



REPUBLIC OF KENYA



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In re Estate of Mary Schmidt alias Mary Nyawira Ndumo (Deceased) (Succession Cause 432 of 2012) [2025] KEHC 2378 (KLR) (14 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2378 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 432 OF 2012**

G MUTAI, J

FEBRUARY 14, 2025

**IN THE MATTER OF THE ESTATE OF MARY SCHMIDT
ALIAS MARY NYAWIRA NDUMO (DECEASED)**

BETWEEN

ESTHER WANGECI KITETO 1ST APPLICANT

JOHN KAMUNYA 2ND APPLICANT

AND

SCHMIDT HERMANN DETLEF RESPONDENT

RULING

1. The deceased, whose estate is the subject of these proceedings, died on 30th September 2011 in the Federal Republic of Germany. At the time of her death, she was married to Schmidt Hermann Detlef, having contracted a marriage with him on 25th December 1999 at the Marriage Registrar's office in Mombasa. In their certificate of marriage, they were described as being a spinster and a bachelor, respectively.
2. In the petition for grant of letters of administration intestate filed on 17th October 2012, Mr Detlef described himself as being the husband of the deceased and the only dependant. According to him, the deceased had only one property, Title No. Kilifi/Mtwapa/1344 and had no liabilities.
3. The grant was issued in respect of the estate of the deceased on 28th March 2013. The said grant was confirmed vide a certificate of Confirmation grant dated 19th June 2013.
4. The certificate of confirmation of grant stated that the deceased had only one asset, to wit Title No. Kilifi/Mtwapa/1344. The said property was to devolve in full to the said administrator Schmidt Hermana Detlef.



5. The grant was confirmed notwithstanding the fact that 6 months had not lapsed since its issuance pursuant to the application of the administrator. The said administrator averred that he was the sole heir of the deceased, that he was ill and wished to relocate to Germany for treatment and needed to dispose of the asset so that he could pay for his treatment.
6. Vide the summons for revocation or annulment of grant dated 5th April 2016, the applicants herein sought the following orders:-
 1. That the grant and the certificate of confirmation thereof issued on 8th May 2013 and confirmed on 19th June 2013 to Schmidt Hermann Detlef be and is hereby revoked;
 2. The subdivision and all related transactions relating to all that parcel of land known as Title No. Kilifi/Mtwapa/1344 following from the confirmed grant be and are hereby revoked; and
 3. That the estate be returned to status quo ante.
7. The basis upon which the application was sought was that the grant was obtained fraudulently by the making of false statements, or the concealment from the court of material facts, that the proceedings to obtain the grant were defective and incompetent in substance, and was obtained by means of the making untrue statements of fact essential on a point of law to justify the grant.
8. The affidavit in support of the application was sworn on 5th April 2016 by the 1st applicant. The deponent urged that the Administrator failed to disclose that the deceased had two minor children, among whom was the 2nd applicant. She averred that upon obtaining the grant, the administrator procured the subdivision and sale of Title No Kilifi/Mtwapa/1344.
9. The Summons dated 5th April 2016 was subsequently withdrawn on 12th July 2016, with no orders as to costs, upon the death of the administrator.
10. The applicants subsequently filed the summons for revocation and or annulment of the grant dated 18th October 2019. The prayers sought in the said application are as follows: -
 1. That the grant of probate of letters of administration and the certificate of confirmation of grant issued thereof issued on 8th May 2013 and confirmed on 19th June 2013 to Schmidt Hermann Detlef be and is hereby revoked and annulled;
 2. That all the steps taken by the administrator pursuant to the order granting the letters of administration and the certificate of confirmation and which may have changed the assets of the estate subject of this application be declared nullity in law;
 3. That the current status of Title No Kilifi/Mtwapa/1344 be preserved and the subsequent subdivisions and all related transactions relating to all that parcel of land known as Title No Kilifi/Mtwapa/1344, following from the confirmed grant, be and are hereby revoked; and
 4. That the costs be provided for.
11. The affidavit in support of the latter application was sworn by Esther Wangeci Kiteto. The contents of this affidavit are similar to those of her earlier affidavit. The same was sworn on 5th November 2019. I shall not rehash the same here.
12. Despite being served through the advocates on record, the respondent or his estate never entered an appearance nor filed a response. The matter, therefore, proceeded as an undefended application.
13. The matter was heard on 6th November 2024. Mr John Kamunya, the 2nd applicant, averred that the administrator obtained the grant without disclosing that it was his mother who bought Title No Kilifi/



Mtwapa/1344. He accused Mr Detlef, his stepfather, of obtaining the grant fraudulently and thereafter dissipating the estate to the detriment of the interest of the deceased heirs. He prayed that the grant issued to Mr Detlef be annulled and a new grant be issued to him.

14. Counsel for the applicants filed written submissions dated 3rd December 2024, in which they urged that the applicants be allowed.
15. Should the grant be revoked? It was averred that the respondent is now deceased. That being the case, the grant issued to the deceased is useless and inoperative through subsequent events. Section 76 of the *Law of Succession Act* provides that: -

“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.”

16. In the case of *Albert Imbuga Kisigwa v Recho Kavai Kisigwa* [2016] eKLR, the Court stated as follows:-

“(13) Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”



17. The court expounded on the grounds for revocation of a grant under section 76 of the Law of Succession Act in In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR, by stating as follows: -

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

18. Looking at the evidence adduced, it is also clear that the deceased administrator obtained the grant without disclosing material information and procured the quick confirmation of the grant for reasons that look exceedingly suspicious. His conduct reeks of fraud. Consequently, it is my view that the same was obtained fraudulently.

19. Under the circumstances, the grant herein cannot stand. It is for revocation. I therefore allow the application in terms of prayers 1 & 2 of the summons for revocation of grant only.

20. In my view, this Court lacks jurisdiction to determine questions regarding title to land. Such questions ought to be taken to the Environment and Land Court for determination.

21. The orders that therefore commend themselves to me therefore are the following: -

1. The grant issued to Schmidt Hermann Detlef is hereby revoked;
2. The steps taken by the said Schmidt Hermann Detlef in furtherance or reliance of the said grant are hereby declared nullities at law; and
3. The applicants shall have the costs of the application to be recovered from the estate of the deceased administrator.

22. The Court hereby appoints the applicants herein, Esther Wangeci Kiteto and John Kamunya, the administrators of the estate of the deceased. It is hereby ordered that a grant be issued forthwith. The grant shall be confirmed upon their application after 30 days from the date hereof.

23. Orders accordingly



DATED AND SIGNED AT MOMBASA THIS 14TH DAY OF FEBRUARY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Mr Lumatete, for the Applicant;

No appearance for the Respondent; and

Arthur – Court Assistant.

