



REPUBLIC OF KENYA



**In re Estate of Isaac Mutsachi Amukhoye (Deceased) (Succession Cause  
216 of 2001) [2025] KEHC 3557 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3557 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 216 OF 2001  
SC CHIRCHIR, J  
MARCH 20, 2025**

**BETWEEN**

**RICHARD MUTSACHI ..... APPLICANT**

**AND**

**ZEPHANIA MUTSACHI ..... RESPONDENT**

**RULING**

1. What is coming up for determination is the application dated 22/1/2024. The applicant seeks orders as follows;
  - a). That the Grant of Letters of Administration and Certificate of Confirmation of Grant issued to Zephania Shieyo Mutsachi previously or subsequently issued with respect to the estate of Mutsachi Amukoye on 22/2/2022 be revoked.
  - b). That any distribution, transfer and dispositions of any kind and/or by the Administrator with respect to the estate of the deceased herein be declared unlawful null and void and the registration of the said properties, if any ,restored to the estate of Isaac Mutsacha Amukoye.
2. It is the Applicant's case that the Grant was obtained by making a false statement of fact; that when the Administrator was applying for certificate of confirmation ,he reduced the shares belonging to other beneficiaries, in order to benefit himself. He states that he wants the confirmation that was done of 8/4/2013 to be upheld instead. There was no response to the application.

**Applicant's submissions**

3. It is submitted that the Respondent did make a formal Application for him to be allowed to substitute the deceased Administrator, one Grace Opisa who was the initial Administrator; that the Applicant did not consent to the respondent's Application for his appointment as a substitute to the said Grace. It is



further submitted that on the purported mediation that took place, not all beneficiaries were involved and that in the purported consent for distribution, their signatures were forged.

### **Analysis and determination**

3. The proceedings herein relate to the estate of Isaac Mutsachi Amukoye (Deceased) who died on 27/1/2001. His widow, one Grace Opisa was issued with the Grant of Letters of Administration intestate on 26/7/2001. On 25/2/2013, the Grant was confirmed and the then given properties of the estate being land parcel Kakamega/Chekahai/143 and Kisa/Khushiku/840 were distributed as per the certificate of confirmation of Grant issued on issued on 8/4/2013.
4. Through the Notice of Motion dated 6/5/2019, an application for rectification of the grant was filed by the Administrator. A perusal of the record shows that the particular Application was never prosecuted.
5. On 26/2/2021 a mediation Agreement under KAK/MED/SCC/01/2021 was filed. The consent was adopted on 25/10/2021. The terms of the mediation Agreement were on the distribution of the property.
6. On 14/01/2022 the Respondent herein filed summons for rectification and for confirmation of Grant. The Application was heard on 22/2/2022 by Justice Musyoka and the Judge allowed the Application in terms of prayer 1 and 2.
7. Prayer 1 of the above sated Application, had sought for substitution of the Administrator by the Respondent herein, on grounds that the Administrator had died. The respondent also prayed for the correction of his name. Prayer 2 of the Application sought for substitution of a deceased beneficiary by the name Florence Ayumo Amukoye with her daughter one Anne Comfort Ayako. The Respondent further sought for the issuance of a new Grant and an amended certificate of confirmation to reflect the above changes. The court declined to grant prayer 3, which had the effect of changing the mode of distribution of the property.
8. Accordingly, the certificate of confirmation of Grant was issued on 22/2/2022. It is this certificate that the Applicant herein is contesting. He states that the Application leading to its issuance was marred by falsehoods.
9. On the appointment of the new Administrator, the mediation agreement stated that the beneficiaries had agreed that the respondent herein “was going to oversee the final distribution upon all parties agreeing on the same”. The grant was consequently issued with the respondent as the Administrator of the estate and there was no contestation from any of the beneficiaries until the present Application.
10. The Applicant has argued that there was no consent on the respondent being appointed as the new Administrator. However in paragraph 4 of his Supporting Affidavit to the present Application he has stated as follows; “that the window later passed on and we appointed our brother Zephania Mutsachi to substitute the Petitioner.” The widow in question was the then Administrator who died ,and the Zephania is the Respondent herein.
11. The Applicant’s allegation therefore that there was no consent to the appointment of the respondent to substitute the deceased’s Administrator flies in the face of the above stated admission.
12. The Applicant has further submitted that there was no application for revocation of the previous Grant and appointment of the new Administrator. However, through the consent filed on 25/10/2021, the beneficiaries agreed on substitution, and who was to be deceased Administrator’s substitute. The fact that there was going to be substitution and who was to substitute the deceased’s Administrator was therefore agreed upon, through the mediation process.



13. In my observation, the Application dated 14/1/2022 and filed the same day, was seeking formal implementation of the mediation agreement. The fact that the respondent did not then used the work “revocation” in the application of 14/1/2022 did not make his prayer ambiguous.
14. I have further noted that under the same prayer 1, the Respondent herein had prayed for a fresh Grant to issue. Thus, the amended Grant issued on 22/2/2022 was properly issued. And its issuance is traceable to the mediation Agreement.
15. Finally, the Applicant has argued that the mediation agreement was false and should be abandoned. Mediation settlement agreement is entered into by consent of the parties. It is trite law that a consent is in the nature of a contract and can only be set aside on such grounds as a contract would be set aside. That is to say either by consent of the parties or unless there is evidence of fraud, undue influence or misrepresentation, among others. (Ref Flora Wasike vs Desmond Wanbeolla( 1980)1 KAR).The Applicant has pleaded that the mediation agreement was based on falsehoods , but he has not bothered to point out the alleged falsehoods in the mediation agreement. This complaint is without merit.
16. Further, it is instructive that the Applicant states that the mediation agreement was marred with falsehoods he is not seeking to set aside the mediation Agreement.
17. If he has had a change of heart about what was agreed on mediation, it is too late for the Applicant to turn back. He has otherwise failed to persuade this court that the mediation agreement was based on fraud or falsehood as he calls it.
18. In conclusion, the application lacks merit. It is hereby dismissed. Each party to meet his own costs

**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. Otieno for the Applicant.

