



**In re Estate of the Late Gerishom Kombo Mukoshi (Deceased) (Succession Cause 59 of 2006) [2024] KEHC 13761 (KLR) (29 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13761 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 59 OF 2006  
SC CHIRCHIR, J  
OCTOBER 29, 2024  
IN THE MATTER OF THE ESTATE OF THE LATE  
GERISHOM KOMBO MUKOSHI (DECEASED)**

**BETWEEN**

**JAMES AMUNZE W AMAKWA ..... PETITIONER**

**AND**

**MARGARET NYASILI ..... 1<sup>ST</sup> OBJECTOR**

**MARCELLINE NANJALA ..... 2<sup>ND</sup> OBJECTOR**

**JUDGMENT**

1. This cause relates to the Estate of the late Grishom Kombo Mukoshi ( The deceased) who died on 13<sup>th</sup> June 1995. The petitioner, who described himself as a nephew to the deceased applied for letters of Administration intestate to his Estate. The letter was issued to him on 27<sup>th</sup> April 2006 .
2. The objectors/ Applicants have brought this summons seeking for revocation of grant, on grounds that the 1<sup>st</sup> petitioner failed to disclose material facts to the court.

**The Applicant's case**

3. Through the Affidavit sworn by the 1<sup>st</sup> objector he states that the deceased left behind her mother ,herself and another daughter identified as Florence Akosa. That both her mother and sister have since died; that her mother died on 4<sup>th</sup> may 2006, before filing succession proceedings to the deceased's Esate .She further states that upon her mother's demise the petitioner chased her and her sister from the deceased' land and went ahead to obtain the Grant fraudulently.
4. It is further her case that she ranks in priority to the petitioner in administration of the deceased's estate, as the petitioner is the deceased's nephew while she is a daughter to the deceased. She further



states that on 10<sup>th</sup> may 2017 she filed an objection which was dismissed on 30<sup>th</sup> march 2023 for want of prosecution.

5. The objector further wants the petitioner to be ordered to provide a full and accurate inventory of all the assets and liabilities ; and for the court to issue preservatory orders for Land parcels Nos: Butsostso/ Esumeiya / 1706 and 1879.

### **Respondent's case**

6. The petitioner states that the deceased was his uncle, that he died without leaving behind a widow or children; that he also had land parcels Nos: Busotso/ Esumeiya/ 1706 and 1879; that the deceased had transferred parcel No. 1879 to one Raphael Shisia. He states that the objector herein had filed another succession cause 23/10/2006 which was dismissed on 24/4/2015
7. In a further affidavit sworn on 9<sup>th</sup> July 2024 the petitioner states that parcel No. 1879 was bought by his father Raphael Shisia and therefore it is not part of the Estate.

### **Petitioner's submissions.**

8. The petitioner has submitted that the objectors had previously filed summons for revocation of Grant which was dismissed 9 years ago, that is on 24/4/2015, for want of prosecution.
9. It is further submitted that the objectors have been part of these proceedings all along; that though the objectors application is an objection, it has been crafted as a protest and should be dismissed.
10. It is finally submitted that the objectors should be filing a protest to the Application for confirmation of grant.

### **Determination**

11. A brief background to the present Application is necessary.
12. On 23<sup>rd</sup> October 2006, the objectors applied for revocation of the grant of letters of administration that was issued to the petitioner on 27<sup>th</sup> April 2006. The grounds were that the grant was obtained in a fraudulent manner in that there were concealment of some materials to the court. This Application was never prosecuted.
13. On 24/4/2015, the file was placed before the judge and the judge made the following order: “ whereas no action has been taken on this file since 14/6/2012, this succession cause is hereby marked as closed under the court’s inherent jurisdiction” . Thus contrary to the petitioner’s assertion, the Application for revocation was not dismissed, but the file was closed.
14. I have carefully read through the file and I have not seen any Application to “re-open” the file. The 1<sup>st</sup> objector wrote a letter to the court dated 26<sup>th</sup> October 2015 and it is apparent that it is this letter that “ reopened” this matter. The proceedings then went on as though the file had never been closed. Subsequent to the “re-opening” a number of Applications were filed. On 2/8/2022 Justice Otieno dismissed two pending Applications but not the Application for revocation of grant. Further, though the judge directed the parties to report the progress on transmission, it is clear that the Application for confirmation of grant has not been heard.
15. In view of the mistakes that have been occasioned in this file , and which appear to have been overlooked by all the parties, including the court, this court invokes the powers bestowed upon it under Rule 73 of the probate and Administration Rules and I order that this file is hereby deemed to have been reopened.



16. Back to the present Application , it is evident that a similar Application was filed on 30/10/2006 by the 1<sup>st</sup> objector. The Application is dated 23<sup>rd</sup> October 2006. This Application, which the court had ordered that it proceeds by way of viva voce evidence, has never been prosecuted. The Objectors therefore cannot purport to bring a similar Application when the one on record has not been withdrawn. I consider this an abuse of the court process.
17. The Application is hereby dismissed
18. This court will give directions on the way forward during the delivery of this Ruling.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 29<sup>TH</sup> DAY OF OCTOBER 2024.**

**S. CHIRCHIR**

**JUDGE.**

**In the presence of :**

Godwin- Court Assistant.

Mr. Masiga for the objector

Mr . Nyikuli for the petitioner

Marceline Nanjala- 2<sup>nd</sup> objector.

