



**In re Estate of Mary Wanjiru Kuria (Deceased) (Succession Cause
1574 of 1992) [2024] KEHC 7982 (KLR) (Family) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7982 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1574 OF 1992
PM NYAUNDI, J
JUNE 28, 2024**

BETWEEN

**WINNIE WAIRIMU KURIA 1ST APPLICANT
LYDIA MUTHONI KURIA 2ND APPLICANT
ELIZABETH NYAMBURA KURIA 3RD APPLICANT
MARTHA WAMBUI KURIA 4TH APPLICANT
FRED KAMAU KURIA 5TH APPLICANT**

AND

**LUCY NJOKI KURIA 1ST RESPONDENT
SAMUEL KAGUATHA KAMAU 2ND RESPONDENT
VIRGINIA WAIRIMU 3RD RESPONDENT**

RULING

1. Mary Wanjiru Kuria (the Deceased) died intestate on 11th May 1992. Sharon Simon Kuria Kamau and Winnie Wairimu Kuria petitioned this court for grant of letters of administration intestate in their capacity as husband and daughter of the Deceased respectively. The grant was issued on 20th January 1993. Subsequently, the grant was confirmed on 8th March 2011. An amended grant was issued on 29th February 2016.
2. Simon Kuria Kamau died on 29/7/2020 and was substituted by Fred Kamau Kuria. A further amended grant was issued on 7th February 2022 in the names of Fred Kamau Kuria and Winnie Wairimu Kuria. A further amended certificate of confirmation was issued on 30th March 2022.



3. Lucy Njoki Kuria (the 1st Respondent) filed Summons for Revocation dated 15th August 2023 on the grounds that;
 1. Winnie Kamau Kuria, (hereinafter “the Petitioner”), obtained amendment grant of letters of administration intestate (hereinafter “the Grant”) to the estate of Mary Wanjiru Kuria (deceased) to strike out Simon Kamau Kuria (herein “the co-administrator”), now deceased, vide an application dated 9th November 2020.
 2. The said application replaced the co-administrator with Fred Kamau Kuria, the petitioner’s brother who is one of the sons of Simon Kamau Kuria and Mary Wanjiru Kuria vide the amended grant issued on 7th February 2022.
 3. The proceedings to obtain the grant and to procure confirmation thereof by the petitioner were defective in substance for the reasons that, inter alia;-
 - a. The petitioner failed to disclose to the Honourable Court that the grant issued to the Petitioner and the co-administrator was confirmed in 8th March 2011 prior to the death of the co-administrator who died on 29th July 2020.
 - b. Prior to the co-administrator’s death, the distribution of the estate of Mary Wanjiru Kuria had been completed and the grant confirmed and letters of allotment issued with regards to the properties being sub-divided; plot no. 47 Ongata Rongai in particular.
 - c. The petitioner failed to disclose that there is an existing Kajiado Succession Case No. 26 of 2020 with regards property of the now deceased co-administrator where the portion allotted to the deceased is a subject matter.
 - d. The petitioner further failed to state before this court that the deceased had a second wife one, Lucy Njoki, who has lived in the allotted property as her matrimonial home with the co-administrator from 1994, when she got married to the co-administrator, together with their 2 children.
 4. The grant was obtained fraudulently as the Petitioner and/or other beneficiaries did not disclose to the Honourable Court that the succession process herein was already concluded before the demise of the co-administrator with respect to Plot No. 47 (A) Ongata Rongai.
 5. The petitioner disregarded the fact that the co-administrator, who was a co-owner of the said property with Mary Wanjiru Kuria, his wife, and got half the property with his second wife as their matrimonial home, together with their children.
 6. The petitioner has filed Rent Restriction Tribunal Case No. 1429 of 2022 and 220 of 2023 with the intent of evicting their step-mother and step-siblings from the subject premises and distressing for rent, in a property she knows fully well has been the home of her father’s second wife and children.
 7. The applicant is apprehensive that unless the petitioner cum administrator is restrained by the appropriate orders of injunction pending hearing and determination of the application, the applicant, her children and the co-administrator’s estate stand to suffer.
 8. The application has been brought timeously without any delay.
 9. In the premises, it will serve the interests of justice, equity and fairness if the application filed herewith seeking to revoke the grant issued to the petitioner on 7th February 2022 is certified urgent, heard expeditiously without delay and the orders sought therein granted in the first



instance to forestall the imminent derailment of the interests and rights of the applicant estate of the co-administrator and harassment of his beneficiaries.

4. In response, the Applicants filed a Notice of Preliminary Objection dated 13th March 2024 on the ground that none of the three (3) applicants erroneously named as the respondents have the legal capacity as well as the locus standi to institute and prosecute the application.
5. The court directed that the Notice of Preliminary Objection be heard first. Parties were asked to file written submissions neither of the parties have filed their submissions.
6. I would like to state at the outset that the misdescription of the parties herein does not go to the root of the issues in question as it is evident what is for determination by the Court. I therefore find that the parties who describe themselves as the Respondents are actually applicants in the Summons for Revocation dated 15th August 2023.

Analysis And Determination

7. The only issue that falls for determination is;
 - i. Whether the Respondents have locus standi.
8. 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 *Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased)* [2016] eKLR, Mrima J discussed the importance of the principle and stated that;

A party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings. It is also worth-noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties.
9. The issue herein is whether the Applicants have the requisite locus standi to seek the revocation of the grant in question issued to the Respondents.
10. Under Section 76 of the *Law of Succession Act*, any party interested in the estate of the deceased may bring the application contemplated under that section and/or Rule 2 as read with Rule 17(1) of the *Probate & Administration Rules*. Rule 17(1) of the *Probate & Administration Rules* provides that:-

“Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has already applied for by another person may do so.”
11. Therefore, in the court’s view, the Applicants as interested parties have locus standi as contemplated in Section 76 of the *Act*, to challenge the Grant.
12. In the end, I find that the Notice of Preliminary Objection dated 13th March 2024 lacks merit and the same is dismissed with no order as to costs.
13. There is more, however on perusal of the record and proceedings herein it is evident that there has been an error on the record as relates to issues that have a bearing on the estate of Simon Kuria Kamau.



14. Section 47 of the *Law of Succession Act* provides-

Jurisdiction of the Court

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:.....

15. Rule 73 of the Probate and Administration Rules provides

Saving of inherent powers of court

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

16. I take cognizance of the fact that the dispute herein relates to the beneficiaries and distribution of the estate of Simon Kuria Kamau (deceased) who was the husband of the deceased herein and retired administrator of her estate.

17. I note that by Certificate of Confirmation of Grant, Simon Kuria Kamau was allocated half of Plot No.47 (A) Ongata Rongai as his share of the Estate. When he died, the surviving administrator vide Summons dated 9th November 2020 moved the court vide Section 75 of the *Law of Succession Act* and Rules 44 and 49 of the Probate and Administration Rules to ‘amend the letter of administration intestate issued to Simon Kuria Kamau And Winnie Wairimu Kuria on 29/2/2016 be amended by striking out and removing the name of Simon Kuria Kamau (deceased) and substitute the name with Fred Kamau Kuria.’

18. The Application further sought that ‘the amended confirmation of grant issued in this matter on 29/2/2016 be further amended in the schedule of properties as proposed in the schedule attached to this application’.

19. The Application was allowed and the import of that amendment was that the ½ share of Plot 47 A Ongata Rongai previously allocated to the Deceased, Simon Kamau Kuriawas now shared equally by the surviving beneficiaries of Mary Wanjiru Kuria. It is this transaction that is the gravamen of the Summons for Revocation filed by the ‘respondents’ in the Summons dated 15th August 2023.

20. The history of the matter and to the extent that the orders issued on 29th February 2016 and 30th March 2022 had the effect of merging the estate of Simon Kamau Kuria with that of Mary Wanjiru Kamau, necessitate that I activate the inherent powers of the Court as donated by Article 159(2) of the *Constitution*, Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules and vacate the orders of the Court made on 29th February 2016 and 30th March 2022 affecting the ½ share of Plot N0. 47 A Ongata Rongai that was allocated to Simon Kamau Kuria.

21. That the said certificates of confirmation of Grant that issued on 29th February 2016 and 30th March 2022 are accordingly cancelled alongside any transactions that may have been effected on the half share of Plot N0. 47 A Ongata Rongai that was allocated to Simon Kamau Kuria.

22. This is because the ½ share Plot N0. 47 A Ongata Rongai that was allocated to Simon Kamau Kuria can only be administered in a probate cause that relates to his estate, which in this case would be Kajiado Succession Cause No. E065 of 2023

23. In conclusion therefore, these are the final orders-



- a. The Preliminary Objection dated 13th March 2024 is dismissed with no order as to costs.
- b. The Orders of the Court issued on 29th February 2016 and 30th March 2022 touching on Simon Kuria Kamau ½ share of Plot No. 47 (A) Ongata Rongai are vacated and the respective certificates of grant are cancelled to that extent.

It is so ordered

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 28TH DAY OF JUNE, 2024.

P. NYAUNDI

JUDGE

In presence of: -

Fardosa Court Assistant

