



REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

SUCCESSION CAUSE NO.191 OF 2000

IN THE MATTER OF THE ESTATE OF ENOCK KITOI MAINA (DECEASED)

JOSEPH KIPTONUI RONO.....PETITIONER/RESPONDENT

VERSUS

EMILY CHEPKIRUI.....OBJECTOR/APPLICANT

R U L I N G

1. The Application coming for consideration in this Ruling is the one dated 1/2/2021 seeking the following Orders:-

(i) SPENT

(ii) THAT pending the hearing and determination of this application, this Court be pleased to issue Orders staying Execution of the Certificate of Confirmation of Grant issued on 23/11/2017 and all consequential orders arising there from

(iii) THAT pending hearing and determination of revocation proceedings, there be stay of Execution of the terms of certificate of confirmation dated 23/11/2017.

(iv) THAT the Petitioners be ordered to pay costs of this application.

2. The Application is based on the grounds on the face of it and supported by the Affidavit of EMILY CHEPKIRUI RONO in which it is deposed as follows: -

(i) THAT the applicant is one of the surviving widows of Daniel K. Rono who is a son of the deceased and therefore entitled to share in the estate of the deceased;

(ii) THAT the deceased's estate comprises in land parcels KERICHO/KAPSUSER/709 AND KERICHO/KAPSUSER/651;

(iii) THAT the petitioner/ respondent has intermeddled with the deceased estate and has sold sizeable portions of the parcels of land to 3rd parties named in the grant and who the petitioner/respondent has included to share in the estate contrary to the law;

(iv) THAT it would be prejudicial to allow the respondent include the 3rd parties to share in the estate whereas they are neither beneficiaries nor liabilities;

(v) THAT the grant issued to the petitioner be revoked so as to pave way for a fresh distribution of the estate as the process of obtaining and confirming the grant was done by giving untrue allegations of facts.

3. The Petitioner, JOSEPH KIPTONUI RONO opposed the application and filed a Replying Affidavit in which he deposed as follows: -

(i) THAT the estate of the deceased has been distributed in accordance to the wishes of the deceased and with the consent of all the beneficiaries including the applicant;

(ii) THAT the applicant consented to the confirmation of grant, and verbally consented to the mode of distribution of the estate in court;

(iii) THAT the parties named in the certificate of confirmation of grant have not been illegally included, but have been included by the consent of all the beneficiaries of the estate;

(iv) THAT the application is meant to delay the conclusion of the administration of the estate of the deceased and create unnecessary friction between family members.

4. The parties filed written submissions as follows: -

The applicant submitted that the respondent had not included the third parties listed in the certificate of confirmation of grant as liabilities at the time of filing successions proceedings and they should therefore not be included to share in the estate as liabilities;

5. The applicant submitted that the petitioner filed for confirmation of grant and distributed the estate of the deceased without the applicant's consent thereby occasioning the filing of the application of stay of execution of the confirmation of grant and revocation of grant.

6. It was also submitted that the respondent had failed as an administrator of the deceased estate as he had misled the court that shares of all beneficiaries had been identified and ascertained, and there was therefore a need to revoke the grant issued and appoint another administrator to conclude the process of distribution of the estate.

7. The applicant relied on the case of *RE ESTATE OF JOSEPH KIBERA GITURO (DECEASED) (2019) eKLR*;

8. The respondent on the other hand, submitted that, the applicant did not seek for revocation of grant in her application and therefore the applicant should not be granted the orders sought in her application, as it is improper and defective.

9. The respondent submitted that the issues raised by the applicant in her submissions cannot be determined on the basis of affidavit evidence only and that the applicant is bound to call witnesses who should be cross examined to ascertain the allegations made. It was also submitted that the grounds for revocation of grant are those set out in section 76 of the law of succession act.

10. The respondent submitted that the applicant consented to the confirmation of grant by affixing her thumb print to the consent to confirmation of grant (form 37) and she verbally consented to the mode of distribution while present in court. It was also submitted that the respondent did not make a false statement to the court neither did he conceal something material to the case from the court.

11. The respondent submitted that the applicant consented to the confirmation of grant both in writing and verbally and that the applicant has also not given sufficient reason to warrant being granted stay of execution. It was also submitted that the respondent has diligently administered the estate of the deceased, by ensuring that the grant had been confirmed and by commencing the process of transfer to the beneficiaries.

12. The respondent relied on the following cases:

(i) RE ESTATE PRISCA ONG'AYO NANDE (DECEASED) (2020) eKLR;

(ii) RE ESTATE OF JOSEPH KIBERA GITURO (DECEASED) (2019) eKLR; and

(iii) KIPKEBE LIMITED VERSUS PETERSON ONDIEKI TAI (2016) eKLR;

13. The issues for determination in this ruling are as follows: -

(i) Whether stay of Execution of the certificate of confirmation dated 23/11/2017 should be granted.

(ii) Whether this Court can give orders against parties who have not been enjoined.

(iii) Who pays costs of the Application.

14. On the issue as to whether stay of execution of the Certificate of confirmation dated 23/11/2017 should be issued, I find that there are revocation proceedings which have not yet been heard. The Certificate of Confirmation cannot be Executed in the circumstances.

15. On the issue as to whether this court can issue orders against parties not enjoined, it is in the interest of Justice that no party should be condemned unheard.

16. The high court in *re Rose Aluso Odongo (deceased) (2014) eKLR*, stated as follows regarding the procedure to be followed in applications for revocation of grants, **"Rule 44 of the Probate and Administration Rules governs the procedure to be followed in respect of applications founded on Section 76 of the Law of Succession Act. The matter is set down for directions by virtue of Rule 44(3) for the purpose of the court directing service of the application on all affected persons. After the service ordered under Rule 44(3), the matter is once placed before the judge for directions on the mode of hearing."**

17. I direct that the summons for revocation be served on all the parties featuring in the certificate of confirmation.

18. On the issue as to who pays the costs of this application, I direct that the costs to abide the revocation proceedings.

19. I direct that the Petitioner files their response to the summons for revocation dated 1/2/2021.

20. I further direct that all the parties named in the certificate of confirmation dated 23/11/2017 be served with the summons for revocation dated 1/2/2021 and to appear in Court within 30 days of this date for directions on how the said summons should be disposed of.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 17TH DAY OF DECEMBER, 2021.

A.N. ONGERI

JUDGE