



**In re Estate of Imoli Luhitse Paul (Deceased) (Succession Cause  
661 of 2015) [2023] KEHC 23006 (KLR) (29 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 23006 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 661 OF 2015  
SC CHIRCHIR, J  
SEPTEMBER 29, 2023**

**BETWEEN**

**LOICE MUNAYO MUCHINA ..... PETITIONER**

**AND**

**JORFACE ANDEKA ANIONDO ..... OBJECTOR**

**JUDGMENT**

1. The Applicant through the summons dated 26/2/2020 seeks for the revocation of Grant of letters of Administration. The Application is premised on the ground that the grant was obtained through fraud and misrepresentation in that the Administrator/Respondent misrepresented the actual survivors of the Deceased.
2. The Applicant has deponed that indeed part of the Estate property namely parcel No Kakamega/Kambiri/980 had been given out, while some of the survivors had been gifted with land during the life-time of the Deceased.
3. It is further alleged that the Applicant, his sister and some creditors who were left out of the list of beneficiaries are entitled to a share of the Estate.

**The hearing**

4. The hearing proceeded by way of viva voce and the Applicant adopted her averments in the Affidavit as set out above. She however added that she was not notified when the Application for Grant of Representation was made. She did not call any other witness.
5. The Respondent failed to appear in court during the hearing.



## **Applicant's submissions**

6. It is the Applicant's submission that as the Deceased's grandchild, he was entitled to benefit from the Estate. The objection has relied on the case of *In the matter of the Estate of Veronica Njoki Wakagoto* (2013) eKLR to buttress his submissions.

## **Determination**

7. I have considered the Application, the supporting Affidavit and the Applicant's testimony. A brief background to the present Application is necessary.
8. On 24/9/2015 the Respondent petitioned for letters of administration Instate in respect of the Estate of ImoLi Luhitse Paul (Deceased). She listed the survivors of the Deceased as herself and her sisters, namely, Sofia Masangila Khalalia and Respalngondo Mamudi. The Estate only property was indicated as parcel No Kakamega/Kambiri/980.
9. The Respondent then proceeded to apply for confirmation of Grant on 24/11/2016. Again, the person identified as being entitled to benefit from the Estate were listed as:
  1. Sofia Masangila Khalalia
  2. Respa Lingondo Mamuchi
  3. Lioce Munayo Muaina- ( The Respondent herein)
  4. Kilato Ambalwa DikanoThe objector herein and his sibling, did not feature anywhere in the list.
10. The Applicant's case is that, he is the son of Ernest Amiondo Imoli, who was the son of the Deceased. That his own father has since died and that consequently he and his sister, one Ichiro Iraronga are entitled to a share of their late father's share of the Estate.
11. The Respondent raised a preliminary objection, challenging the legal capacity of the Applicant to apply for revocation of the Grant arguing that the Applicant was not a survivor of the Estate. The preliminary was heard and dismissed by Justice Musyoka. Therefore, the issue as to whether or not the Applicant is a survivor of the Estate has been settled

## **The A present Application**

12. Section 76 of the *Law of succession Act* ( The Act) sets out the grounds upon which a grant may be revoked or annulled. It provides as follows:

" 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 its own motion:

- a. ....
- b. That the Grant was obtained fraudulently by the making of a false statement by the concealment from the court something material to the case.
- c. ....
- d. .... "



13. Rule 26(a) and (2) of the *Probate and Administration Rules* provides that :
- " 1. Letters of administration shall not be granted to any applicant without notice to every person entitled in the same degree as or in priority to the Applicant
2. An Application for a Grant where the Applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in form 38 or 39 by all persons so entitled in equality or priority, be supported by an Affidavit of the applicant and such other evidence as the court may require."
14. Thus the Respondent was required to give notice to the person who was equally entitled to ,or who ranked higher in priority to the Respondent on the Administration of the Deceased's Estate. As one of the survivors of the Estate therefore the Applicant ought to have been notified.
15. Further the Respondent was required seek consent to the Applicant or declaration of renunciation by the Applicant about taking out the Grant.
16. There was no Notice given or consent sought as aforesaid in this case. The Respondent therefore failed to comply with Section 51(2)(g) of the Act and Rule 7 of the *Probate and Administration rules*.
17. It is trite law that failure to disclose beneficiaries is tantamount of non-disclosure of material fact within the context of Section 76 of the *Law of succession Act* ( see for instance the decision in *Re the Estate of Alexander Muchemi Kiago* (2017) eKLR, and in *Re Estate of Ndinguri* (2017) eKLR).
18. It is asserted, and which assertion has not been refuted, that the objector and his sister were beneficiaries of the Deceased, and failure to disclose declare them , amounted to non-disclosure of material fact.
19. Am satisfied that the Application meets the requirement of section 76 on revocation of Grant.
20. Consequently, I make the following orders:
- a. The Grant of letters of Administration granted to Lioce Munayo Muchina on 16/6/2016 and confirmed on 15/2/2017 are hereby revoked.
- b. Lioce Munayo Muchina and Jorface Andeka Anionda are hereby appointed as Administrators of the Estate of Imoli Luhitse Paul.
- c. The Administrators or either of them to apply for confirmation of the Grant within 30 days of this Ruling
- d. This being a family matter, each party to meet their own costs.

**DATED, SIGNED AND DELIVERED IN AN OPEN COURT IN KAKAMEGA THIS 29TH DAY OF SEPTEMBER 2023.**

**S.CHIRCHIR**

**JUDGE**

