



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Rahab Nyawira Thuu (Deceased) (Succession Cause
21 of 2016) [2023] KEHC 20958 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20958 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
SUCCESSION CAUSE 21 OF 2016
AK NDUNG’U, J
JULY 26, 2023**

IN THE MATTER OF THE ESTATE OF RAHAB NYAWIRA THUU – DECEASED

BETWEEN

THUO ANTONY MWAURA APPLICANT

AND

DANIEL BUTTI NJOROGE 1ST RESPONDENT

CAROLINE WANGARI THUO 2ND RESPONDENT

RULING

1. These proceedings relate to the estate of Rahab Nyawira Thuu who died intestate on 16/11/2012. Letters of administration of her estate were granted to her only surviving children Daniel Butti Njoroge, Antony Mwaura Thuo and Caroline Wangari Thuo, the Applicant and the Respondents herein on 18/03/2015. Consequently, the Grant was confirmed on 27/10/2015.
2. The net intestate estate of the Deceased comprised of all assets listed on the Certificate of Confirmation of Grant and which was to be registered in joint names of the Deceased’s children herein.
3. The Applicant has now filed summons for revocation of grant dated 05/09/2022. The summons is brought under section 76 of 4 [Law of Succession Act](#), rules 44 and 73 of the [Probate and Administration Rules](#). The Applicant has sought the following orders;
 - i. That the grant of letters of administration intestate made on 18/03/2015 and confirmed on 27/10/2015 be revoked and/or annulled on the grounds that;
 - a. The administrators have failed after due notice and without reasonable cause to proceed diligently with the administration of the estate.



been collecting rent from Shop No.2 for a period of three years which he has failed to disclose to this court and that the 1st Respondent has not proved that Shop No.1 and 6 tenants pay their rent directly to the joint account. Therefore, the 1st Respondent should account for the same. He stated that the estate does not owe the 1st Respondent any money.

11. The 1st Respondent filed a further affidavit and stated that they had a meeting before the Applicant became uncooperative where they agreed on renovations to be made and the Applicant even signed a cheque to the effect of upgrading the electrical power from single to three phase. That the rent for Shop No.1 amounting to Kshs.30,000/- is paid quarterly as well as rent for Shop No.6 and rent for Shop No.2 is paid monthly which is remitted to the joint account. He attached the joint account to show that the rent is always paid to that account. He averred that he had acted in the best interest of the estate and has never spent any shillings for his personal use.
12. Parties were directed to file submissions. The Applicant submitted that it is now seven years and the administrators have not been able to wind up with the administration and has not produced a full and accurate account of completed administration thereby rendering the grant to be inoperative and useless. That the administrators have failed to administer the estate diligently and has failed to provide an inventory or account for the estate. Further, the Respondent has become selfish and greedy for he has been collecting rental income for his personal use instead of allowing the tenants to remit the same to the joint account. That the Respondent has not demonstrated that it is the Applicant who failed to sign the transmission forms as none was attached and that there was no agreement for appointment of an agent.
13. He submitted that the grant has become useless and inoperative since the Respondent admitted that there has been a breakdown in communication between the administrators. That the Respondent has failed to give a full inventory despite having been served and that the Respondent's action amounts to intermeddling with the estate since he admitted that he has been solely managing the estate. He urged this court to revoke the grant since it has become useless and inoperative.
14. The Respondents on the other hand submitted that the Applicant failed to produce any evidence to show that he has ever aided in the administration of the estate despite being one of the administrators. That the Applicant neglected his obligations and left the Respondents to administer the estate on their own. They submitted that the Applicant has not demonstrated that the 1st Respondent has used any proceeds from the income of the estate for his own personal or selfish use and that the Applicant has not provided sufficient grounds warranting revocation of the grant. Further, the Applicant has failed to demonstrate that a notice was issued before filing this matter as required under section 76(d) of the [Law of Succession Act](#). The Respondents urged this court to order for filing of a full and joint inventory of administration of the estate in accordance with section 83 of the Law of Succession Act.
15. I have considered the parties rival arguments from their pleadings and submissions. The only issue for determination is whether the grant issued to the administrators herein should be revoked.



16. The application for determination is premised on section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya (herein referred as the Act). The said section states as follows:

“76. Revocation or annulment of grant

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.”

17. Section 76 envisions that a grant can be revoked where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he or she fails to apply for confirmation of grant within the time allowed, or he or she fails to proceed diligently with administration, or fails to render accounts as and when required.
18. From the material placed before the court, the Applicant seeks revocation on account that;
 - i. That the administrators have failed after due notice and without reasonable cause to proceed diligently with the administration of the estate.
 - ii. The grant has become useless and inoperative.
 - iii. The administrators have not produced a full and accurate inventory of assets and liability of the estate.
19. The administrator’s duties and responsibilities are explicit and outlined in section 79, 82 and 83 of the Act. Under section 79 all the property of the Deceased vests in the administrators/executors. The said section provides;

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”
20. Section 82 (a) vests in the administrator the power to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate.
21. Section 83 list the duties of the administrators. Their duties entail;
 - “ 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.”

22. It was therefore the Applicant’s duty to prove that the administrators have failed to perform the above duties. It is worth noting that the Applicant is an administrator as well and therefore, he had the onerous task to prove that he has performed the duties as prescribed above.

23. Moving on, the Applicant claimed that the grant has become useless and inoperative. The legal position is that this is applicable where a sole Administrator passes away or where the administrator is unable to carry on with administration due to other factors. See Musyoka J *In re Estate of Festo Lugadiru Abukira (Deceased)* [2019] eKLR where the court held that;

“The third general ground is where the grant has become useless or inoperative on account of subsequent events, that is subsequent to the making of the grant. It would arise where a sole personal representative has died. There would be no person to carry on administration under his grant, rendering the document useless and inoperative. It would also be the case where the administrator suffers disability, whether physically or mentally, rendering him incapable of discharging his duties, such as where he becomes senile or of unsound mind or lapses into a coma from which he does not recover or suffers such debilitating physical injuries that make it practically impossible for him to do anything for himself. An administrator who is adjudged bankrupt would also fall under this net for he would lose capacity, by virtue of section 56 of the *Law of Succession Act*, and he cannot possibly act as administrator, and the grant he holds would become a useless piece of paper.”

24. *In re Estate of Kiberenge Mukwa (Deceased)* [2021] eKLR and *Julia Mutune M’mboroki v John Mugambi M’mboroki & 3 others* [2016] eKLR the court held that;

“In my view, therefore, where the sole administrator is a natural person, and he or she dies, the grant becomes useless or inoperative by reason of subsequent event of his demise. I am



aware that the Law of Succession Act does not define or say what constitutes “the grant has become useless and inoperative through subsequent circumstances”. But, in my opinion, death of an Administrator would be a sufficient reason to revoke a Grant for having become useless and inoperative due to subsequent demise of its holder...I am content to cite the case of *In the Matter of the Estate of Mwangi Mugwe alias Eliza Ngware (Deceased)* Nairobi High Court Succession Cause No. 2018 of 2001 where Khamoni J (as he then was) held that an application for substitution was improper and could only be brought under section 76 of the *Law of Succession Act* for Revocation of Grant on the grounds that it had become useless and inoperative following the demise of the holder.”

25. It therefore follows that the Applicant cannot be seen to say that the grant has become useless and inoperative since the administrators are still alive and of sound mind.
26. The Applicant however stated that the administrators have failed to proceed with administration of the estate diligently. Section 76 (d)(ii) of the *Act* as cited above allows this court to revoke a grant in the event the administrator has failed after due notice and without reasonable cause, to proceed diligently with the administration of the estate.
27. The said section requires a notice to be served to the Administrators. The section expressly states that;

“(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either.... (emphasis added)-“
28. The Applicant claimed that the Respondents failed to proceed diligently despite being served. The Respondents on the other hand submitted that notice was not served. The above section talks of ‘after due notice’...This implies that a due notice must be served upon an administrator and after service of notice, he/she has failed to act accordingly. It would appear that it is only then that the provisions of section 76(d) would kick in. It has not been demonstrated that any notice was ever issued on the Respondents therefore, section 76(d) cannot be invoked at this stage. I am guided in this regard by the decision *In Estate of Joseph Odinde Odongo (deceased)* 2021 eKLR where the court held that;

“Indeed, failure to distribute a deceased’s estate is a ground for revocation of a grant for letters of administration as provided under section 76 (d) of the Law of Succession. However, such revocation is not automatic. It is conditional. It is dependent on the applicant demonstrating that notice has been issued to the person who has applied for the grant and that person has failed...The Objector did not furnish the court with such notice. This court therefore was not satisfied that the Objector had proven the ground set out in section 76(d) of the Law of Succession for the revocation of the said Grant.”
29. Furthermore, I have perused the replying affidavits by the Respondents and the attachments thereon. There appears to be some discernible lack of consensus on the way forward in the administration of the estate. Joint Administrators of an estate must act together collegially in the administration of the estate. Any unilateral act by either of them and which affects the estate is illegal. Worth noting too, is that none of the administrators has legal wherewithal to use their own individual resources to improve or affect the estate unless such part of the estate has been transmitted to them individually. Under section 79 of the Act, the joint administrators are the personal representatives of the Deceased and all the property of the Deceased vests in them as personal representatives. All the powers and duties of personal representatives vest in the three administrators and should be exercised collegially.



30. The Grant herein was confirmed on the 27th October 2016. Almost 7 years down the line, the administration of the estate has not been wound up. Section 83(g) of the Act provides that;
- 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;
31. The three administrators have failed so to do. The record reveals that the three administrators are the only beneficiaries to the estate. Neither the Applicant nor the Respondents have been able to establish that it is the opposite party who has failed to diligently administer the estate. What we have are accusations and counter accusations bereft of tangible evidence. Section 3(4) of the Evidence Act is clear that a fact is not proved when it is neither proved nor disproved. The threshold for revocation of Grant is not achieved.
32. On the issue of accounts, the administrators had the duty under Section 83(g), (h) and (i) of the Act to produce inventory and accounts of the estate. The sections are worded as follows;
- (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.
33. None of the administrators have rendered the full inventory and the accounts of the deceased's estate. They have failed in their capacities as administrators to furnish the court with full and accurate accounts of the estate of the Deceased. They have also failed to give an accurate account of the completed administration if at all.
34. So, which way for this estate? Having heard the parties and acting in the best interests of the estate, am persuaded that this is a proper case for the invocation of the court's inherent powers under rule 73 of the probate and administration Rules to require the Administrators herein to comply with the law by making the following orders;
- a. The Administrators, being the Applicant and the Respondents herein, shall furnish this court with 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 within three (3) months of this ruling;
 - b. The Administrators shall complete the administration of the Estate of the deceased within six (6) months of the date of this ruling and render a full and accurate account of the complete administration in accordance with section 83(g) and (i) of the Law of Succession Act.



- c. In default of (a) and (b) above, the grant be revoked and appropriate orders made.
- d. Each party to bear its own costs of this application.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 26TH DAY OF JULY 2023.

A.K. NDUNG’U

JUDGE

