



REPUBLIC OF KENYA



**In re Estate of Eric Edward Khasakhala (Deceased) (Succession Cause  
2248 of 2002) [2023] KEHC 18337 (KLR) (Family) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 18337 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 2248 OF 2002**

**PM NYAUNDI, J**

**APRIL 28, 2023**

**IN THE MATTER OF THE ESTATE OF ERIC EDWARD KHASAKHALA(DECEASED)**

**JUDGMENT**

1. By Summons for revocation of grant dated 5<sup>th</sup> November 2019, the Applicant seeks that the grant of representation to the Estate of Eric Edward Khasakhala made to Barack Habwe Ingate, Clerah Josephine Nyangweso Khasakhala and Florence Amunga Khasakhala on 29<sup>th</sup> October 2002 and confirmed on 5<sup>th</sup> May 2004 be revoked. The Application is presented Under Section 76 of the [Law of Succession Act](#), Cap 160 Law of Kenya and Rule 44 of the probate and Administration rules and all other enabling provisions of the law.
2. The Application seeks the following orders-
  1. Spent
  2. That the Grant of Letters of Administration made to Barak (sic) Ingati Habwe, Clerah Jossephine Nyangweso and Florence Amunga Kasakhala be revoked and/ or varied
  3. That instead the confirmed certificate of Grant thereof be given to Tony Otswoni Khasakhala and Anne Akoy Khasakhala.
  4. That the Administrators/ Executors by themselves or through the firm of Munikah & Co. Advocates who applied for the Grant and Confirmation of the Grant do give a full inventory of the deceased assets and liabilities.
  5. That the Administrators/ Executors by themselves or through the firm of Munikah & Co. Advocates do give a full account of the Administration of the assets of the diseased (sic)
  6. That Munikah & co. Advocates who did the probate and administration of the Estate on behalf of the estate needs to be summoned to explain the whereabouts of the properties which he sold at about 16 million (sic) thereabout.



3. The Summons is supported by the Affidavit of Tony Otswoni Khasakhala sworn on 5<sup>th</sup> November 2019. Parties agreed to canvass the Application by written submissions.

### **Applicant's Submissions**

4. The Executors/ Administrators of the Estate are the uncle and wives of the deceased. One of the administrators Clerah Josephine Nyangweso Khasakhala died on 11<sup>th</sup> April 2018.
5. The Applicant states he has no confidence in the remaining administrators administering the Estate of the deceased, as one of them namely Barack Ingati Habwe is said to live in Mombasa outside the jurisdiction of the Court and therefore unable to effectively perform the role.
6. The Applicant submits that the administrators have failed to render an account to the court since their appointment in contravention of the clear provisions of the law.
7. It is also submitted that other properties of the deceased have since been discovered which were not included in the initial grant and that they should now be included so that they can be transmitted to the beneficiaries.
8. The Applicant relies on the decisions of *Re Estate of Stephen Mwangi* [2018]eKLR and *Re Estate of Julius Ndubi Javan*[2018] eKLR

### **Analysis and Determination**

9. The Application seek to compel Munikah and Co. Advocated to prepare a full inventory of the deceased's assets and liabilities, to give a full account of the Administration of the assets of the deceased (sic) and explain the whereabouts of the properties that were sold at about 16 million.
10. The responsibility to administer an estate and prepare accounts rests with the administrator and not the advocate. It is the administrator who holds the position of trust. For this reason, I will not allow prayers 4, 5 and 6 of the summons in so far as they seek to compel the firm of Munikah and Co. Advocates to assume the duties of a personal representative.
11. Section 76 of the *Law of Succession Act* provides-

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.
12. The Applicant herein seeks the revocation of the grant on the basis that one of the Administrators has died and that the others have failed or are unable to perform their duties as provided for under the law.
  13. It is further submitted that the inaction of the Administrators has put the estate at risk of being wasted.
  14. The Application was not opposed.
  15. The Authorities referred to by the Applicant are not relevant to the instant case as they refer to instances when the revocation was sought under Section 76 (a), (b) and (c).
  16. In the instant case the revocation is sought on the basis that one of the Administrators has died (the grant is therefore inoperative) and that the remaining Administrators have failed to carry out their responsibilities.
  17. Section 83 of the *Law of Succession Act* sets out the responsibilities of personal representatives as hereunder: -
 

Personal representatives shall have the following duties—

    - a. to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
    - b. to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
    - c. to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
    - d. to ascertain and pay, out of the estate of the deceased, all his debts;
    - e. within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
    - f. subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
    - g. within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
    - h. to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities



of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

- i. to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”
18. The Grant herein was confirmed on 5th May 2004. 19 years later it is yet to be administered, the estate is yet to be transmitted to the beneficiaries. The Administrators did not offer an explanation or contest the averments of the Applicant. In the circumstances I do hold that the Administrators have failed to discharge their responsibilities.
19. In *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa* Succession Cause No. 158 of 2000 Mwita J stated: -
- “Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
20. Whereas it is contended that Barack Ingati Habwe is critically this has not been substantiated. Having regard to the circumstances of this matter and the need for the family to move towards finalising the administration of the estate, I revoke the earlier grant and order that grant of representation in the Estate of Eric Edward Khasakhala issue to;
1. Barack Ingati Habwe
  2. Florence Amunga Khasakhala
  3. Tony Otswoni Khasakhala
  4. Anne Akoya Khasakhala
21. In so doing I am persuaded by the reasoning of Ogola J in *re Estate of the Late Mwaura Makuro (Deceased)* [2021] eKLR, where whilst acknowledging that it was evident that a good case had been made for the removal of the administrator for failure to proceed diligently with the administration of the estate, he observed that the interests of justice would not be served by revoking the grant and instead proceeded to invoke the inherent powers of the Court under Section 73 of the *Law of Succession Act* and provide a bespoke order. I will do likewise, and order as follows: -
1. The Grant of representation issued on 29<sup>th</sup> October 2002 and confirmed on 5<sup>th</sup> May 2004 is revoked and fresh grant of representation in the Estate of Eric Edward Khasakhala issue to
    - a. Barack Ingati Habwe
    - b. Florence Amunga Khasakhala
    - c. Tony Otswoni Khasakhala
    - d. Anne Akoya Khasakhala
  2. The Administrators shall distribute the estate of the estate as per the certificate of confirmation of Grant and complete the administration of the Estate within 120 days from the date hereof



3. The Administrators produce a full and accurate inventory of the assets and liabilities of the deceased including a full and accurate account of all the dealings therewith within 120 days from the date hereof
4. The matter be mentioned before the Deputy Registrar on 15<sup>th</sup> November 2023 to confirm compliance.
5. Each party to bear their own costs.

It is so ordered.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL, 2023.**

**P M NYAUNDI**

**JUDGE**

**In the presence of:**

..... Advocates for the Applicant

..... Advocates for the Respondent

Karani Court Assistant

