



In re Estate of Wanjala Mukewa Sasita (Deceased) (Succession Cause 250 of 2014) [2024] KEHC 9894 (KLR) (30 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9894 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 250 OF 2014**

REA OUGO, J

JULY 30, 2024

IN THE MATTER OF THE ESTATE OF WANJALA MUKEWA SASITA (DECEASED)

BETWEEN

DORIS WANYAMA PETITIONER

AND

FLORENCE NAMACHAFU KERE APPLICANT

RULING

1. This ruling relates to the summons of revocation or annulment of grant dated 22nd May 2020. She seeks the grant of letters of administration made to Doris Nasimiyu Wanyama on 1/12/2014 and confirmed on 16/6/2017 to be revoked (or annulled) because the proceedings to obtain the grant were defective in substance. Florence Namachafu Kere filed an affidavit in support of the application.
2. She avers that in 1991 and 1994 Cleopas Webala Kere purchased 4 plots of land from the deceased person herein and he was given possession. Upon taking possession, the applicant's son built residential houses on the land. He took occupation of some of the houses and rented the others. She avers that her son died on 14/7/2001 before the title to the 4 plots was given to him but the applicant and his children have continued being in occupation of the houses and collecting rent. The deceased had embarked on processing the title for the applicant's son before his death. Unfortunately, the process was not completed. Land title No. E.Bukusu/S. Kanduyi/8863 was supposed to be for him.
3. The petitioner then filed her response vide the replying affidavit dated 12/11/2021. She averred that the applicant cannot annul and revoke the grant dated 1/12/2014 and confirmed on 16/6/2017. It was averred that the applicant did not have the limited grant ad litem as provided in section 54 of the 5th schedule. The limited grant marked FNK-1 was for purposes of representing the deceased in Bungoma CMC No 85 of 2018. She avers that she filed a case in Bungoma CMC No 85 of 2018 where judgment was passed in favor of the plaintiff. Even though the applicant filed an appeal against the decision, her application for a stay of execution was dismissed.



4. The application was heard by way of *viva voce* evidence.
5. Florence Namachitu (Pw1) adopted her witness statement filed on 7/2/2023. She averred that her late husband, Cleophas Webala Kere, in 1991 and 1994 purchased from the deceased 4 plots of land and he was given immediate possession. Her son constructed a semi-permanent residential house on the land and rented out some of the houses. Unfortunately, her son died before the title was processed in his name. The petitioner without her knowledge embarked on the succession process and had the grant confirmed without disclosing the applicant's interest. She testified that the petitioners by concealing the information misled the court. It was material for the interest held by her son and their occupation of the land to be made known to the court. Once the grant was confirmed, the petitioner had the same registered in her name and now demands to evict the applicant. The applicant told the court that the petitioner concealed information and misled the court to confirm the grant. On cross-examination, she testified that she had no letters of grant for the estate.
6. Doris Wanyama (Dw1) adopted her witness statement dated 9/11/2022 as her evidence in chief. She avers that she was given Parcel No. LR Bukusu/S.Kanduyi/8863 by her late father-in-law, Sasita Wasare. She avers that the applicant lacks the limited grant for initiating this instant application. The succession regarding the deceased was published in the Kenya Gazette in Publication No. CXVI. NO. 107350/2014. The purpose of the Gazette is to inform everyone about the succession cause. The title deed of the suit land was issued to her and her children. She then filed Bungoma CMC No 85 of 2018 and she was given orders to evict the applicant. The applicant's application to stay the execution was declined and the petitioners now occupy the suit property as they have built their homes therein.

Submissions by the Parties

7. The applicant in her submissions referred the court to section 76 of the *Law of Succession Act*. She submits that the petitioner knew the properties constructed on the suit land were not by the deceased. The grant was obtained through the concealment of something material to the case. She argues that the applicant and her sons slept on their rights and cannot alter justice as enshrined in the law. They urged the court to revoke the grant so that a fresh grant is made to include the late Cleophas Webala Jerre's plots so that only that portion of land parcel no. E.Bukusu/s.kanduyi/8863.
8. The respondent submits that according to the green card of land parcel no. E.Bukusu/s.kanduyi/8863 was subdivided from LR No. E. Bukusu/S. Kanduyi/6702 which differs from parcel of land No. LR. E. Bukusu/S. Kanduyi/5516 is being sub-divided from 3667. The applicant must prove that land No. LR. E. Bukusu/S. Kanduyi/5516 and 5566 became part of parcel no. 8863. The respondent filed a Bungoma CMC No 85 of 2018 against the applicant and her son was to be evicted. Their appeal against the decision was dismissed in HCCA No 12/2020. The respondent submits that the applicant is guilty of laches and the application should be dismissed.

Analysis And Determination

9. I have considered the pleadings filed before the court, the evidence on record, submissions by the parties, and the law. The only issue for the court's consideration is whether the applicant has proved a case for revocation of the grant.



10. The circumstances in which a grant can be revoked are enumerated under section 76 of the *Law of Succession Act* and highlighted by the court In the Matter of the *Estate of L.A.K. (Deceased)* [2014] eKLR as follows:

“Revocation of grants is governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”

11. In this case, the appellant applied for revocation of the grant on the ground that the grant was defective in substance. The court In *re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR stated as follows:

“Under section 76...a grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons.”

12. Pw1 testified that her husband Cleophas Webala Kere, in 1991 and 1994 purchased 4 plots of land from the deceased and he was given vacant possession. Her son constructed a semi-permanent residential house. In the applicant’s case, the petitioners concealed such information, misleading the court.

13. Interestingly, the respondent filed a case in the Chief Magistrate’s Court at Bungoma, Civil Case No. 85 of 2018 seeking eviction of the applicant from Plot No. E. Bukusu/S.Kanduyi/8863. The court found that the petitioner and her 3 children were the registered owners of the suit land and directed that the applicant be evicted. The applicant filed an appeal against the decision of the subordinate court at the Environment and Land Court *vide* ELC Appeal No 12 of 2020. The ELC court exercising its appellate jurisdiction affirmed the decision of the trial court.

14. The issue of ownership of Plot No. E. Bukusu/S.Kanduyi/8863 was resolved by the Environment and Land Court and the applicant lays no claim to the land. The court also made an order evicting the applicant from the land. The applicant in my view failed to demonstrate how the proceedings leading to the grant were defective in substance.

15. In conclusion I find no merit in the summons of revocation or annulment of the grant dated 22nd May 2020, the same is dismissed with no orders as to costs.

DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THIS 30TH DAY OF JULY 2024.

R.E. OUGO

JUDGE

In the presence of:

Applicant - Absent

Miss Nanzushi -For the Respondent



