



**In re Estate of See Tinyo Abira (Deceased) (Succession Cause
428 of 2014) [2023] KEHC 18137 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18137 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 428 OF 2014
MS SHARIFF, J
MAY 31, 2023**

BETWEEN

TOBIAS ABIRA SEE PETITIONER

AND

JARED OCHOR 1ST OBJECTOR

NICHOLAS OTIENO OJWANG 2ND OBJECTOR

RULING

1. The objectors filed a summons for the revocation of grant dated May 6, 2021 seeking the revocation and or annulment of grant issued to the petitioner on September 25, 2014 and confirmed on October 2, 2015 and orders that the land parcel number Kisumu/Wathorego/3491 do revert to the deceased's name.
2. The application is grounded on the fact that whereas the objectors are purchasers for value parcel No Kisumu/Wathorego/3491, each having purchased at different times, one half portion of the said parcel from the deceased during his lifetime, the petitioner failed to disclose this fact to the court during the succession proceedings, their occupation and actual possession of the same notwithstanding. The objectors state that the Petitioner/ administrator has caused the registration of the said parcel in his name through transmission wherefore they stand the risk of being dispossessed of their respective portions.
3. The petitioner filed a replying affidavit inter alia disclosing that upon obtaining letters of administration, the acreage of the land changed from 0.055 Ha to 0.11 Ha after sorting out a boundary dispute with a neighbour. He admits that the objectors indeed bought land from his father but maintains that they did so jointly for a portion measuring 0.055 hectares and they are therefore entitled to the portion they bought and not the extra size obtained after the boundary dispute had been



determined. He depones that the objectors are not his late father's relatives and therefore the grant cannot be nullified at their instance.

4. The matter proceeded by way of *viva voce* evidence. PW-1, the 1st objector besides reiterating the disposition in his affidavit stated that he bought a portion measuring 0.55 hectares from the deceased. It was his testimony that at the time of the purchase he found his co objector in possession as he had already constructed a house on his portion. The first objector thus claims his 0.055 hectares of parcel No Kisumu/Wathorego/3491.
5. PW-2 Nicholas Otieno Ojwang stated that he bought his land prior to the 1st objector and had built his house at the time the 1st objector was buying his. He stated that his portion was 0.055 hectares which was duly surveyed. He denied sharing the said portion with the 1st objector.
6. The petitioner did not testify.
7. At the close of the objectors' case Mr Abira Counsel for the objectors made oral submissions before the court highlighting that given the evidence, the objectors were entitled to the orders sought on the strength of Section 76 of the *Law of Succession Act*.

Analysis and determination

8. This being an application for revocation of grant, the relevant legal provisions are Section 76 of Cap 160 which 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—
9. The ground fronted by the objectors is that the petitioner failed to disclose their interest in the subject parcel of land which they had purchased from the deceased during his lifetime and they were in active occupation and possession thereof, a fact that the petitioner was privy of as at the time that he petitioned for the grant and when he applied for the confirmation thereof.
10. The petitioner does not however dispute this fact only that there is an extra acreage which the objectors are not entitled to. This calls for the examination of the agreement which the objectors produced into evidence showing that the 1st objector bought a portion of the parcel measuring 0.055 Ha on April 11, 2012 and the 2nd objector also bought a portion which has not been indicated on the agreement.
11. Be that as it may, there is evidence that the objectors are purchasers whose interests in the estate of the deceased was not indicated in the petition for grant of letters of administration. The issue of size is an issue that this court may not delve into at this juncture because that question is a preserve of the Environment and Land Court by dint of Section 13(2) of the *Environment and Land Court Act* and article 162 (2) (b) of the *Constitution* of Kenya 2010. This court's jurisdiction in the instant application



is limited to whether the petitioner while making his application for grant of letters of administration concealed material fact relating to the estate.

12. According to form P & A 5 filed herein, the petitioner did not indicate the objectors' interests as liabilities on the estate and this therefore is consistent with a finding that the petitioner failed to disclose material fact in his disposition.
13. The court in *Re Estate of Moses Wachira Kimotho (Deceased)* Succession Cause 122 of 2002 [2009] eKLR, while emphasizing the importance of disclosing material facts such as purchasers on the deceased's estate held;

“I am certain that had the Applicants been made aware of the application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of those interests. Further had the Respondent been forthright and candid and included the Applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is therefore the grant was obtained fraudulently by making of a false statement and or concealment from court of something material to the cause. The Respondent knew of the Applicants' interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for the confirmation of the grant.

14. Premised upon the above stated reasons, I find and hold that the grant herein was obtained through concealment of material facts which makes the grant so issued to the petitioner liable for annulment and or revocation.
15. On the balance, the orders that lend themselves to this court are as follows:-
 - a The grant issued to Tobias Abira Shee on September 25, 2014 and confirmed on October 2, 2015 is hereby revoked.
 - b The registration of the petitioner as the sole registered proprietor of Land parcel number *Kisumu/Wathorego/3491 be and is hereby revoked and the said parcel of land to revert back to the deceased See Tinyo Abira.
 - c The said parcel of land be and is hereby distributed to the objectors Jared Ochor and Nicholas Otieno Ojwang in equal shares of 0.055 hectare.
 - d The Land Registrar Kisumu County to be served with a copy of this order for purposes of effecting orders No b) and c) herein above.
 - e The other assets of the estate shall not be interfered with and a new grant and a certificate of confirmation thereof shall forthwith issue reflecting the distribution hereinabove made.
 - f Each party shall bear his own costs.

DELIVERED, DATED AND SIGNED AT KISUMU THIS 31ST DAY OF MAY 2023.

MWANAISHA S SHARIFF

JUDGE

