



In re Estate of the Late Nicholas Kiptoo Bomett (Deceased) (Succession Cause 585 of 2009) [2025] KEHC 5861 (KLR) (9 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5861 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 585 OF 2009
SM MOHOCHI, J
MAY 9, 2025**

BETWEEN

ANDREW K BOMETT APPLICANT

AND

SAMIR BADYYOPADHYAY KUMAR OBJECTOR

RULING

1. The Petitioner, who is acting in person, filed two applications. The first one dated 24th July, 2024 is the Summons for Confirmation of Grant which seeks confirmation of the Grant issued on 27th of June, 2022.
2. The second Application is the one dated 4th October, 2024 which seeks cancellation of titles for property known as Nakuru/Municipality/Block 15/209 and the same to revert back to the estate with an order being issued to the Land Registrar Nakuru to the effect.
3. The gist of the two Applications was that the deceased died intestate and was survived by two sons, the Petitioner and one Len Bomett. He argued that his brother, Len Bomett intermeddled in the estate property, proceeded to subdivide and sell the said property. That the grant issued to Len Bomett was eventually revoked and a fresh one issued to the Petitioner.
4. The Protestor by way of Affidavit of Protest dated 29th November, 2024 opposed the Application dated 24th July, 2024 on the grounds that, the Applicant has approached the Court with material non-disclosure. That the said property no longer exists having been sub-divided with two new parcels of land being borne. That upon sub-division, the two parcels borne from the said parcel were Nakuru Municipality/Block 15/1031 and Nakuru Municipality/Block 15/1030.
5. The Objector stated that, he is the current registered owner of Nakuru Municipality/Block 15/1031 having Purchased it from one Patrick Matindi in the year 2016 who had purchased it Patrick Njoro



- Waweru and who in turn had purchased it from Len Bomett who had acquired it through transmission as a beneficiary of the estate.
6. That the Application has been brought by unclean hands to frustrate the legitimate occupation of the Objector in Nakuru Municipality/Block 15/1031.
 7. The Applications and Protest were disposed by way of written submissions as directed on 3rd December, 2024

Applicant's Submissions

8. The Applicant submitted that the basis of entering into a sale agreement was letter by the Chief dated 23rd September, 2009. The agreement was dated 28th November, 2009 but the letters of administration were issued on 15th April, 2010 and the Certificate of Confirmation issued on 7th October, 2010. Therefore, that Grant could not have transferred the property.
9. He also submitted that the Objector cannot be classified as a beneficiary as he does not qualify within the definition of Section 29 of the *Law of Succession Act*.
10. Reliance was placed *in re Estate of Charles Gungu Gwiyanga (Deceased)* (Succession Cause 44 of 2021) [2022] KEHC 10300 (KLR) where it was held:-

“hence a transaction rendered unlawful by statute cannot be protected by law

Objector's Submissions

11. The Objector through the firm of Sheth and Wathigo Advocates submitted that, the Revoked grant was not considered on merit and was granted on the premise that the administrator Len Bomett has since passed away and not on the basis that the grant had been issued fraudulently.
12. Reliance was placed in *Re Estate of Ngaigow M'Shomba (Deceased)* [2019] eKLR and *Re estate of Prisca Ong'ayo Nande (deceased)* [2020] eKLR to submit that the grant had become useless and was only revoked to conclude administration of the estate not to commence the process afresh.
13. The Objector also argued that Nakuru/Municipality Block 15/209 had been purchased 5 years before the application for revocation of grant and resultant parcels sold to innocent purchasers. That Len Bomett sold his half share and the application has been brought with undue delay. Reference was made to the case of *Re estate of Daniel Muntet Naimodu (Deceased)* Nakuru Succession Cause No. 256 of 1990 where the Court was of the opinion that: “equity aids the vigilant and not the indolent. The delay on the part of the Applicant's is inexcusable, the interest of the estate is shown so much late in time.

Analysis and determination

14. The Applicant is seeking that the title
 - a. Whether the Grant can be confirmed?
 - b. Whether the titles issued pursuant to Nakuru/Municipality Block 15/209 can be cancelled?
 - c. Costs
15. According to Section 76 of the *Law of Succession Act*, a Grant of letters of administration can be revoked under the following grounds:-
 - 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—...
 - e. that the grant has become useless and inoperative through subsequent circumstances
16. The Sale agreement between Len Bomett and Patrick Njoroge Waweru is dated 28th November, 2009. The Grant was issued on 15th of April, 2010. It is not clear why the Applicant was left out of the Sale Agreement. The property sale was commenced even before the Letters of Administration were issued. Secondly the sale was between one Len Bomett as an administrator and Partick Njoroge Waweru to the exclusion of the Applicant.
 17. The Supporting Affidavit in support of the Application for Confirmation of Grant, it is averred that the Co-administrator, the Petitioner herein had since left the country for studies in the United States and he had his authority to swear. No such authority was availed. Secondly Len Bomett averred that he had not commenced the sale process but the agreement indicated that he had already sold the property and received 1 million shillings and needed the confirmed grant for the balance.
 18. The foregoing and other inconsistencies raise more questions than answers. Be that as it may, the process of selling the property began before issuance and confirmation of grant but the transfer was effected one year after the confirmation of grant. It can therefore not be said that the titles were obtained fraudulently.
 19. Looking at the Summons for Revocation of Grant dated 31st May, 2022, the Applicant swore an affidavit in support dated 27th May, 2022 wherein he averred that:-
 2. Certificate of Confirmation of Grant was issued to Len Bomett and Andrew K. Bomett.
 3. That Andrew K. Bomett be the administrator in this cause as Len Bomett is deceased.
 4. That after the sale of parcel of land known as Nakuru/Municipality Block 15/209 to Patrick Njoroge Waweru, Andrew K. Bomett was not given his share of the proceeds.
 5. That the distribution was not fair and Andrew K. Bomett was not involved in the final distribution.
 6. That it is only fair and just that the Certificate of Confirmation of Grant be revoked pending the hearing and determination of this suit.
 20. The Applicant does not in any way stated that, the Grant was defective, or that it was obtained by fraud by making false statement or concealment of material facts or that there were untrue allegations. From the Affidavit, it is evident that the Applicant was aware that Nakuru/Municipality Block 15/209 was going to be transferred to Len Bomett and Patrick Njoroge in equal shares. His main grievance is that after the sale of the property to Patrick Njoroge, he never got his share of the proceeds and that the final distribution was not fair.
 21. The courts attention was not brought to the said illegalities during the application for revocation of the grant but rather 2 years after revocation and the demise of one administrator. The position of this



- case is that the grant became inoperative and was subject to revocation pursuant to Section 76 (e) of the *Law of Succession Act*.
22. As for the cancellation of the titles, Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules grants this Court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the Court process including cancellation of title deeds obtained through fraud or where there has been an abuse of the Court process. The onus is on the Applicant to demonstrate to this Court that the titles were not obtained legally.
23. It is not clear why the Applicant did not move the Court to have the titles cancelled in 2022 if he was aware that the deceased brother had intermeddled and fraudulently dealt with the estate of the deceased and sold half of the property to unknown third parties claimed. It is also suspicious why he never included the prayer of cancellation or the particulars of fraud in his Summons for Revocation of Grant dated 31st May, 2022 if he knew of the existence of fraud.
24. In cases where the law has been complied with, Section 93 of the *Law of Succession Act* affords a level of protection to purchasers. It provides:
- (1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.
25. The Court while addressing the import of Section 93 in the case of *Monica Adhiambo v Maurice Odera Koko* [2016] KEHC 6805 (KLR) held that:
- “...The reality of the situation is that provisions of Section 93 do not validate unlawful acts and what was intended by Section 93 was where a grant is properly and lawfully issued then, Section 93 can come to the rescue of such a purchaser. In my humble view the underlying objective of the *Law of Succession Act* is to ensure that beneficiaries of deceased persons inherit the property.
26. The Court in the above authority was categorical that, one cannot seek refuge under Section 93 but when the transaction has been shown to have been above-board then the purchaser can be afforded the protection of law.
27. Section 26 (1) of the *Land Registration Act* provides as follows:
- “(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-
- a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”



28. The purchase of property from deceased's estate may be invalidated if shown to be either fraudulent and/or upon other serious defects and/or irregularities.
29. As it stands the revoked Grant was confirmed on 7th October, 2010. Looking at the Green Card annexed by the Objector, and which has not been challenged by the Applicant, it confirms that the transmission was done on 24th October, 2011.
30. The revoked grant has not been proved to have been revoked due to fraud or concealment of material facts or illegality. The grounds manifest in the summons for revocation of grant were that the Applicant herein was not given his share of the loot and that one administrator has passed on and that he was not involved in the final distribution. This alone confirms he was aware of the existence of the grant and the intended sale.
31. For that reason, I decline to impute the particulars of fraud or illegality in the sale, transmission and subdivision of Nakuru/Municipality Block 15/209 as pleaded by the Applicant.
32. Furthermore, the Objector has insisted that, he bought his share from the half of Len Kibowen and not the third party. It is not which half went to who between the two transferees.
33. The other issue that the Court has noted is that, the Applicant wants the title Nakuru/Municipality Block 15/209 to revert back to the estate and the same transferred to him solely. What of the estate of the deceased administrator? Were there no beneficiaries of the Len Bomett? The Applicant failed to inform Court of those crucial details and as it stands the Court cannot grant that prayer as is.
34. This Court cannot delve as to faultiness of the revoked grant of representation at this stage of confirmation of a grant issued to the Applicant. By extension the Court cannot therefore not make and order for cancellation of titles which were borne out of Nakuru/Municipality Block 15/209 due to lack of adequate proof of illegality or fraud.
35. In the premise, the Applications dated 24th July, 2024 and the one dated 4th October, 2024 have been found to be devoid of merit and are dismissed with costs to the Objector.

It is so ordered

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 9TH DAY OF MAY 2025

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MOHOCHI S.M.

JUDGE

