



In re Estate of the Late Kipsoi Nyamweibi (Deceased) (Succession Cause 237 of 2004) [2023] KEHC 25838 (KLR) (23 November 2023) (Ruling)

Neutral citation: [2023] KEHC 25838 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 237 OF 2004
JK SERGON, J
NOVEMBER 23, 2023
IN THE MATTER OF THE ESTATE OF THE LATE KIPSOI
NYAMWEIBI (DECEASED)**

BETWEEN

CHARLES KIBET KOSKE OBJECTOR

AND

PATRICK ALI SOI PETITIONER

RULING

1. The Objector/Applicant has filed a summons for revocation/annulment of grant dated 13th July, 2023 seeking the following orders;
 - (i) Spent.
 - (ii) That the confirmed grant issued on 16th March, 2016 be annulled/ revoked.
 - (iii) That pending the finalization of administration of the estate land a temporary order of injunction do issue to restrain the sale, trespass, plucking of tea or any other dealing whatsoever over land parcel number Kericho/Kibwastuiyo/83.
 - (iv) That fresh grant be issued to the objector/applicant.
 - (v) Costs be provided.
2. The summons for revocation/ annulment of grant is supported by grounds on the face of it and an affidavit sworn by Charles Kibet Koske the objector/ applicant herein. The objector/applicant is a beneficiary of the estate of the deceased.



3. The Applicant avers that the grant was confirmed on 16th March, 2016 and that one of the beneficiaries by the name Jonathan Kiprono Koske has sold a substantial portion of the land to a third party before the execution of grant. The Applicant annexed bundles of the agreement.
4. The Applicant avers that the administrator has neglected and/or reneged to administer the estate according to the grant despite being issued with the confirmed grant and further that sale of part of the estate land makes it difficult to administer the estate and that the same is a source of conflict between the beneficiaries and buyers resulting in a court suit to wit ELC no E008 of 2023 in the Principal Magistrate's Court at Sotik.
5. The Applicant therefore prays for an injunction order to restrain the sale, trespass, plucking of tea by the buyers of the estate land as the estate of the deceased is pending administration.
6. The Applicants also seek to have the grant revoked/annulled and a new administrator appointed.
7. The Petitioner/Respondent filed a replying affidavit in opposing the summons for revocation/annulment, the replying affidavit was sworn by Patrick Ali Soy.
8. The Respondent avers that he is aware that some of the beneficiaries of the estate of the deceased sold their portions of land knowing that upon finalization of succession and obtaining the titles to their names they would transfer the same to the purchasers.
9. The Respondent avers that he is aware that the estate ought to be distributed to all the beneficiaries of the estate of Kipsoi Nyamweibi (deceased) as per the certificate of confirmation of grant dated 16th March, 2016 and that he was willing to distribute the said estate and that the objector/applicants interference was unwarranted.
10. The Respondent faults the objector for interference with the administration of the Estate of the deceased including the fact that the objector had committed perjury by providing false information to the court for obtaining limited grant of letters of administration - *ad litem*.
11. The Respondent contends that the objector was merely trying to delay the finalization of the instant succession matter while advancing issues aimed at disinheriting some of the beneficiaries of the estate.
12. The Respondent argued that the instant application is frivolous, vexatious and an abuse of court process and should therefore be dismissed with costs.
13. I have considered the application and replying affidavit in opposition to the application and I find that the issues for this court's determination are whether or not to revoke/annul confirmed grant issued on 16th March, 2016 and whether to grant a temporary order of injunction to restrain the sale, trespass, plucking of tea or any other dealing whatsoever over land parcel number LR no Kericho/Kibwastuiyo/83.
14. On the first issue or revocation and/or annulment of grant, I find that the Applicant has not met the grounds for revocation and/or annulment as set out in section 76 of the [Law of Succession Act](#). In the Case of [Albert Imbuga Kisigwa v Recho Kavai Kisigwa](#) [2016] eKLR Mwita J. observed as follows; "Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account the interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice." It is my considered view that in the current circumstances, there is no basis for revoking the grant rather



the administrator should be cited to complete the distribution of the estate as per the terms of the confirmed grant issued on 16th March, 2016.

15. On the issue as to whether to grant a temporary injunction to restrain the sale, trespass, plucking of tea or any other dealing whatsoever over land parcel number LR no Kericho/Kibwastuiyo/83, I wish to emphasize that the role of the probate court under the Law of Succession Act is limited. A cursory review of decisions from the probate courts reveals that the probate court only deals with the administration of the estate of the deceased and does not extend to determination of disputes with third parties or other rights, even though such rights may arise from the deceased's estate. In the case of in Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR the court held that when disputes arise after the confirmation of the grant, the same ought to be determined outside the probate court. Musyoka J. stated as follows: "Clearly disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation. In the meantime, the property in question is removed from the distribution table. The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most cases be *functus officio* so far as the property in question is concerned. The primary mandate of the probate court is distribution of the estate and once an order is made distributing the estate, the court's work would be complete. The proposition therefore is that not every dispute over property of a dead person ought to be pushed to the probate court. The interventions by that court are limited to what I have stated above."
16. Consequently, the summons for revocation and/or annulment of grant dated 13th July, 2023 is hereby dismissed with each party bearing their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 23RD DAY OF NOVEMBER, 2023.

.....

J.K SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

J. K. Rono for the applicant

Bii for the Respondent

