



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO.7 OF 2018

IN THE MATTER OF THE ESTATE OF THE LATE SAMWEL CHEPKWONY KALYA Alias SAMWEL CHEPKWONY ARAP KALYA Alias SAMWEL KALYA Alias SAMWEL ARAP KALYA Alias SAMUEL ARAP KALYA Alias KALYA SAMUEL CHEPKWONY (DECEASED)

ISHMAEL CHEPKWONY.....1ST OBJECTOR

PAMELA CHEPKWONY.....2ND OBJECTOR

ALICE CHEPKWONY.....3RD OBJECTOR

VERSUS

EUNICE CHELANGAT KIMETO.....PETITIONER

RULING

1. In this Succession Cause in the estate of SAMWEL CHEPKWONY KALYA (deceased), letters of administration intestate were on 28th January 2019 issued to Eunice Chelangat Kimeto.
2. Thereafter, an affidavit of protest against confirmation of grant was filed on 9th May 2019 by Ishmael Chepkwony, Pamela Chepkwony and Alice Chepkwony on the ground that the beneficiaries to the estate did not consent to the grant of letters of administration, that the petitioner did not disclose all the assets of the deceased, that the grant was obtained fraudulently on false information, and that the family had sat down and agreed to take out fresh letters of administration.
3. The protest proceeded by way of written submissions. The objector’s counsel M/s Sang & Sang Advocates filed their submissions on 3rd July 2019, while the petitioners counsel M/s Mutai J. K. filed their written submissions on 22nd October 2019. Counsel did not highlight the written submissions filed in court.
4. I have perused and considered the submission filed on both sides.
5. Under section 76 of the Law of Succession Act (Cap. 160) a grant of representation of letters of administration intestate, can be revoked or annulled by the court, at any time whether or not the same has been confirmed. The relevant part of the section provides as follows –

“76. A grant or 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 on its own motion”
6. Several statutory reasons are listed under section 76 as grounds upon which a court may revoke or annul a grant of presentation of letters of administration.
7. I note that in response to the objection, the petitioner has contended that the grant of letters of administration herein should not be revoked because the objectors have come to court to object before a Summons of confirmation of grant was filed. Counsel for the petitioner relied on **Nairobi HC Succession Cause No.2326 of 2008 – in the Estate of Joel Cheruiyot Ronoh (deceased) [2016]eKLR** to support this contention. I agree with the reasoning in that case. However, in my view, where the protest to grant of letters of administration is challenging the validity of the issuance of the letters of administration, the decision in the above case does not apply. The case relied upon by counsel is thus not applicable in the circumstances of the present case, as it is distinguishable.
8. The objectors complaint is that the petitioner/administrator did not disclose material facts or that she provided to the court false information by including land assets which did not belong to the deceased. From what is disclosed, in my view, the objectors have not demonstrated either material non disclosure or use of false information by the petitioner that would warrant revocation or annulment of the

grant of letters of administration herein. In this regard, I have perused the consent to apply for letters of administration and it is quite clear that it was signed by Eunice Kimeto, Elizabeth Ngeno, Hellen Koech, Alice Langat and Anne Bor, though It was not signed by Ishmael Chepkwony, Alice Chepkwony, Hillary Korir, Pamela Chepkwony and Florence Chepkwony. That alone in my view is not a sufficient reason for revocation of grant, unless the objectors were denied the opportunity to sign the consent. In the present case, there is no evidence that they were denied that opportunity.

9. With regard to the land asset which is said to belong to a stranger, the issue of that land asset can be dealt with at confirmation stage and it can be excluded from the estate if indeed it did not belong to the deceased. In my view, the inclusion of a wrong asset is not a sufficient ground for revocation of grant. This would equally apply to the alleged naming of a wrong survivor of the deceased as beneficiary, as both can be dealt with at confirmation stage and be excluded if there is adequate reason to do so.

10. Having said as above, the main reason why I find that the protest does not have merits is that there is no dispute that the petitioner/administrator is a daughter of the deceased. She stated so in form PA 80. Nobody is challenging this fact. She was thus in my view qualified to apply for and be appointed by the court as an administrator. Secondly, the objectors have not disclosed their actual relation with the deceased and what they want to be done after the revocation or annulment of grant of letters of administration. In my view, therefore, taking out fresh letters of administration at this stage is not in the best interests of justice as the petitioner/administrator herein is not a stranger to the deceased and this estate, but is a beneficiary.

11. In my view, therefore the objectors failed to discharge their burden of demonstrating to this court sufficient legal grounds, under section 76 of the Law of Succession Act (Cap. 160) to sustain their request for revocation or annulment of grant.

12. I thus find no merit in the protest, and dismiss the same. The petitioner/administrator will proceed to apply for confirmation of grant as provided for by law, and the inheritance interests of all the objectors should be included.

Dated this 23rd day of April 2020.

GEORGE DULU

JUDGE

Delivered through video conferencing in the presence of Mr. Langat Court Assistant, Mr. Musyoka ICT Officer and Mr. Sang for the objectors.