



REPUBLIC OF KENYA



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In re Estate of the Late Kiptare Arap Tele (Deceased) (Succession Cause 015 of 2021) [2024] KEHC 15952 (KLR) (18 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15952 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 015 OF 2021
JK SERGON, J
DECEMBER 18, 2024**

IN THE MATTER OF THE ESTATE OF THE LATE KIPTARE ARAP TELE (DECEASED)

BETWEEN

REUBEN MOSONIK A CHUMO PETITIONER

AND

JOEL KIPKIRUI CHUMO 1ST APPLICANT

EZEKIEL CHEPKWONY CHUMO 2ND APPLICANT

REUBEN CHUMO 3RD APPLICANT

PAUL CHUMO 4TH APPLICANT

JOSEPH KIPNGETICH CHUMO 5TH APPLICANT

CHUMO SAMMY 6TH APPLICANT

RULING

1. The application coming up for hearing is a summons for revocation of grant dated 13th July, 2023 seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) That the certificate of grant of letters of administration was made to Reuben Mosonik A. Chumo on 4th October, 2021 and confirmed on 31st January, 2023 be revoked.
 - (iv) That the honourable court has wide powers and discretion to issue such orders and make other or further directions.



2. The application is based on the grounds stated on the face of it and the facts deponed in the supporting affidavit of Joel Kipkurui Chumo, the 1st Applicant/Protestor herein with the authority of the 2nd, 3rd, 4th, 5th and 6th Applicants/Protestors.
3. He stated that he was aware that the Petitioner filed an amended summons for confirmation of grant which was confirmed on 31st January, 2023 and that the confirmed grant was obtained fraudulently, thereby necessitating the application for revocation.
4. He argued that the death certificate used in filing the instant succession proceedings is a forgery and that they have a true copy of the death certificate of the deceased.
5. He averred that on 11th July, 2023 they were served with a notice of intention to ascertain boundaries and fix the boundaries in the land parcel known as L.R Kericho/Kapkatet/60 which parcel belongs to the estate of the deceased who is their father and further that the Petitioner had filed an application that security should be provided during the subdivision process.
6. He avers that the Petitioner petitioned this court for confirmation of grant of letters of administration intestate in respect of their deceased's father estate without seeking the consent of the beneficiaries who are entitled to take out letters of administration in respect to the deceased's estate.
7. He further avers that upon pursuing proceedings, he was shocked to learn that the grant was confirmed on 31st January, 2023 and the estate of the deceased distributed.
8. He further averred that the proceedings leading to the confirmation of the grant were defective and that the grant was confirmed on the basis of untrue allegations, deliberate omissions and concealment of material facts and therefore the grant ought to be revoked.
9. He also averred that the Petitioner had made concerted efforts to effect the distribution of the estate in line with the impugned certificate of confirmation of grant dated 31st January, 2023.
10. Joel Kipkirui Chumo the 1st Applicant filed a further affidavit in respect to the application, and averred that his father passed away on 30th September, 1988 and that he had three houses.
11. He further avers that the daughters of the three houses have not been included in the instant succession proceedings. It is his averment that they were deliberately left out by the Petitioner/Respondent and it is therefore imperative for the certificate of grant dated 31st January, 2023 to be revoked to allow the beneficiaries to be included in the grant.
12. He avers that the Petitioner was given 5 acres of land by the deceased prior to his demise and the Petitioner sold the land and misappropriated the proceeds from the sale and was rendered homeless and destitute.
13. Joel Chumo also stated that the family out of generosity donated a total of 1.2 acres and which land the Petitioner has since sold part of it. He avers that the above notwithstanding, the Petitioner filed a citation demanding another share of the deceased's property.
14. He avers that the Petitioner instituted the succession proceedings without the concurrence of all the beneficiaries. It is further stated that the death certificate was forged and that the chief letter's was obtained fraudulently and that the chief who wrote the letter is from another location and not a resident of the location of the beneficiaries.
15. When the cause came up for inter partes hearing and Mr. Okumu, Learned Advocate for the Petitioner stated that he had filed a replying affidavit dated 10th September, 2023 disputing the claims in the summons for revocation and that they would file submissions.



16. This court directed the parties to file and exchange their written submissions. At the time of writing this ruling, the said replying affidavit could not be traced in the court record.
17. The Objector/Applicants filed submissions and reiterated that the procedure used to obtain the grant was defective in substance and violated the provisions of section 76 of the Law of Succession Act. They reiterated that the Petitioner filed the instant succession cause without notifying the beneficiaries.
18. They cited the case of re Estate of Kyengo Kiilu Ngungi (deceased) [2021] eKLR where the court allowed summons for revocation on grounds that the grant was obtained by means of untrue allegations of fact essential in law to justify the grant and that the petitioner was a stranger to the estate and had secretly filed the Succession Cause without informing the beneficiaries.
19. The Petitioner filed submissions and contended that whereas the Objector alleged forgery of the death certificate of the deceased, they did not furnish proof of the alleged forgery and cited the case of Elizabeth Kamene Ndolo v George Matata Ndolo [1996] eKLR where the court stated as follows; “We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases.”
20. The Petitioner contended that the Applicant/Objectors cannot claim that consent was never sought and that they were not aware of the instant succession proceedings, yet they were served with consent forms and they refused to sign and therefore there was no defect in the process used to obtain the grant.
21. I have considered the application and submissions by the parties and I find that the sole issue for determination is whether to revoke the grant issued on 31st January, 2023.
22. On the issue as to whether to revoke the grant issued on 31st January, 2023, this court has considered the claims by the objector more so the fact that proceedings culminating to the confirmation of grant were defective and that the grant was confirmed by means of untrue allegations, deliberate omissions and concealment of material facts.
23. On whether the proceedings culminating in confirmation of grant were defective, the objector faulted the petitioner for instituting the instant succession proceedings without notifying and/or consulting the beneficiaries of the estate of the deceased.
24. This court has perused the amended summons for confirmation of grant dated 11th January, 2023 and finds that save for the Petitioner, the other beneficiaries did not execute a consent on the proposed mode of distribution and a consent to confirmation of grant.
25. The Petitioner argued that he instituted the instant succession proceedings via citation proceedings. The Petitioner argued that at the inception of the succession cause, the beneficiaries refused to sign the requisite forms which necessitated the filing of an affidavit dated 14th January, 2021 to the same effect.
26. The Petitioner argued that prior to filing the amended summons for confirmation of grant dated 11th January, 2023 the objectors were served with consent forms and that they refused to sign and he stated that there is an affidavit of service dated 24th January, 2023 as proof service. It is also apparent that there is on record a summons requiring attendance issued by this court was served upon the beneficiaries of the estate for the confirmation hearing which was scheduled on 31st January, 2023.



27. It is therefore the finding of this court that the proceedings culminating in the confirmation of grant were not defective since the beneficiaries were privy to the instant succession proceedings and they opted not to participate.
28. On whether the grant was confirmed by means of untrue allegations, deliberate omissions and concealment of material facts, in the absence of tangible proof fraud or forgery on the part of the Petitioner, this Court finds that the objectors have not proven their case thereby warranting revocation and/or annulment of grant based on the grounds set out in section 76 of the [Law of Succession Act](#).
29. In the Case of [the Estate of Prisca Ong'ayo Nande \(Deceased\)](#) (2020) eKLR, the court observed as follows; "I have very closely perused through the provisions of the [Law of Succession Act](#), and I have not come across any provision that provides a remedy to a person who is aggrieved by confirmation orders. Sections 71, 72 and 73 of the [Law of Succession Act](#), which deal with confirmation of grants, do not address the question of redress for parties who are unhappy with the confirmation process, nor do they deal generally with flaws in the confirmation process. As stated above, section 76 has nothing to do with the confirmation process, and provides no relief at all to any person unhappy with the confirmation process. In the absence of any provision in the [Law of Succession Act](#), for relief or redress for persons aggrieved by such orders, the aggrieved parties have only two recourses under general civil law, that is to say appeal and review, to the extent that the same is permissible under the [Law of Succession Act](#). I would believe that one can also apply for the setting aside or vacating of confirmation orders, where the same are obtained through abuse of procedure."
30. Consequently, the notice of motion dated 13th July, 2023 is found to be without merit. The same is dismissed with each party bearing their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 18TH DAY OF DECEMBER, 2024.

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Malel holding brief for Kipngetich for Objectors

No Appearance for the Petitioners

