



REPUBLIC OF KENYA



KENYA LAW
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**Manyasa v Sara (Succession Appeal E08 of 2021)
[2024] KEHC 10584 (KLR) (26 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10584 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION APPEAL E08 OF 2021
SC CHIRCHIR, J
AUGUST 26, 2024**

BETWEEN

CHARLES MAPESA MANYASA APPELLANT

AND

AWINJA OMUGANDA SARA RESPONDENT

*((Being an appeal from the Ruling of Hon. G.Ollimo delivered on 17th June
2021 in Butere chief Magistrate's court Succession cause No. 49 of 2010))*

JUDGMENT

1. On 17/8/2020 the Respondent herein filed summons before the trial court ,seeking for revocation of the certificate of confirmation of grant issued to the appellant in respect to the Estate of Barnabas Mapesa Eshitemi (Deceased). The respondent also sought for issuance of a new certificate which makes a provision of her share in the Deceased's Estate.
2. In a ruling delivered 17/6/2021, the court revoked the certificate of confirmation of grant and directed any of the parties in the suit to apply for fresh summons for confirmation of grant. The court further directed that all the beneficiaries should have equal shares. It is the said ruling that has given rise to this Appeal.
Memorandum of appeal
3. The appellant has set out the following grounds:
 1. That the trial magistrate crossly erred in failing to make a finding that the respondent herein lacked the requisite capacity to agitate any claim on behalf of the estate of one Tito Mukabane Mapesa



2. That the learned trial magistrate grossly erred in failing to consider that it is the appellant who redeemed the deceased estate by paying a loan to Agricultural Cooperation so as to save the estate of the deceased.
 3. That the learned trial judge grossly erred in pre-empting a fresh distribution of the deceased estate by making an order that all the beneficiaries be assigned equal shares even before such application for confirmation of grant has been made.
 4. That the learned trial magistrate exhibited actual bias against the appellant in the matter
 5. That the learned trial magistrate final orders are manifestly un-just to the appellant.
4. The Appeal was canvassed by way of written submissions:

Appellant's submissions

5. It is the Appellant's submissions that since the Respondent is not a child, but a grandchild, of the deceased, she lacked the capacity to object to the succession proceedings. In this regard the Appellant has relied on the case of *Rajesh Pranjiva* (2014) eKLR where it was held that a litigant is only clothed with *locus standi* upon obtaining a limited grant of an estate he or she seeks to represent.
6. It is further submitted that the trial magistrate failed to consider that the Appellant paid off the loan owed to Agricultural Finance Corporation by the deceased, in an attempt to save the deceased's land from being sold.
7. The respondent was yet to file submissions as at the time of writing this judgment.

Summary of the Evidence

8. In the supporting Affidavits to the Application for revocation of the grant, the respondent stated that she was the only child of the Mukabane Mapesa, the son to the deceased, that they used to reside on land parcel No Maromo/Inaya/742. (The suit property). She further stated that the deceased was survived by 6 sons and the deceased had sub-divided his land between the six. She was using her father portion of the land until he was stopped by the Appellant in the year 2016. She seeks the intervention of the court in seeking to reclaim her father's share in the suit property.
9. In response, the Appellant stated that he was ready to make a provision for the Respondent. He however states that he settled the deceased's debts owed to Agricultural Finance Corporation, and has met all administrative costs of the estate. He has attached receipts for repayment of the loan.
10. Consequently, he further states, he has the right to have the entire suit property, but as a sign of good faith he is willing to allocate a portion to the Respondent.

Determination

11. This is a first appeal and the mandate of this court is well settled. In the case of *Gitobu Imanyara & 2 others v Attorney General* (2016) eKLR, the court of Appeal stated: "it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect. See *Selle and another v*



Associated Motor Boat Company Limited and others [1968] EA 123 and *Williamson Diamonds Ltd. v Brown* [1970] E.A.L.”

12. I have perused the lower court proceedings, the ruling of the same court, the memorandum of Appeal and the Appellant’s submissions. I have identified the following issues for determination:
 1. Whether the Respondent has the *locus standi* to bring these objection proceedings.
 2. Who should settle the liability of the Estate if any.
 3. Whether the certificate of certification of court should be set aside

Whether the Respondent has the *locus standi* to bring objection proceedings.

13. It is not in dispute that the Respondent is a grandchild of the deceased and the child of Tito Mukabane Mapesa, the son of the deceased. Even though in the replying affidavit, the Appellant did acknowledge that the Respondent is entitled to claim for the Estate in place of her deceased’s father, in his submissions, he contends that she Respondent lacked the legal standing because she has not taken out Representation on behalf of her father’s estate.
14. The next question then is whether the Respondent needed to have taken out a grant ad litem or full grant in order to benefit from her grandfather’s Estate.
15. Section 41 of the *Law of Succession Act* provides as follows: “Where reference is made in this Act to the “net intestate estate”, or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.”
16. *In Re Estate of Wabome Njoki Wakagato* (2013) eKLR, Justice Musyoka held “indeed part V the grandchild have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grand children should inherit from their own parents. This means that the grandchildren can only inherit from their grandparents indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”
17. My understanding of section 41 of the *Law of Succession Act* and Justice Musyoka’s finding in the above stated case is that, the right of inheritance by a grandchild of his parent’s share in the estate of grandparent flows from being a child of the child of the deceased. In other words, it is the relationship, and the fact of death of the grandchild’s parent, that gives a grandchild the *locus standi*. Consequently it matters not whether or not the grandchild has taken out a grant of representation in respect of his or her own parent’s Estate at the point of seeking to claim a share in the grandparent’s Estate.
18. The respondent herein did not therefore need to take out a grant of representation for her father’s Estate to entitle her to a share of her grandfather’s estate.

Whether the Appellant is a creditor to the Estate

19. The Appellant claims that he paid off the loan owed to Agricultural Finance Corporation by the deceased so as to preserve the said property. Contrary to the finding of the trial court, there are receipts



showing that indeed the Appellant did make some payments to the said lender. However the payment made was on behalf of the estate and consequently this was a liability to the estate. That being the case, then the Appellant ought to have reflected it in the list of liabilities, in his petition. A perusal of the petition shows that there were nil liabilities against the Estate. The onus was on the Appellant, as the petitioner, to reflect the liabilities in question. That was a duty placed on him by section 83 of the Law of Succession Act. He did not, and contrary to his assertion, he had no right to take over the entire land because of settling the said debt. If he had stated the liability, the estate would only have ought him to the extent of the alleged liability, but not necessarily the entire suit property.

Whether the certificate of confirmation of grant should be revoked.

20. From the onset, I need to point out that the Law of Succession Act makes no provision for revocation of certificate of confirmation of Grant. Section 76 of the Act, makes specific reference to annulment or revocation of grant but not a certificate of confirmation. In my view a certificate of confirmation can only be set aside, cancelled or reviewed. However in the light of Article 159(2)(a) of the Constitution and the power bestowed on this court by Rule 73 of the Probate and Administration Rules, I will ignore the technical defects and address the issue as I understand it, which is setting aside the certificate of confirmation of Grant.
21. From the summons for “revocation” it is evident that the respondent was not challenging the appointment of the Appellant as the Administrator of the estate. Her only complaint is that she was left out of the distribution despite the fact her father, one of the deceased’s sons, had the right to inheritance. In short, she is claiming her father’s share.
22. The Appellant readily admitted the Respondent’s entitlement to the Estate and undertook to give her the portion due to her. The Appellant however faults the trial court for preempting, the confirmation proceedings by going ahead to direct how the Estate should be distributed.
23. I have perused the ruling of the trial Magistrate. While concluding her ruling, her final orders were as follows:
 - 1). The certificate of grant issued to Charles Mapesa Manyasa be revoked and the same be issued in the names of both Charles Mapesa Manyasa and Awinja Omukunda Sara Bukachi.
 - 2). Either the Applicant of the Respondent is at liberty to file fresh summons for confirmation in which the Applicant’s share is captured.
 - 3). All beneficiaries to be assigned equal shares.
 - 4)
 - 5)
 - 6)
22. Firstly, as stated herein before, the trial court ought to have been setting aside the certificate and not revoking it. Secondly, having not revoked the grant there was no basis upon which the Respondent was being admitted as a Co- Administrator of the Estate. The Grant as well as the certificate must be consistent in as far as the particulars of administration go. By having a new administrator appointed at the point of confirmation, while leaving the grant of letters of Administration intact, the trial court introduced technical barriers to the implementation of the certificate of confirmation of Grant.



23. Finally , having directed the petitioner to file fresh summons for confirmation then order no. 3, was uncalled for. I agree with the Appellant that the trial magistrate, pre-empted the outcome of the intended summons.
24. In view of the foregoing and in exercise of the authority given to this court by Article 159(2) of the Constitution Rule 73 of the Law of Succession Act, I hereby proceed to make the following orders:
- a. That the Ruling of the trial court is hereby set aside
 - b. The orders of confirmation of Grant made on 15th October are hereby set aside and the certificate of confirmation issued on 15th October 2010 is hereby cancelled.
 - c. Any sub-division that has been carried out affecting title no.Marama / Isaya/ 742 done in pursuance of the certificate of confirmation of Grant issued on 15th October 2010 is hereby nullified and land registrar , Kakamega county is hereby directed to cancel all subdivision emanating from the above stated Title and reinstate the ownership of the land to the name of the deceased.
 - d. The Appellant to file fresh summons for confirmation of Grant not later than 30 days from the date of this judgment, in which the mode of distribution must include the Respondent's share in the Estate.
 - e. This matter will be mentioned on a date to be given at the date of this Ruling to confirm compliance with the above stated directions.

DATED, SIGNED AND DELIVERED AT NAIROBI, VIA MICROSOFT TEAMS, THIS 26TH DAY OF AUGUST 2024.

S. CHIRCHIR

JUDGE.

In the presence of :

Godwin- Court Assistant

