



**In re Estate of Joseph Mukaisi Maero alias Joseph Mukaisi Mahero (Succession Cause 78 of 1992) [2024] KEHC 14657 (KLR) (26 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14657 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 78 OF 1992**

**S MBUNGI, J**

**NOVEMBER 26, 2024**

**IN THE MATTER OF THE ESTATE OF JOSEPH MUKAISII  
MAERO ALIAS JOSEPH MUKAISII MAHERO (DECEASED)**

**BETWEEN**

**FLORENCE LICHUMA MAHELO ..... APPLICANT**

**AND**

**DAVID MUKAYISI MAHERO ..... RESPONDENT**

**RULING**

1. The applicant filed an application for summons for revocation of grant dated 14<sup>th</sup> May, 2024 seeking the following orders: -
  - i. That the Grant of Letters issued on 2<sup>nd</sup> October, 2020 and Certificate of Confirmation of grant dated 1<sup>st</sup> October, 2020 distributing LP No Bustosto/Esumeyia/740, Bustosto/Esumeyia/481 and Bustosto/Esumeyia/475 be revoked and the property be reverted back to the names of Joseph Mukaisi Maero alias Joseph Mukaisi Mahero deceased.
  - ii. That an order be issued directing the Land Registrar Kakamega Lands Registry to cancel all Title deeds emanating from Land Parcels: LP No Bustosto/Esumeyia/740, Bustosto/Esumeyia/481 and Bustosto/Esumeyia/475 in furtherance of the Grant of Letters of Administration Intestate issued on 2<sup>nd</sup> October, 2020 and Certificate of Confirmation of grant dated 1<sup>st</sup> October, 2020.
  - iii. That pending hearing and determination of this cause, an order of injunction be issued restraining the petitioner and Interested parties, either by themselves or through their agents, personal representatives and any other person claiming ownership in furtherance of the grant of Letters Dated 2<sup>nd</sup> October, 2020 and Certificate of Confirmation of grant dated 1<sup>st</sup>



October,2020 from developing, demarcating, subdividing, selling, transferring or any other manner interfering with estates herein.

- iv. That the costs of this application be in the cause which application is grounded on the affidavit of Florence Lichuma Mahelo filed herewith, and any other grounds that may be adduced at the hearing thereof.
2. The grounds of the application were that the grant was obtained fraudulently and that the applicant was left out in the Certificate of Confirmation of grant dated 1<sup>st</sup> October, 2020.
3. The application was supported by an affidavit sworn by the applicant where she stated that the deceased herein is her father and that she had realized that succession for his estate had been done secretly without her involvement.
4. The applicant also states that the deceased had allocated Butsotso/Esumeyi/1183 to her, urging that the distribution of the estate be reviewed to include the applicant.
5. The respondent filed a replying affidavit dated 31<sup>st</sup> May, 2024 through which he acknowledged that the applicant is his sister and a beneficiary within the meaning of Section 29 of the Law of Succession act Cap 160.
6. The respondent averred that the grant herein was confirmed on 30<sup>th</sup> June 2020, and the trial court became functus officio so far as confirmation of the grant was concerned and that a certificate of grant cannot be revoked as principally sought by the applicant hence the applicant ought to have appealed against the orders that confirmed the grant or sought for review of the orders, if she was indeed not satisfied with the distribution that the court ordered.
7. The respondent further stated that all beneficiaries were outlined in the petition as well as listed in the chief's letter dated 14<sup>th</sup> February, 2020.
8. Moreover, the respondent stated all the daughters of the deceased were aware of this cause and never at any point did the applicant raise any objection whatsoever until the matter was determined. Further, the respondent stated that at the time of confirmation of grant, the applicant herein was present in court alongside all other daughters of the deceased.
9. In his affidavit, the respondent also avers that the summons for revocation have been brought under the wrong provisions of the Law/Act which provides that Revocations should be brought under Section 76 of the Law of Succession Act and not Section 71 (2) neither should it be brought under Rules 40 Law of Succession Act.
10. The respondent stated that no proper ground for revocation had been raised by the applicant as provided under Section 76 of the Succession Act thereby making the application vague and not to warrant any of the orders sought.
11. The respondent further refuted the claim by the applicant that the property Butsotso/Esumeyia/1183 was strictly allocated to the applicant since the deceased died intestate in 1983 and that all his properties were still in his name and no title deed had been issued in his name prior to his death. He however states that the applicant, in the year 2002, vide Gazette Notice 7792 of 2022, secretly filed for succession in an attempt to have the said property transferred in her name, but the same was never successful.
12. Further, the respondent stated that even if the applicant was to claim the said Butsotso/Esumeyia/1183, then it would only be fair that the same be distributed amongst all the daughters of the deceased.



13. Lastly, the respondent submitted that there are no provisions of the *Law of Succession Act* that provides a remedy to a person who is aggrieved by confirmation orders and that revoking or annulling the certificate of confirmation without setting aside or vacating the orders which give it life would be an exercise in futility for reasons that a certificate of confirmation of grant is a document that the court generates or extracts from the orders that had been made at confirmation as evidence or proof of the making of the said orders; urging that the court dismiss the application with costs.

#### **Analysis and Determination.**

14. I have looked at the application, the supporting affidavit and the replying affidavit.
15. The applicant avers that she was left out when the respondent was filing and processing the petition of her father's estate up to the point of the certificate for confirmation of grant was issued, yet she is a daughter of the deceased.
16. The respondent admits that the applicant is a daughter to the deceased, but he does not explain why he left her out.
17. I have looked at the chief's letter dated 26<sup>th</sup> February, 1993. The applicant is not named as an heir of the deceased's estate. She is not named as one of the survivors of the deceased in the petition and also in the affidavit in support for summons for confirmation. Similarly, her consent was not sought when the summons were being confirmed.
18. This amounts to concealment of material fact from the court, which is a ground for revocation of a grant as provided for by Section 76 of the *Succession Act* which provides as follows:

#### Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (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

19. The respondent in his replying affidavit, has dismissed the application as being defective because it is based on the wrong provision of the law, Section 71 of the *Succession Act*. I agree with him, but on reading the application and the prayers sought it is clear that the applicant was applying for revocation of both the grant of representation, the confirmed grant and revocation of certificate of confirmation.
20. I find the misquoting of the wrong provision of the Section of the Law not fatal for also Section 71 deals with confirmation of grant.
21. The upshot of the above is that the applicant has demonstrated that she has identifiable interest in the estate of the deceased and her interest was not taken care of by the petitioner. I therefore allow the application to the extent that the orders confirming the grant are set aside, the certificate of confirmation extracted as a result of the confirmation is hereby cancelled/revoked. The Lands Registrar to cancel the title deeds emanating from Land Parcels No. Bustosto/Esumeyia/740, Bustosto/Esumeyia/481 and Bustosto/Esumeyia/475 and to revert them to the name of the deceased. And lastly, pending hearing and determination of this cause, an order of injunction do issue restraining the petitioner and Interested parties, either by themselves or through their agents, personal representatives and any other person claiming ownership in furtherance of the grant of Letters Dated 2<sup>nd</sup> October, 2020 and Certificate of Confirmation of grant dated 1<sup>st</sup> October, 2020 from developing, demarcating, subdividing, selling, transferring or any other manner interfering with estates herein.
22. In order to ensure speedy administration of the estate I will not revoke the letters of administration issued to the petitioner but I will appoint the applicant to be a co-administrator of the deceased's estate together with the respondent.
23. Now the two administrators do file fresh summons for confirmation of the grant and if they are not agreeing in the mode of distribution, each administrator can file separate summons for confirmation for the court's consideration within the next 30 days. Mention on 23.01.2025.
24. The parties are encouraged to sit down and agree as a family on how to share the deceased's estate.
25. This being a family matter, each party to bear its own costs of the application.
26. Right of appeal 30 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**S.N MBUNGI**

**JUDGE**

In the presence of:

Applicant – present

Respondent - present

Court Assistant – Elizabeth Angong'a

