



In re Estate of Morris Okelo Lugulu (Deceased) (Succession Cause 516 of 2004) [2023] KEHC 1753 (KLR) (28 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1753 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 516 OF 2004
FA OCHIENG, J
FEBRUARY 28, 2023
IN THE MATTER OF THE ESTATE OF MORRIS OKELO LUGULU
(DECEASED)
AND
IN THE MATTER OF REVOCATION OF GRANT OF LETTERS OF
ADMINISTRATION INTESTATE**

BETWEEN

WILLIAM OWUOR OTIENO (SUING AS THE ADMINISTRATOR OF THE ESTATE OF MORRIS OKELO LUGULU) OBJECTOR

AND

ROSE ONYANGO OBONDO 1ST PETITIONER

STEPHEN OUMA OTIENO 2ND PETITIONER

SUED AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE GEORGE JUMA LUGULU

RULING

1. Before me is a summons for the revocation or annulment of the Grant issued to George Juma Lugulu on July 1, 2004. The said grant was confirmed on December 22, 2005.
2. The application was brought by William Owuor Otieno, in his capacity as the Administrator to the estate of the late Morris Okelo Lugulu.
3. The applicant filed the application against Rose Anyango Obondo and Stephen Ouma Otieno, both of whom he cited as the administrators to the estate of George Juma Lugulu.



4. The second prayer in this application was that the Certificate of Confirmation of Grant which was issued in Kisumu Succession Cause No 1046 of 2013 be revoked or annulled. The said grant had been issued in respect to the estate of George Juma Lugulu.
6. This application is premised upon the following grounds, as enumerated on the face thereof;
 - a) That the Grant of Letters of Administration and the Certificate of Confirmation thereof to the deceased's estate as applied for by George Juma Lugulu is prohibited by dint of Section 39 of the *Law of Succession Act*, hence the proceeding being defective in substance.
 - b) That the Grant was obtained fraudulently, by making of false statement, (and) concealment of material facts relating to the estate of the deceased.
 - c) That the grants of Letters of Administration and the Certificate of Confirmation thereby, are a nullity *ab initio*.
 - d) That the fact that the late George Juma Lugulu's Grant was obtained fraudulently and by non-disclosure of facts, automatically affect the Grant issued to the respondents because it will be a corruption of the law to validate his actions.
 - e) That the underlying objective of the *Law of Succession Act* was to ensure that the beneficiaries of a deceased person inherit the property thus the need to revoke such Grants issued in such fraudulent manner to none (sic!) beneficiaries, and allow the applicant's family inherit the estate of the deceased.
 - f) That the respondents intend to misappropriate and/or abuse the said estate of the deceased, to the detriment of the Applicant and other Beneficiaries.
 - g) That it is in the interest of justice and fairness that the Orders sought hereinabove are granted.”
7. The application is supported by the affidavit sworn by the applicant. In his said affidavit, the applicant sets out the historical background of the family of Lugulu Wakanya, who was the father of the late Moses Okelo Lugulu, the deceased in this succession cause.
8. He heaps blame upon George Juma Lugulu for acting in a fraudulent and opaque manner.
9. Pursuant to Section 76 of the *Law of Succession Act* a grant may be revoked or annulled if, *inter alia*, it was obtained fraudulently by the making of a false statement or by the concealment of something which is material to the case.
10. In this case, the applicant's position is that;

... the 1st respondent's husband having administered the deceased's estate fraudulently and by not disclosing material facts to the court, the Certificate of Grant issued thereon and subsequent processing of the Title Deed became null and void ab-initio, and it was the duty of his Administrators, the Respondents herein, to correct the unlawful action, which they did not.”
11. The applicant had cited the respondents herein as petitioners. The respondents made it clear that they were never petitioners in this case. It is George Juma Lugulu who was the petitioner.
12. Although the applicant told the court that it was his advocate who made the inadvertent mistake of citing the respondents as petitioners, I hold the view that the “mistake” was neither inadvertent nor minor. My view is that because the applicant wished to persuade the court that the grant had



- been obtained fraudulently, it was necessary to try and show that the respondents were the petitioners because the grant in issue was issued to the person who had applied for it.
13. In my considered opinion, as the respondents were not petitioners in this cause, they cannot be liable for any alleged fraud which the applicant attributed to the petitioner.
 14. If the applicant has any issues with the issuance of the grant to the respondents in the succession cause relating to George Juma Lugulu, he would have to make an appropriate application in Succession Cause No 1046 of 2013.
 15. The court cannot make orders in this Cause, for purposes of issues in a separate cause.
 16. Furthermore, the person against whom the applicant is making allegations of fraud, is dead. He cannot speak for himself. The applicant has not explained why he waited for so many years, from the time George Juma Lugulu obtained the Grant herein, on July 1, 2004; until May 27, 2021, when he filed the current application.
 17. In any event, following the demise of George Juma Lugulu, the grant which was issued to him in 2004 is no longer available for revocation or annulment.
 18. Considering that the Certificate of Confirmation of Grant was issued in 2005, I hold the considered view that the estate of the deceased, Morris Okelo Lugulu has, in all probability, been wound-up. My said view is informed by the fact that the property which the applicant is laying a claim to, as a beneficiary, had apparently already vested in George Juma Lugulu, who has since passed away.
 19. Finally, I note that the respondents herein were never parties to this succession cause. Nowhere are they named in the cause. It appears that the applicant has made the respondents parties in a cause that they had never played any role. I find that if the applicant wished to seek the joinder of the respondents to this cause, he would have to move the court appropriately.
 20. All said and done, I find no merit in the application dated May 27, 2021; it is therefore dismissed, with costs to the respondents.

Dated, signed and delivered this 28th day of February, 2023.

FRED A. OCHIENG

JUDGE

I certify that this is a
true copy of the original.

DEPUTY REGISTRAR

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