



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Elizabeth Kavaya Aligula (Succession Cause
133 of 2014) [2022] KEHC 10465 (KLR) (19 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 10465 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 133 OF 2014
RN NYAKUNDI, J
MAY 19, 2022**

BETWEEN

MARTIN ATUTOH ABUKO 1ST PETITIONER

ROSE A WANDERA 2ND PETITIONER

FRANCIS ADEGO 3RD PETITIONER

AND

EVANS ALIGULAH OBJECTOR

JUDGMENT

1. By way of Summons for Revocation or Annulment of Grant, dated 3rd October 2019, the applicant seeks for orders that;
 - i. Spent
 - ii. That the honorable court be pleased to grant a temporary injunction restraining the Petitioners from transferring or disposing off portions of land from the estate of the deceased herein comprised in land parcel No. Kakamega/ Sergoit/150 to the institution and/ or persons named in the Certificate of Grant issued pending the hearing and determination of this application inter partes.
 - iii. That this honourable court be pleased to revoke and/ or annul the grant issued to the petitioners and confirmed on 15th February 2016
 - iv. That this honourable court be pleased to order and/ or declare that the certificate of confirmation of Grant issued on 2nd March 2019 is erroneous and not in conformity with the orders of the honourable court given on 15th February 2016.



- v. That any title deeds issued pursuant to the said certificate of confirmation of grant issued on 2nd March 2016 be cancelled.
 - vi. That the costs of this application be provided for;
2. The application is premised on the grounds that, the applicant is one of the sons of the deceased. Secondly, that these succession proceedings were done secretly without the knowledge of the objector and other legal beneficiaries of the deceased and that the petitioners uttered a forged document purporting the same to be official death certificate of the deceased in support of their application for grant of letters of administration. The applicant has also contended that the petitioners were not the proper persons to be appointed as administrators of the estate of the deceased who left several surviving children who are qualified to be administrators of the estate of the deceased. It is averred that the confirmation of grant by Hon. Justice G.K, Kimondo was very specific that the confirmation of the grant was only in respect of distribution of the 3.2 acres to Aligula primary school. Further, it is alleged that in total disregard of the said court order when the petitioners / respondents irregularly and erroneously extracted the said Certificate of confirmation of grant and included strangers as beneficiaries. The applicant contends that the order of distribution was very specific only in respect on 3.2 acres to Aligula Primary school and that the actions of the petitioners amount to intermeddling with the estate of the deceased.
 3. The applicant swore an affidavit in support on 3rd October 2019 which he reiterates the contents in the grounds at the foot of the application.
 4. On their part, on 28th October 2019, the 1st Petitioner swore a Replying Affidavit and filed on 29th October 2019 in opposition of the Objector's application. He introduced himself as the chairman, Board of Management of Aligula Primary School, formerly Kabuyemit Primary School . He pointed out that he is aware that vide the sale agreement dated 24th February 1986 the deceased, sold to the school 3.2 acres of land comprised in the land parcel No. Kakamega/ Sergoit/150. It was further averred that the school initially operated in the name of Kabiyemit until 1995 when it changed to Aligula Primary School after the deceased requested the school management to honour her late husband John Aligula by adopting his name which request was approved by the management; that the said school is a public school and that it was the deceased intention to cause transfer of the said 3.2 acres of land into the name of the school but she passed on; that in 2010, the Ministry of Education directed public schools to have title deeds for their parcels of land ; that the petitioners approached the objector and his sister one Grace Aligulah to file letters of administration in respect of their late mother's estate and the objector demanded Kshs 50,000 which the petitioners refused to pay; that before then, after the demise of their mother the objector has been busy selling portions of Title No. Kakamega/ Sergoit/150; that it was after the petitioners realized that the objector was not willing to take out letters of administration , the Board of management of the school decided to file Eldoret HC Citation Cause No. 138 of 2013; where upon the citees being, the objector, his brother and sister Washington Kidunda Aligula and Grace Agatsiva Aligula respectively, were served and they even instructed an advocate to represent them in the matter; that later on their advocate filed a notice to cease acting and on 19/3/2014, after the court was satisfied that the citees had been duly served , the court granted the citors now the petitioners herein leave to file succession cause. It is the petitioners contention that the allegation that they applied for and obtained grant of letters of administration in this matter secretly and without informing or involving the family of the deceased is false. Lastly, it was reiterated that the school is rightly entitled to 3.2 acres of land comprised in land parcel No. Kakamega/ sergoit/150.
 5. The court directed parties to file submission. I have perused the court file and have not found any.



Determination

6. I have considered the summons and the affidavits in support and in opposition and I find that the only issue for determination is whether the application meets the threshold for revocation or annulment of grant under Section 76 of the *Law of Succession Act*.

7. The said provision of the law provides that;

“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.”

8. It follows that for a grant to be annulled or revoked, the applicant has to demonstrate the existence of a ground or grounds set out in aforementioned provision of the law.

12 From the summons before the court, the objector seems to have no issue with regards to the grant that was limited to the distribution of the 3.2 acres to Aligula Primary School but the only bone of contention is with regards to the respondents actions which it is alleged that they have irregularly and erroneously extracted the said certificate of confirmation of grant and included strangers as beneficiaries.

13. The petitioners on the other hand have not disputed this position and in the replying affidavit filed in court on 29th October 2019, the deponent avers at paragraph 32 that the other persons were included in the distribution because they have stakes in the said estate and hence the petitioners cannot be blamed for doing that.

14. I have carefully perused the proceedings leading to the issuance of the grant which was only limited to the distribution of 3.2 acres land to Aligula Primary School. It would then appear, that the respondents



have taken upon themselves to amend the certificate of grant issued on 15/2/2016 to include other parties. From the supporting and replying affidavits there are mistakes and errors on the face of the record with respect to the confirmed grant issued on 2nd March, 2019 as it contravenes the orders of the court dated 15th February 2016. That alone diminishes the legality, justness, propriety, rightness and regularity of the instrument so relied upon to distribute and administer the estate of the deceased. In my humble opinion in the interest of justice those glaring errors and mistakes cannot be countenanced by this court. for purposes of achieving equity in the distribution of intestate estate it is necessary that Section 76 of the Law of Succession Act be invoked as a consequence of which the impugned confirmed grant be revoked.

15. This court has the discretion to appoint administrators under section 66 of the Law of Succession Act, which provides as follows –

‘When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference –

- a. Surviving spouse or spouses, with or without association of other beneficiaries;
- b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided in Part V;
- c. The Public Trustee; and
- d. Creditors.’

16. In a nutshell there seems to be no contest with regard to the distribution of the 3.2 acres to Aligula Primary school. the interesting part of it is the introduction of strangers with no locus standi in terms of Section 29 of the Law of Succession Act. The bad and ugly of the confirmation proceedings ought to be made good. in this intestate succession besides the asset covering 3.2 acres there is the other part of the estate yet to be ironed out. The most advisable course is to issue a declaration that the objector and the administrators be appointed as legal personal representatives to the estate of the deceased Elizabeth Kavaya Aligula. As of now this court issues injunctive orders upon the estate pending the full determination of the beneficiaries and distribution of any ascertained estate capable of being conveyed to the heirs. I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT ELDORET VIA EMAIL THIS 19TH DAY OF MAY 2022.

R. NYAKUNDI

JUDGE

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