



**In re Estate of Elias Nkoroi (Deceased) (Succession Cause
E007 of 2022) [2024] KEHC 2230 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2230 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
SUCCESSION CAUSE E007 OF 2022**

LW GITARI, J

MARCH 6, 2024

IN THE MATTER OF THE ESTATE OF THE LATE ELIAS NKOROI (DECEASED)

BETWEEN

LOYD NJAGI KIMOTHO 1ST APPLICANT

MOREEN MAKENA 2ND APPLICANT

AND

GINFORD MBUNGU MUTEGI RESPONDENT

RULING

1. Before this Court is the Application dated 16th February, 2022 filed by the Interested Parties herein and seeking the following orders:
 - i. Spent.
 - ii. Spent.
 - iii. That pending the hearing and determination of this application an order of inhibition do issue restricting the registration of dealings in L.R. No. Magumoni/Rubate/491 and L.R. No. Magumoni/Kamwimbi 'A'/361.
 - iv. Spent.
 - v. That the Grant of Letters of Administration issued on 04/11/2020 and confirmed on 06/10/2021 in Chuka C.M. Succession Cause No. 27 of 2019 be revoked.
 - vi. That costs of this application be borne by the Respondent.
2. The Application is supported by the affidavit sworn by Moreen Makena, the 2nd Applicant/Interested Party herein, and premised on the following grounds:



- i. That the proceedings to obtain the grant were defective in substance.
- ii. That the grant was obtained fraudulently by the making of a false statement and concealment from the court of something material to the case.
- iii. That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.

The summons was filed by Basilio Gitonga Muriithi and Associates Advocates.

3. The 2nd Applicant deposed that the Applicants are grandchildren of the deceased herein. That their late father is the son of the deceased herein and that the Administrator herein is not a beneficiary of the estate. It is thus the 2nd Applicant's contention that the said Administrator instituted this cause secretly though the interested parties are the proper beneficiaries of the subject estate.
4. In response to the said Application, the Respondent/Administrator filed a Replying Affidavit sworn on 1st March, 2022. He deposes that the lower court succession cause, to wit, Chuka Chief Magistrate's Court Succession Cause No. 27 of 2019, was originally filed by one Kimotho Elias, a son of the deceased in these proceedings. That the said Elias Kimotho was issued with a Grant of Letters of Administration in respect to the Estate of the deceased on 22nd July, 2019. That Kimotho Elias died on 6th February, 2020 before the Grant issued to him on 22nd July, 2019 was confirmed.
5. The Respondent further deposes that on 29th October, 2020, vide an application dated 2nd September, 2020, the lower court appointed the Respondent as the legal representative of the estate of the deceased on the strength that the Respondent is the nephew of the deceased who had bequeathed him to take care of his family after his demise. That on 30th September, 2021, the Lower Court granted the Respondent a Certificate of Confirmation of Grant to distribute the estate of the deceased as per the wishes of the deceased. That consequently, the Respondent distributed the deceased's estate as per the wishes of the original administrator, one Kimotho Elias.
6. That the 1st Applicant/Interested Party was in Court on 30th September and never raised any objection to the conduct of the distribution of the estate of the deceased. That on the other hand, the 2nd Applicant/Interested Party is the biological daughter of one Humprey Mwiathi Ntiga who is not at all related to the deceased in these proceedings. The Respondent thus deposes that the present application does not meet the threshold provided under Section 76 of the Succession Act to warrant the Grant issued to him being revoked.
7. Counsel for the 2nd Applicant and Counsel for the Respondent recorded a consent dated 3rd May, 2023 to the effect that twenty four (24) points from L.R. No. Magumoni/Rubate/491 be given to the 1st and 2nd Applicants and that the Application dated 16th February be marked as settled. Consequently, vide a Notice of Withdrawal the dated 3rd July, 2023, the 1st Interested Party opted to wholly withdraw his claim as represented in the summons dated 16th February.

Analysis

8. The issue for determination herein is whether the Applicant's application meets the threshold for the revocation of a grant within the meaning of Section 76 of the [Law of Succession Act](#).
9. For avoidance of doubt, of Section 76 of the [Law of Succession Act](#) states as follows:

“76. Revocation or annulment of grant



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)
- (e)”

10. The Applicants had invited this Court to revoke the grant of letters of administration for the reasons that the Respondent instituted this cause secretly by concealing a material fact that the Applicants are the proper beneficiaries of the estate. That though the 1st Applicant is named as a beneficiary, he was not involved in the lodging of the cause and any signatures purporting to be his are forgeries. Further, that the 2nd Applicant was omitted all together though she has an interest in the estate of the deceased.

11. As noted herein above, the 1st Applicant filed a Notice Withdrawing his claim in the present Application whereas the 2nd Applicant and the Respondent have a consensus on the portion of the deceased estate that should be given to the 1st and 2nd Applicants. Considering the developing facts of this case, I agree with submission that the Counsel for the 2nd Applicant that the consent dated 3rd May, 2023 should be adopted as an order of this Honourable Court. Thus for this matter to be settled 24 points out of LR No. Magumoni/Rubate/491 should be given to the applicants though the 1st applicant and his advocate had signed the consent. The respondent had signed the consent.

Conclusion:

- 1. The application dated 16/2/2022 is marked as withdrawn.
- 2. The claim by the applicants’ interested parties be settled as per the consent dated 3/5/2023 that is to say, twenty four (24) points from L.R. No. Magumoni/Rubate/491 be given to Loyd Njagi Kimotho and Moreen Makena

DATED, SIGNED AND DELIVERED AT CHUKA THIS 6TH DAY OF MARCH 2024.

L.W. GITARI

JUDGE

