



REPUBLIC OF KENYA



In re Estate of Francis Wasilwa Saratuki (Deceased) (Succession Cause 18 of 2006) [2023] KEHC 26162 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEHC 26162 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 18 OF 2006**

DK KEMEL, J

NOVEMBER 30, 2023

**IN THE MATTER OF THE ESTATE OF THE LATE
FRANCIS WASILWA SARATUKI(DECEASED)**

BETWEEN

MAURICE NASICHE KUDONDO OBJECTOR

AND

BEATRICE NALIKA SITUMA PETITIONER

RULING

1. *Vide* Summons for Revocation of Grant dated April 23, 2021, filed on April 26, 2021, pursuant to section 76 of the Law of Succession Act and rules 44 and 73 of the Probate and Administration Rules, the objector herein, Maurice Nasiche Kudondo, sought that; the grant of letters administration issued to the Petitioner herein, Beatrice Naliaka Situma and confirmed on September 30, 2009, over the estate of the deceased herein, Francis Wasilwa Saratuki Achuti (Deceased) be revoked; the deceased's shares in Trans-Nzoia Investment Co. Ltd of land Plot No. [particulars withheld] be included to the list of properties comprising of the estate of Francis Wasilwa Saratuki Achuti (Deceased); a fresh grant of letters of administration be issued to the Objector, Maurice Nasiche Kudondo son of the deceased; and costs of this application be paid out of the estate.
2. The application is supported by the Objector's affidavit sworn on April 23, 2021 in which he states that the deceased herein, Francis Wasilwa Saratuki Achuti, died on May 12, 2005 and grant of letters of administration Intestate were made to Beatrice Naliaka Situma by this honourable court. The Grant was confirmed on September 30, 2009 and that the same was obtained fraudulently by making of false statements by the Petitioner and concealment of material facts to this succession cause.
3. He averred that the deceased was a shareholder in Trans Nzoia Investment Company Limited and owned a share of land measuring 68 Acres, Plot No. [particulars withheld] Farm as evidenced by the annexure marked MNK-2.



4. He averred that in 2015 or thereabout two beneficiaries of the deceased, Pailomena Nawanga Wasilwa and Bernard Nyongesa Saratuki, fraudulently caused the said deceased's share of land to be transferred and registered in the name of Pailomena Nawanga Wasilwa and a land title was issued as [particulars withheld].
5. He alleged that when he came to know about it he immediately obtained letters of administration ad litem and filed a case in the Environment and Land Court at Kitale *vide* ELC case No. 81 of 2018 to get back the deceased's property.
6. He alleged that the deceased's land plot no.[particulars withheld] is at risk of being lost to non-beneficiaries and/or unequally distributed if the Confirmation of Grant dated September 30, 2009 is not revoked.
7. He further averred that as a beneficiary and dependent of the deceased he was left out during the Confirmation of Grant dated September 30, 2009, and that he stands to be disinherited unless the grant confirmed is revoked and/or annulled.
8. In opposition to the said Summons for Revocation and/or Annulment of the Grant, on September 20, 2021 the Petitioner filed a replying affidavit dated September 14, 2021. She asserted that prior to his death, the deceased had four wives and one of the deceased's widow is Pailomena Nawanga Wasilwa a shareholder of Trans Nzoia Investment Company wherein she held a share certificate for a land measuring 68 acres on the company's [particulars withheld] Farm and that is where she used to live prior to the demise of their husband thus no need to include the said property as part of the deceased's properties.
9. She averred that the objector and 25 others signed a consent to the making of the grant of letters of administration intestate to a person of equal or lesser priority in the year 2005 as required by law before the same was issued.
10. She averred that she has carried out her duties as an administrator of the Estate of the deceased diligently to completion and that it has been 12 years since the same Grant was issued and confirmed but the objector has never filed any application to revoke it.
11. She averred that the objector participated in all the succession proceedings thus the allegations that the Grant was obtained through fraudulent means and by concealment of material facts was not true as the parcel of land that he insists was not included as one of the deceased's properties has never been part of the deceased's properties as the same was registered under the name of Philomena Nawanga Wasilwa.
12. She averred that there has been inordinate delay by the objector in bringing up this application and that the same is a waste of judicial time.
13. She averred that the estate of the deceased is no longer in existence and that there is nothing to be redistributed even if the Grant was revoked thus it will serve no purpose.
14. She averred that the revocation of the grant will affect 3rd parties who have since bought land from some of the beneficiaries herein and are not parties to the suit and this may in the long run re-open a series of cases.
15. She averred that the land in contention was never part of the deceased's properties in paper and it was upon family members to deliberate on how the same would be distributed among the beneficiaries if at all the same was to be distributed.



16. She urged this Court to find that the application for revocation of the Grant lacks merit and dismiss the same with costs.
17. The application was canvassed by way of written submissions. Each party filed and exchanged their respective submissions.
18. The objector's submissions are dated October 4, 2022 and filed on November 3, 2022. On whether the grant should be revoked, it was submitted that there existed a share certificate issued to the deceased by Trans Nzoia Investment Company Limited showing that the deceased owned 68 acres of land in untransferred shares in Trans Nzoia Investment Company Limited and that the same was in the knowledge of the Petitioner but she excluded the same from the schedule of assets forming part of the estate of the deceased thus the land was fraudulently disposed of and its recovery was the subject matter in Kitale ELC Case No. 81 of 2018.
19. It was further submitted that the allegations that the land belonged to Pailomena Nawanga Wasilwa as she was a shareholder of Trans-Nzoia Investment Company Limited were not backed with evidence as the Petitioner failed to place before this Court the said share certificate issued by the company as proof that she owned the 68 acres separate from those shown in the share certificate of Francis Saratuki.
20. On the law regarding transfer of shares, it was submitted that a share can be defined as a single unit of ownership in a company and that it is transferred from one person to another through transfer document duly executed by or on behalf of both the transferor and the transferee. It was further submitted that subject to section 323 of the *Companies Act* shares in a company are personal property of the shareholder which means that the shares form part of the estate of the deceased.
21. Opposing the application, the petitioner submitted that the objector failed to provide evidence to demonstrate before this honourable court that indeed the grant issued to the Petitioner on September 30, 2009 was obtained fraudulently by concealment of material facts. According to the Petitioner, the Objector was present during the hearing of the confirmation of the grant in 2009, he participated in the signing of the consent to the making of the grant and that it has been more than 10 years since the confirmation of grant was made.
22. It was submitted that the power to revoke a grant is discretionary and it ought to be exercised judiciously.
23. The Petitioner submitted that the objector was present during the family meeting where ownership of the sale of the plot was discussed by family members and that he volunteered to look for a buyer.
24. The interested party, although granted 14 days to serve its response on the objector's application dated 23rd April 2022, no response was filed.
25. I have considered the pleadings filed herein as well as the submissions filed. It is not in dispute that the administrators herein have since had the grant confirmed and have already done their duty which is re-distribution of the estate of the deceased. The issue for determination is whether the protestors have furnished sufficient provisions to warrant for the revocation of grant.
26. Revocation or annulment of grant is provided for under section 76 of the *Law of Succession Act* as follows:-
 - 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 has ordered or allowed; 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 the 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.”

27. It is noted that the Objector sought to have the grant revoked on the basis that the Administrator obtained the same fraudulently by concealment of material facts, which is against the provisions of the *Law of Succession Act*. Since the Objector is the one making the allegations, the burden of proof lay squarely on his shoulders to prove as provided for under sections 107 and 108 of the *Evidence Act* as follows:

107(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

107(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

108 the burden of proof in a suit or proceedings lies on that person who will fail if no evidence at all were given on either side.

28. Concealing material facts refers to intentionally withholding or suppressing relevant information during the process of obtaining a grant. Courts consider any omission or deliberate non-disclosure of facts that would impact the outcome of the application for confirmation of grant as fraudulent concealment. This could involve withholding details about the existence of a will, failing to inform the court about prior rights to the grant, or making false statements to deceive the Court.

29. Under Kenyan law, the revocation of a grant obtained fraudulently by concealment of material facts is justified on various grounds. These include:

- a) Deliberate Non-Disclosure: If it can be proven that the grantee deliberately withheld material information essential to the case, the court has the authority to revoke the grant. This ensures that the legal process is conducted with full transparency and fairness.



- b) False Statement: If the grant application includes false statements, misrepresentation, or false allegations of facts essential to point of law, the grant can be invalidated. Falsehoods made either knowingly or inadvertently undermine the integrity of the application process.
 - c) Untrue Allegation: Even if an untrue allegation of fact essential to point of law is made in ignorance or inadvertently, it can still be grounds for revocation. This provision emphasizes the importance of ensuring the accuracy and veracity of the information provided during the grant application process.
30. Non-disclosure of material facts to the succession Court by the Petitioner is the main accusation laid against her by the Objector. The Objector maintains that the Petitioner did not include the deceased's shares in Trans Nzoia Investment Co. Ltd Plot No. [particulars withheld] in the list of properties comprising of the estate of Francis Wasilwa Saratuki Achuti.
 31. The Petitioner in rebuttal averred that the deceased had 4 wives and one of them, also deceased, Pailomena Nawanga Wasilwa, was a shareholder of Trans Nzoia Investment Company Limited wherein she held a share certificate for a land measuring 68 acres on the company's [particulars withheld] Farm and it was where she used to reside with her husband prior to his demise. She further averred that there was no need to include the said property as part of the deceased's properties as the shares were in the name of Pailomena Nawanga Wasilwa and a title was issued under the same name.
 32. It was averred that the Objector and 25 others signed the respective consent form to the making of the Grant of Administration Intestate as required under law before the same Grant was issued to her on November 8, 2007, and confirmed on September 30, 2009.
 33. She finally averred that she carried out her administration duties diligently up to completion and that it has been more than 12 years since the Grant was issued and that the Objector never filed any application to revoke the same.
 34. The Objector availed a faint copy of a share Certificate to support his allegations that the deceased, Francis Wasilwa Saratuki Achuti, was the owner of the shares and that the same were transferred to the deceased's wife, the late Pailomena Nawanga Wasilwa. He failed to avail any sort of evidence from the said Trans Nzoia Investment Co. Ltd and the relevant land registry to substantiate the allegations. From the records on the Court file, it is elaborate that the Petitioner followed the requisite legal requirements when she Petitioned for the Grant of Letters of Administration and only included properties registered under the name of the deceased, Francis Wasilwa Saratuki Achuti, to the exclusion of parcel Plot [particulars withheld] of [particulars withheld] Farm that was under the name of the late Pailomena Nawanga Wasilwa. Further, the chief's introductory letter as appears on record presented a consent form clearly indicating that the Objector herein did consent to the appointment of the Petitioner herein as the Administrator to the estate of the deceased, Francis Wasilwa Saratuki Achuti.
 35. The power granted under section 76 of the *Law of Succession Act* for revocation of grants is discretionary. Where a case is made out for revocation of a grant under section 76, the Court has the option to either revoke the grant or make other orders as may meet the ends of justice. Section 47 of the *Law of Succession* and rule 73 of the *Probate and Administration Rules* enjoins the court to exercise inherent jurisdiction to make orders as necessary to meet the ends of justice.
 36. From the above analysis, to decide in favour of the Objector, the Court has to be satisfied that he furnished evidence whose level of probity is such that a reasonable man even in a case as this where the petitioner has not adduced any evidence, might hold that the more probable conclusion is that for which the objector contends, since the standard of proof is on balance of probabilities/preponderance of evidence (see *Lancaster v Black – Well Coltery Co. limited* [1918] WC Rep 345).



37. I find an order revoking the grant will cause prejudice to the parties who are all anxious to have the property shared equally between the parties and also sold off to 3rd parties. The objector failed to prove that he did not issue his consent at the time of the petitioning of the grant of letters of administration intestate and on the deceased's ownership of the said shares. The availed copy of the certificate of shares from Trans Nzoia Investment Company Limited was too faint, not authenticated and certified as the true copy by the relevant company for me to believe its contents. That being the position, I decline to issue an order for revocation of grant.
38. In view of the foregoing observations, the Objector's summons dated April 23, 2021, fails. The same is dismissed. As parties are members of one family, each party to bear their own costs.

It is so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 30TH DAY OF NOVEMBER 2023.

D. KEMEI

JUDGE

In the presence of:

No appearance Kraido for Objector/Applicant

Musundi for Petitioner/Respondent

No appearance for Interested Party

