



**In re Estate of Mutisya Ngunze (Deceased) (Succession Cause
9 of 1999) [2024] KEHC 4922 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4922 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 9 OF 1999**

G MUTAI, J

APRIL 19, 2024

BETWEEN

ONESMUS MULI MUTISYA APPLICANT

AND

NDULULU MUTISYA 1ST RESPONDENT

HANNINGTON MUTISYA 2ND RESPONDENT

RULING

1. Before the Court is the Summons of Revocation of Grant dated 2nd July 2002. The same was filed by the Applicant. Vide the said Summons he seeks the revocation of the grant issued to Ndululu Mutisya and Hannington Mutisya on the grounds that it was obtained fraudulently by the making of a false statement and by concealment from Court of something material to the case.
2. The Summons was supported by the annexed affidavit of the Applicant. Vide the said affidavit the Applicant deposed that the Petitioners/Administrators did not disclose the full extent of the estate of the deceased. In particular, that no mention was made of the farm property in Mkongani, which property was occupied by the Respondents and other siblings of the Applicant.
3. The grant sought to be revoked is dated 25th October 1999 and was issued to the Respondents. Despite the passage of more than 23 years since it was issued, the grant has never been confirmed.
4. The summons for Revocation of Grant came up for hearing on 4th March 2024. On the said date, only the Applicant was present. Being satisfied that service upon the Respondents was effected and that despite being served, they were absent without explanation, I heard the matter in their absence.
5. In his oral testimony, the Applicant stated that the deceased person was his father. The 1st Respondent sold the deceased land, but he was able to have the sale revoked. He urged that the grant was obtained fraudulently by the Respondent and that, for that reason, it should be revoked.



6. The Applicant filed Written Submissions dated 12th March 2024, which I have considered.
7. Section 76 of the [Law of Succession Act](#) provides for the circumstances under which a grant may be revoked. It states that:-

“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.”

8. As stated in the above-referenced statutory provision, the grant may be revoked either at the instance of a party or on the Court’s own motion. Revocation is a drastic remedy that may not be taken lightly. Even when acting on its own motion, the Court may revoke the grant only in the clearest of cases and for very good reasons.

9. In [Albert Imbuga Kisigwa v Recho Kavai Kisigwa](#) [2016] eKLR EC Mwita, J held that: -

“13. Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a 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.”

10. From the foregoing, it is apparent that where the grant was obtained fraudulently by making a false statement or by concealing something material to the case from the court, it may be revoked. The grant may also be revoked where the administrators have failed to exercise diligence. In the latter case due notice must be given to the administrators.



11. In this matter, it does appear to me that the Respondents did not fully disclose the extent of the deceased's estate. The evidence of the Applicant in Support of this contention was not rebutted and thus remains unchallenged. In any case the Respondents do not appear to be keen to complete the administration of the estate.
12. In the circumstances of this matter, it is in the interest of justice that the grant be revoked.
13. The upshot of the foregoing is that I revoke the grant issued on 25th October 1999. I direct the dependants of the deceased to apply for a fresh grant jointly.
14. Orders accordingly.

DATED AND SIGNED THIS 19TH DAY OF APRIL 2024 AT MOMBASA.

GREGORY MUTAI

JUDGE

In the presence of

Mr Onesimus Muli Mutisya (present);

No appearance for the Respondents; and

Arthur – Court Assistant.

