



**In re Estate of Nyamita Owala (Deceased) (Succession Appeal
E006 of 2022) [2024] KEHC 4067 (KLR) (4 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4067 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION APPEAL E006 OF 2022
RE ABURILI, J
APRIL 4, 2024**

IN THE MATTER OF THE ESTATE OF NYAMITA OWALA(DECEASED)

BETWEEN

SOSPETER ODERO LAJA APPLICANT

AND

RODA OCHIENG OGALO RESPONDENT

*(An appeal against the Ruling of Hon. R.S. Kipngeno delivered on the
19th July 2022 in Nyando SPM Succession Cause No. E163 of 2021)*

JUDGMENT

1. Before the lower court, the respondent vide an application dated 23rd December 2021 sought for revocation/annulment of the grant of letters of administration issued on the 6th August 2021 to the appellant on the ground that the appellant was not a beneficiary of the deceased but a relative and further that the appellant failed to include the deceased's daughter as a beneficiary.
2. In response, the appellant filed a replying affidavit dated 21st February 2022 in which he stated that the respondent was not a beneficiary of the deceased's estate and that he was the only surviving relative of the deceased as evidenced by the chief's letter and further as the respondent had not raised the issue of being the deceased's daughter since the deceased's passing in 2003.
3. In its ruling, the trial court found that the respondent was a daughter of the deceased who had been married off and thus left the deceased's home while the appellant lived with and assisted the deceased in his old age as there was no heir nearby to help the deceased.



4. Aggrieved by the trial court's ruling, the appellant filed the amended appeal dated 25th May 2022 on the 26th May 2022 in which she raised the following grounds of appeal;
- i. The learned trial magistrate erred in law and in fact in allowing the respondent's summons for revocation and/or annulment of grant dated 23rd December 2021 against the appellant.
 - ii. The learned trial magistrate erred in law and fact in failing to find that the deceased was not survived by any widow or children other than the appellant who was the deceased's only surviving next of kin.
 - iii. The learned trial magistrate erred in law and fact in failing to find that by virtue of being the only surviving next of kin of the deceased, the appellant was within his rights to apply for letters of administration of the deceased's estate.
 - iv. The learned trial magistrate erred in law and fact in finding that the respondent was the daughter and the only surviving sibling to the deceased. No evidence of the same was tendered to the court hence the decision of trial court was based on no evidence.
 - v. The learned trial magistrate erred in law and fact in failing to consider that there were two conflicting letters from the area chief on the deceased's beneficiaries hence arriving at the wrong findings.
 - vi. The learned trial magistrate erred in law and fact in failing to evaluate the entire evidence on record thereby arriving at wrong findings on the issues before court.
 - vii. The ruling was against the weight of evidence.
5. The parties agreed to dispose of the appeal through written submissions but the respondent did not file any submissions.

The Appellant's Submissions

6. It was submitted that as far as the estate of the deceased was concerned, no beneficiary was left and that he was the deceased's nephew who took care of him until his demise and that the evidence relied on by the respondent that she is the daughter of Gaudensia Anyango was not sufficient proof of maternal relationship but rather that the respondent was an issue resulting from the relationship between the deceased and his sister – in – law whom the deceased inherited.
7. It was submitted that the only evidence that would suffice as evidence of the respondent's relationship to the deceased would have been a birth certificate.

Analysis & Determination

8. This being a first appeal, the duty of this Court is as was stated by the Court of Appeal in the case of *Abok James Odera t/a A. J. Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR, where the Court pronounced itself as follows: -

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give



reasons either way. See the case of Kenya Ports Authority versus Kustron (Kenya) Limited 2000 2EA 212 wherein the Court of Appeal held, inter alia, that: -‘On a first appeal from the High Court, the Court of Appeal should consider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.’”

9. Therefore, this court has to re-reconsider the evidence before the trial court and the submissions of the parties and the law. From a careful perusal of the record of appeal and submissions by the appellant, the legal issue falling for determination is: “Whether the trial court was right in revoking the grant of letters of administration issued on the 6th August 2021 to the appellant.
10. Revocation of a grant is governed by Section 76 of the Law of Succession Act. For avoidance of doubt, 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) 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.”

11. Section 76 above was clearly expounded on by the court In re Estate of Prisca Ong’ayo Nande (Deceased) [2020] eKLR where it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining



the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

12. The respondent invited the trial court to revoke the grant issued to the appellant on the grounds that he had left her out as a beneficiary of the deceased’s estate as she was a daughter of the deceased.
13. In support of her case, the respondent annexed documents, specifically the death certificate for one Gaudensia Anyango which provided that she was her mother.
14. On his part, the appellant in his replying affidavit sworn on the 21st February 2022 in which he denied that the deceased had a wife or child. He deposed that the deceased was his uncle and that he was the only beneficiary of the deceased and that he had been chosen by the community to take care of the deceased in his old age.
15. I have considered the evidence presented before the trial court and I note that in the letter from the Assistant Chief of Jimo East Sublocation dated 22nd March 2021 presented by the appellant in his petition for letters of grant noted that one Gaudensia Anyango who was deceased, was the wife of the deceased.
16. From this evidence, it is clear that the appellant was not truthful in his response to the summons for revocation of grant, that the deceased had no wife. I further note that there is a Certificate of Birth on record registered on the 3rd February 2022 showing that the respondent is the child of the deceased and Gaudensia Anyango. This birth certificate though issued rather recently, is a public document which has not been controverted by the appellant herein.
17. Taking all the above into consideration, it is my finding that the respondent proved before the trial court that she was the deceased’s daughter and from the documents in support of the appellant’s petition for grant of letters of administration, the respondent was not included as one of the beneficiaries of the deceased’s estate.
18. I thus find that the trial court rightfully held that the respondent had satisfied the conditions sufficient to for revocation/annulment of the grant of letters of administration issued on the 6th August 2021 and the subsequent orders confirming the annulled grant are of no consequence.
19. The upshot of this is that I find this appeal lacking in merit and is thus dismissed. I uphold the ruling of the lower court annulling the grant and its confirmation. Any property of the estate of the deceased Nyamita Owala which was registered in the name of the deceased and which was transferred to the



appellant herein or any other third party pursuant to the grant which was annulled shall revert to the name of the deceased Nyamita Owala for the respondent herein to petition for administration.

20. Each party to bear their own costs of this appeal.

21. This file is closed and the lower court file to be returned to the lower court.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 4TH DAY OF APRIL, 2024

R.E. ABURILI

JUDGE

