



**In re the Estate of Chelule Chebunyei (DEceased) (Succession Cause 87 of 2016) [2024] KEHC 9789 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9789 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 87 OF 2016**

**HM NYAGA, J**

**JULY 31, 2024**

**IN THE MATTER OF THE ESTATE OF CHELULE CHEBUNYEI (DECEASED)**

**BETWEEN**

**RUTH CHELANGAT CHELULE ..... PETITIONER**

**AND**

**DECCA H CHEPKEMOI CHELULE ..... OBJECTOR**

**RULING**

1. Vide summons dated 7<sup>th</sup> November, 2023 brought under Articles 45(1), 48 and 50(1) of the Constitution, Sections 52, 54, 66, 76, 3, 29, 37, 40, 45, 46 and 76 of the Law of Succession Act, Rules 44, 73 and 74 of the Probate and Administration Rules, Order 40 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Rules, the Objector seeks for orders that: -
  1. Spent
  2. The Honourable Court be pleased to stay and revoke the Certificate of Grant of Letters of Administration Intestate issued to Ruth Chelangat Chelule on 12<sup>th</sup> November, 2018 and all subsequent orders thereto be stayed pending the hearing and determination of this Application.
  3. The Honourable Court be pleased to discharge, annul and/or revoke the Grant of Letters of Administration Intestate issued to Ruth Chelangat Chelule on 12<sup>th</sup> November, 2018 and all subsequent orders thereto be stayed pending the hearing and determination of this Application.
  4. Immediate direction in this matter do issue to enable just, efficient and timely disposal of this matter as this Honourable Court may deem fit and just to grant in the circumstances.
  5. Costs of this Application be provided for.



2. The Application is premised on the grounds that the deceased died intestate on 24<sup>th</sup> January,1991 and he was survived by Jackson Chelule, Zakayo Chelule, Samson Chelule and John Chelule who are all deceased, that the petitioner did not include one of the beneficiaries to the deceased's estate in the fraudulently obtained letters of Administration and the subsequent summons for the confirmation of Grant; that no family meeting has ever been held by the beneficiaries to authorize the petitioner to take out letters of administration intestate on behalf of the estate of the deceased; that the grant was obtained fraudulently by making of false statements or by concealment of material facts from the court and without the consent of the applicant; that the petitioner made application for the impugned Grant by making material non-disclosure on the full list of beneficiaries and list of assets of the estate of the deceased; that the beneficiaries listed herein ranked equally in the degree of consanguinity and affinity to the Estate of the Deceased; that on the strength of the Impugned Grant, the Respondent has instituted ELC Case No. 56 of 2021 at the Environment and Land Court at Nakuru; that the said case before the ELC is scheduled for further defence hearing in February, 2024; that unless the matter is certified urgent, the Applicant and co-beneficiaries of the Estate glare at an imminent threat of being stripped off their proprietary rights to their respective parcels of land; that the object of this Application will be defeated if the matter is not certified urgent and orders sought granted; and that it is in the interest of justice that the orders sought be granted.
3. The Application is supported by an Affidavit of Deccah Chepkemoi Chelule sworn on the even date. She reiterated the above grounds and annexed a copy of the Impugned Certificate of confirmation of grant marked as "DCC-1".
4. The Application is opposed by the Petitioner vide her Replying Affidavit sworn on 25<sup>th</sup> April,2024. She averred that the summons is hopeless, laced with malice and bad faith.
5. It was her assertion that the objector herein had filed a similar summons dated 19<sup>th</sup> February,2019 through the Law firm of M/s Koech Chepkurui & Associates and that in response to the summons she filed a replying affidavit sworn on 4<sup>th</sup> April,2019.
6. She averred that the matter was heard by way of viva voce evidence before Hon. Justice A.K Ndungu on 21<sup>st</sup> May,2019 ,16.10.2019 and 22.1.2020.
7. That the matter was slated for mention on 18<sup>th</sup> March,2020 to confirm filing of submissions and it is unclear what transpired thereafter, and that it was upon the Applicant to follow up with the matter but not to file a fresh application.
8. She contended that the current summons was filed to frustrate the conclusion of the said ELC case which has been heard and submissions filed.
9. Be that as it may, she deposed that she did not obtain the grant fraudulently as alleged but she petitioned the same with the full knowledge of the beneficiaries and clan members.
10. It was her deposition that prior the confirmation of grant, her advocate on record then, L.R Kipsang & Co. summoned all the beneficiaries vide letters dated 31.3.2017 and 16.11.2017 to deliberate on the distribution of the estate and the objector herein attended the meeting.
11. She stated that in the certificate of confirmation of grant the objector was given 4 acres of land in question and as such the instant application is unmeritorious since there is a pending similar summons and there is no evidence of fraud presented by the objector.
12. She prayed that the summons be dismissed with costs.



13. Prior to directions I issued on 10<sup>th</sup> June, 2024, I am to determine whether the Application dated 19<sup>th</sup> February, 2019 and the instant Application dated 7<sup>th</sup> November, 2023 are similar.
14. It is not in dispute that the objector herein had filed an application dated 19<sup>th</sup> February, 2019 seeking for Orders that:-
  1. Spent
  2. Pending the hearing and determination of this Application there be stay of execution of all the consequential orders arising from the certificate of confirmation of grant issued on 12<sup>th</sup> November, 2018.
  3. The certificate of Grant of Letters of Administration made to Ruth Chelangat Chelule on the 12<sup>th</sup> November, 2018 be revoked on the following grounds: -
    - a. That the grant was obtained fraudulently by the making of false statement or by the concealment from the court of some material facts.
    - b. The grant was obtained by means of untrue allegation of facts essential in point of law to justify the grant particularly that the petitioner failed to disclose or seek consent to apply for grant petitioner failed to disclose or seek consent to apply for grant from other survivors who had priority or equal right to apply as well.
    - c. The petitioner deliberately omitted/or overlooked the rights of all the beneficiaries of the estate of the deceased in the schedule of assets presented before this Honourable court.
15. The above application is supported by an affidavit of the objector herein sworn on 19<sup>th</sup> February, 2019.
16. It is also not in dispute that the said Application dated 19<sup>th</sup> February, 2019 was heard by way of viva voce evidence.
17. From the record, the above application was heard on 16<sup>th</sup> October, 2019 wherein the objector herein testified and on 22<sup>nd</sup> January, 2020 wherein the petitioner herein testified. After the Petitioner testified the parties were directed to file their respective submissions.
18. Subsequently, the matter was mentioned severally to confirm filing of submissions on 12.6.2020, 23.6.2020, 3.7.2020, 7.2020, 28.9.2020, 20.8.2021, 20.9.2021 and 25.11.2021 but the parties were absent.
19. Thereafter before confirmation of the filing of submissions, the Applicant/Objector filed the instant Application.
20. It is correct and patent based on prayers sought that the aforementioned applications are similar. The objector in both applications is seeking revocation of grant issued to the Petitioner herein on 12<sup>th</sup> November, 2018 on ground that the same was obtained fraudulently. It is not clear why the Objector chose to file the current application considering the first application is yet to be determined.
21. It is trite law that the Court has an inherent jurisdiction to protect itself from abuse or to see that its process is not abused. The black law dictionary Sixth Edition, Continental Edition 1891- 1991 P 990 P 10-11 defines abuse as "Everything which is contrary to good order established by usage that is a complete departure from reasonable use "An abuse is done when one makes an excessive or improper use of a thing or to employ such thing in a manner contrary to the natural legal rules for its use"



22. Oputa J.SC (as he then was) In the Nigerian case of *Amaefule & other v the State* defines abuse of judicial process as: -

“A term generally applied to a proceeding which is wanting in bona fides and is frivolous vexations and oppressive. In his words abuse of process can also mean abuse of legal procedure or improper use of the legal process.”

23. In *Agwusin v Ojichie* Justice Niki Tobi JSC observed;

“That abuse of court process create a factual scenario where appellants are pursuing the same matter by two court process. In other words, the appellants by the two court process were involved in some gamble a game of chance to get the best in the judicial process.”

24. Order 2 Rule 15 of the *Civil Procedure Rules*, has established clear principles which guide the court in the exercise of power to strike out a matter in the following terms;

“ 15.

(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

- a) it discloses no reasonable cause of action or defence in law; or
- b) it is scandalous, frivolous or vexatious; or
- c) it may prejudice, embarrass or delay the fair trial of the action; or
- d) it is otherwise an abuse of the process of the court....and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

25. In the instant case, it appears the Applicant wants to abandon the previous application before its determination. By filing the instant application when there is a similar application on record that is yet to be determined is in itself an abuse of the process of the court sufficient under order 2 rule 15 (1) (b) and (d) to justify striking out.

26. In view of the foregoing, I hold that the instant application is an abuse of the court process and I proceed to strike it out with costs to the petitioner. The objector should personally pay the said costs.

27. Since the objector has the earlier application pending the filing of submissions, I direct that the parties proceed to do so, in the manner that I shall direct shortly.

28. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 31<sup>ST</sup> DAY OF JULY, 2024.**

**H. M. NYAGA,**

**JUDGE.**

In the presence of;

Court Assistant Jeniffer



Mr. Langat for administrator

No appearance for objector

