



In re Estate of Job Kipyegon Selim (Deceased) (Succession Cause 345 of 2015) [2024] KEHC 2448 (KLR) (5 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2448 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 345 OF 2015
JK SERGON, J
MARCH 5, 2024**

IN THE MATTER OF THE ESTATE OF JOB KIPYEGON SELIM (DECEASED)

BETWEEN

JANE CHEROTICH APPLICANT

AND

ESTHER CHEPTONUI CHEBOCHOK 1ST RESPONDENT

PHILLIP SELIM 2ND RESPONDENT

THE PUBLIC TRUSTEE 3RD RESPONDENT

RULING

1. The application coming up for determination is a summons dated July 18, 2023 seeking the following orders;
 - (i) Spent
 - (ii) Pending hearing and determination of this application, the Honourable Court be pleased to grant an injunction restraining the 1st and 2nd respondents either in person or through his servants, employees, agents from further dealing with the assets which constitute the estate of the deceased.
 - (iii) The 1st and 2nd Respondent do give a full and accurate account of all dealings in the estate of the late Job Kipyegon Selim
 - (iv) The certificate of confirmation of grant intestate issued on the 23rd day of October, 2017 be revoked.
 - (v) Costs



2. The application is supported by grounds on the face of it and the supporting affidavit of Janet Cherotich the applicant herein.
3. The applicant avers that she is a biological child of the deceased herein following a fleeting romantic relationship between the deceased and her mother Leah Chepkirui Sitonik.
4. The applicant avers that she was introduced to the 1st and 2nd Respondents by the deceased and had met them on several occasions including the funeral of the deceased.
5. The applicant avers that the deceased adequately provided for her needs until his demise in 2013 and despite the failed marriage with her mother, the deceased had acknowledged her as his child.
6. The applicant avers that upon the deceased's demise, the 1st and 2nd Respondent petitioned for letters of administration intestate without including her as a beneficiary to the estate and that subsequently this court issued a certificate of confirmation of grant, she therefore faulted the respondents for concealment of material facts about the beneficiaries of the estate of the late Job Kipyegon Selim. The applicant was adamant that the confirmed grant had not included all the properties the deceased owned prior to his demise.
7. The applicant avers that she had learnt that the 1st and 2nd Respondents have since applied and been allowed to access 50% of the Group Life Insurance Cover Compensation of the deceased held by the 3rd Respondent to the total exclusion and detriment of the interests of the applicant who is a beneficiary of the estate by virtue of being a biological daughter to the deceased.
8. The applicant avers that the 1st and 2nd Respondents had unlawfully excluded her from benefiting from the deceased's estate and consequently taken exclusive control and administration of the accounts and failed to make reasonable provisions for the other beneficiaries. The applicant was apprehensive that unless the court intervened the estate of the deceased, which was fast depleting, would be spent to her detriment, prejudice and render the applicant destitute.
9. The respondents filed a replying affidavit sworn by Philip Selim he stated that the deceased was his brother and that prior to his demise, he had not informed any of the family members that he had sired a child outside and that the only information they heard was of the adopted daughter. The respondents stated that the applicant was a child to a maternal aunt. The respondents faulted the applicant for failing to produce a birth certificate bearing the deceased's name as her father.
10. The respondents contended that following the demise of the deceased the applicant did not come forward as a child of the deceased and further that upon filing the succession cause in 2015 two years after the demise of the deceased, the applicant did not come forward claiming to be a beneficiary of the deceased.
11. The respondents conceded that some of the property was left out at the time of filing the succession cause as they did not have all the documentation in good time, however, they would be applying for rectification of grant to include all properties of the deceased in the course of time.
12. The respondents were adamant that the applicant is not a beneficiary to the estate and reiterated that the other family members were well aware of the succession proceedings of the estate and were in agreement. The respondents urged the court to dismiss the instant application as it lacks merit.
13. The applicant filed a further affidavit which was sworn by Charles Selim who stated that he is paternal uncle of the applicant and brother to the deceased, he stated that his late brother had introduced them to the applicant and informed them that the applicant is daughter following a fleeting romantic relationship and that the applicant had visited them on several occasions.



14. Charles Selim stated that he learnt that the respondent had received some money belonging to the deceased and contacted the applicant who was caught unaware. He conducted some investigations and learnt that the respondents had filed for summons for confirmation of grant of letters of administration with a proposed mode of the distribution of the estate of the deceased to the exclusion of the applicant. They only included the deceased's adopted daughter and that the certificate of confirmation did not include all assets owned by the deceased. He therefore urged this court to order the inclusion of the applicant as a beneficiary of the estate.
15. I have considered the pleadings by the parties and I find that the issue for this court's determination is whether the certificate of confirmation of grant intestate issued on the 23rd day of October, 2017 be revoked or annulled for concealment of material facts about the beneficiaries of the estate of the late Job Kipyegon Selim. I find that the applicant has not made out a cogent case that she is indeed a beneficiary to the estate of the deceased, she has not furnished this court with a birth certificate bearing the deceased's name as her father in support of her case for revocation of grant. I therefore find that the applicant has not met the threshold for revocation and/or annulment of grant set out in section 76 of the Law of Succession Act. In the case of Albert Imbuga Kisigwa v Recho Kawai Kisigwa, Succession Cause No.158 of 2000, Mwita J. noted thus:
- “(13) 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 wrongdoing 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 the interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”
16. In any event this court upon confirmation of grant is largely *functus officio*. 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.
17. Consequently, the summons dated July 18, 2023 is dismissed but with no order as to costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 5TH DAY OF MARCH, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Mr. Rutoh

Miss Akinyi holding brief for Miss Awiti for Applicant

No Appearance for the Respondent

