



**In re Estate of Francis Asman (Succession Cause 3B of 2015)  
[2022] KEHC 11096 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11096 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
SUCCESSION CAUSE 3B OF 2015**

**F GIKONYO, J  
MAY 26, 2022**

**IN THE MATTER OF THE ESTATE OF FRANCIS ASUMAN IRERI ALIAS FRANCIS ASMAN**

**BETWEEN**

**DAVID LONGISA SANGIRIAKI ..... APPLICANT**

**AND**

**DAVID SAITOTI OLE IRERI ..... RESPONDENT**

**RULING**

1. Before me is Summons for Revocation and Annulment of Grant of Letters of Administration of the Estate of Francis Asuman Ileri Alias Francis Asman (hereinafter referred to as “the deceased”) that was issued to David Saitoti Ole Ileri on 20<sup>th</sup> September 2016 and confirmed on 24<sup>th</sup> May 2017. The Summons also seeks, in the alternative and in the exercise of the discretion of, the court to direct that the shares of the estate bequeathed to the respondent be vested in the applicant on behalf of the children of Paul Ngige and for the benefit of the children and the beneficiaries of the estate of the late Francis Asuman Ileri. The Summons was filed on 8<sup>th</sup> June 2021.

**The Objector’s Case**

2. The Summons is supported by the Applicant’s affidavit sworn on 31/05/2021 and filed in Court on 8/06/2021. He deposed that the Grant of letters of administration were obtained through fraud, misrepresentation and concealment of material facts by the Petitioner/Respondent.
3. He claims that he bought a portion of land measuring 1acre from the parcel of land known as CIS-Mara/ololpironto/493 from Maria Malon Ileri; the respondent’s mother, and the respondent was a witness to the sale. He paid a consideration of Kshs. 62,000/= in two instalments of Kshs. 50,000/=, and the balance of Kshs. 12,000/= after the consent to transfer had been issued. On 31<sup>st</sup> January 2011, the respondent together with his mother requested him to pay them Kshs. 5,000/= from the remaining



balance of Kshs. 12,000/= before the area chief Jackson Sasai and a letter was written to that effect. He avers that he had been living on the said parcel for approximately 12 years.

4. The objector/applicant submitted that the petitioner/ respondent took of letters of administration for the estate of Francis Asuman Ileri on 26<sup>th</sup> August 2016 whereby he concealed the fact that his late mother had sold 1 acre of land to the objector/ applicant. The objector/applicant was living on the said parcel as the process of succession continued. That the petitioner/respondent was present and witnessed the exchange of the consideration amount. The petitioner/respondent deliberately failed to disclose this fact to the court despite having an obligation of full disclosure.
5. The objector applicant submitted that he had paid almost 95% of the consideration amount taken possession and occupation of the said land. Therefore, the petitioner/ respondent ought to have considered him as a creditor to the estate in the administration of the estate of the deceased.
6. The objector/applicant has relied on the following authorities;
  - i. Section 76 of the Law of Succession.
  - ii. [\*Jamleck Maina Njoroge Vs Mary Wanjiru Mwangi\*](#)[2015] eKLR
  - iii. *Pius Kilonzo Vs Jones Mukiti Kilonzo & another High Court Succ. Cause No. 194 Of 2017*
  - iv. *In the matter of the estate of the late Solomon Jiongo (Deceased) P&A Case No. 24 of 2018*
  - v. [\*Re Estate of Julius Ndubi Java \(Deceased\)\*](#) [2018]eKLR
  - vi. [\*Peter Owino Anino V John Oriedo\*](#) [2021]eKLR

### **The Respondent's Case**

7. In opposing the Summons for Revocation of Grant, the Respondent filed his affidavit in Reply sworn on 13/10/2021 and filed in Court on 15/10/2021.
8. He deposed that the grounds given by the applicant are not enough to revoke the grant or redistribution of the estate. That after distribution the beneficiary who sold 1 acre to the applicant was found to be entitled to ½ of an acre. That the applicant is not a beneficiary of the estate and should not apply for revocation of a grant. That the respondent because he was a witness to the sale of 1 acre should not be a reason to be compelled to give out the said parcel of land by virtue of being an administrator. He argued that the applicant should follow up the matter with the person who sold him the 1 acre to recover the balance of ½ acre instead of interfering with the administration of the estate.
9. The summons for revocation of grant was canvassed by way of written submissions. However, the respondent failed to submit orally or file his written submissions.

### **Analysis and determination**

10. One issue arises from the application, the response thereof and written submissions by the applicant's, that is: -
  - (a) Whether there are grounds to revoke the grant of letters of administration made on the 26<sup>th</sup> August 2016 and confirmed on 24<sup>th</sup> May 2017.
11. The major ground advanced under section 76 of the [\*Law of Succession Act\*](#) is: -
  - (b) that the Grant was obtained fraudulently by the making of a false statement or by concealing from the Court of something material to the case.



12. I will break down the evidence provided as proof of fraud and concealment of material fact in obtaining the grant herein. He claims he purchased 1 acre of land from the mother of the respondent. The said 1 acre of land was to be excised from the estate property. And, that the respondent was a witness to this transaction. But, he claims, this fact was concealed from the court. He considers himself to be a creditor of the estate.
13. Does the evidence herein and the facts thereto constitute "the Grant was obtained fraudulently by the making of a false statement or by concealing from the Court of something material to the case" in the sense of the *Law of Succession Act*?

#### **Of creditor of estate**

14. Of creditors or debts of the estate, I am content to cite in *In re Estate of Mukhobi Namonya (Deceased)* [2020] eKLR that: -

Who exactly is the creditor of the estate or what ought to be treated as a liability of the estate. The most obvious candidates are individuals or entities that transacted with the deceased during his lifetime. Debts that the deceased left unsettled are a burden that the administrators of his estate ought to take care of. Transactions that he left incomplete, such as for sale of land by him or to him, should be completed by the administrators. The administrators are able to do so through the powers conferred upon them by section 82 of the *Law of Succession Act*, being mindful of section 79, which vests the assets of the estate in the administrator. Section 83 imposes a duty on administrators to settle such debts before distributing the estate.....

One of the duties of administrators, set out in section 83(d) of the *Law of Succession Act*, is to ascertain and pay out of the estate all the debts of the deceased. Ascertainment of the debts of the estate is about identifying them, in terms of finding who the creditors were, how the debts were incurred, what documentation is available, before pay out can be done. If the debts arose during administration, and were necessitated by the exigencies of administration, such as where funds were needed to pay for the administration process, in terms moneys for court fees, advocates costs, land rents and rates, taxes, and attendant expenses, then section 83(c) of the *Law of Succession Act* would be relevant. That provision requires administrators to pay out of the estate all the expenses of obtaining the grant and all other reasonable expenses of the administration. Where estate assets have been dissipated to address the expenses envisaged in section 83(c) then it must be stated what these expenses were, how they arose and how they were settled. The same would apply where certain debts and liabilities of the estate needed to be settled and estate assets had to be sold to facilitate the settlement of such debts. Section 83(d) of the *Law of Succession Act* requires administrators to ascertain and pay, out of the estate, all the debts of the deceased. In addition, section 83, at paragraph (e), requires the administrators to render accounts of their administration within six months of their appointment."

15. A long rendition; but retain the excitement. I have perused the sale agreement dated 31<sup>st</sup> August 2010 between Maria Malon Ileri and David Longisa Sangiria for the sale of 1 acre out of parcel of land known as Nrk/Cis-Mara/Ololpironito/493. The said agreement was witnessed by the petitioner /respondent herein.
16. But, several pertinent facts emerge.



17. The deceased died on 23<sup>rd</sup> January 2004. From the certificate of official search dated 17<sup>th</sup> May 2021, the suit land was still registered in the names of Francis Asman Ireri (the deceased herein).
18. The said sale of land transaction was not between the applicant and the deceased. It was between the applicant and the mother of the respondent.
19. The sale was of estate immovable property after the death of the deceased, and before a grant of letters of administration had been issued or confirmed. The grant of representation was granted in 2016 and confirmed in 2017.
20. My understanding of the law does not render such transaction a debt of the estate or make the applicant a creditor or beneficiary of the estate of the deceased. the transaction is not a lawful but incomplete transaction by the deceased which should be completed by the administrators of the estate of the deceased, and so, such transaction is not one that should be noted in the section on creditors, debts or liabilities of the deceased in the petition for a grant of representation.
21. I also think such transactions runs afoul of the law. According to Section 82(b) (ii) ‘no immovable property shall be sold before confirmation of the grant’. The transaction may also be a candidate under section 45 of the Law of Succession Act as an act of intermeddling. Further, validity and enforcement questions therefrom will arise such as; whether any property passed from the seller to the buyer, or whether the transaction is lawful acquisition of land, or unlawful acquisition of land falling within the claw-back provision in article 40(6) of the Constitution as to deny it property-rights protection.
22. In the meantime, I note that the applicant complains that he was unaware of the proceedings, and that he ought to have been consulted before filing the petition for letters of administration. In light of my finding and holding on the nature of the transaction herein and his status in the estate, I should think it was sufficient disclosure of the succession cause upon the publishing of notice in the Gazette of the application for the grant, and inviting objections thereto, under Section 67 of the Law of Succession Act.

### **Conclusions and orders**

23. The applicant cannot set forth his own trespasses on the law as a basis for revocation of the grant herein. His claim and remedy lie elsewhere, perhaps, in the Environment and Land Court, but not in this succession cause. In light of the findings of the court that he is not a creditor or a beneficiary of the estate of the deceased, his application for revocation lacks a foot on which to stand. Accordingly, I dismiss the application. However, given the fact that the respondent witnessed the offending transaction herein, each party shall bear own costs of the application.
24. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION. THIS  
26<sup>TH</sup> DAY OF MAY 2022**

-----  
**F. GIKONYO M.**

**JUDGE**

**In the presence of:**

1. Mrs. Karia for the Objector
2. Petitioner in person
3. Mr. Kasaso CA

