



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Mukhono Chibo (Deceased) (Succession Appeal  
E7 of 2022) [2022] KEHC 14538 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14538 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION APPEAL E7 OF 2022**

**PJO OTIENO, J**

**OCTOBER 31, 2022**

**IN THE MATTER OF THE ESTATE OF MUKHONO CHIBO (DECEASED)**

**BETWEEN**

**JAMES LIBAHA MUKHONO ..... APPELLANT**

**AND**

**ABRAHAM ASUTSI MUKHONO ..... RESPONDENT**

*(Being an appeal from the decision of Hon. H. Wandere (SPM) in Kakamega  
CM's Court Succession Cause No. 924 'B' of 2018 delivered on 11th April 2022)*

**JUDGMENT**

1. In this appeal, the grievance by the Appellant are expressed in the Memorandum of Appeal to be that:-
  - 1) That the Learned trial Magistrate erred in fact and in law in making a substantive order to revoke a Certificate of Confirmation of Grant when there was no application made for the order but rather based on a letter.
  - 2) That the learned trial Magistrate erred in fact and law by proceeding to make an order without hearing the Appellant on the matter at all.
  - 3) That if the trial court would have given the Appellant a chance to be heard the Appellant would have demonstrated that the Respondent attempted to upset the Certificate of Confirmation of grant by filing an incompetent appeal at the High Court and the same was struck out.
  - 4) That this appeal has merit.
2. The proceeding before the trial court reveal that the matter was referred to Court Annexed Mediation and a Mediation Settlement Agreement signed on 3/12/2019 filed in court on 5.3.2020. The gist of the settlement was that the objection be withdrawn and succession proceeds as initiated with the



understanding that the deceased left behind five sons. The parties addressed the court on the outcome of the mediation and the court did on 3.3.2020 adopt the Mediation Settlement Agreement and marked the matter as settled.

3. In reality, when the Mediation Settlement Agreement was adopted only the objection was terminated but there was still the need to deal with the application for confirmation of grant to have the estate distributed. I discern that the trial court erred in marking the matter settled before the estate was distributed and transmitted.
4. That however, was not the end of the controversy. It appears that the file found itself before the trial court on the 11.4.2022 and the record reveals that the court made orders as follows:-

“ 11. 4.22

Coram

Before: Hon. Hazel Wandere, SPM

Court Clerk: Cheptek

Court:

Letter dated 7.4.22 has been considered. The confirmation dated 11<sup>th</sup> August 2020 is hereby revoked.

Confirmation to now be as per the mediation settlement agreement dated 3<sup>rd</sup> December 2019

H. Wandere, SPM”

5. It is not explicit how the date of 11.4.2022 was taken as there are no Minutes showing that the matter would go before the court on the day. It is however inferable that the placement of the file before the court was prompted by a letter by the Respondent dated 7.4.2020 and filed in the court file on the same day.
6. A reading of that letter reveals no inclusion of a request to revoke the grant. All the letter alleged was that there was a mistake in the confirmed grant as it identified seven (7) beneficiaries as opposed to the five (5) sons of the deceased and contrary to the Mediation Settlement Agreement signed by all parties. On the basis of that alleged error, the Respondent requested that there be rectification of the Certificate of Confirmation of Grant to distribute the estate to the said five sons.
7. It was therefore unprovoked to have the grant revoked without the parties moving the court with a request.
8. Granted that under Section 76 of the *Law of Succession Act*, the court may move suo sponte to have a grant revoked or annulled, that is only permissible if the grounds of revocation stipulated by the law be present. Here the trial court merely said it had considered the Objector’s letter and resolved to revoke the certificate of confirmation and to distribute the estate in accordance with the Mediation Settlement Agreement of 3.12.2019.
9. The court has perused the record before the trial court and is concerned that the matter appears to have been dealt with without due regards to the basics of the law. The first fault is that the matter was dealt with very substantively but superficially on a date not scheduled. Granted that a court may be moved by way of a letter, in appropriate cases, whenever the court determines that it can move informally, it has no liberty to so more without notifying the parties, especially those to be adversely affected by the possible orders.



10. The Orders of the trial court effectively takes away interests and the disclosed shares of the estate of two persons named in the Certificate of Confirmation of Grant. That is an order that takes away a property right and cannot be made before the persons to be affected is accorded the opportunity to state his position. To the extent that the proceedings of 11.4.2020 were taken contrary to the provision of the Constitution making the right to be heard as a component of the right to a fair hearing be non-derogable, I find that those proceedings and the ensuing orders were a violation of the Constitution and for that matter the same are invalid, null and void. If null and void, the same ought not to be allowed to remain in the court file. The same is set aside and expunged from the court records.
11. Having so determined, the position of the file reverts to the date the Mediation Settlement Agreement was adopted by the court. That position leaves the file at the level that the estate must be distributed to the beneficiaries. That task I remit to the trial court. In understanding that task, it would be important and necessary for the Judicial Officer to inquire if the deceased left behind any daughter and if such daughter make a claim to the estate or if they have renounced their right. In effect the appeal is allowed and the orders of 11.4.2020 are therefore set aside.
12. Let the file be placed before the Chief Magistrate for purposes of allocation to the court that will execute the task of distributing the estate.
13. As the errors leading to this appeal were committed by the court, and parties being siblings, it is directed that each party shall bear own costs.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 31<sup>ST</sup> DAY OF OCTOBER 2022.**

**PATRICK J. O. OTIENO**

**JUDGE**

**In the presence of:**

Mr. Mukavale for the Appellant

Respondent, Abraham Asutsi - present

Court Assistant: Polycap Mukabwa

