



REPUBLIC OF KENYA



In re Estate of Herbert Amakobe Okutoi (Deceased) (Succession Cause 898 of 2012) [2025] KEHC 3493 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3493 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 898 OF 2012
SC CHIRCHIR, J
MARCH 20, 2025**

IN THE MATTER OF THE ESTATE OF HERBERT AMAKOBÉ OKUTOI (DECEASED)

BETWEEN

NOEL MATORIO AMAKOBÉ 1ST APPLICANT

JOICE AWINJA INJILI 2ND APPLICANT

AND

DAVID MALUMBE OKUTOYI ADMINISTRATOR

RULING

1. What is coming up for determination is the Summons for Revocation of Grant dated 13/12/2022 . It is premised on Section 76 of the [Law of Succession Act](#) and Rule 44 of the [Probate and Administration Rules](#).
2. The Applicants’ case is that the deceased had several other beneficiaries which the Respondent concealed from the court when he petitioned for the Grant, and that these beneficiaries were never notified about the petitioning of the grant.
3. In response, the respondent admits that the deceased had four wives and 11 children; that the deceased had made his wishes known ,and he distributed the property according to the wishes of the deceased. He further states he had only registered the properties in his name, to hold them in trust for some of the beneficiaries.
4. The Summons were heard by way of viva voce evidence and the Affidavits of the parties.

The Applicants’ case

5. The 1st witness was the Applicant. She told the court that the deceased was her father- in -law; that he died in 2011 and without leaving a will; that he had 5 wives who all had children ,except one. She further



stated that her husband, Meshack, predeceased the deceased. That after the deceased died there was a family meeting which was held in regard to the distribution of the Assets of estate but the members never came to any consensus. She produced the following documents as exhibits:

- a. ID for Joyce Awinja
- b. Death certificate of the deceased
- c. A chief's letter dated 10/12/2022
- d. Certificate of death of Meshack
- e. A copy of the minutes for 22/10/2011 meeting
- f. A copy of grant issued to the respondent
- g. Confirmation of ownership in aspect of Plot No. B3008 from Nairobi County
- h. A copy of official search of parcel No. Busotso/Shikoti/5196
- i. Certificate of death for one Miriam Amakoma

The respondent's case

6. The respondent (DW1) testified that his father had sub-divided the property amongst his children and that he only did succession on the properties that were given to him.
7. On cross-examination he stated that when his father died he was given a letter from the chief, in Milando, and that the family appointed him to undertake the succession. He stated that he did not have documentation to support the said allegation.
8. He further stated that the deceased had a will, which was filed together with the petition. He admitted that he did not list all the survivors of the deceased when he petitioned for the Grant. He further testified that the children of the deceased were Nine. He further stated that the grant was confirmed on 20/11/2017 and he shared the properties amongst his siblings.
9. The Applicant thereafter filed submissions which I have read and considered.

Analysis and Determination

10. The only issue for determination is whether the Applicants have made a case for revocation of Grant.
11. Section 76 of the *Law of Succession Act* gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It states 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;
(Emphasis added)
- 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 has ordered or allowed; 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
 - iv. The grant has become useless and inoperative through subsequent circumstances.

12. The power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the court's decision in the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* Succession Cause No. 158 of 2000 where Mwita J stated:-

“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 wrong doing 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 interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

13. Further the circumstances in which a grant can be revoked were discussed in the case of *In the Matter of the Estate of L.A.K. (Deceased)* [2014] eKLR :- where the court held as follows:

“Revocation of grants is governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.” (Emphasis added)

14. In the petition for the grant, it is evident from the Affidavit in support thereof that, the respondent listed himself and three widows of the deceased as the only survivors. When it came to the distribution, all the properties he had declared stated went to him. . The respondent has readily admitted not only that the deceased had eleven children, but that he never listed them as survivors.

15. Further I have also noted that save from the three widows, there was no consent from the Applicants or other survivors of the deceased, giving Authority to the respondent to administer the estate or denouncing their right to administer.

16. It also emerged, from his replying Affidavit and the Affidavit of the Applicant herein, that there exists certain Assets which were not declared by the respondent. Those undeclared Assets is another material fact which must be fully disclosed at the point of petitioning for the Grant. Failure to declare these



Assets constituted non- disclose of material facts. as assets, like the survivors, are fundamental facts which must be disclosed. The respondents concealed these material facts from the court.

17. In the case of *In re estate of Wahome Mwenje Ngonoro* (2016) eKLR it was held: -

“It is trite law that if a grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case; or that the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently, such a grant can be revoked or annulled. The law permits the court to revoke a grant on its own motion or on application by an interested person.

The evidently deliberate failure by the Respondent to involve the applicants at the time of filing these proceedings, failing to list them among the beneficiaries or seek their consent or renunciation was in view in bad faith and amounts to concealment of material facts. My conclusion is that the proceedings leading to the issuance of the grant are defective in substance and that material information was not disclosed to the court in that had the court been made aware that there were other beneficiaries who were interested in the deceased's estate, the court would have hesitated to issue the grant.”

18. In view of the foregoing , am satisfied that the Applicants have made a case for revocation of Grant.

19. In the end, I hereby make orders as follows:

- a. The grant of letters of Administration intestate issued to David Malumbe Okutoyi on 18th March 2013 is hereby revoked , the confirmation proceedings of 21st November 2016 are hereby set aside and the certificate of confirmation of grant issued on 20th January 2017 is hereby cancelled.
- b. David Malumbe Akutoyi, Joyce Awinja Injili and Noel Matorio Amakobe are hereby appointed as Administrators of the estate of Herbert Amakobe Okutoyi, and Fresh Grant of letters of Administration intestate to issue forthwith.
- c. The Administrators or any of them, to file summons for confirmation of grant, which summons must list all the beneficiaries of the deceased as per houses and all the Assets of the Estate, within 45 days from the date of this Ruling.
- d. This Matter will be mentioned on a date to be allocated at the date of this Ruling to confirm compliance with order (c) above.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO, THIS 20TH DAY OF MARCH 2025.

S. CHIRCHIR

JUDGE

In the presence of :-

Godwin Luyundi- Court Assistant

Mr. Owino for the Applicant

David Malumbe- Respondent .

