



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Alexander Ombikhwa (Deceased) (Succession Cause
52 of 1992) [2023] KEHC 19381 (KLR) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19381 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 52 OF 1992
WM MUSYOKA, J
JUNE 30, 2023**

RULING

1. I am tasked with determining a summons for revocation of grant, dated November 25, 2022. It is brought at the instance of Roen Ombikhwa, who I shall refer hereto as the applicant. She avers to be a daughter of the deceased, and complains that the administratrix, who has since died, did not disclose the other survivors of the deceased, and approached the matter in a manner suggesting that she was the sole survivor. She was a surviving spouse, and she did not disclose the surviving children of the deceased, and the surviving children of the dead children of the deceased. She avers that the grant was confirmed, and the property was devolved to the administratrix, who caused it to be subdivided into 3 parts. She would like the property reverted to the original title, Bukhayo/Busibwabo/188.
2. I agree, from what I can see from the petition and the other documents filed, when representation was sought. The late administratrix only disclosed herself. She did not disclose the other survivors. That was not in compliance with section 51(2) of the *Law of Succession Act*, Cap 160, Laws of Kenya. Although she did not need the consent of the children to petition, as she had prior right to administration, under section 66 of the *Law of Succession Act*, and Rules 7(7) and 26 of the Probate and Administration Rules, she was bound to disclose all the children of the deceased, as that is what is envisaged under section 51(2) of the *Law of Succession Act*.
3. Anyhow, there is no need to interrogate the process of obtaining the grant, for the administratrix died, and there is no one holding representation to the estate. The grant made to the late administratrix has now become useless and inoperative following her death, and that alone is good ground, under section 76(e) of the *Law of Succession Act*, for having the grant revoked, and I shall revoke it on that ground alone.
4. However, I shall be reluctant to interfere with the confirmation process. Firstly, the current status of the property has not been disclosed. Under whom is it currently registered? It is alleged that it was subdivided, but no evidence of that subdivision was adduced. Such disclosure would be relevant, for if the property is in the name of the late administratrix, and has not been transferred to third parties, there would be no point of interfering with the confirmation and transmission processes. In such case, it would be more prudent not to interfere, but to let the parties pursue distribution of the property in



the estate of the late administratrix. It has also not been disclosed whether the late administratrix was the mother of the applicant herein, and the other children that she has disclosed. If she was, the more the reason the children should seek to distribute the property through her estate. The other reason is that if the property was sold and transferred to third parties, there would be reason to hear the third parties, before a decision is made, with regard to reverting it to the estate. There is protection for such third parties, under section 93 of the [Law of Succession Act](#).

5. In view of what I have stated above, whereas there could be reason to appoint new administrators, the distribution, if at all it happened, should not be interfered with. The new administrators should make more disclosures, and provide material upon which a court can decide on the way forward.
6. The final orders that I make are that I revoke the grant made herein on May 3, 1993, to Venice Nakhone Ombire. I appoint the applicant herein, Roen Ombikhwa, as the new administratrix, and a grant of letters of administration intestate shall issue to her, accordingly. I decline to grant the other prayers sought in the application, for the reasons given above. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 30TH DAY OF JUNE 2023

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Mr. Masiga, instructed by Masiga Wainaina & Associates, Advocates for the applicant.

