



In re Estate of Emmanuel Kalume Bwanamzuri (Deceased) (Succession Cause 83 of 2006) [2024] KEHC 17047 (KLR) (22 November 2024) (Ruling)

Neutral citation: [2024] KEHC 17047 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 83 OF 2006
G MUTAI, J
NOVEMBER 22, 2024**

BETWEEN

DICKSON MASHA EMMANUEL APPLICANT

AND

ALBERT MWARUA EMMANUEL RESPONDENT

RULING

1. The deceased, whose estate is the subject of these proceedings, passed away on 20 April 1984 at Kaloleni. At the time of his death, he was 65 years old.
2. Vide a petition dated 8th March 2006, the petitioners, Albert Mwarua Emmanuel and Rose Emmanuel Kalume, sought the grant of representation in respect of the deceased's estate. They described themselves as the only beneficiaries of the deceased. It was, however, apparent during the hearing that Rose Emmanuel Kalume, the applicant's and the respondent's mother, played no role in the prosecution of the succession proceedings.
3. The grant was issued to the petitioners on 16th October 2006. The said grant was subsequently confirmed on 10th July 2007.
4. Vide summons for revocation dated 10th June 2024 the applicant sought to have the grant issued to the respondent revoked pursuant to the provision of section 76(b) of the *Law of Succession Act* on the basis that the same was obtained fraudulently and by concealment from court of material facts relating to the estate, for the action taken by the respondent pursuant to the impugned grant to be declared a nullity in law, for additional beneficiaries to be added and for the respondent to be forbidden from intermeddling with the properties of the estate, in particular with the status of Title No Kaloleni/Vishakani/124.



5. In the affidavit in support of the application, it was stated that the respondent acted fraudulently and obtained a grant, through which he vested in himself Title No. Kaloleni/Vishakani/124 and allotted himself Title No. Mombasa/Plot No 40/I/XIV and LR No. 13 in Majengo, Mombasa to the matter.
6. It was urged that the Petitioner/Respondent omitted to name the following beneficiaries in the petition for the grant of representation: -
 - a. Esther Kadii;
 - b. Caroline Masha Emmanuel;
 - c. Violet Kavahi Kalume;
 - d. Lewis Shitama Kalume; and
 - e. Christine Sada Kalume
7. He therefore agreed that the summons be allowed as prayed.
8. The respondent filed a replying affidavit sworn on 9th July 2024, vide which he denied the averments in the summons for revocation of the grant. He averred that the properties were intact and expressed his readiness to account for the properties and incomes of the estate.
9. The respondent stated that there was one other beneficiary who had been omitted. He prayed that the application be allowed.
10. The application was canvassed by way of viva voce evidence.
11. The applicant testified that the deceased was their father, he had one wife and eight children, 4 of whom are now deceased. He further testified that the respondent obtained the grant without involving them. It was his evidence that the respondent was their last-born brother.
12. The applicant testified that Albert sold a portion of the land and shared the proceeds with him.
13. The respondent, on his part, testified that he resides in Kaloleni Vishakani. He testified that the applicant hadn't been truthful because he had been involved in the process of obtaining the grant. He prayed that the grant be revoked so that all the beneficiaries could be involved.
14. Upon the conclusion of the hearing, the court directed that the parties file written submissions. Only the applicant's counsel complied.
15. In his submissions of 29th October 2024, the applicant's counsel, Kedeki & Co. Advocates, submitted that the court does revoke the grant for failure on the part of the petitioner to disclose material facts.
16. On whether the grant should be revoked, the applicant urged that it should. It was urged that the respondent failed to disclose material information and failed to disclose his sibling. In support of his contention, counsel relied on the court's decision in *Matheka & another vs Matheka* (2005) 2 KLR 455.
17. I have considered the applicant's response thereto, as well as the oral testimony of the witness and the written submissions of the parties. I agree that the sole issue in this matter is whether the grant ought to be revoked.



18. The conditions under which the court may revoke the grant are well settled. Section 76 of the [Law of Succession Act](#) provides that: -

“76. 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 foregoing provision of the law has been the subject of a plethora of decisions of the High Court and the Court of Appeal. In *Matheka and Another vs Matheka* [2005] 2 KLR 455, the Court of Appeal laid down the following guiding principles: -
- i. A grant may be revoked either by application by an interested party or by the court on its own motion.
 - ii. Even when revocation is by the court upon its own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.”
20. In the case of *re Estate of Prisca Ong’ayo Nande (Deceased)* [2020] KEHC 6553 (KLR) the court held as follows: -

“8. Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. 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 material facts, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

21. I note that in this case, the respondent admitted that the process through which the grant was obtained was defective. He also agreed that the grant ought to be revoked.
22. The respondent's admission that he obtained the grant without disclosing all material information, and my finding that the grant issued in respect of this estate was obtained through non-disclosure of material information, justify the revocation of the grant.
23. Further, the administrator/respondent failed to administer the estate faithfully and hasn't distributed it to date. In the circumstances, I find and hold that the application is merited. I revoke the grant issued to the respondent on 16th October 2006, which grant was confirmed on 10th July 2007.
24. I issue a grant to Dickson Masha Emmanuel forthwith and order that he take out summons for confirmation of the grant within 60 days of the date hereof.
25. As this is a succession dispute between close family members, an order for payment of costs would not promote peace and reconciliation among these close kin. I therefore order that the parties bear their costs.
26. It is so ordered.

DATED AND SIGNED IN MOMBASA THIS 22ND DAY OF NOVEMBER 2024. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Mr Lisanza, holding brief for Ms Kedeki, for the Applicant;

No appearance for the Respondent; and

Arthur - Court Assistant.

