



**In re Estate of Muse Arap Mosonik & Esther Chepngetich Mosonik (Deceased)
(Succession Cause 7 of 2013) [2022] KEHC 13246 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13246 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 7 OF 2013
AN ONGERI, J
SEPTEMBER 23, 2022**

BETWEEN

SIMON KIPNGETICH KOSKEI PETITIONER

AND

JANE CHEPKOECH MOSONIK OBJECTOR

RULING

1. The objector/applicant filed a summons for revocation dated September 23, 2021 seeking the following orders;
 - i) That this application be certified urgent and service of this summons be dispensed with in the first instance.
 - ii) That pending the hearing and determination of summons for revocation of grant a prohibitory order do issue to prohibit any dealing involving LR No kericho/Kipkelion/Chepseon/Block14 (Kapseger/ 15), LR No kericho/Kipkelion/Chepseon/Block14 (Kapseger/379), and all titles resulting from sub-division thereof.
 - iii) That pending the hearing and determination of the summons for revocation of grant a prohibitory order do issue to prohibit dealings involving shares Kenya Commercial Bank, Standard Chartered Bank, Mutipurpose Mau, Sinendet Multipurpose that belonged to the above mentioned deceased person.
 - iv) That the certificate of grant of letters of administration made to Simon Kipngetich Koskeion November 22, 2019 and confirmed on June 4, 2014, be revoked on the following grounds:-
 - (a) That the same was obtained fraudulently by means of untrue allegation of fact.
 - (b) That the proceedings to obtain the grant were defective in substance.



(c) That the grant was obtained by untrue allegation of a fact essential in a point of law to justify the grant in that the petitioner failed to disclose to court that the daughters of the deceased were entitled to share in the estate of the deceased.

2. The summons for revocation is supported by the affidavit of the objector/applicant.
3. The objector/applicant avers that she was a daughter of the deceased persons and that the petitioner/respondent herein was her brother.
4. The objector/applicant avers that she did not sign any letter from the chief and that the resultant gazette notice was issued unprocedurally. Subsequently the grant of letters of administration intestate were issued to the petitioner/respondent and confirmed on June 4, 2021.
5. The objector/applicant avers that the petitioner/respondent did not inform any of the other dependants and/or beneficiaries of the succession proceedings.
6. The objector/applicant avers that upon perusing the court file, she discovered that none of her siblings, herself included, were named as beneficiaries in the certificate of confirmation of grant.
7. It was against such background that she was seeking for the revocation of grant to pave way for the redistribution of the estate of the deceased persons.
8. She faulted the petitioner/respondent for having employed subterfuge and deceit to secure the whole estate of the deceased persons to himself whereas the other dependants and/or beneficiaries had been denied their rightful share as a result some of the dependents and/or beneficiaries had been rendered destitute.
9. The petitioner/respondent opposed the summons for revocation and filed a replying affidavit dated February 16, 2022.
10. The petitioner/respondent avers that before he commenced the succession process he obtained a letter from the chief which included all beneficiaries to the estate.
11. The petitioner/respondent avers that prior to obtaining grant of letters of administration intestate, he submitted a letter of consent dated January 10, 2013 and the objector/applicant herein signed the consent.
12. The petitioner/respondent avers that after the court granted him letters of administration intestate on September 11, 2013 he caused gazette notice no 9982 to be published and hence the allegation that the succession proceedings were conducted in secrecy did not hold water.
13. The petitioner/respondent avers that all beneficiaries were informed and fully aware of the succession proceedings.
14. The petitioner/respondent avers that he was living with their parents prior to their demise and the portion where his parents homestead was erected was allocated to him by their deceased father.
15. The petitioner/respondent avers that prior to their father's demise he had issued shares in Mau Tea Multipurpose Cooperative Society Limited to the objector/applicant and Eunice Mosonik.
16. The petitioner/respondent avers that prior to the demise of their father, the objector/applicant and Eunice Mosonik had been allocated a piece of land which they subsequently sold to John Kipkones Kosgei for purposes of educating their children.
17. The parties filed written submissions which I have considered.



18. The objector/applicant contended that she alongside the persons listed in the affidavit in support of the summons for revocation of grant were the deceased's children as such they were entitled to a share of the estate of the deceased as beneficiaries and/or dependants as envisaged by section 29 of the *Law of Succession Act*.
19. The objector/applicant reiterated that the grant in this case was obtained fraudulently and that there was a concealment of material facts, as some beneficiaries and/or dependants were left out when obtaining the grant.
20. The petitioner/respondent contended that the objector had not satisfied the grounds for revocation of a grant as captured in section 76 of the *Law of Succession Act*.
21. The petitioner/respondent contended that he had furnished a letter from the chief dated January 11, 2013 listing all beneficiaries and/ or dependants of the estate.
22. The petitioner/respondent reiterated that all the beneficiaries and/or dependants of the estate were informed and fully aware of the succession proceedings. The petitioner/ respondent had followed due process in obtaining the grant.
23. The petitioner/respondent reiterated that the assertion by the objector that there was material non-disclosure was false as she was fully aware of the succession proceedings and signed the consent to obtain the grant of administration.
24. The issues for determination are as follows;
 - (i) Whether the objector/applicant is a beneficiary of the estate of the deceased
 - (ii) Whether the grant herein should be revoked.
25. On the issue as to whether the objector/applicant is a beneficiary. I find that it is not in dispute that she is a daughter of the deceased herein Mose Arap Mosonik.
26. The letter from the chief indicates the objector/applicant as a beneficiary of the estate.
27. I find that there is no basis for revocation of the grant. The grounds for revoking a grant are set out in section 76 of the *Law of Succession Act* which states as follows;

“ A grant of representation whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by interested party or its own motion:-

 - a. That the proceedings to obtain the grant were defective in substance;
 - b. That the grant was obtained by the making of a false statement or by concealment of from the court of something material to the case.
 - c. That the grant was made by an untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.
 - d. The person to whom the grant was made has failed, after die notice and without reasonable cause either:-
 - i. To apply for confirmation of the grant within a year from the date thereof or such longer period as the court has ordered or allowed;
 - 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 paragraph (e) and (g) of section 83 or has produced such investigation or account which is false in any material particular; or
- e. That the grant has become useless and inoperative through subsequent circumstances.”
28. The remedy is not to revoke the grant but to have the applicant included in the distribution of the estate.
29. The petitioner is accordingly directed to share the estate with his siblings.
30. The certificate of confirmation is set aside and the petitioner is directed to file an amended mode of distribution of the Estate and to give a share to the objector and all his siblings.
31. Mention on November 9, 2022 for compliance
32. Orders to issue accordingly.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 23RD DAY OF SEPTEMBER 2022.

A. N. ONGERI

JUDGE

