



In re Estate of Stephen Mmavi Chahasi (Deceased) (Succession Cause 954 of 2012) [2022] KEHC 12450 (KLR) (19 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12450 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 954 OF 2012
PJO OTIENO, J
AUGUST 19, 2022**

IN THE MATTER OF THE ESTATE OF STEPHEN MMAVI CHAHASI (DECEASED)

BETWEEN

GERALD LUGALIA 1ST APPLICANT

BENSON AMUGUNE CHAHASI 2ND APPLICANT

AND

RICHARD BHULLARS CHAHASI RESPONDENT

RULING

1. The grant of letters of administration to the estate of the deceased was made to the petitioner on the February 9, 2013 and confirmed on the October 30, 2013. Pursuant to the confirmation, a certificate of confirmation of grant was issued dated November 7, 2013 distributing the estate comprising two parcels of land equally among the eight named beneficiaries.
2. It is alleged by the two applicants that since the date of confirmation the certificate of confirmation is yet to be implemented by transfer of the shares to the beneficial owners. On that basis the two applicants filed the summons for revocation of grant dated October 9, 2018 for failure to distribute the estate and seeking in addition that the court grants an order of injunction restraining the administrator from selling or alienating the estate pending the hearing and determination of the application.
3. The grounds put forth to premise the application was solely that having had the grant confirmed as aforesaid, he had failed to perform his duty as an administrator by distributing the estate while disposing portions thereof without the consent of the beneficiaries. Those same grounds were reiterated in the affidavit of the first applicant which they exhibited the grant, certificate of confirmation of grant and the certificates of searches of the two estate properties to demonstrate that both remain in the name of the deceased. It is of note that there was no iota of evidence of disposal of the estate property exhibited.



4. The application was opposed by the administrator who swore the replying affidavit on the July 17, 2020 where in it is asserted that the distribution was done with the consent of all the beneficiaries and not unilaterally and that the same was witnessed by village elders. He denied having defaulted as alleged and termed the accusation of him selling the estate as vexatious and demeaning and therefore prayed that the application be dismissed with costs.
5. Parties filed respective submissions which I have enjoyed the benefit of reading and appreciating. What is common ground from both sides is the fact that the grant was confirmed and the estate distributed equally among the eight beneficiaries. The second common ground is that even when so distributed the land is yet to be surveyed, subdivided and transferred to the said beneficiaries.
6. I consider this application to have been propelled and sustained in court since October, 2018, by applicant failing to appreciate what it means to distribute an estate of the deceased, while the petitioner has failed to truly appreciate his duty as an administrator with a confirmed grant. The matter has not been helped by the involvement of counsel. I see in this matter no real dispute. The administrator needs to be told that the certificate of confirmation needs to be implemented by having shares due to each beneficiaries transmitted. On the other side the applicants, who are just two out of the other seven, need to be told that distribution being a court supervised apportionment and division, usually after payment of due debts and estate obligations, of the estate to those beneficially entitled was done by the certificate of confirmation of grant.
7. Revocation of grant remain discretionary remedy which the court resorts to upon demonstration of a wrongdoing or wrongful failure by the administrator on his duties. If there was to be evidence of disposal of part or portions of the estate to the detriment of those beneficially entitled there would have been a good ground to revoke the grant. Where a grant is revoked it is desirable that the person who has sought for revocation steps in as the administrator. Here there is no offer to administer the estate after revocation. That portend the danger of leaving the estate unadministered. That would in the circumstances of this case not meet the ends of justice. The court determines that ends of substantial justice would be served by obligating the administrator to perform his duties under section 83 (f) and (g) of the *Act*.
8. It is therefore directed and ordered that the administrator, being the eldest of the siblings, shall cause the two parcels of land to be transferred by transmission to the eight beneficiaries either as proprietors in common, with each owning an eighth of the land. In the alternative, with financial input by all beneficiaries to have the parcels of land surveyed and subdivided into equal portions and transferred to each beneficiary. That be done within 90 days from today.
9. Matter shall be mentioned on December 9, 2022 to confirm the state of implementing the certificate of confirmation of grant.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 19TH DAY OF AUGUST 2022.

PATRICK JO OTIENO

JUDGE

In the presence of:

The applicants in persons.

Mulama for Amani Ndungu for the respondent/administrator.

Court assistant: Kulubi.

