



In re Estate of Dickson Elkanah Sese (Deceased) (Succession Cause E1351 of 2023) [2025] KEHC 8181 (KLR) (Family) (23 May 2025) (Ruling)

Neutral citation: [2025] KEHC 8181 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E1351 OF 2023
CJ KENDAGOR, J
MAY 23, 2025
IN THE MATTER OF THE ESTATE OF DICKSON ELKANAH SESE (DECEASED)
BETWEEN
HILDAH KEMUNTO SESE APPLICANT
AND
REBECCA NYAKERARIO MOMANYI RESPONDENT

RULING

1. The Deceased, Dickson Elkanah Sese, died intestate on 1st October, 2023. The Court granted Letters of Administration Intestate on 31st January, 2024 to Rebecca Nyakerario Momanyi and Anne Bosibori Momanyi (Petitioners herein), who are Deceased's wife and Sister-in-Law respectively. The same was due for confirmation on 29th July, 2024. However, before the confirmation, Phildah Kemunto Sese (the Applicant herein), brought summons for Revocation dated 4th May, 2024. She argued that the Grant of Letters of Administration was obtained fraudulently and that the Petitioners deliberately failed to make a full and frank disclosure of all material facts. She stated that she is a daughter of the Deceased, and that the Petitioners applied for the grant secretly and behind her back, despite having full knowledge of her existence.
2. She sought the following orders;
 1. Spent
 2. That the grant of Letters of Administration Intestate made on 31st January, 2024 to one Rebecca Nyakerarion Momanyi and Anne Bosibori Momanyi be revoked.



3. That the Honourable Court be pleased to grant the Objector/Applicant leave to file an Answer to the Petition for grant of Letters of Administration Intestate dated 15th November, 2023 and a Cross-petition.
 4. That the [Petitioners] be immediately ordered to surrender, vacate, and cease intermeddling with the Deceased's estate in its entirety until the final determination of the Administration.
 5. That the [Petitioners] be ordered to furnish the Court with a detailed statement of account of all the monies collected from the Deceased's properties and of all such other properties within their control.
 6. That KCB Bank Kenya Ltd be ordered to surrender to court ALL documents in its safe custody held in the name of the Deceased at its branch in Kitengela.
 7. That costs of this Application be in the cause.
3. She swore and filed two affidavits to support the summons for Revocation, one dated 4th May, 2024 and another dated 21st July, 2024. She stated that the Grant was obtained fraudulently through non-disclosure of material facts. She averred that the Petitioners deliberately failed to make a full frank disclosure and misrepresented the facts to obtain the grant. She stated that she is a daughter of the Deceased but was excluded from the petition despite the Petitioners being aware of the fact she was the Deceased's daughter. In response, the petitioners filed a Replying Affidavit, Bundle of Documents, and witness statements, all of which I have carefully considered.
 4. The parties and their witnesses testified before this Court and their testimonies were as follows;
 5. PW1 was the Applicant. She testified that she was the Deceased's daughter. She also said that the Petitioner, Rebecca Nyakerario Momanyi, was a lawful wife to her father. She stated that there are properties that have been omitted. She asked the Court to revoke the Grant and allow her cross-petition. On cross-examination, she stated that the Petitioner should administer the estate, but with someone else. She also testified that she did not say that she did not want to be involved in any way over her father. She also called PW2, who was her mother. PW2 also confirmed that the Petitioner was legally married to the Deceased. She also stated that she was not interested in the estate.
 6. DW1 was the Petitioner, Rebecca Nyakerario Momanyi. She stated that she got married to the Deceased on 9th November, 2004 at North Carolina. She also stated that the Applicant is the Deceased's daughter. She stated that she is aware of all the properties owned by the Deceased, unlike the Applicant, who she said was not aware of the properties. She also stated that she included Ann Momanyi as a Co-administrator because the kids were under 18 and she (Ann) was also the closest to the kids. She stated that she opposes the Applicant's petition to be an administrator, but she does not oppose her being included as a beneficiary. The Petitioner called other witnesses, DW2, DW3, and DW4, all of who admitted that the Applicant was the Deceased's daughter.

Issues for Determination

7. Having carefully considered the Application, the documents filed by the parties, and their testimonies, the following are the issues for determination.
 - a. Whether the grant should be revoked.
 - b. Whether the Applicant should be added as a co-administrator to the Estate.



8. Section 76 of the [Law of Succession Act](#) provides for the grounds under which a Court can revoke a grant of Letters of Administration. The Section provides as follows;

“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.”

9. The Court in [Jamleck Main Njoroge v Mary Wanjiru Mwangi](#) [2015] eKLR interpreted the above provision in the following terms;

“...The circumstances that can lead to the revocation of grant have been set out in section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

10. I also associate myself with the reasoning of the Court in [Albert Imbuga Kisigwa v Recho Kavai Kisigwa](#), Succession Cause No 158 of 2000, where the Court interpreted the above section in the following terms;

“... 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.”



11. Further, the Court in *In re Estate of Amos Kiteria Madeda-Deceased* (Probate & Administration E004 of 2021) [2022] KEHC 12950 (KLR) (21 September 2022) (Ruling) interpreted the said provision in the following terms;

“21. The grounds upon which a grant may be revoked or annulled are thus statutory and it is incumbent upon any party making an application for revocation or annulment of a grant to demonstrate the existence of any, some or all the above grounds. A reading of Section 76 shows that the grounds can be divided into the following categories: - (a) the propriety of the grant making process; (b) mal-administration or (c) where the grant has become inoperative due to subsequent circumstances.”

12. Based on the above authorities, the Applicant had a duty to adduce evidence and establish least one of the grounds enumerated under Section 76. I have carefully considered her two affidavits and her testimony in Court. In her testimony, she acknowledged that the Petitioner, Rebecca Nyakerario Momanyi was her father’s legally wedded wife. In addition, PW2, the Applicant’s mother told the Court that she had divorced the Deceased in 2002 and that she was not interested in the estate. The Applicant also claimed that the Petitioners had omitted some Deceased’s properties. I however note that she did not provide evidence of the said properties she claims to have been left out.

13. In my view, the Applicant did not demonstrate that the proceedings to obtain the Grant were defective in substance. She also did not provide evidence that the Grant had become useless and inoperative through subsequent circumstances. Lastly, she did not establish that the Petitioners had failed to proceed diligently with the administration of the estate.

14. The evidence on record reveals that the Petitioners did not, at the time of filing for the grant, disclose to the Court that the Applicant was the Deceased’s daughter. I have seen the affidavit filed by the Petitioners in support of the Petition for Letters of administration Intestate. It was sworn by the Petitioner, Rebecca Nyakerario Momanyi, on 15th November, 2023. In the affidavit, she stated that the Deceased had three children. She did not include the Applicant in the list of children. Subsequently, however, the Petitioner readily acknowledged that the Applicant was a daughter of the Deceased. It also came clear to this Court that the Petitioners were aware of the existence of the Applicant at the time they were filing the Grant of Letters of Administration.

15. This Court is being invited to determine whether the Petitioner’s failure to disclose the existence of the Applicant at the time of obtaining the Grant amounts to concealment of something material or untrue allegations, and thus a sufficient ground to revoke the grant. I am alive to the fact that the Petitioner is the only surviving spouse of the Deceased. The former spouse, PW2 told the Court that she was not interested in the estate of the Deceased. From the foregoing, I do not see reason to revoke the Grant.

16. In resolving this issue, I associate myself with the reasoning of the Court in *In re Estate of David Kiprugut Bor (Deceased)* (Succession Cause 123 of 2021) [2023] KEHC 17624 (KLR) (23 May 2023) (Ruling) where the Court commented on the revocation of a Grant issued to a spouse of the Deceased.

“24. It will be of course completely out of order to revoke a grant of representation duly issued to the senior ranking heir to the deceased intestate estate. Issues of revocation is a matter to be exercised sparingly and not at whim.....

25. The judicial discretion permits me not to revoke or annul the grant of representation issued to the spouse of the deceased. She is better placed to



deal with all matters arising on both movables and immovable of the deceased estate.”

17. The Petitioner told the Court that she has no problem including the Applicant in the list of beneficiaries. She said she does not oppose her being included as a beneficiary. The Court thus directs that the Applicant be included in the list of beneficiaries. Concerning her request to be a co-administrator, the Applicant did not demonstrate that her interests as a beneficiary will be prejudiced unless she is admitted as a co-administrator. If anything, the Applicant will have opportunity to file protest if not agreeable to mode of distribution to be proposed by the administrators. Her request to be admitted as a co-administrator is also disallowed.

Disposition

18. Final orders;
- a. The Applicant’s Summons for Revocation dated 4th May, 2024 and her prayer for revocation of grant issued to the Petitioners herein on 31st January, 2024 is hereby dismissed.
 - b. The Applicant’s prayers No (2) to prayers No. (6) in the said summons are also disallowed.
 - c. The Applicant shall be included in the list of beneficiaries.
 - d. No order as to costs.
19. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 23RD DAY OF MAY, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Administrator: Beryl

Mr Olao, Advocate for Applicant

Ms. Mogire, Advocate for the Respondent

