



In re Estate of the Late Jairo Akibaya Elloga (Deceased) (Succession Cause 821 of 2000) [2022] KEHC 11077 (KLR) (28 July 2022) (Ruling)

Neutral citation: [2022] KEHC 11077 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 821 OF 2000**

JN KAMAU, J

JULY 28, 2022

IN THE MATTER OF THE ESTATE OF THE LATE JAIRO AKIBAYA ELLOGA-DECEASED

AND

IN THE MATTER OF AN APPLICATION BY:

BETWEEN

KENNETH IMBAHALE AKIBAYA 1ST ADMINISTRATOR

EZINA ALUSA AKIBAYA 2ND ADMINISTRATOR

AND

REBECCA WANJIRU AKIBAYA OBJECTOR

RULING

Introduction

1. On 27th September 2021, the Objector herein filed Summons for Revocation of Grant dated 20th September 2021. She sought for orders that the Grant of Letters of Administration of the Estate of Jairo Akibaya Elloga (hereinafter referred to as “the deceased”) that was issued to the Administrators herein on 7th December 2012 be revoked and a fresh grant be issued in her name.
2. In support of the said application. She swore an affidavit on 20th September 2021. She averred that the deceased was her father who died on 19th October 2000 and that he had three (3) houses. She stated that she was from the second house while the 1st Administrator was from the 1st house and the 2nd Administrator was from the 3rd house.
3. She contended that her mother passed away on 14th September 2014. She added that the 1st Administrator’s mother also died before the Grant was confirmed and she was replaced by the 1st Administrator herein. She pointed out that there was no representative for the 2nd house.



4. She stated that the two (2) Administrators had been unable to jointly administer and distribute the deceased's estate after the Grant was confirmed due to bad blood between them. She averred that as the two (2) Administrators continued to fight, the deceased's estate was wasting away.
5. She added that the said Administrators had been mistreating the beneficiaries of the estate by denying them the deceased's properties and in particular those of the second house because they lacked a representative in the administration. She urged this court to revoke the Grant and issue a fresh grant in her name as the sole administrator.
6. In opposition to the said Summons for Revocation of grant, on 15th November 2021, the 1st Administrator filed his Replying Affidavit. The same was sworn on 12th November 2021. The 2nd Administrator swore and filed her Replying Affidavit on 1st December 2021.
7. The Administrators denied that they had bad blood between them or that they were unable to distribute the deceased's estate. They pointed out that the Objector and her brother, Samuel Eloga Akibaya, had applied to be substituted as administrators in place of their deceased mother who was also an administrator to the deceased's estate but that the said application was dismissed vide a Ruling dated 18th October 2017.
8. They asserted that the Certificate of Confirmation of Grant had errors apparent on the face of the grant which necessitated them to apply for the rectification of the same and another Certificate was re-issued on 10th December 2018.
9. They stated that the Title Deed for L.R. No Kisumu/Wathorego/2573 got lost prompting them to advertise the same in a Gazette Notice dated 11th September 2020, which fact was well within the Objector's knowledge as they promptly notified the second house of the same. They added that after re-issuance of the Title Deed of the said parcel of land, they applied for a further rectification of grant and a Further Rectification of Grant was re-issued on 2nd November 2020.
10. They pointed out that they opened an account with Kenya Commercial Bank on 23rd February 2021 in order to receive dividends from East African Breweries with Unclaimed Assets Authority, which dividends were yet to be received for distribution.
11. They blamed the Objector for frustrating the administration of the 2nd house by constantly disposing of the assets without their consent and/or that of other beneficiaries. They added that further malice was depicted in her application which she filed without the consent of her siblings.
12. They requested to be accorded ample time to administer the deceased's estate which was polygamous in nature and a complex process thus requiring co-operation from all houses. They were emphatic that the Objector rigorously participated in the succession cause and failed to demonstrate any of the grounds in Section 76(a), (b) and (c) of the Law of Succession Act.
13. They asserted that the Objector's application was malicious, vexatious and merely meant to waste judicial time and urged this court to dismiss the same.
14. The Objector's Written Submissions were dated 30th December 2021 and filed on 25th January 2022 while those of the 2nd Administrator were dated and filed on 6th December 2021. The 1st Administrator did not file any Written Submissions.
15. The Ruling herein is therefore based on the said Written Submissions which the Objector and 2nd Administrator relied on in their entirety.



Legal Analysis

16. The Objector invoked Section 74 of the [Law of Succession Act](#) which provides 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.
17. She submitted that the Administrators had not disputed difficulties in the administration of the deceased's estate and that they had not given the court good reasons for their failure to properly administer the same to ensure a seamless transmission of the estate to the beneficiaries as per the confirmation, five (5) years after the Grant was confirmed on 18th October 2017.
18. She argued that the Administrators' assertions that the Grant had errors with respect to land parcel Kisumu/Wathorego/2573 and that the Title to the said property got lost was not reason to withhold the distribution of the other properties. She added that the deceased's estate had many other properties and that the impugned parcel had nothing to do with her family.
19. She was emphatic that the Administrators did not furnish any evidence to show that she had frustrated the distribution of the estate by selling portions of Nyandarua/Ngorika/656. She asserted that the said parcel was given to the 2nd house but that the Administrators had failed to transmit it to the rightful beneficiaries.
20. She averred that her Summons was timely and brought in good faith to avoid further wastage to the estate and ensure that the interests of the beneficiaries were protected from lacklustre and infighting amongst the Administrators which had occasioned untold frustrations to her and other beneficiaries.
21. On her part, the 2nd Administrator submitted that the power to revoke a grant was a discretionary one that must be exercised judiciously and there had to be evidence of wrong doing for the court to revoke or annul a grant. She added that such evidence had not been presented before the court. In this regard, she cited the case of [Imbuga Kisigwa vs Recho Kavai Kisigwa](#) [2016] eKLR.
22. She contended that revocation of grant was governed by Section 76 of the [Law of Succession Act](#) and that the Objector had not tendered proof to warrant revocation of the same under Section 76 (a), (b) and (c) of the [Law of Succession Act](#) as was held in the case of [Re: Estate of LAK \(Deceased\)](#) [2014] eKLR where a similar finding was reached.
23. She further submitted further that the Objector never objected or appealed the court's Ruling which disallowed her substitution as an administrator in place of her deceased mother.
24. She contended that failure to distribute a deceased's estate was a ground for revocation under Section 76(d) of the [Law of Succession Act](#) but that the Objector did not rely on the same in her application. She, however, pointed out that such revocation was not automatic but was unconditional and dependent on an objector demonstrating that notice had been issued to the person that applied for the grant and that that person had failed to administer the deceased's estate and/or to produce an inventory or account of administration as required by law within a time described by the court. She pointed out that the Objector had not furnished the court with such notice warranting the revocation of the grant.
25. She explained that the court did not allow the application by the Objector and her brother to be substituted as administrator in place of their deceased mother on the ground that Section 81 of the [Law of Succession Act](#) provides that upon the death of one or more administrators, all the powers and duties of the administrators become vested in the survivors or survivor of them. She averred that administration of the deceased's estate was therefore vested in her and the 1st Administrator and



- that it was not legally correct for the Objector to allege that the 2nd House had no administration representative.
26. She submitted that the Objector ranked lower in terms of priority to her as the deceased's wife and she had been diligently administering the estate. She added that that being a polygamous estate, the Objector could not single-handedly administer the same and that if the court was inclined to allow the application, which she vehemently opposed, then the Objector ought to seek the consent of all her siblings to be their representative in the administration of the deceased's estate..
27. Section 76 of the *Law of Succession Act* Cap 160 (Laws of Kenya) provides 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—
 - (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 (emphasis court); 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.”
28. In order for the orders sought to be granted, an applicant and/or objector must prove that the grounds for revocation have been satisfied.
29. Notably, the two (2) Administrators denied that they had bad blood between them and averred that they had no problems being joint administrators of the deceased's estate. The Objector failed to demonstrate that the Administrators had failed to administer the deceased's estate after giving them notice to proceed diligently as provided in Section 76(d)(ii) of the Law of Succession. If she issued such notice, then she did not furnish the court with a copy.
30. After carefully considering the affidavit evidence and the parties' respective Written Submissions, this court was not satisfied that the Objector had demonstrated that the Administrators had failed to administer the estate as envisaged in Section 76(d)(ii) of the *Law of Succession Act*. This court was therefore not persuaded that there was merit in revoking the Grant of Letters of Administration that was issued to the 1st and 2nd Administrators herein on 18th October 2017.



31. Having said so, there was need for Administrators to administer the deceased's estate. Indeed, Section 83(e) and (f) of the Law of Succession stipulates that the administrators of an estate have a duty:-

“Within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account; (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be.”

Disposition

32. For the foregoing reasons, the upshot of this court's decision was that the Objector's Summons for Revocation of Grant dated 20th September 2021 and filed on 27th September 2021 was not merited and the same be and is hereby dismissed.

33. It is hereby directed that the Administrators comply with the provisions of Section 83(e) and (f) of the Law of Succession within six (6) months from the date of this Ruling failing which the Objector or any other beneficiaries will be at liberty to take such action to safeguard their interests.

34. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF JULY 2022

J. KAMAU

JUDGE

