



**In re Estate of Daudi Arap Misoi (Deceased) (Succession Cause
106 of 1999) [2024] KEHC 1250 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1250 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 106 OF 1999
JK SERGON, J
FEBRUARY 8, 2024**

IN THE MATTER OF THE ESTATE OF DAUDI ARAP MISOI (DECEASED)

BETWEEN

**ISHMAEL CHELUGET 1ST ADMINISTRATOR
DANIEL CHELUGET 2ND ADMINISTRATOR
JANET CHELUGET 3RD ADMINISTRATOR
GEOFFREY KIRUI 4TH ADMINISTRATOR**

AND

**ALICE CHELUGET 1ST APPLICANT
JOSEAH CHELUGET 2ND APPLICANT
PETER CHELUGET 3RD APPLICANT
JOEL CHELUGET 4TH APPLICANT**

RULING

1. The subject matter of this ruling is summons for revocation or annulment of grant in which the applicant sought for inter alia:
 - i. Spent
 - ii. Spent
 - iii. That the grant of letters of administration intestate made in favour of the Petitioners/ Respondents be partially revoked and/or annulled with respect to Plot No. 38 Commercial Plot within Litein Urban Council Measuring 50 feet by 100 feet.



- iv. That costs of this application be in the cause.
- v. Any other and further relief that this Honourable Court shall deem just and expedient to grant
2. The application is based on grounds on the face of it and the supporting affidavit of Joseah Cheluget with the express consent and authority of the other objectors.
3. The applicant/objector stated that he is a beneficiary of the deceased who was the registered owner of land parcel known as Plot No. 38 Commercial Plot within Litein Urban Council Measuring 50 feet by 100 feet.
4. The applicant/objector stated that the succession cause has been in court since 1999 and the matter was referred for court annexed mediation in order for the parties to agree on the mode of distribution of the deceased's property. The applicant/objector stated that during the mediation proceedings it was agreed that Plot No. 38 Commercial Plot within Litein Urban Council Measuring 50 feet by 100 feet be sold and shared equally to the six households and attached a copy of the mediation report.
5. The applicant/objector stated that they were surprised when they finally got hold of the rectified certificate of confirmation of grant dated 30th June, 2022, the confirmation of grant stated Plot No. 38 Commercial Plot within Litein Urban Council Measuring 50 feet by 100 feet be shared equally between the beneficiaries of the 1st and 2nd house and attached a copy of rectified certificate of confirmation of grant.
6. The applicant/objector contended that the confirmation of grant was to be in tandem with the terms of the mediation settlement agreement and he therefore sought to have the grant partially revoked and property be redistributed equally among the six houses as agreed during mediation.
7. Ishmael Chelugut one of the four administrators of the estate filed a replying affidavit in response to the instant application and stated that they attended the mediation proceedings and that there was no mediation settlement agreement that was adopted and/or borne out of the proceedings that is capable of being enforced and further that the mediation settlement agreement that was annexed by the applicant was never adopted in court nor signed by all the administrators and beneficiaries to the estate.
8. The administrator contended that the applicants were agitating that the mediation settlement agreement be implemented partially with particular reference to the Litein Plot No. 38 and at the same time they were silent on other provisions of the agreement to wit selling of the tea plantation in Kericho/Kimolwet/148 and Kericho/Kimolwet/157. The administrator was adamant that this would create a further rift amongst the households if the partial mediation settlement agreement were to be adopted as some of the beneficiaries would lose land while selling the tea plantation.
9. The administrator maintained that the 1st and 2nd household were given the Litein Plot because they did not benefit from the tea planted by the deceased whereas the 3rd to the 6th household got a share of the tea plantation and it was therefore an injustice for the 1st and 2nd house to be denied shares of the tea plantation only for them to be forced to share the commercial plot with the other households equally.
10. The court directed the parties to file submissions. The respondents complied and filed submissions and grounds of opposition. At the time of writing this ruling the applicants had not filed their submissions and response to the grounds of opposition.
11. The respondents filed grounds of opposition they argued that the instant succession cause has been in court since 1999 and the objector/applicants were aware of its existence and neglected and/or reneged on the court proceedings, the court gave judgment on 18th May, 2018 which culminated



in the certificate of confirmation of grant. Consequently the court issued the rectified certificate of confirmation of grant on 30th June, 2022 pursuant to rule 43 (1) of the Probate and Administration Rules. The respondents contended that no appeal had been lodged since the judgment was issued and further that there was no objection raised to the rectified certificate of confirmation of grant dated 30th June, 2022 and therefore the application dated 2nd November 2023 was misconceived and an abuse of court process.

12. The respondents filed submissions in response to the application dated 2nd November, 2023, the respondents contended that the application was scandalous, frivolous and vexatious and should therefore be struck out they relied on order 2 rule 15 of the Civil Procedure Rules which confers to the court the power to strike out applications which pleadings that disclose no reasonable cause of action or defence in law; are scandalous, frivolous or vexatious or may prejudice, embarrass or delay the fair trial of the action or is otherwise and abuse of court process. The respondent contended that the applicants were therefore undeserving of the reliefs sought.
13. I have considered the pleadings and submissions filed by the parties and I find that the issue for determination by this court is whether to annul and/or revoke rectified certificate of confirmation of grant. I find that the applicants have not established grounds set out in section 76 of the Law of Succession revocation and/or annulment.
14. In any event this court is functus officio upon the confirmation of grant. *In Re Estate of Juma Shitseswa Linani (Deceased) [2021]* eKLR the court held that where a person is unhappy with the process of confirmation of grant, such a person ought not to move the court under section 76 for revocation of grant. Instead, the person should file an appeal against the orders made by the court on distribution or apply for review of the said orders. This is because the court confirming a grant largely becomes functus officio so far as confirmation of the grant is concerned, and cannot revisit the matter unless upon review.
15. I therefore find that the application for revocation and/or annulment of the rectified certificate of confirmation of grant is untenable. I find merit in the grounds of objection raised by the respondents. The instant application is an abuse of the court process. The applicant if well advised has other ways of resolving the issue other than the route of revocation and or annulment of grant.
16. Accordingly, I uphold the grounds of objection dated 1st February, 2024 and proceed to dismiss the application dated 29th August, 2023. Each party to bear its own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 8TH DAY OF FEBRUARY 2024.

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J.K. SERGON

JUDGE

In the Presence of:

C/Assistant – Rutoh

Miss Koech for Objectors

Mungunya for the Fredrick Kitur

Miruka for Christopher Chepkei

