



In re Estate of Joshua Aganyana Inyanje (Deceased) (Succession Cause 25 of 2021) [2024] KEHC 13294 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13294 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION CAUSE 25 OF 2021
JN KAMAU, J
OCTOBER 30, 2024**

IN THE MATTER OF THE ESTATE OF JOSHUA AGANYANYA INYANJE (DECEASED)

BETWEEN

PUBLIC TRUSTEE KAKAMEGA PETITIONER

AND

PROCTOR INYANYE AGANYANYA OBJECTOR

RULING

Introduction

1. In his Summons for Revocation and/or Annulment of Grant dated and filed on 22nd March 2023, the 2nd Objector sought for orders that the Grant of Letters of Administration Intestate issued to the Petitioner in 2002 in the cause herein be revoked and annulled and all consequential orders made pursuant thereto be set aside and that the Registration of Susan Asingwa Anganyanya, Faith Akunga, Rana Katana Akangu & Inyanga Joshua as the joint proprietors of the parcel of land known as Kakamega/Kongoni/1160 pursuant to a Grant of Letters of Administration Intestate issued in favour of the Petitioner by this court be revoked and/or cancelled and the title revert to the deceased.
2. He also sought for orders that a fresh Grant be issued in his favour and that this court issues an order restraining Susan Asingwa Anganyanya, Faith Akunga, Rana Katana Akangu & Inyanga Joshua from further intermeddling with land parcel Kakamega/Kongoni/1160 until this matter was heard to its finality.
3. He swore an Affidavit in support of the said Summons on 22nd March 2023. He averred that he was the firstborn son of the deceased, having been born out of wedlock and his mother was Joyce Abachi and was therefore qualified to benefit from the deceased's estate as his beneficiary and/or defendant as per Section 29 of the *Law of Succession Act* Cap 160.



4. He stated that he was left out as a beneficiary in the succession cause herein and was never notified of the same for the past two (2) decades. He pointed out that the Petitioner petitioned this court on 29th April 2002 for Letters of Administration to the estate of the deceased and the same was granted the same year.
5. He averred that the Petitioner concealed information of all beneficiaries by omitting his name and that of Krauzen Khamete, daughter to the deceased and that of Susan Asingwa. He added that it fraudulently included a son, one Joshua Inyanje who was not a beneficiary. He was emphatic that the act of leaving out beneficiaries and concealing information was a ground for revocation of the grant and subsequent orders.
6. He further stated that the Petitioner failed to appear in court to zealously protect, defend and/or administer the estate of his deceased father when required by court or on its own volition leading to the cause herein being inactive with the file being closed on 17th March 2021. He pointed out that the 1st Objector died on 28th September 2020 after having begun objection proceedings to protect the deceased's estate and preserve the same to the best interest of the beneficiaries.
7. He was categorical that Land Parcel No Kakamega/Kongoni/1160 was transferred from the name of the deceased to Susan Asingwa Anganyanya, Faith Akunga, Rana Katana Akangu & Inyanga Joshua to his exclusion. He asserted that the said transmission was done unprocedurally and that the Petitioner failed to duly exercise due care in finding out the state of the Land Parcel No Kakamega/Kongoni/1160. He stated that he had put restriction on the said land.
8. He further contended that Susan Asingwa Anganyanya, Faith Akunga, Rana Katana Akangu & Inyanga Joshua had intermeddled with the subject land by leasing it out to unknown person to him. He asserted that he was aware that Susan Asingwa Anganyanya died in 2015. He added that Land Parcel Tiriki/Cheptul/953 was fraudulently sold by the late Susan Asingwa Anganyanya pending the conclusion of the succession cause and the objection proceedings hence attributing the Petitioner as being indolent in the preservation and protection of the deceased's estate.
9. He pointed out that the Petitioner had failed to disclose other property comprising of the estate of the deceased. He pointed out that the said properties included a quarter hectare property Kakamega/Cheptul/173 which the deceased bought from Samuel Buhasio and two (2) hectare land bought from John Mulwale which title deed had not been issued.
10. He stated that he stood to lose irreparably if the orders that had been sought were not granted. He asserted that it was only fair and just that the Grant of Letters of Administration Intestate and the Certificate of Confirmation issued to the Petitioner herein be revoked and the parcel of land known as Kakamega/Kongoni/1160 revert to the deceased names for purposes of redistribution to include his name and share.
11. On 3rd July 2023, this court directed the 2nd Objector to file and serve a Supplementary Affidavit expounding Paragraph 5 of his Supporting Affidavit that he swore on 22nd March 2023, annexing copies of the sale agreement in respect of Kakamega/Cheptulu/173 and giving details of the record parcel of land that were mentioned in Paragraphs 17 and 18 of his said Supporting Affidavit.
12. In his Supplementary Affidavit that he swore on 1st September 2023 and filed on 8th September 2023 pursuant to the aforesaid court's order of 3rd July 2023, the 2nd Objector vacated his averments in Paragraph 5 of his Supporting Affidavit and produced proof of the deceased's Land Parcel Kakamega/Cheptul/1073 and Tiriki/Serem/1405.



13. Although, the Petitioner had indicated that it filed its Replying Affidavit dated 6th June 2023, a perusal of the e-filing portal showed a PDF document but on clicking the same, the same was returning a message that stated, “Failed to load PDF document”.
14. The 2nd Objector’s Written Submissions were dated 29th February 2024. It was not clear when the same was filed as it did not bear the court stamp. The Petitioner’s Written Submissions were dated 16th May 2024 and filed on 21st May 2024. This Ruling was based on the said parties’ Written Submissions which they both relied upon in their entirety.

Legal Analysis

15. The 2nd Objector submitted that Section 76 of the *Law of Succession Act* granted the court on its own motion or vide application to revoke or annul a grant and that among the grounds for revocation were defectiveness of the proceedings to obtain the grant, omission or exclusion of other beneficiaries and omission of assets of the deceased amounting to concealment of facts. In this regard, he relied on the case of *Estate of Prisca Ong’ayo Nande (Deceased)* [2020] eKLR without highlighting the holding he relied on therein.
16. He contended that Section 66 of the *Law of Succession Act* Cap 160 (Laws of Kenya) on the preference to be given to certain persons to administer the estate where the deceased died intestate, lists the Public Trustee as one of the said persons. He pointed out that therefore, having been granted the Letters of Administration on 1st August 2002, the Petitioner’s powers and duties were guided by Section 82 and 83 of the *Law of Succession Act* Cap 160 and *Public Trustee Act* Cap 168 (Laws of Kenya).
17. He reiterated his averments in his supporting Affidavit and was emphatic that by omitting his name and the assets of the deceased from the succession cause, the Petitioner had excluded him from his share of the estate and equally adequate provision to other beneficiaries and its argument in its affidavit evidence was not plausible.
18. He invoked Section 82(a) and 83 of the *Public Trustee Act* and Section 51(2)(g) and (h) of the *Law of Succession Act* and pointed out that the Petitioner was not diligent in his duties as the Administrator. To buttress his point, he relied on the case of *Re Estate of Agwang Wasiro (Deceased)*[2020]eKLR where it was held that a grant could be revoked where an administrator lacked diligence in its administration of the estate of the deceased. He was emphatic that one Inyanje Joshua was not a child of the deceased. He urged the court to revoke the Grant herein.
19. On its part, the Petitioner invoked Section 66 of the *Law of Succession Act* and submitted that the order of priority begins with the spouse then the children of the deceased. It pointed out that a letter dated 27th April 2000 intimated that the deceased and one Susan Aganyanya agreed to reconcile and stay together as husband and wife and that the said wife was presented to it. It further asserted that as per letter dated 30th January 2004 from the District Commissioner, Vihiga addressed to it indicated that Susan Asirigwa Aganyanya was the sole widow to the deceased.
20. It was its case that the said spouse of the deceased had priority to petition for grant of letters of administration intestate. It pointed out that every person having an equal or prior right to a Grant of Representation and was of age consented to its Petition for the Grant of Letters of Administration that was dated 29th April 2002. In this regard, it relied on the case of *Re Estate of Magangi Obuki (Deceased)* [2020] eKLR where it was held that from a reading of Section 66 of the *Law of Succession Act*, the person given priority over an intestate is the surviving spouse and children.



21. It pointed out that according to the list of beneficiaries by the District Commissioner, Vihiga, all the children listed were minors and added that minors could not consent to the making and confirmation of a grant since they were below the age of consent. In the premises, it contended that there was no material concealment of information with regards to the list of beneficiaries as it relied on the information given to it by the District Commissioner on heirs and the widow of the deceased concerning the properties of the deceased to be administered.
22. It placed reliance on the case of *Re Estate of Zacheaus Sumani Kadagale (Deceased)* [2021]eKLR where the court in relying on the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015]eKLR held that for a grant to be revoked there had to be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.
23. It further invoked Section 107 of the *Evidence Act* Chapter 80 Laws of Kenya and placed reliance on the case of *Abdulkadir Giro Tutu v Martin Kimathi Guantai* [2022] eKLR where it was held that whoever alleged had to prove. It contended that it was apparent from its record that the deceased's second wife was Lucy Odanga and not Joyce Abachi, the 2nd Objector's mother who according to the letter dated 30th January 2004, the District Commissioner confirmed that she had remarried and had no child.
24. It was emphatic that all the allegations that had been made by the 2nd Objector were unsubstantiated therefore falling short of the cardinal principle of he who alleges must prove.
25. It was emphatic that it had carried its mandate diligently and prudently by acting as a personal representative of the deceased pursuant to Section 17(1)(a) of the *Public Trustee Act*. It added that this was evidence from the correspondence seeking clarification from the District Commissioner on the status of the beneficiaries of the deceased and that it was from the said information that it proceeded to distribute the estate equally.
26. It was categorical that the 2nd Objector had not shown any iota of negligence on its part and therefore it was not liable for any act done by him in line with Section 25 of the *Public Trustee Act*.
27. It added that the Estate of the deceased was listed in the Kenya Gazette dated 31st May 2001 and that the 2nd Objector should have asked for instructions or rectification even after the confirmation of the grant.
28. It was its contention that the 2nd Objector had not raised any ground to warrant the revocation of the Grant issued by the court since it had acted in full compliance of the law. It pointed out that it was willing to include any property of the deceased discovered later and thereafter distribute the same to the rightful beneficiaries.
29. Section 76 of the *Law of Succession Act* Cap 160 (Laws of Kenya) provides that:-
 - a. that the proceedings to obtain the grant were defective in substance;
 - b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;



- d. 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 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; or
- e. that the grant has become useless and inoperative through subsequent circumstances.”

30. An order for revocation of the grant can thus only be given if the aforesaid grounds for revocation had been satisfied. A similar finding was arrived at *Re: Estate of L A K – (Deceased)* [2014] eKLR.
31. Having said so, in order for the orders sought to be granted, an applicant and/or objector must prove that the grounds for revocation have been satisfied.
32. Notably, the 2nd Objector’s argument was that he was a child of the deceased and that his name and that of one Krauzen Khamete, a daughter to the deceased. Secondly, he contended that Land Parcel Kakamega/Cheptul/1073 and Tiriki/Serem/1405 were omitted on the list of assets on the Petitioner’s Petition for Letters of Administration Intestate.
33. The Petitioner relied on the letter dated 18th January 2002 from E.O. Okwako Ag District Commissioner, Vihiga gave the list of the deceased’s heirs as follows:-
1. Susan Asingwa Aganyanya Adult 1st widow
 2. Lucy Odanga Adult 2nd widow
 3. Faith Akunda 12 years Daughter
 4. Rana Katana Azangu 4 years Son
 5. Inyanje Joshua unknown Son
 6. Netty Andeke Inyanje Adult Daughter
34. There was an additional note that Inyanje Joshua had been born out of wedlock and that the 2nd widow left the deceased’s home after he died because she had no children. It was on the basis of this letter that the Petitioner herein applied for a Grant of Letters of Administration Intestate.
35. It was evident that the 2nd Objector’s name was not in the list of the letter dated 18th January 2002. His mother, Joyce Abachi, was also not among the deceased’s heirs. Contrary to his assertions, Form 9 and the Certificate of Confirmation dated 15th July 2004 and 11th November 2004 both showed Krauzen Khamete’s name as the deceased’s beneficiary and the fact that she was to share in the deceased’s assets equally with the other beneficiaries.
36. It was not clear to this court why the 2nd Objector’s name and that of his mother were not included in the said list. Suffice it to state that the Petitioner could not have been faulted for having failed to



include their names in the Petition of Grant of Letters of Administration Intestate as their names were not in the said letter.

37. It was apparent that there was consent for the Petitioner to have lodged the Petition for a Grant of Letters of Administration Intestate on behalf of the beneficiaries who were listed in the said letter of 18th January 2002 as none of them had sought to revoke the Certificate of Confirmation of Grant since it was issued on 11th November 2004.
38. The only summons that had been filed for revocation of the Certificate of Grant was by Ronald Vidolo Inyanje, who indicated that he was a brother to the deceased and hence entitled to be the deceased's administrator. It was dated 28th November 2014 and filed on 23rd January 2015. Maximillah Nakhungu Vidolo filed a Notice of Motion application dated 15th December 2023 on 20th December 2023 seeking to substitute the said Ronald Vidolo Inyanje who died on 28th July 2020. This court allowed the said application on 22nd January 2024.
39. It appeared from a consent that was recorded by the Registrar on 24th October 2023, that the substitution of the said Ronald Vidolo Inyanje had the sole effect of relinquishing LR No Tiriki/Serem/1405 to the deceased's estate. The Title of this property was not attached to the Petition of Grant of Letters of Administration Intestate when it was filed.
40. Having been in the name of the said Ronald Vidolo Inyanje as shown in the Title Deed that was attached to the 2nd Objector's Supplementary Affidavit that was filed on 8th September 2023, it was not clear how and when the same belonged to the deceased.
41. In the said Supplementary Affidavit, the 2nd Objector only indicated that the property was bought from John Mulwale. There was a not so legible Sale Agreement dated 13th September 1994 which he indicated as 13th September 2003 that showed that the deceased purchased some land from one Samuel Basio. It is this land that the 2nd Objector purported was LR No Tiriki/Serem/1405. It may very have been but there was no historical background by way of green cards to show this relationship.
42. Further, he also alleged that the deceased also purchased LR No Kakamega/Cheptul/1073 from the said Samuel Basio. This was also not part of the deceased's assets as at the time the Petitioner was lodging the Petition of Grant of Letters of Administration on 2nd July 2002. There was nothing to show how this property formed part of the deceased's estate.
43. Section 107 of the *Evidence Act* Cap 80 (Laws of Kenya) stipulates as follows:-
 1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."
44. In addition, Section 109 of the *Evidence Act* provides as follows:-

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
45. Save for alleging that he was the deceased's son, he did not present any evidence to prove that he was in fact his son or a beneficiary to his estate. He did not also demonstrate this failure by the Petitioner to administer the deceased's estate and/or that LR No Tiriki/Serem/1405 and LR No Kakamega/Cheptul/1073 belonged to the deceased and/or that if the said properties belonged to the deceased,



the Petitioner intentionally and knowingly left them out of the administration of the deceased's estate or to include all the assets that belonged to the deceased.

46. This court was not therefore satisfied that the 2nd Objector had discharged his burden of proof regarding his assertions against the Petitioner herein to the standard required by the law as required under Section 107 and Section 109 of the Evidence Act.
47. With regard to the provisions of Section 66 of the Law of Succession Act Cap 160 (Laws of Kenya), the same states as follows:-
- “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 interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—
- a. surviving spouse or spouses, with or without association of other beneficiaries;
 - b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
 - c. the Public Trustee (emphasis court); and
 - d. creditors.
48. The deceased herein was survived by his wives and children as had been indicated in the letter of the Ag District Commissioner dated 18th January 2002. The 2nd Objector did not provide proof that he was the deceased's son to warrant the Certificate of Confirmation of Grant and/or Grant of Letters of Confirmation that were issued herein being revoked and issued in his name more so when the beneficiaries on whose behalf the administration was done had not complained against the Petitioner herein.
49. If there were any additional properties belonging to the deceased, it was the responsibility of his beneficiaries to bring the same to the attention of the court for administration. It was not unusual for beneficiaries to discover additional assets belonging to a deceased's estate long after confirmation had been finalised. It was for that reason that there was provision of rectification of grant and/or certificate of confirmation to cater for such eventualities.
50. Accordingly, after carefully considering the affidavit evidence on record and the respective parties' Written Submissions, this court was not satisfied to find that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case as envisaged in Section 76(b) of the Law of Succession Act as the 2nd Objector had contended.
51. There was therefore no merit to revoke the Grant of Letters of Administration that was issued to the Petitioner herein to include the beneficiaries as there was no evidence that any known beneficiary to the deceased was left out during distribution of the deceased's estate. This was a matter that was best disposed of by viva voce evidence to fill the many gaps that this court identified as opposed to affidavit evidence that the parties herein opted for as it had no benefit of being interrogated by way of cross-examination.
52. In addition, this court did not have an opportunity to hear the evidence of Susan Asingwa Aganyana, Faith Akunga, Rana Katana Akungu and Inyanga Joshua who were cited in Prayer (6) of the present Summons for Revocation of Grant so as to have made an informed decision as far as the 2nd October herein ought to have replaced the Petitioner herein as the administrator of the deceased's estate.



Revoking the Grant of Letters of Administration when they had not participated in the proceedings herein by not having been served would be a travesty of justice.

Disposition

53. For the foregoing reasons, the upshot of this court's decision was that the 2nd Objector's Summons for Revocation or Annulment of Grant dated and filed on 22nd March 2023 was not merited and the same be and is hereby dismissed.
54. As the Petitioner is a government department, there will be no order as to costs as it would be imprudent to award costs in favour the government against its citizen.
55. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 30TH DAY OF OCTOBER 2024

J. KAMAU

JUDGE

