



In re Estate of Kipsonyo Arap Kili (Deceased) (Miscellaneous Succession Cause 3 of 2017) [2022] KEHC 11188 (KLR) (29 July 2022) (Ruling)

Neutral citation: [2022] KEHC 11188 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS SUCCESSION CAUSE 3 OF 2017**

RN NYAKUNDI, J

JULY 29, 2022

IN THE MATTER OF THE ESTATE OF THE LATE KIPSONYO ARAP KILI

BETWEEN

ESTHER JEPKOGEI APPLICANT

AND

ELIZEBA JEMAIYO RESPONDENT

AND

ALBINE JEMELI SONYO INTERESTED PARTY

RULING

1. The matter before court is the application dated February 13, 2017 by the applicant seeking to revoke the grant of letters of administration intestate made to the respondent on July 11, 2016.
2. The grounds upon which the application is brought are as follows:-
 - i. That the grant was obtained fraudulently to wit, the petitioner omitted five other beneficiaries to wit;
Anna Chumo- Daughter (deceased)
Viola Jepkemei Samoei - Daughter
Mary Jerop- Daughter
Esther Jepkogei- Daughter
Ruth Cheptoo Killy- Daughter
 - ii. The proceedings to obtain the grant was done secretly without the knowledge of the applicant herein who is a beneficiary of the estate of the deceased.



- iii. The grant was obtained by means of untrue allegations of facts essential in the point of law to justify the grant(sic)
 - iv. That the only asset in this cause was the parcel of land known as Nandi/Cheptarit/xx which has now been subdivided and issued with new numbers.
 3. The summons were supported by the sworn affidavit of the applicant sworn on February 13, 2017. It reiterates the grounds at the foot of the application.
 4. The application was opposed by the respondent *vide* the replying affidavit dated March 22, 2018. The respondent's reply is that the subject land was shared into 3 portions amongst 2 brothers and the respondent under the instructions of their aged mother ; that the applicant was present when during the meeting and discussions called by their mother for the distribution of Nandi/Cheptarit/xx; that the other beneficiaries have not made any claim to the suitland save for the applicant, Mary Cherop and Ruth Cheptoo who have made a claim for 1 acre each ; that there are purchasers for value of several resultant portions of the then Nandi/ Cheptarit/ xx who are not parties to these proceedings and they ought to be heard in respect of their portions of land; that once a title deed has been issued , any claims of ownership cannot be determined by this court ;that a consent of the Land Control Board as a result of an application to subdivide before distribution cannot be challenged by this application as it clear that issuance of the consent is an absolute discretion and cannot be challenged at all; that further, the court confirmed the grant after due consideration and evidence adduced after satisfying itself as to the expediency of confirming the grant or concerning the identities ,shares and interest of persons beneficially entitled and the issue arising under the provisions of the law; and that there was no fraud of her part as the applicant was present during the meetings and deliberations convened by their mother to have the subject land shared among the 3 brothers and the respondent only.
 5. The court was then urged to dismiss the application with costs.
 6. The court directed for the application to be canvassed by way of written submissions The applicant's submissions were filed on March 24, 2022. I have perused the record and have not found the submissions for the respondent.

Applicant's Submissions

7. The applicant submitted that the deceased at the time of his death left the widow and five children but the respondent in her petition for letters of administration left out some of the beneficiaries.
8. The applicant further asserted that the only asset left by the late Kipsonyo Arap Kili was all that parcel of land known as Nandi/ Cheptarit/xx measuring 14.97.
9. According to the applicant, the respondent upon being issued with the grant and even before the confirmation of the grant went ahead to have the land sub divided and sold the them to other third parties at the expense of the real beneficiaries.
10. The applicant submitted that the resultant subdivision of Nandi/Cheptarit/xx into Nandi/ Cheptarit/2xx, Nandi/Cheptari/2xx, Nandi/ Cheptarit/2xx, Nandi/ Cheptari/2xx, Nandi/ Cheptarit/2xx, Nandi/ Cheptarit/2xx could be cancelled and the land revert back to the names of the deceased Kipsonyo Arap Kili with the original title Nandi/ Cheptarit/xx.
11. Lastly, the applicant gave a proposal that the deceased's sole asset, namely, land parcel No Nandi/ Cheptarit/ xx be subdivided equally amongst the nine units as follows;
 - i. Salome Kesumo Kipsonyo- Widow 4.1 Acres



- ii. Anna Chumo – Daughter(deceased) 4.1 acres
- iii. Viola Jepkemei Samoei- Daughter 4.1 acres
- iv. Nicholas Kimosbei Korir- Son (Deceased) 4.1 acres
- v. Elizeba Chemaiyo- Daughter 4.1 acres
- vi. Mary Jerop- Daughter 4.1 acres
- vii. Esther Jepkoge- Daughter 4.1 acres
- viii. Kibet Sonyo- Son (Deceased) 4.1 acres
- ix. Ruth Cheptoo Killy- Daughter(Deceased) 4.1 acres

Determination

- 12. The issue for determination herein is whether the applicant’s application meets the threshold for the revocation of a grant within the meaning of section 76 of the *Law of Succession Act*.
- 13. Section 76 of the *Law of Succession Act* stipulates the grounds for the revocation of a grant by stating that:

“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—

- 14. The respondent has argued that she petitioned for letters of administration pursuant to the deliberations by the family to have the suit land divided amongst her and two of her brothers at the instructions of their mother.
- 15. On the other hand, the applicant has maintained that the respondent deliberately omitted some beneficiaries when seeking to obtain the grant.
- 16. *In Re Estate of Moses Wachira Kimotho (Deceased)* Succession Cause 122 of 2002 [2009] eKLR, the court when dealing with a similar matter observed as follows;

“I am certain that had the applicants been made aware of the application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of those interests. Further had the respondent been forthright and candid and included the applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is therefore the grant was obtained fraudulently by making of a



false statement and or concealment from court of something material to the cause. The respondent knew of the applicants' interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for the confirmation of the grant.

17. The import of the above is that, it is imperative on a party seeking letters of administration to disclose all material facts before a court of law while seeking letters of administration.
18. In the instant case, it is evident from a perusal of the court's record that the respondent obtained the letters of administration at the exclusion of 6 beneficiaries, being the widow of the deceased and five children.
19. To that extend, the said impugned grant should be revoked.
20. However, I need to address myself to the issue at hand which is the Land Parcel No Nandi/ Cheptari/ xx which is the cornerstone of this dispute.
21. It is not in dispute that as at the time the late Kipsonyo Arap Kili passed on April 18, 1978, he left the said parcel of land measuring 14.97 Ha.
22. The evidence on record reveals that upon being issued with the grant of letters of administration, the respondent went ahead and had the said parcel subdivided as evidenced by the green card annexed to the summons for revocation of the grant.
23. In her replying affidavit to the summons, the respondent was unshaken in explaining that the said parcel as per the instructions of her mother, Salome Kesumu was to be divided into three portions between herself and her two brothers. She maintained that her mother had declined to have the other beneficiaries get a share from the said parcel.
24. It would appear that, some of the said land was then sold to other third parties a fact that was not disputed.
25. Section 82 of the *Law of Succession Act* provides that no immovable property of a deceased person shall be sold before confirmation of grant. The respondent has in her replying affidavit averred that this court cannot impeach the resultant titles from the mother title for lack of jurisdiction. That is not the correct position in law. Infact, pursuant to section 82 above, the subsequent subdivision of Nandi/ Cheptarit/xx before confirmation of grant was illegal null and void and could not confer any goof title to the parties therein
26. *In re Estate of Jamin Inyanda Kadambi (Deceased)* [2021] eKLR the court stated that;

“A valid sale of estate property can only be by those to whom the assets vest by virtue of section 79, and who have the power to sell the property by virtue of section 82. Even then, immovable assets, like land, such as Kakamega/Kegoye/30, cannot be disposed of by administrators before their grant has been confirmed, and if land has to be sold before confirmation, then leave or permission of the court must be obtained. That is the purport of section 82(b)(ii) of the *Law of Succession Act*. Clearly, the sale transaction that was carried out by the administrators was contrary to sections 45 and 82(b) (ii) of the *Law of Succession Act*, and was invalid for all purposes. It cannot be asserted at all, and am surprised that persons to whom administration of the estate herein can purport to support a sale transaction that was carried out contrary to the very clear provisions of the law.”



27. . In light of the above, I hereby make an order to revoke the letters of grant of administration issued to the respondent as it was obtained fraudulently by making of false statement through omission of some beneficiaries. I therefore make the following orders;

- (i) The grant of letters of administration made to the respondent on July 11, 2016 is hereby revoked and set aside.
- (ii) The titles arising from subdivision of Nandi/ Cheptarit/xx are cancelled and the mother title reverts back to the name of the deceased awaiting the parties to agree on mode of distribution and the courts determination of the same.
- (iii) The parties to file consent or separate proposals on distribution within 21 days from date herein
- (iv) Parties bear their costs.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 29TH DAY OF JULY, 2022.

R. NYAKUNDI

JUDGE

(kipkosgeichoge@yahoo.com, rotichnyongio@yahoo.co.uk)

