#). The grant of letters of administration of act confirmed on 15/06/2023 is hereby revoked.
18. From the documents on record, it is evident that the estate of the deceased comprises of the following properties;
 - i. KAPSARET/KAPSARET BLOCK 1 (YAMUMBI) 581
 - ii. KAPSARET/KAPSARET BLOCK 1 (YAMUMBI) 584
 - iii. BAHATI/KABATINI BLOCK 1/11004
19. These are the only properties that are available for distribution. The objector mentions Kapsaret/ Kapsaret Block 1 (Yamumbi) 587 but there is no such property contemplated in the schedule of properties that belonged to the deceased. Additionally, there is no evidence that any such property was sold to Tai Enterprises, which evidence would be by way of a sale agreement. All allegations of any properties sold from the estate have no sale agreement to corroborate the same and therefore remain unsubstantiated.
20. Upon considering the application and submissions, I hereby issue the following orders;
 - i. The grant of letters of administration dated 28/08/2021 and confirmed on 15/06/2023 be and is hereby revoked.
 - ii. I hereby appoint Peter Kariuki Kiarie, Miriam Muthoni Kiarie and Abraham Karanja Kiarie as administrators of the estate, under section 76 of the [Law of Succession Act](#).
 - iii. A Grant of Letters of Administration of the estate of the deceased to issue to Peter Kariuki Kiarie, Miriam Muthoni Kiarie and Abraham Karanja Kiarie.
 - iv. That in consonant to Art. 159(2)(C) of [the Constitution](#), the heirs to the estate are reminded that mediation provides responsive and timely justice to this kind of dispute on distribution of the estate. That the administrators take advantage of this forum to fast-track consensus building tailored at recording a resolution on distribution of the assets to the beneficiaries.



- v. The administrators to file the proposed mode of distribution of the estate in court within the next 90 days.
- vi. Each party shall bear its own costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 24TH DAY OF MAY 2024

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R. NYAKUNDI

JUDGE

<i>SUCCESSION CAUSE NO 216 OF 2010</i>	0
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