



REPUBLIC OF KENYA



In re Estate of Susan Nyambura Kamau (Deceased) (Succession Cause 599 of 2009) [2024] KEHC 8425 (KLR) (27 June 2024) (Ruling)

Neutral citation: [2024] KEHC 8425 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 599 OF 2009
DKN MAGARE, J
JUNE 27, 2024**

BETWEEN

JOHNSON KAMAU GACHOKA APPLICANT

AND

PETER GITURO KAMAU RESPONDENT

RULING

1. The Applicant filed an application dated March 30, 2022 for orders:-
 - a. That the court be pleased to review the orders issued on November 18, 2021 and the Certificate of Confirmation of Grant and remove Peter Kamau Gituro as co-administrator.
 - b. That the court be pleased to review the orders issued on November 18, 2011 and the Certificate of Confirmation be amended to read Johnson Kamau Gachoka as the only administrator.
2. The Applicant put in a supporting affidavit where he stated that he and the Respondent were granted the confirmation of grant on 18th November 2011. That the Respondent has not been cooperative in regards to signing the transfer forms in respect to 2 acres in GEMA holdings, shares in KCB Ltd and Kenya Airways held at the NCDSC Ltd Account No.CXXX.
3. He stated that the Respondent has refused to sign the relevant documents in respect of the shares forming part of the estate of the deceased and therefore slowing down the process of distributing the same to the beneficiaries.
4. He prays the court to remove the Respondent. That he is capable of administering the estate more efficiently without the Respondent. That to discharge his duty to the beneficiaries, the court must issue a fresh certificate of confirmation of grant without the Respondent. He states that the distribution remains unchanged save for the removal of the Respondent.



5. The court record reveals that there was no replying affidavit made in response to the application. The Applicant and the Respondent did not put in written submissions.

Analysis

6. Rule 73 of the *Probate and Administration Rules* provides for the inherent power of the court as follows:-

“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.”

7. The authority of *In re Estate of Elijah Mbondo Ntheketha (Deceased)* [2017] eKLR it was held:-

“The removal of an administrator amounts to revoking his appointment. Revocation of grants is provided for under section 76 of the *Law of Succession Act*. An applicant seeking to obtain such revocation must build a case founded on section 76.”

8. Section 76(d) of the *Law of Success Act* gives the Court the powers to annul or revoke a grant on an application of a party or suo moto on the grounds stipulated therein. The Section provides that:-

“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 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 may 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.”
9. The persuasive authority of *In re Estate of William Nzioka Mutisya (deceased)* [2018] eKLR the court observed that:-

“It is however my view that the administrators may be removed from their duties where, due to wrangles and disagreements amongst themselves, it is impossible for them to proceed diligently with the administration of the estate ... In my view if the Court finds that the administrators are unable to properly administer the estate due to their disagreements, nothing stops the Court from removing them from the administration and appointing new administrators notwithstanding the issue of priority or preference. This must be so because section 66 of the *Law of Succession Act* provides that:

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interest of all concerned, be made.”



10. Personal Representatives of an estate are subject to supervision of the court and the court has the power to remove them from administration of the estate where necessary. *In re estate of Njue Kamunde (Deceased)* [2018] eKLR it was held:-

“The applicant contends that the respondent has acted contrary to the law in carrying out her duties as the administratrix and feels that on account of that, she should be suspended and leave her as the sole administratrix of the estate of the deceased who is her late son ... I agree with the applicant that section 47 *Law of Succession Act* and Rule 73 *Probate and Administration Rules* can be invoked to remove or suspend him/her ... I also agree that personal representatives are subject to supervision of this court and this court will not shy away from making any orders that may be expedient and necessary for the ends of justice and to prevent abuse of powers conferred to them under section 53 and 79 of the *Law of Succession Act*.”

11. *In re Estate of Wilson Ndumbi Kathesye (Deceased)* [2016] eKLR Hon. Justice W. Musyoka held:-

“The application for determination is a summons dated August 17, 2015. It seeks rectification of the grant so as to remove the name of one of the administrators on the grounds that she has refused to cooperate with the applicant to complete administration of the estate ... Consequently, I do hereby grant it in the terms proposed.”

12. An application for removal of an administrator is supposed to be supported by consent of all other beneficiaries. *In re Estate of Stephen Chege Kimari (Deceased)* [2016] eKLR Hon. Justice W. Musyoka held as follows:-

“The application seeks removal of an administrator. The process of removal is akin to that of appointment. The consents of all concerned must be obtained, particularly if they rank equal or higher to the applicant in terms of entitlement to appointment. From the certificate of confirmation of grant, I have counted ten (10) survivors. None of them has filed any papers in support of the application.”

13. In all this I stand guided. The Applicant has not shown that on his part he had done anything else. To enable the court to conclude this matter, I direct that all beneficiaries appear before me on 5/11/2024 or consent to the removal of the co-administrator.
14. Parties to be notified for directions on 5/11/2024.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 27TH DAY OF JUNE, 2024.

Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:

Applicant present

No appearance for Respondent

No appearance for other beneficiaries



