



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

SUCCESSION CAUSE NO. 65 OF 1996

IN THE MATTER OF THE ESTATE OF THE LATE PENINA CHEPKOECH KAPERER

IN THE MATTER OF A PETITION FOR GRANT BY AUSTIN AUMA KAPERER.....PETITIONER

VERSUS

IN THE MATTER OF AN APPLICATION BY GEORGE KAPERER & MILDRED KAPERER...APPLICANTS

RULING

The Applicant, **AUSTIN AUMA KAPERER**, moved this Court by his application dated 9th March 2021. It is a summons for revocation of grant.

1. The substantive relief sought in the application was in the following words;

“2. Pending the hearing and determination of this Application inter parte, this honourable court revoke the rectified letters of administration dated 9th of February 2021 issued 23rd November 2020.”

2. The short answer to the application is that, because the said application has now been heard and is being determined, the relief sought is now spent.

3. Nonetheless, the Applicant submitted that the proceedings of 9th February 2021 were substantially flawed and thus defective.

4. As the Applicant pointed out, a grant of letters of administration intestate shall not be confirmed until the court is satisfied about the identities of all the persons who are entitled to benefit from a share of the estate of the deceased.

5. Secondly, the free estate of the deceased must be identified, so that the court is able to make appropriate orders for the distribution thereof.

6. Whereas the Petitioner has correctly articulated the law, it is not clear to me how the same is applicable to the application currently before me.

7. As regards the revocation of a grant, the Petitioner pointed out that, pursuant to **Section 76** of the **Law of Succession Act**, the court may revoke or annul a grant if;

“(a) the proceedings to obtain the grant was defective in substance;

(b) the grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case;

(c) the grant was obtained by means of an untrue allegation of a fact or of an essential point of law ...”

8. The Petitioner submitted that the proceedings of 9th February 2021 were carried out in his absence.

9. The Petitioner is the widower to Penina Chepkoech Kapere (Deceased). He invoked the provisions of **Section 66** of the **Law of Succession Act**, which provides the following guidance in determining the order of preference when the court was issuing a grant;

(a) Surviving spouse or spouses, with or without association of other beneficiaries;

(b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) The Public Trustee; and

(d) Creditors; provided that where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

10. The court issued the grant to the Petitioner, together with his children.

11. In my considered opinion, the ranking of the Petitioner, as the widower, was not overlooked. He remains one of the administrators; and that is in keeping with the very same statutory provisions which accords him preference. I so find because **Section 66** makes reference to;

“Surviving spouse or spouses, with or without association of other beneficiaries.”

12. But most significantly, I find, as I did on 23rd November 2020, that;

“(1) As one of the children of the deceased was a minor at the time the Grant was issued, it follows that there should have been more than one Administrator of the Estate.

Accordingly, it was wrongful to have issued the Grant to Austin alone.

On that ground, I order that the Grant be revoked forthwith.

A new Grant shall issue in the names of Austin Auma Kapere, George Kapere and Mildred Achieng Kapere.”

13. When the Court appointed the 3 administrators, it did so pursuant to the authority bestowed upon it by **Section 58 (2)** of the **Law of Succession Act**, which stipulates as follows;

“Where an application for a grant of letters of administration in respect of an intestate estate is made by one person alone and a continuing trust arises the court shall, subject to section 66, appoint as administrators the applicant and not less than one or more than three persons as proposed by the applicant which failing, as chosen by the court of its own motion.”

14. In this instance, the Applicant did not propose any other persons who could be appointed as administrators, alongside him.

Therefore, the Court acted on its own motion.

15. And in appointing the co-administrators, the Court derived guidance from **Section 66** of the **Law of Succession Act**.

16. In the result, even when the application dated 9th March 2021 was considered on its merits, I find that must fail, as the Applicant did not satisfy the Court that the Court should exercise its discretion in his favour.

17. Ultimately therefore, the application is dismissed.

18. However, being mindful of the fact that this is a case within a family, and in order not to fuel antagonism, I order that each party will meet his or her own costs of the application.

DATED, SIGNED AND DELIVERED AT KISUMU

THIS 18TH DAY OF OCTOBER 2021

FRED A. OCHIENG

JUDGE