



REPUBLIC OF KENYA



**In re Estate of the Late Alfred Namukana Nasango (Succession Cause
133 of 2013) [2023] KEHC 27101 (KLR) (19 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27101 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 133 OF 2013
DK KEMEL, J
DECEMBER 19, 2023**

BETWEEN

ALFRED NASONGO NAMUKANA PETITIONER

AND

GEORGE LUSWETI NAMUKANA OBJECTOR

JUDGMENT

1. The application dated 14th November 2017 and filed in Court on even date lodged by the Objector is premised under the provisions of Section 47 & 76 of the [Law of Succession Act](#) and Rule 44 & 73 of the [Probate and Administration Rules](#). The Objector seeks an annulment and/or revocation of the grant issued to the Petitioner on 9th July 2014 and that the Objector herein be enjoined together with his siblings as beneficiaries in the estate of the deceased on the grounds that;
 - i. The said grant was obtained by concealment of some material facts of the case by the Petitioner as the exercise was conducted without the knowledge of the Objector.
 - ii. That the Petitioner has gone ahead and sub-divided the deceased's estate to persons who are not beneficiaries to their exclusion.
 - iii. That the Objector was never listed as a beneficiary of the estate of the deceased when the Administrator commenced the succession cause.
 - iv. That the Objector only learnt of the proceedings herein when he saw the Petitioner and some buyers surveying the land parcels.
2. The application is supported by the grounds on the face of the application and by a supporting affidavit of the Objector.
3. In response, the Elizabeth Nekesa filed on 10th May 2019 an affidavit in response to the summons for revocation of Grant dated 29th April 2019, wherein she averred that she is the wife of the late Petitioner



and that the application is frivolous, brought in bad faith, and an abuse of Court process. According to her, the Objector herein is the elder brother of her late husband (the Petitioner herein) and prior to him filing this cause, the Objector was requested to be an Administrator but he refused. She averred that the deceased had three wives and that he had settled each wife in their respective land parcels and only land parcels Ndivisi/Makuselwa/388 and Ndivisi/Makuselwa /454 were in the deceased's names, and was rightfully shared between the 2nd and 3rd wife but that the 1st House had their own parcel in their name given to them by the deceased. She averred that the Objector was given eight acres of the land in Bokoli by the deceased thus cannot claim a share in Ndivisi/Makuselwa/388 and Ndivisi/Makuselwa /454. She insisted that her late husband involved the Objector in the succession proceedings and consent was obtained from all the beneficiaries but that the Objector refused to be involved in the succession proceedings. She finally averred that the Objector raised similar objections prior, during the Confirmation of Grant for letter of administration proceedings, but that the same was dismissed and that her late husband's Grant was confirmed.

4. The matter proceeded by way of viva voce evidence then parties were directed to file and exchange their written submissions. Both parties filed and exchanged their respective submissions.
5. The Law of Succession Act provides for revocation of grants under Section 76, which 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.”

6. 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 marred by several irregularities. 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.
7. According to the evidence of OB-PW1, George Lusweti Namukana, who relied on his witness statement dated 17th May 2022 and further statement date 20th June 2023 as his evidence in chief, the succession cause instituted by the Petitioner was secretly done without his knowledge and/or consent and that he wanted the Grant issued to the Respondent revoked. According to him, the Petitioner lied that he was the sole son of the deceased excluding the other beneficiaries and he proceeded to produce documents in support of the same as OB. Exhibit 1. On cross examination, he told the Court that the deceased had only three wives and three parcels of lands as his assets. He confirmed that he was never involved nor informed of the succession proceedings and that he resides in Bokoli/Misikhu/617 and not Bokoli/Misikhu/1040 and that his late father gave him eight acres prior to his death, and that he occupies that land with three of his other brothers namely Boniface Wanjala Namukana, Edward Mukanda Namukana and Patrick Nasongo Namukana. On re-examination, he told the Court that he does not want his sister-in-law to be an administrator in his late father’s estate as the deceased had other children.
8. PET.PW1, Elizabeth Nekesa Simiyu, testified that she is the widow of the Petitioner herein and proceeded to adopt the contents of her affidavit sworn on 16th February 2023 and the annexures thereto produced in Court as PET.Exh.1-5. According to her, she was aware that her husband was doing this cause and that the Objector accompanied them to the chief’s office but declined to accept to take up grant of letters of administration claiming that he had no share on the land as he already had his. On cross examination, she told the Court that the deceased was her father in law and that he had 3 wives with about 24 children. According to her, the deceased settled some of his sons on plots 388 and 454 and that she resides on plot 454. She testified that the chief’s letter produced in Court as PET. Exh. 1 was given to the late Petitioner as an administrator and that he used the same to file the succession cause. She testified that the Petitioner had a portion in plot 388 but later sold it to buyers. She agreed to seeing the consent of distribution and admitted that the same did not have names of members of the 1st and 3rd houses. She further testified that she lacked evidence that the Objector had earlier lodged an objection



which was similarly dismissed. She affirmed that some of the family members did not sign the consent and that she saw the chief's letter dated 10th November 2017 which contained all the family members.

9. Based on the above, it is palpable that the Objector did meet the threshold set under the law to warrant an order of revocation of grant. It is noted that the Objector has furnished sufficient reasons as to why the Grant should be revoked. It is clear that not only were the proceedings to obtain the Grant defective in substance but 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 and 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. Indeed, it has transpired that the 1st and 3rd households have been left out in the administration of the estate. It is fair and just that they too be brought on board by being allowed to suggest one administrator each so that they proceed to jointly distribute the estate. I find the reasons advanced for the revocation of grant are sufficient and must be allowed.
10. In the result, the objector's summons for revocation dated 14th November, 2017 is found to have merit. The same is allowed in the following terms:
 - i. That the grant of letters of administration issued on 9th July 2014 is hereby revoked.
 - ii. The certificate of confirmation of grant issued on 3rd May, 2017 is hereby cancelled.
 - iii. Any titles that have been issued to beneficiaries or purchasers arising from subdivision of land parcels Ndivisi/Makuselwa/388 and Ndivisi/Makuselwa/454 and or any others originally registered in the name of the deceased are ordered cancelled and the same to revert in the name of the deceased Alfred Namukana Nasongo forthwith and to await fresh distribution among the beneficiaries.
 - iv. The family of the deceased, with urgency, agree and present before this Court the representatives of their respective three houses that will be appointed as the administrators to the estate of the deceased within thirty (30) days from the date hereof to enable the issuance of a fresh grant and in default the court shall proceed to appoint administrators.
 - v. The new administrators once appointed to file fresh summons for confirmation of the fresh grant to be issued together with consent to distribution within thirty (30) days of the issuance of the fresh grant or file separate proposals on distribution within the same period.
 - vi. Each party to bear their own costs.

DATED AND DELIVERED AT BUNGOMA THIS 19TH DAY OF DECEMBER 2023.

D. KEMEI

JUDGE

In the presence of:

Natwati for Objector/ Applicant

Juma Waswa for Kundu for Petitioner/ Respondent

