



**In re Estate of Maritim Arap Bwogo alias Bwogo Maritim Arap
Alias Maritim A Bwogo (Deceased) (Miscellaneous Succession Cause
E007 of 2023) [2024] KEHC 4176 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4176 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS SUCCESSION CAUSE E007 OF 2023**

HM NYAGA, J

APRIL 18, 2024

**IN THE MATTER OF THE ESTATE OF MARITIM ARAP BWOGO ALIAS
BWOGO MARITIM ARAP ALIAS MARITIM A. BWOGO (DECEASED)**

BETWEEN

AMOS KIPYEGON RONO APPLICANT

AND

DANIEL KIPKURUI MARITIM PETITIONER

RULING

1. The Applicant herein moved this court by way of summons dated 26th January, 2023 seeking Revocation of the Grant issued to the Petitioner/Respondent on 14th December, 2020 regarding the estate of Maritim Arap Bwogo alias Bwogo Maritim Arap alias Maritim A. Bwogo, the deceased herein.
2. The application is premised on grounds on its face and supported by an affidavit of the Applicant sworn on the even date.
3. It is the Applicant's case that he is the son of the deceased and through a family meeting held on 19th December, 2022 he was duly appointed to take out grant of letters of administration.
4. It is his deposition that the respondent is his step brother and he took out the grant without knowledge and participation of all the beneficiaries of the estate specifically the beneficiaries from the first house.
5. He asserts that the Respondent procured the said grant of letters of administration fraudulently, through misrepresentation of facts and by failure to obtain the consent from beneficiaries with equal right to apply for the same.
6. He avers that the respondent has disposed part of the estate's land parcel no. Nakuru/Olenguruene/Kiptagich/180 and in a clandestine maneuvers to disinherit other beneficiaries summoned all



- beneficiaries through court summons dated 24th December, 2022 to produce the original title deed of the aforesaid Land.
7. He depones that they stand to suffer irreparable loss by being unjustly disinherited if the order sought is disallowed.
 8. In opposition to the summons, the Respondent swore a replying affidavit on 8th May, 2023 wherein he avers that the summons is frivolous, mischievous, lacking in merit, incompetent, mala fides and abuse of the court process.
 9. He depones that the estate of the deceased comprises two houses and the minutes annexed to the Applicant's supporting affidavit are those of the deceased's 1st house only and as such it is untrue that the whole family resolved to appoint the Applicant as the sole administrator of the deceased's estate.
 10. He depones that before taking out the letters of administration he reached out to the applicant and his siblings from the first house to jointly take out letters of administration to distribute the estate and recover the aforesaid land that had been forcibly occupied by an intermeddler one Robert Kibet Ngeno but they declined on grounds that they had already distributed their share of a land known as Nakuru/Olengurone/ Cheptuech/72.
 11. That consequently he sought chief's assistance who summoned the objectors to a meeting at his office on 3rd August, 2020. However, none of them attended, necessitating the chief to issue him with a letter of introduction in which he listed the applicant and all the beneficiaries of the deceased's estate and directed him to proceed and file a Succession Cause.
 12. He contends that in the petition he listed all beneficiaries of the deceased estate including the Applicant herein and all the estate's properties save for L.R No. Nakuru/Olenguruone/Cheptuech/72 as he did not have a copy of its title deed and Nakuru/Tinet/Sotik 673 as it had been declared to belong to Cheruiyot Arap Sigira by the Land Disputes Appeals Tribunal on 9th October, 2007.
 13. He avers that subsequently he served the objectors summons requiring them to avail the title deed of L.R No. Nakuru/Olenguruone/Cheptuech/72 to enable him to prepare a summons for confirmation of grant but they filed a myriad of application including the present one and falsely accused him of seeking to disinherit them.
 14. He conceded that he inadvertently failed to follow the correct procedure of citing the objectors before filing the petition but instead issued them with summons after commencing the succession process.
 15. He states that upon the objector's raising the present objection he quickly conceded to having the objector being appointed his co-administrator so that they jointly administer the deceased's estate.
 16. He contends that he did not sell or dispose of some parcels of the deceased estate as alleged but has fought to recover one of the assets namely L.R No. Nakuru/Olenguruone/Kiptagich/180 which has been grabbed by an intermeddler one Robert Kibet Ngeno purporting to have purchased the same from his deceased mother and their sickly sister through Nakuru CM-ELC No. 136 of 2020 wherein he sought inter alia eviction orders against the said intermeddler from LR No. Nakuru/Olenguruone/ Kiptagich/180 which forms part of the deceased's estate and the matter is currently pending before court.
 17. He maintains that his intention in filing this petition was to preserve the entire estate and have the same shared equally amongst all the deceased's beneficiaries, and he therefore prays that the grant should not to be revoked but instead the applicant should be appointed as a co-administrator so that they can jointly administer the estate bearing in mind that the estate comprised of two houses.



18. He also prays that this Honourable court issues orders to preserve the entire estate of the deceased and to stop any further intermeddling and pilferage of the same.

Applicant's Submissions

19. The Applicant largely reiterated the averments in his supporting affidavit in his submissions.
20. He posits that the respondent did not comply with the provisions of Rule 26(1&2) of the Probate and Administration Rules which requires notice to be served on all beneficiaries before issuance of the Letters of Administration and Rule 22(1) of the same rules, which required the respondents to cite other beneficiaries to denounce their right before proceeding to apply for the grant.
21. He contends that the Respondent has admitted not including all the properties of the deceased in his petition and argues that his contention that the grant should not be revoked but instead he should be admitted as a co administrator should not stand as allowing it will be tantamount to validating fraudulent activities of the Respondent. In bolstering his position, the Applicant cites the case of in *Lazarus Estates Ltd vs Beatey* (1956), QB 702 and 712 where it was stated as follows:
- “No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud. For this unravels it, vitiates, judgment, contracts and all transactions whatsoever”
22. The applicant posits that the petition herein is defective and beyond redemption. He relies on the case of *Estate of Katana Vuko Wale vs Hamisi Katana Vuko* [2021] eKLR where the court revoked the grant on grounds that it was obtained by making false statement and concealing of material facts as the same had been filed without notice to all beneficiaries and without their consent.
23. On Costs, the Applicant submitted that it follows the event and prays that he should be granted the same for having successfully prosecuted his summons.

Respondent's Submissions

24. The Respondent similarly reiterated the averment contained in his Replying Affidavit in his submissions.
25. He argues that power to revoke or uphold a grant is a discretionary one. For this proposition he relies on Section 76 (a)-(c) of the *Law of Succession Act* and the case of *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa* Succession Cause No. 158 of 2000 cited with approval *In re Estate of the Late Kipkoech arap Tallam* (Deceased) (Succession Cause 9 of 2020) [2022] KEHC 11848 (KLR) (9 May 2022) (Ruling).
26. He submits that the circumstances prevailing in this matter is not suitable for the revocation of the grant for reasons that; revocation of grant will leave the deceased's estate more vulnerable considering there is ongoing suit being CM-ELC 136of 2020 in which he is the plaintiff; the present petition was filed in the year 2020 almost four years now and therefore revoking the grant is not only untenable but will also cause more harm than good to the deceased estate; and there are lawful means available to remedy the procedural anomaly manifest in the present petition to wit appointment of a co-administrator from the 1st house to jointly administer the deceased's estate in accordance with the law.
27. He posits that the case of *Estate of Katana Vuko Wale vs Hamisi Katana Vuko* cited by the applicant is irrelevant for reasons that the appointment of the respondent to administer the estate of the deceased did not confer in him any benefit or advantage as alleged by the Applicant.



28. He urges this court to be guided by Article 159(2) of *the Constitution* of Kenya and to appoint the objector as a co-administrator and issue preservation orders for the entire estate pending the conclusion of the present petition.

Analysis & Determination

29. The main issue for determination is whether the grant issued to the Respondent on 14th December, 2020 should be revoked.
30. Section 76 of the *Law of Succession Act*, Cap 160 of the Laws of Kenya provides as follows:-

“76. 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) 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 has ordered or allowed; 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) e) that the grant has become useless and inoperative through subsequent circumstances.”

31. In *Samuel Wafula Wasike vs Hudson Simiyu Wafula* [1993] LLR (CAK) (Kwach, Omolo and Tunoi JJA) held:-

“A grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court, is liable to revocation.”



32. Rule 22(1) &(2) of the [Probate and Administration Rules](#) provides as follows;

“Citation to accept or refuse or to take a grant

1. A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.
2. Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or of the last survivor of such executors or of any beneficiary under the will.”

33. Rules 26 and 40 (8) of the [Probate and Administration Rules](#) Provides as follows:

“Section 26

1. To any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
2. An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.
3. Unless the court otherwise directs for reasons to be recorded, administration shall be granted to a living person in his own right in preference to the personal representative of a deceased person who would, if living, have been entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.

Section 40(8)

“Where no affidavit of protest has been filed the summons and affidavit shall without delay be placed by the registrar before the court by which the grant was issued which may, on receipt of the consent in writing in Form 37 of all dependants or other persons who may be beneficially entitled, allow the application without the attendance of any person; but where an affidavit of protest has been filed or any of the persons beneficially entitled has not consented in writing the court shall order that the matter be set down as soon as may be for directions in chambers on notice in Form 74 to the applicant, the protester and to such other persons as the court thinks fit.”

34. *In the Matter of the Estate of Ngari Gatumbi alias James Ngari Gatumbi (deceased)* Nairobi High Court Succession Cause No.783 of 1993 it was held:-

“A grant will be revoked where a person who is entitled to apply is notified by the petitioner of their intention to apply and that persons consent to the petitioners’ application is not sought.”



35. It is thus clear from the provisions of Section 76 above that the Court, either on its own Motion or on the application of any interested party and whether the grant of representation has been confirmed or not can revoke or annul a grant if the Court finds that it was unlawfully or irregularly issued.
36. Rules 26 and 40 (8) of the *Probate and Administration Rules* are patent that letters of administration shall not be granted to any applicant without notice to every person entitled in the same degree as or in priority to the applicants.
37. The Applicant herein has asked this court to revoke the grant on three grounds; the Applicant concealed from court that the deceased was polygamous and had two houses; the Applicant did not comply with the provisions of Rule 22 above as they were not cited to either accept or refuse to take the grant yet they are equally entitled to a grant; and the consent of the members of the 1st house was not sought.
38. The Respondent did not controvert the averment that he did not disclose that the deceased was polygamous. Also, he readily conceded that he did not comply with Section 22 of the *Act*.
39. Regarding consent of the members of the 1st House, the Respondent stated that he requested that they jointly apply for letters of administration in order to distribute the estate of the deceased but his request was dismissed prompting him to seek assistance of the chief of Cheptuech Location who summoned the objectors to a meeting at his office but regrettably none of them turned up. This position is not backed by any cogent evidence.
40. I have also perused form P& A 38, and I confirm the name of the Applicant was not included. I cannot ascertain whether the names of his other siblings were included in that consent as none of the parties herein have listed the beneficiaries of each house. Be that as it may, it is clear the respondent did not disclose to court that the deceased was a polygamous and all the beneficiaries of the deceased estate had not consented to him solely applying for letters of administration on behalf of the estate of the deceased. On that ground alone there is sufficient reason to revoke the grant herein.
41. There is no evidence that the Respondent has disposed of L.R No. Nakuru/Olenguruone/Kiptagich/180 as alleged by the Applicant. The Respondent has successfully demonstrated through the annexed plaint that he has lodged a case against the aforesaid intermeddler seeking inter alia for his eviction from this land.
42. The Respondent also acknowledged he excluded L.R No. Nakuru/Olenguruone/Cheptuech/72 and Nakuru/Tinet/Sotik 673 from the list of assets of the deceased estate.
43. I have considered his reasons for the same. The reason for excluding Nakuru/Tinet/Sotik 673 is plausible as it does not belong to the deceased's estate.
44. However, the explanation provided for excluding Nakuru/Olenguruone/ Cheptuech/72 is implausible as he did not state why he did not obtain its title before lodging the petition yet he knew it was in possession of the members of 1st house. In this regard, I find lack of candour on his part.
45. In view of the foregoing, I am satisfied that the grant herein was issued to the Petitioner/Respondent through fraudulent means and/or by non-disclosure of material facts.
46. Consequently, I proceed to revoke the grant letters of administration issued to the respondent by the Chief Magistrate's Court on 14th December 2020.
47. The court is alive that the revocation of the grant will not resolve the substantive issues regarding the estate. Therefore, to expedite the matter, I direct that;



- a. Nakuru Chief Magistrate's Court Succession Cause No. E099 of 2020 be and is hereby transferred to this court for hearing and determination. A new number to be assigned to the transferred file.
 - b. Fresh Letters of Administration intestate be issued in the joint names of the Petitioner herein Daniel Kipkurui Maritim and the Objector Amos Kipyegon Rono, but only subject to them complying with the law. They are therefore directed to jointly file all the requisite forms afresh in the next 30 days. In regards to the Form 38 (consent) the two petitioners to file one jointly but if not possible, each house should file its own.
48. I will give a mention date for compliance with the above orders and subsequent issuance of the fresh grant.
49. There are allegations of intermeddling on part of the land comprising the estate of the deceased. Therefore, I also issue a preservation order of the deceased's estate pending the hearing and determination of this cause.
50. The costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 18TH DAY OF APRIL, 2024.

H. M. NYAGA,

JUDGE.

In the presence of;

Court Assistant Philip

Mr. Bore for Respondent

Mr. Tonge for Applicant

