



REPUBLIC OF KENYA



In re Estate of Amos Captain Lubutula (Deceased) (Miscellaneous Succession Cause 23 of 2022) [2023] KEHC 27196 (KLR) (21 December 2023) (Ruling)

Neutral citation: [2023] KEHC 27196 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS SUCCESSION CAUSE 23 OF 2022**

PJO OTIENO, J

DECEMBER 21, 2023

IN THE MATTER OF THE ESTATE OF AMOS CAPTAIN LUBUTULA (DECEASED)

BETWEEN

**REUBEN AMOS DEMESI 1ST PETITIONER
BARNABUS OMAE AMOS 2ND PETITIONER**

AND

**EMMANUEL M. LUTUBULA 1ST OBJECTOR
PETER MWOMBE LUBUTULA 2ND OBJECTOR**

RULING

1. Before this court is the applicant's summons for revocation of a grant not brought pursuant to any provisions of the law and seeking the following orders: -
 - I. That the grant of letters of administration issued to the petitioner/respondent's herein be revoked and/or annulled
 - II. That the honourable court be pleased to issue a new grant of letters of administration to the 2nd objector/applicant.
 - III. That all the title deeds issued as a result of the sub division of land parcel number Trans Nzoia/Ex-Sitati/1 be cancelled and the same to revert to the estate of Amos Captain Lubutula for fresh distribution among the beneficiaries.
 - IV. That all the other properties of the deceased which have been transferred to third parties be reverted back to the estate of the deceased for fresh distribution among the beneficiaries of the estate.
 - V. That the costs of these proceedings be recovered from the estate.



2. The application is premised on the grounds that the petitioners have failed to administer the estate of the deceased to the benefit of all the beneficiaries and have proceeded to transfer the estate to third parties.
3. The application is also supported by the affidavit of Peter Mwombe Lubutula in which he reiterates the grounds on the face of the application and further avers that when the petitioners petitioned for letters of administration they failed to involve all the family members of the deceased and that they have given themselves big shares of the estate excluding other beneficiaries.
4. The application is opposed by the affidavit of Barnabus Omae Amos sworn on 15/5/2023 in which he avers that the objector has failed to give the particulars of the alleged concealment of material facts and that the objector participated in the distribution of the estate of the deceased.
5. In the further affidavit of Peter Mwombe sworn on 8/6/2023, he asserts that the respondent transferred part of the estate to Edwin Agalomba, Stanford Kizito Walela, Mary Khasoa Makokha, Francisa Aura Makokha, James Maranga Otoigo, mwende Mutunga and Philip Ingati Andubi without the consent of all the family members. He claimed that they agreed that the estate be distributed equally but the administrators and their families have given themselves more acreage than the others, the administrators have not issued title deeds to Grace Nyanchama Amos, Samson Ongaki Lubutula, Isaac Nambale Amos, William Chitiavo Lubutula, Merab Fubalo, Musa Lubutula, Stella Mufwaya Lubutula, Albert Lubutula, Valenty Andati and David Ngeresa. He further contends that the administrators have not given an account of about 3 acres in Kitale as well as the monies withdrawn from the deceased's bank accounts and that they have disposed parcel of land known as Isukha/Shirere/2308 leaving the actual beneficiaries landless.
6. Directions were given that parties file their respective submission son the application and the submissions by the parties appear to echo the contents of their respective affidavits with the petitioner further submitting that a grant cannot be revoked without notifying the interested parties claimed by the applicant to have acquired interests in the estate property.

Issues, Analysis and Determination

7. I have looked at the application, the responses thereto and the submissions by the parties and the issue that arises for my determination is whether the grant issued to the petitioners on 28/4/2017 and confirmed on 27/2/2020 should be revoked and/or annulled
8. The grounds for revocation of a grant as coded in section 76 of the *Law of Succession Act* were expounded *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where it was held as follows;

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to



apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

9. The applicant has stated that the petitioners failed to disclose all the beneficiaries but failed to name the beneficiaries that were excluded from the succession proceedings. The applicant has also stated that the petitioners are disposing part of the estate without the consent of family members and have annexed a bundle of searches to prove such transfer. The grant in question was confirmed on the 27th day of January, 2020. Section 82(b)(ii) of the Law of Succession Act empowers a personal representative to dispose the immovable property of a deceased person after the confirmation of a grant. The question thus is whether the petitioners disposed the share of others or their own. That has not been brought out clearly by the applicants. It is thus a fact that has not been proved and cannot be the basis to revoke the grant.
10. Another ground cited by the applicant for revocation is that the distribution of the estate of the deceased was not equally done. Though this is not a ground for revocation of a confirmed grant, I have perused the records of the file and I have noted that the applicant signed the consent to distribution annexed to the summons for confirmation of the grant as number 30 in the list. He has not indicated if he was coerced to sign or if his signature was forged and for that reason he is estopped from renouncing the mode of distribution he had earlier agreed to. To this court this cannot be a basis for revocation.
11. On the last allegation that the administrators have sold land parcel no. Isukha/Shirere/2308 leaving the beneficiaries destitute, section 107 of the Evidence Act provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. The applicant has not produced sale agreements or a search to prove this fact. In fact, the beneficiaries who were given the said parcel namely Antonina Iswa and Margaret Khavere have not come forward to make this claim. The court finds the claim to be baseless.
12. The grounds cited by the applicant have not been supported by evidence and for that reason the court finds that the application for revocation to be devoid of merit and the same is hereby dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 21ST DAY OF DECEMBER, 2023

PATRICK J O OTIENO

JUDGE

