



**In re Estate of Michael Muasya Mbalu (Deceased) (Succession Cause 382 of 2014) [2024] KEHC 4645 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4645 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 382 OF 2014**

**MW MUIGAI, J**

**APRIL 11, 2024**

**BETWEEN**

**HENRY MURUA MBALU ..... APPLICANT**

**AND**

**KELVIN MBALU ..... 1<sup>ST</sup> ADMINISTRATOR**

**GRACE MBALU ..... 2<sup>ND</sup> ADMINISTRATOR**

**RULING**

**Introduction**

1. The Petition was filed on 6/6/2014 by Petitioners/Administrators Beneficiaries of the deceased's estate. The Petition was gazetted on 28/7/2014 and grant of letters of administration was issued on 7/10/2014 jointly to Grace Mbalu, Kevin Mbalu & Angela Mbalu, widow, son & daughter of the deceased respectively.
2. The grant was confirmed on 9/5/2016.

**Summons For Revocation Dated 16/9/2019**

3. By a Summons for Revocation or Annulment of Grant dated and filed on 16<sup>th</sup> September 2019, Henry Mutua Mbalu the Applicant herein sought the following orders:-
  1. Spent
  2. That the respondents be restrained either by themselves, family members, agents or any other persons claiming under them from using, executing, selling, alienating, subdividing or in any other manner dealing with the property known as Mbooni/Iiani/933 in purported administration of the estate pursuant to the grant issued herein pending the hearing of the application interparties.



3. That the grant of letters of administration confirmed on 9<sup>th</sup> may 2016 be revoked and /or annulled.
4. That the costs of the application be provided for.
4. The Chamber Summons is based on the following grounds:-
  - a. That the grant was obtained fraudulently by making a false statement or by concealment from the court of some material facts of the case by willingly and knowingly indicating that the deceased had no liability
  - b. That the respondent failed to disclose that the applicant was a beneficiary to the deceased estate and that all the property known as Mbooni/Iiani/933 was acquired through an agreement for sale between the deceased and the applicant.
  - c. That the respondents being aware of this position failed to consider his interests and concealed this information and their actions has now disinherited the applicant as a beneficiary of the deceased estate as she has proceeded to transfer and register the same to herself and her children.
  - d. That the respondent fraudulently obtained the confirmation of grant in material non-disclosure and secrecy.
5. The Summons is supported by the affidavit of Henry Mutua Mbalu who deponed that he was a lawful beneficiary of the deceased by virtue of being a liability to the estate of the deceased.
6. He averred that he entered into an agreement with the deceased on 18<sup>th</sup> December 2010 in the presence of their late father and mother and 4 other witnesses of the sale Agreement of the property.
7. The Applicant averred that he proceeded to transfer an amount of two hundred and fifty thousand Kenya Shillings from his Co-operative bank account to the deceased account vide a cheque dated 15<sup>th</sup> December 2020 and that the deceased was taken ill before he had transferred the said parcel of land to him and unfortunately succumbed to the illness and he proceeded to bury him at his land with the full knowledge of his family as they were aware that it had been sold to him.
8. The Applicant further averred that the respondents were citizens of America and it was his fear that they intended to sell the land and that they did not consult or make their intentions known to the immediate family but secretly went ahead to seek letters of administration.
9. That the respondents were subsequently issued with a grant of confirmation in respect of the estate of the deceased on 9.5.2016 and in which they failed to disclose interests of the applicant in the petition.
10. The applicant averred that the actions of the respondents have completely disinherited the applicant as a beneficiary of the estate of the deceased and that he was never consulted or asked to give his consent nor served with summons for confirmation of grant hence was unaware of the proceedings.
11. The applicant averred that the respondents fraudulently obtained the confirmation of the grant in material non disclosure hence misleading the court and that unless the orders sought are granted, he will suffer loss

#### **Replying Affidavit Sworn On 15/10/2019**

12. The Respondents through Angela Kanini Mbalu swore a replying affidavit on 15<sup>th</sup> October 2019 and deponed that the application for revocation was baseless, frivolous, ill-motivated, in bad faith bad in law and an abuse of the court process.



13. She deposed that they followed the right procedure in filing the Succession Cause No 382 of 2014 without any fraud or concealment of any material fact from the court and they were not obligated to inform the applicant since he is neither a beneficiary nor a creditor in the estate of the deceased.
14. .She averred that the deceased never entered into any agreement for sale of any piece of land or the whole parcel regarding to his parcel No. Mbooni/Liani/933 to the applicant at any given time and that the applicant's claim of buying land is null and void as the said transaction could not have been done without the consent of the family members.
15. .She averred that the subject parcel of land was approximately 10 acres and it was unbelievable for the applicant to state that it could have been sold for kshs 250,000.
16. She further averred they were not aware of any transaction and /or sale agreement between the deceased and the applicant as alleged and that at a glance of the sale agreement indicates the same to be a forgery.
17. It was deposed that the alleged agreement was not written by the deceased for she knew his handwriting and it was not the one on the agreement and that the late Musila Mbalu could not have witnessed the sale agreement as he was senile at the time of the said transaction and if it's true that the applicant paid the purchase price then the deceased would have transferred the land to him as the deceased sold several pieces of land between 2012 and 2014 and had them transferred.
18. It was deposed that the deceased was hospitalized for 3 weeks and the objector could have raised the issue of transfer then instead of raising it 5 years after the demise of the deceased and that he was buried in the family grave yard next to his late father and the land is in the name of the late Musila Mbalu and has never been subdivided.
19. The respondent averred that her uncles also denied the land in issue having been sold to the applicant or anyone else.
20. It was averred that the applicant's affidavit in objection to the confirmation of grant was an afterthought and that he was not a rightful beneficiary to the estate of the deceased
21. They urged the court to dismiss the Summons for revocation dated 16 September 2019 be dismissed with costs

#### **Further Affidavit Sworn On 20/11/2019**

22. In his further affidavit Henry Mutua Mbalu deposed that the deceased to whom the estate relates to was his step brother and sold to him the parcel of land Mbooni/Ilani/933 which originally belonged to their late father who sold to the deceased at kshs 16, 500 and therefore selling it at kshs 250,000 was very reasonable.
23. He stated that at the time of the sale, the respondents had relocated to the United States after family differences and only returned to Kenya for his burial thus they were nowhere to be consulted.
24. He averred that he applied for a loan from his work place and requested for a cheque of Kshs 250,000 which was a consideration for the parcel of land and the cheque was written days before the written agreement was executed.
25. He averred that the sale agreement was duly executed by the deceased and bears his signature and identification number and was not a forgery as alleged by the respondents.
26. He further averred that his late father had two parcels of land one in Makueni and another in Machakos and before his death he distributed his properties amongst his 4 houses two wives were given the



parcel in Makueni and two others were given parcels in Machakos after which each house proceeded to subdivide to each beneficiary.

27. That the deceased sold his portion that he had inherited from their father in Machakos and after his death he had nowhere to be buried at and he offered his portion of the family land in Makueni for the deceased to be buried and that they did not have a family grave yard.
28. He averred that he was in possession of the subject land and has fully developed it which the respondents are fully aware of.

### **Applicant's Submissions**

29. On behalf of the Applicant, it was submitted that the main issue for determination was whether or not the applicant had made a case for revocation.
30. Reliance was made to Section 76 of the *Law of Succession Act* which provides for circumstances in which a grant may be revoked or annulled. It was submitted that in any judicial proceedings, parties must make full disclosures to the court of the material facts to the case and that the respondents deliberately concealed to the court that there were dealings between the applicant and the deceased and that it was his view that the failure for disclosure was fraudulently done to defraud the applicant.
31. Reliance was made to the case of *Musa Nyaribari Gekone & 2 others Vs Peter Miyienda & another*(2015) eKLR on the definition of an interested party.
32. Similarly reference was made to the case of *Estate of Julius Ndubi Javan* (2018) eKLR to put emphasis on the duty of a probate court to distribute the estate of the deceased to the rightful beneficiaries and Rule 41(3) of the Probate and Administration Rules.
33. It was submitted that although the mandate of the court is to distribute the net estate of the deceased, the pending ownership claim of the Land Parcel No Mbooni/liani/933 should be determined before the grant is confirmed. That the applicant invites the court to have his interests recognized because he stands to suffer irreparably if the respondents proceed to have the estate distributed as per the already confirmed grant before his case is heard and determine on merit.
34. It was the applicant's final submission that he had demonstrated that the grant was obtained fraudulently by the concealment from court something material to the case and thus urged the court to revoke the grant and afford the applicant an opportunity to have the issue of ownership and legality of the sale agreement determined.

### **Respondent's Submissions**

35. On behalf of the Respondents, it was submitted that there were 10 issues for determination as follows
  - e. Whether the deceased Michael Muasya Mbalu is buried on the applicant's piece of land
  - f. Whether the respondents were issued with a certificate of confirmation of grant on 9/5/2016 to the Estate herein
  - g. Whether the land parcel No. Mbooni/IIani/933 is registered under the names of the respondents/ administrators
  - h. Whether the respondents/ administrators were aware of the alleged sale agreement between the deceased and the applicant over the land parcel No. Mbooni/ Iiani/933



- i. Whether the sale agreement between the deceased and the applicant is a genuine agreement and whether it can be legally enforced.
  - j. Whether the applicant is a lawful beneficiary of the estate of the deceased by virtue of being a liability
  - k. Whether the respondents failed to disclose the interest of the applicant in the petition
  - l. Whether the certificate for confirmation of grant was obtained fraudulently by making a false statement or by concealment from the Court of some material facts of the case by willingly and knowingly indicating that the deceased had no liability
  - m. Whether the applicant has established grounds for revocation of the confirmation of grant issued on 9/5/2016
  - n. Whether the honourable Court has jurisdiction to handle the dispute of ownership of land parcel No. Mbooni/liani/933 currently registered in the names of the respondents
36. On issue a, It was submitted that the claim by the applicant that the deceased was buried in his land was negated by the respondent's witnesses and it emerged that the deceased was buried in the family grave side.
37. .On issue b, it was submitted that it was not disputed that the respondents were issued with a certificate of confirmation of grant on 9/5/2016.
38. On issue c, It was submitted that the land parcel No. Mbooni/liani/933 was registered under the names of the respondents as evidenced by a copy of title deed in the respondents bundle of documents.
39. On issue d, It was submitted that the respondents clearly stated that they were not aware of the alleged sale transaction until the applicant filed the summons for revocation of grant herein and the applicant never made any efforts to make the respondents aware of the alleged sale transaction.
40. On issue e, it was submitted that at a glance of the agreement dated 18/12/2010, it clearly shows that as the time of authoring the agreement, the parcel of land had not been inserted. Also that the applicant has not offered any explanation to any of the discrepancies despite having been pointed out by the respondent
41. It was submitted that there was no valid sale agreement between the deceased and the applicant over the land Makueni/liani/933 that can legally be enforced and that the applicant was looking for a way to unjustifiably enrich himself at a loss to the beneficiaries of the estate of the deceased.
42. .On issue f, it was submitted that there being no valid enforceable sale transaction between the deceased and the applicant over the land parcel no. Mbooni/liani/933, the applicant is not a lawful beneficiary to the Estate of the deceased.
43. .On issue g, the respondents did not fail to disclose the interests of the applicant in the petition since all through until the applicant filed for summons for revocation of grant they were not aware of his claim and he never made any efforts to inform them.
44. On issue h, it was submitted that the respondents followed due legal process in obtaining the certificate for confirmation of grant without any fraud or concealment of material facts.
45. On issue I it was submitted that the applicant had terribly failed to establish any ground for revocation of the certificate of confirmation of grant issued on 9/5/2016.



46. On issue j, it was submitted that the court lacks jurisdiction to deal with an issue touching on ownership of title which should be heard by the Environment and Land Court.
47. It was submitted that the applicant had not disclosed any of the grounds in Section 76 of the Law of Succession Act to warrant the revoking /annulment of the grant and thus there was no evidence of any wrong doing by the respondents or any other reasonable ground to cause the revocation or annulment of the grant herein.
48. The court was urged to invoke its discretionary power and dismiss with cost the application dated 16/9/2016.

### **Determination**

49. The Court considered the pleadings and submissions filed by parties through learned Counsel and the issues that emerge for determination are;

- a. Whether the grant issued on 9<sup>th</sup> May 2016 should be revoked or not ?

50. The Summons is premised on Section 76 of the Law of Succession Act, Cap 160, Laws of Kenya provides;

“

“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) 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.”

51. Hon L. Achode L J. (as she then was ) in Betty Sation Kisoso V Priscilla Jeruto Kisoso, Succession Cause No. 2119 Of 2010, rendered herself as follows:



- (24) On the issue of confirmation of grant, the circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.
- (25) A grant may also be revoked if the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the Estate. See - Matheka and anor v Matheka [2005] 1 KLR pg 456. It may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required. (Emphasis added)
52. The applicant averred that he bought the Parcel of land No Mbooni/Iiani/933 on 18/12/2010 during the lifetime of the deceased, he was/is in possession of the property but the deceased died before he could transfer the sold portion to him and that the administrators were aware of the said sale went ahead to petition for the letters of administration and deliberately failed to disclose that the applicant as the Creditor to the deceased estate.
53. The respondents in their replying affidavit where they denied the knowing that the applicant was sold for the parcel of land by the deceased, denied the existence of any sale agreement and alleged that the sale agreement if existed was a forgery and was thus invalid, null and void.
54. The applicant averred that the respondents were fully aware of the applicant's interest in the estate yet they deliberately concealed to the Court that there were dealings between the applicant and the deceased and that the subject property was occupied by the applicant and that they also failed to disclose that the applicant had an interest in the estate.
55. The court has seen the Applicant's availed documents which include Chief's letter dated 5/9/2019, copy of the sale agreement dated 18/12/2010 in Kamba language and a copy of translation in English, copy of the Banker's cheque dated 23/9/2010 and Copy of Minutes for the meeting held on 29/6/1996. These documents show a proof of proprietary interest in the said parcel of land.
56. The Applicant's application he contends that Land Title No. Mbooni/Iiani/933 was sold to him by the deceased who died before he could effect the transfer of the parcel to him.
57. In the Applicant's Further Affidavit he also alleges that he was/is related to the deceased herein as his stepbrother and the Land Parcel in question is ancestral land belonged to their father. It was subdivided and part sold to the deceased and he bought it from him.
58. This Court's mandate is in administration and distribution of deceased's intestate estate of testate estates and matters connected thereto as outlined in the preamble of the Law of Succession Act which provides as follows;
- An ACT of Parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons; and for purposes connected therewith and incidental thereto
59. Therefore, the estate of the deceased is administered under the Act and where there is no Will distribution of the estate is by and through the Court so that the beneficial interest of the assets that comprise of deceased's estate are transmitted to the beneficiaries of the deceased's estate.



60. It is in exercising the legal mandate of administration and distribution of deceased's estates under the Law of Succession Act that the Court has to hear and determine what assets comprise as the estate of the deceased AND/OR the assets although in the name of the deceased are available for distribution. If any asset has an encumbrance, legal charge, legal possession by another party, a dispute of ownership title use or possession, then this Court will hive it off and not be distributed and instead referred to the appropriate forum for hearing and determination. The appropriate forum being where ownership, title, use or possession is the Environment and Land Court under Article 167 2(b) CoK Section 13 of Environment Land Act.
61. In summary therefore, this Court is clothed with requisite jurisdiction in administration and distribution of the estate of the deceased except where a proprietary interest is established, a dispute over the said asset in the name of the deceased that lays claim other than a beneficial interest, only then will the Court cede the matter to the appropriate forum. As it is there are competing interests allegations and counter allegations with regard to the deceased's estate property Mbooni/Ilani/933.

### **Disposition**

62. ...
1. The application for revocation of grant is dismissed at this stage there are competing claims/ interests to Mbooni/Iiani/933 waiting to be established.
  2. The suit property/Land Parcel Mbooni/Ilani/933 shall revert back in the name of the deceased Michael Muasya Mbalu and remain as part of the estate pending hearing and determination of the competing claims through viva voce evidence in this Court or in Environment and Land Court.
  3. The said Suit Property Land Parcel Mbooni/Ilani/933 shall be preserved under Section 45 of Law of Succession Act.
  4. The Deputy Registrar Machakos High Court to serve the above order to the Land Registrar Machakos to effect the reversion forthwith.
  5. Parties/Counsel to appear before DR MHC to complete filing and exchange of Witness Statements and List of Documents or forward the matter to Environment & Land Court for hearing and determination.
  6. Each party to meet their own costs
  7. It is so ordered.

**RULING DELIVERED SIGNED DATED IN OPEN COURT IN MACHAKOS HIGH COURT ON 11/4/2024 (VIRTUAL/PHYSICAL CONFERENCE)**

**M.W.MUIGAI**

**JUDGE**

In The Presence/absence Of:

No Appearance - For The Applicant

Mrs Nzau - For The Respondents

Geoffrey/Patrick - Court Assistant(s)

