



In re Estate of John Kipkemboi Kemei - Deceased (Succession Cause 092 of 2007) [2024] KEHC 16381 (KLR) (23 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16381 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 092 OF 2007
RN NYAKUNDI, J
DECEMBER 23, 2024**

IN THE MATTER OF THE ESTATE OF JOHN KIPKEMBOI KEMEI - DECEASED

BETWEEN

JOHN KIBIEGO GOREN 1ST APPLICANT

APTON GOREN 2ND APPLICANT

AND

ALEX KIPROTICH NGETICH RESPONDENT

RULING

1. Before me for determination are summons for revocation expressed to be brought under the provisions of Section 76 of the *Law of Succession Act* and Rule 44 of the Probate and Administration Rules. The Objector seeks the following reliefs:
 - a. That the said grant was obtained fraudulently by concealment from this honourable court material facts that the asset listed as LR NO. 10214/1 Nandi Hills on the certificate of confirmation of grant dated 28th February, 2023 is no longer in existence as the same had already been subdivided during the time of the proprietor John Kipkemboi Kemei now deceased.
 - b. That there are liabilities to the estate of the deceased including but not limited to the applicants herein who were not included in these proceedings and who have been in occupation of land parcel I.R No. 18475 for over 40 years.
 - c. The proceedings to obtain the grant were defective in substance for failure by the administrator to include the liabilities to the estate.
2. The application is premised on the grounds set out therein and the contents of the affidavit sworn by John Kibiego Goren in support of the same. The Applicant contends that the grant in question was fraudulently obtained since the administrator failed to disclose to this court that there were liabilities to



the said estate who purchased land from the deceased and have been in physical possession of the said land for over 40 years. He stated that he bought land from the late John Kipkemboi Kemei measuring 25 acres on 24th of March, 1976 which was curved out from Land Reference Number 10214/1 Nandi Hills Title IR 18475 (lease).

3. That shortly thereafter in the year 1978 the deceased asked him to advance him Kshs. 25,000/= which he wanted to spend on his son's wedding in lieu of 10 more acres of land. That the said agreement was done orally and payment was in cash. The said 10 acres was curved out and added to his initial 25 acres making a total 35 acres which he took physical possession immediately.
4. The applicant deposed that attempts were made to formalize these land transfers through various legal firms. Initially, Tanui & Company Advocates were instructed to handle the subdivision and transfer, but this process was interrupted when Mr. Tanui was appointed as a High Court judge. Subsequently, Roseline Odede & Company Advocates were engaged to continue the conveyance process.
5. That Mr. Goren later gifted the 35 acres to his brother, Apton Goren, who had already taken physical possession of the land. The original parcel (LR 10214/1) was eventually subdivided into three portions, with the relevant portion being LR 14281/3, measuring 14.13 Ha.
6. In response to the summons, the respondent filed a replying affidavit characterizing the application as unmeritorious, frivolous, and based on deliberate misrepresentations intended to mislead the court.
7. Regarding the estate's liabilities, the respondent maintained that the only verifiable liability was a charge to Agricultural Finance Corporation (AFC) registered on 28th April 1969, which was active at the time of the deceased's death. He contends that any alleged letter of consent to transfer property to the applicants would have been illegal and void due to this existing charge.
8. The Respondent averred that attempts were made to settle the matter, with the Estate's advocates writing to the first applicant on 28th November 2022 providing settlement options. However, these attempts were either ignored or disregarded by the applicants. The respondent further notes that the applicants were aware of the beneficiaries' petition in Eldoret Succession Cause No. 92 of 2007 through various meetings but demonstrated indolence and inordinate delay in pursuing their claims.
9. The respondent strongly refuted the existence of any agreement between the deceased and the applicants, either oral or written, regarding the property. He characterized the applicants' claims about such an agreement as a blatant attempt to cover up their failure to pay for the property's acquisition. Regarding property L.R NO. 10214/1 NANDI HILLS, the respondent states it has never been demarcated nor had beacons installed, contrary to the applicants' assertions.
10. A significant point raised in the affidavit is that the first applicant waited seventeen years after the deceased's death (who passed away on 9th November 2006) before initiating legal proceedings through Citation Cause No. E029 of 2022 in Kapsabet High Court. The respondent views this as evidence of fraudulent intent and collusion with local authorities to interfere with the estate.
11. The Respondent concluded by stating that the estate has been fully distributed according to a scheme of distribution, which has been confirmed by the court. The respondent argues that the orders sought by the applicants would only serve to jeopardize the already distributed estate and should be declined.
12. The applicant filed written submissions dated 10th November, 2023 in agitating for the application. On the first issue concerning whether the Applicant's application meets the threshold for revocation of grant under Section 76 of the *Law of Succession Act*, learned counsel for the Applicant submitted that the grant should be revoked on grounds that the Respondent obtained it through concealment of material facts. It was submitted that the Applicant had purchased 20 acres of land from the deceased



during his lifetime in 1975, a fact which was omitted from the Chief's letter and not disclosed by the Administrator. Counsel maintained that the Administrator failed to inform the Applicant of the ongoing process and ignored his occupation of the 20-acre portion where he had made substantial developments.

13. To support this position, counsel cited the case of *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR, which expounded on Section 76 and established that a grant may be revoked where the process was defective due to omission of mandatory procedural steps or where fraud and misrepresentation occurred through non-disclosure of survivors.
14. On the second issue regarding costs, learned counsel for the Applicant relied on Section 27 of the *Civil Procedure Act*, submitting that costs should follow the event unless the court orders otherwise for good reason. The Applicant prayed that the Respondent be condemned to meet the costs of the summons and incidentals thereof. In interpreting this provision, counsel maintained that "the event" refers to the result of the entire litigation, with the order as to costs remaining at the discretion of the court.

Analysis and determination

15. The court is called upon to examine whether the administrator's conduct in obtaining and executing the grant meets the threshold of propriety demanded by the *Law of Succession Act*.
16. The law governing revocation of grants is not merely procedural but serves the paramount purpose of ensuring justice in the administration of estates. Section 76 of the *Law of Succession Act* enshrines the court's power to revoke grants where circumstances demand, providing a remedy against maladministration, fraud, or substantial procedural defects. This power, while discretionary, must be exercised judiciously and only upon sound grounds.
17. Section 76 of the *Law of Succession Act*, sets out situations when a grant can be revoked or annulled, Section 76 provides as follows:

“Section 76

“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.”

18. In the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* (2015) eKLR the court discussed circumstances when a grant can be revoked. The court observed:

“ 11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s 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 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.”

19. The grounds cited for revocation are that the Petitioners in this cause fraudulently obtained letters of administration without the knowledge of the beneficiaries of the objector and thereafter proceeded to effect registration of the said property in their names on the strength of the impugned proceedings.

20. The Respondent’s defense, primarily anchored on the existence of an Agricultural Finance Corporation charge, while relevant to the ultimate disposition of the property, fails to address the fundamental issue of disclosure. The presence of a charge does not extinguish the administrator’s duty to present all claims against the estate for the court’s consideration. Indeed, as established in *In re Estate of Prisca Ong’ayo Nande*, (supra) the concealment of potential beneficiaries or interested parties constitutes a serious breach of the administrator’s fiduciary obligations.

21. The court takes particular note of the attempted disposition of the disputed portion of land despite knowledge of the Applicants’ claims. This conduct falls squarely within the prohibition articulated in *Morris Mwiti Mburungu vs Denis Kimathi M’Mburungu* (2016), where the court emphasized that actions contrary to Sections 45 and 82 of the Act cannot receive judicial protection. The administrator’s duty is to preserve the estate pending proper determination of all claims, not to pre-empt such determination through unilateral action. The court in the said case stated as follows:

“ ... Where any person interferes with the free property of the deceased or deals with an estate of a deceased person contrary to the provisions of section 45 and 82 of the Act that is intermeddling, is unlawful and cannot be protected by the court. The transaction is subject to be nullified and set aside at the instance of innocent beneficiaries who may have been affected by the act but were not involved in the same.”

22. The Respondent’s argument regarding the Applicants’ delay in pursuing their claims must be examined against the broader context of equity’s operation in succession matters. While equity aids the vigilant, it does not countenance the exploitation of procedural advantages to defeat substantive rights. The evidence before this court suggests not mere oversight but a calculated omission of material facts that fundamentally compromised the integrity of the succession process.

23. In considering the appropriate remedy, the court is guided by the principle that revocation of a grant is an extraordinary measure, to be employed only where the circumstances demand such intervention.



However, where the very foundation of the grant is tainted by concealment of material facts, the court's duty to ensure just administration of estates requires decisive action.

24. The evidence presented reveals a pattern of conduct that strikes at the heart of proper estate administration. The Respondent's failure to disclose the Applicants' interests during the succession proceedings, regardless of any views held about the validity of their claims, constituted a material concealment that denied this court the opportunity to make an informed determination regarding the administration of the estate.
25. Moreover, the attempt to dispose of the disputed property without first resolving the Applicants' claims demonstrates a concerning disregard for the proper procedures established by the Law of Succession Act. Such conduct not only undermines the orderly administration of estates but also threatens to defeat legitimate interests that might exist in the estate.
26. In light of these considerations, I find that the grant was obtained through concealment of material facts sufficient to warrant revocation under Section 76(b) of the Law of Succession Act. The proper administration of justice requires that all interests in the estate be fully disclosed and properly considered before any final determination regarding distribution is made.
27. Having carefully considered the evidence and submissions before this court, and in accordance with the provisions of Section 76 of the Law of Succession Act and the inherent powers of this court under Article 159 of the Constitution of Kenya, I hereby make the following orders:
 - a. The grant of letters of administration intestate issued to the Respondent on 28th February, 2023 is hereby REVOKED in its entirety.
 - b. The certificate of confirmation of grant dated 28th February, 2023 is hereby SET ASIDE.
 - c. Any transactions, transfers, or dealings with the estate property known as LR NO. 10214/1 Nandi Hills made pursuant to the revoked grant are hereby declared NULL AND VOID.
 - d. The Respondent shall, within thirty (30) days from the date hereof: (a) File a full and accurate inventory of the estate of the deceased; (b) Provide a detailed account of all dealings with the estate property from the date of obtaining the grant to date; (c) Surrender to the court registry all original documents relating to the administration of the estate.
 - e. The parties are at liberty to engage in mediation regarding the distribution of the estate under the supervision of a court-accredited mediator, with such mediation to be concluded within forty-five (45) days from the date hereof.
 - f. The costs of this application, including the costs of any necessary surveys and documentation, shall be borne by the Respondent, such costs to be taxed if not agreed.
28. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET VIA CTS ON THIS 23RD DAY OF DECEMBER 2024

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R. NYAKUNDI

JUDGE

