



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Okoti Amakobe (Deceased) (Succession Cause  
203 of 1990) [2022] KEHC 14040 (KLR) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14040 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 203 OF 1990  
WM MUSYOKA, J  
OCTOBER 21, 2022**

**RULING**

1. I am called upon to determine a summons, dated July 15, 2021. The application is for revocation of the grant. It is at the instance of Rasto Amakobe Okoti, who I shall refer hereto as the applicant. The grounds on the face of the application are to effect that the distribution of the estate considered strangers or persons who were not beneficiaries of the estate, that the persons who deserved the estate were left out, and that the distribution of the estate was not equitable. In the affidavit in support, the applicant targets Arthur Omondi Okoli. He avers that the said man was not a beneficiary of the estate as he was not related to the deceased, but a buyer who was intermeddling with the distribution of the estate. He says that the estate ought to be distributed afresh so that the real beneficiaries benefit. He refers to Joshua David Ambani, who he says is his nephew, by dint of being a child of his step-sister, and had been buried at his father's land.
2. There is a reply to the application by Susy Nafula Okoti, a daughter of the deceased, and a beneficiary of his estate. He describes the applicant as her stepbrother, being a child of her stepmother, the administratrix of the estate, Elimina Mutole Okoti. She describes the application as an afterthought, as the applicant had known about the succession cause since its inception. She then goes on to give a detailed history of the matter from inception, ending with the judgment that was delivered herein on December 17, 2014, and which she says the applicant and the administratrix have never accepted. She asserts that the 2 have resisted efforts to have the estate distributed. She further avers that the 2 sold portions of the estate to various people. She concludes by saying that the administration has been completed, for the estate property, Butsotso/Esumeyia/598 was subdivided into 5 portions, being Butsotso/Esumeyia/5571, 5572, 5573, 5574 and 5575, and registered in the names of the applicant, Joshua David Ambani, Arthur Omondi Ogodi, Dinah Naliaka Wanyonyi and Susy Nafula Okoti, respectively.
3. Susy Nafula Okoti has attached a large body of documents to her affidavit to support the case set out in her response. The most critical annexure appears to be the judgment of Chitembwe J, of December 17, 2014. That judgment was on an application dated December 27, 2007, for revocation of grant. Susy Nafula Okoti, Arthur Omondi Ogodi, Elimina Mutole Okoti and the applicant, Rasto Amakobe



Okoti, testified in those proceedings. The court did not revoke the grant, but it made orders on the distribution of the estate. It concluded that Elimina Mutole Okoti and the applicant, Rasto Amakobe Okoti, sold land to Arthur Omondi Ogodu. The court went on to identify the persons entitled to a share in the property as Arthur Omondi Ogodu, Susy Nafula Okoti, Joshua David Ambani, Dinnah Naliaka and Martha Okoti/Rasto Amakobe Okoti. The court then went on to distribute the estate property, Butsotso/Esumeyia/598, between the 5 sets of beneficiaries. There are copies of the title deeds in Butsotso/Esumeyia/5571, 5572, 5573, 5574 and 5575, generated following the orders made in that judgment.

4. The applicant filed a further response to that reply, by his affidavit of January 25, 2022. He asserts that Joshua Ambani and Arthur Omondi were not beneficiaries of the estate, and had been introduced into the matter by Susy Nafula Okoti. He asserts further that his mother did not settle the said persons on the land.
5. Both sides filed written submissions. Both are of little utility, to the extent that they did not cite any statutory provisions nor case law, and largely dwelt on the facts that have already been deposed in the affidavits on record.
6. Let me start by stating that this is not a proper application for revocation of grant. Revocation of grants is provided for under section 76 of the *Law of Succession Act*, cap 160, laws of Kenya. It provides for 3 general grounds upon which a grant may be revoked. One, where the process of making and obtaining the grant was problematic, in terms of defects in the manner it was obtained, and lack of integrity in the substance of the material relied on by the applicant is applying for the grant. Two, where a grant is obtained procedurally, but there is, subsequently, failure of the administration. Section 76 identified 3 incidences of failure of administration, being, failure to apply for confirmation of grant, failure to diligently administer the estate, and failure to render accounts. Three, where a grant has become useless and inoperative upon subsequent events. That would be where a sole administrator dies, leaving the estate without an administrator, the grant held by the dead administrator would be useless. It would also be the case where the sole administrator has lost the soundness of his mind or has been rendered physically infirm to the extent of not being able to manage the business of administration of the estate. Lack of soundness of mind is an incapacitating factor in law generally. It could be the case where the sole administrator is adjudged bankrupt, and, therefore, losing capacity to hold any office of trust, including that relating to administration of the estate of a dead person.
7. The application before me is not founded on any of the 3 general grounds. The applicant does not complain about the manner in which the grant herein was obtained. He does not complain about failure of administration either. Neither does he say that the grant herein has become useless and inoperative. The issues he raises, about how the estate was distributed, do not found a ground, under section 76, for revocation of the grant, or any grant for that matter. The remedy of revocation of a grant is not available for all manner complaints that anyone may have over the affairs of the estate. It is only available to the limited grounds set out in section 76. It is not open to anyone who is unhappy over anything to do with the estate to apply to have the grant revoked. It is also not a substitute for an appeal for anyone unhappy with any order that a probate court has made on anything.
8. Section 76 provides 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 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; 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.”

9. The applicant appears to be unhappy about the way the estate herein was distributed. One, being aggrieved about orders on distribution of an estate is not a ground for revocation of a grant under section 76. Two, the remedy for unhappiness over orders made on distribution is to appeal or seek review of the order, if ground exists for the same. Both should be sought within reasonable time. The judgments, where the distribution was ordered, was delivered on December 17, 2014. The applicant never filed an appeal at the Court of Appeal against that judgment, neither did he apply for review of the orders made in that judgment. He cannot utilize the devise of revocation of grant to achieve what he should have by way of appeal or review. In any case, too much time has passed since the judgement was rendered. Three, the applicant was privy to the proceedings that led up to the judgement of December 17, 2014. He testified in that case, and if he was unhappy with the outcome, he should have appealed within the timelines set in the law. Four, the issues that he raises in the instant application arose in the proceedings that Chitembwe J conducted, and the judgment that the judge rendered. The applicant, by raising the same issues in the instant application is seeking to re-litigate the matter, and is inviting me to sit on appeal on the judgment of Chitembwe J. Five, Chitembwe J made specific findings that Arthur Omondi and Joshua Ambani were beneficiaries of the estate of the deceased, and proceeded to allocate shares to them in the estate. Those findings and holdings were made in a determination of a revocation application, and they cannot be overrun by another revocation application. The issues around the entitlement of Arthur Omondi and Joshua Ambani, to a share in the estate, are now res judicata, and this court is *functus officio* so far as they are concerned.

10. From the material that has been placed on record, it is clear that the estate has been distributed, for Butsotso/Esumeyia/598 has been subdivided into Butsotso/Esumeyia/5571, 5572, 5573, 5574 and 5575, and transferred to the names of the individuals identified as beneficiaries in the judgment of December 17, 2014. It should be clarified that the term “beneficiary” is not synonymous with a survivor or relative or kin of the deceased. It merely refers to a person who has a beneficial interest in the estate of a dead person. Such person could include anyone who has acquired a stake in the estate by way of sale. A beneficiary is anyone who is entitled to benefit from an estate, and that includes buyers of estate



assets. Chitembwe J identified Arthur Omondi and Joshua Ambani as such beneficiaries. If anyone felt that that conclusion had no foundation, then the way out for them was by appealing against the same.

11. I believe that I have said enough to demonstrate that there is no merit whatsoever, to the application dated July 15, 2021. It exists for the sole purpose of being dismissed, and I hereby dismiss the same. I shall award Susy Nafula Okoti the costs thereof. As there is evidence that the estate has been distributed, and title deeds issued to the beneficiaries, the administration has been completed. Consequently, I hereby direct the Deputy Registrar to close this file.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 21<sup>st</sup> DAY OF October 2022**

**WM MUSYOKA**

**JUDGE**

Erick Zalo, Court Assistant.

Mr Ananda, instructed by M Ananda & Company, Advocates for the applicant.

Mr Elung'ata, instructed by Elung'ata & Company, Advocates for Susy Nafula Okoti.

