



In re Estate of Patrick Mutura Njau (Deceased) (Succession Cause E141 of 2021) [2024] KEHC 15311 (KLR) (22 November 2024) (Ruling)

Neutral citation: [2024] KEHC 15311 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE E141 OF 2021**

A MSHILA, J

NOVEMBER 22, 2024

IN THE MATTER OF THE ESTATE OF PATRICK MUTURA NJAU (DECEASED)

BETWEEN

ALICE NJAMBI MUTURA APPLICANT

AND

JAMES MATHU NJAU RESPONDENT

RULING

Background

1. The Applicant filed a Chamber Summons dated 22nd September, 2023, brought pursuant to Rules 49 and 73 the *Probate and Administration Rules*. The Applicant prayed for the following Orders;
 - a. Spent
 - b. That this Honourable Court be pleased to admit in evidence the Further Affidavit of Alice Njambi Mutura sworn on 22nd September, 2023, in opposition to the Summons For Revocation of Grant dated 16th March, 2023 and scheduled for hearing on 16th October, 2023 and to be deemed as duly filed
 - c. That this Honourable Court be pleased to grant leave to the Objector to file response to the Further Affidavit (if need be)
 - d. That costs of this Application be in the cause.

Applicants Case

2. The application is based on the grounds found on the face of the application and a supporting affidavit made by the Applicant; the Applicant has new evidence being the Report of a Forensic Document



Examiner dated 1st September, 2023 in relation to the purported signature of the deceased on the Will dated 14th January, 2021 that had been produced by the Objector is his application to revoke the Grant.

3. The evidence was not available to the Applicant at the time of filing her response in opposition to the Summons for Revocation of the Grant; and seeks that the Further Affidavit be admitted as part of her evidence at the hearing. The Affidavit is crucial in assisting the Court to make an informed, just and fair determination of the dispute.
4. The application was brought without any undue delay and the Objector will not suffer any prejudice if the prayers sought are granted; The Applicant urged the Court to grant the Orders sought in the interest of justice. Case law relied on *R v National Transport Services Authority Ex-parte Extra Solutions Ltd* (2017) eKLR; *Okiya Omutatab Okoiti v Kenya Institute of Supplies Management & 3 Others* (2022) eKLR.

Respondents Submissions

5. In response the Respondent opposed the application and urged the Court to take into account the conduct of the Applicant in failing to comply with the courts directions and now wants to file four (4) Affidavits and produce documents; he contended that the application was solely intended to delay the fair hearing and determination of the application for Revocation of the Grant.
6. The Applicant had not advanced any reasons as to why she had waited until 1/09/2023 to instruct a document examiner; the Respondent urged the Court not to admit the Affidavit and Documents as to do so would return the matter to the pre-trial stage and with no right of response he would be greatly prejudiced;
7. The application was made in bad faith and the court was urged to dismiss the application with costs and the hearing to proceed as scheduled.

Issues for Determination

8. This court has framed the following issues for determination which are;
 - i. Whether to allow the applicant to introduce the additional document;
 - ii. Whether it would be just in the circumstances for the court to exercise its discretion;
 - iii. whether the additional evidence meets the threshold for admission;

Analysis

9. The cardinal principle of the rule of law is that all parties must be given a chance to fully present their case to the court;
10. Where there are specific time frames provided by the law for the filing of documents sought to be relied upon then a court of law is duty bound to disallow the filing of additional evidence. This court makes reference to the case of *Raila Odinga & 5 others v IEBC and 3 others* (2013) eKLR, where the Supreme Court held that the Petitioner was duty bound to adhere to the time frames set down in law.
11. Where the law is not exhaustive on time frames and where there is no specific provision catering for non compliance by a party a court may exercise its inherent powers to make orders that are in the interest of justice. It is this court's considered view that the time lines set down for filing documentation are not exhaustive and exclusive and a party who has failed to comply may seek leave of court and the court



may exercise its inherent discretion. Indeed, in this instant case the Applicant has requested this court to invoke this inherent power and grant the orders sought.

12. When exercising this discretion the court must look at and weigh the surrounding circumstances of the case and the material placed before it and then determine whether it would be in the best interests of justice to allow the additional documents to be introduced.
13. Both parties, herein had filed their respective affidavits to support their cases and the pleadings were closed and the cause was certified as ready to proceed to hearing of the Summons for Revocation of Grant filed by the Respondent.
14. The Applicant then filed this application under a Certificate of Urgency dated the 22nd September, 2023 seeking leave of the court to introduce additional evidence in the form of a Report of a Document Examiner.
15. It is apparent that the evidence sought to be introduced by the Applicant was not within her knowledge and possession and could have been produced at the time the date for hearing was given; lastly the evidence is fresh and will make a significant impact in the determination of the Cause;
16. This court shall not endeavour to delve into the contents of the document examiners Report but in order for this court to do justice to both parties it is this courts considered view that more information is indeed required to prove the validity of the Will.
17. The additional affidavit and document will not prejudice or change the nature of the Respondents' case and leave shall be and is hereby granted to the Respondent to include a rebuttal to the additional evidence;
18. In the light of the above circumstances this court is satisfied that the application meets the threshold of the conditions for admission of additional evidence; and this court is further satisfied that the additional evidence will enable this court to determine the case on merit and will ensure that all parties are granted a chance to ventilate their case; and from the material placed before it finds that this is a suitable case in which it can exercise its discretion.

Findings and Determination

19. For the forgoing reasons this court makes the following findings and determinations.
 - i. The application is found to have merit and it is hereby allowed. The Applicant be and is hereby granted leave to file the additional affidavit and document.
 - ii. The Further Affidavit dated 22/09/2023 is hereby admitted upon the requisite fees being paid into court within seven (7) days
 - iii. Respondent is hereby granted leave to file and serve Further Affidavit within seven (7) days of service if new issues arise.
 - iv. The Costs shall be in the cause.
 - v. Mention on 24/03/2025 for directions on hearing the Revocation of Grant.

Orders Accordingly

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 22ND DAY OF NOVEMBER, 2024.

HON. A. MSHILA



JUDGE

In the presence of;

Sanja – Court Assistant

Maghe Miss – h/b for Njagi – for the Admin/Applicant

Njuguna Gitahi - h/b Juma Murage – for the Respondent

Miss Mwangi - h/b for Kiprop – Applicant/Admin

