



REPUBLIC OF KENYA



**William & 4 others v Kandie (Succession Cause 160 of 2013)
[2024] KEHC 4531 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4531 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 160 OF 2013
RN NYAKUNDI, J
APRIL 11, 2024**

BETWEEN

**MARY JERUIYOT WILLIAM 1ST OBJECTOR
ROSEBELA CHROTICH KIMUTAI 2ND OBJECTOR
MAGDALINA JEPTOO 3RD OBJECTOR
JENNIFER JEPKOECH KIMUTAI 4TH OBJECTOR
EVERLYNE JEBER KOECH 5TH OBJECTOR**

AND

GLEDY TANUI KANDIE PETITIONER

RULING

1. The applicant approached this court vide a Summons for Revocation of Grant dated 13th December 2022 seeking the following orders;
 1. Spent.
 2. Spent.
 3. Spent.
 4. That the Grant of Letters of Administration Intestate issued to Gledy Tanui Kandie, the petitioner herein on 27/3/2017 and as regards the estate of Kiptarus Chesaina Kipkemboi (deceased) in this cause and confirmed on 15/3/2018 be and are hereby revoked and/or annulled.
 5. That the certificate of confirmation of a Grant issued on 11/4/2018 in the cause be and is hereby revoked.



6. Spent.
 7. That after revocation or annulment, Mary Jeruiyot William and Jennifer Jepkoech Kimutai Applicants/ Objectors be made administrators of the said estate.
 8. That costs of this application be borne by the Petitioner/ Respondent.
2. The application is premised on the grounds on the face of it and the averments in the annexed affidavit sworn by the 1st objector.
 3. The applicant contends that the petitioner applied for a grant of letters of administration of the estate of the deceased stealthily without informing the other beneficiaries. The crux of the application is that the letters were obtained through concealment of material facts. The applicants urged that they are siblings and children of the deceased and further, that the beneficiaries that the petitioner included were neither children of the deceased nor creditors of his estate.
 4. The application was opposed by a replying affidavit filed by Simion Tanui, the 1st interested party. He deposed that the interested parties are purchasers of parcels of land that form part of the estate and they have been utilising the same. The 2nd – 5th interested parties purchased the land in the presence of the objectors who consented to the agreement and appended their signatures. Further that the 2nd, 3rd and 5th respondents have title deeds issued on their names. He urged that he purchased the parcel after conducting due diligence and finding that the land was registered in the name of the petitioner. Additionally, he stated that the petitioner informed the 2nd-5th interested parties that the sisters had consented to the selling of some portion of the land.
 5. The 1st objector filed a supplementary affidavit in response to the replying affidavit. She deposed that the Interested Parties are neither the surviving children of the deceased nor the creditors of the estate of the deceased herein. She stated that at no given time did the deceased transact any business either over Tittle Nos. Uasin Gishu/elgeyo Border/53 Or Uasin Gishu/elgeyo Border/435.
 6. The 2nd Interested Party's father's estate, that is, Title No. Uasin Gishu/elgeyo Border/52, borders that of the deceased, being Title No. Uasin Gishu/ Elgeyo Border/53 while the 3rd, 4th and the 5th Interested Parties homes are about a half (1/2) a kilometre away from land parcel No. Uasin Gishu/ Elgeyo Border/53. Further, that the Interested Parties knew very well that the two (2) mentioned parcels, that is, numbers 53 and 435 was the estate of the deceased herein.
 7. She stated that it was within her knowledge that the 2nd and 3rd Interested Parties used to lease portions of land contained in parcels number 53 from her late brother Joseph Kimutai Tamil. He passed away on 21.3.2010 and the applicants herein were not opposed to the leasing, but never participated in the same. Additionally, her late brother William Kiprono Chepkuyeng used to lease out to the 3rd Interested Party a portion contained in Parcel Number 53. Similarly, the applicants herein had no problem with that. She pointed out that they were not involved and did not participate regarding the said transaction.
 8. At no given time did the applicants consent to the selling of the estate and they did not know when it took place. The signatures appearing on the annexures marked ST2(a) and ST2(c) against the name Jeniffer (Sic) Kimutai is not that of Jennifer Jepkoech Kimutai, the 4th Objector/ Applicant herein - but a forged. The card No. 0xxx72, purportedly belonging to the said 4th Objector is not hers as her valid ID. Card number is 25xxxx63 which was annexed as MJW -1.
 9. The deponent stated that the purported sale, if indeed they took place, contravened the *law of succession act* and as such the Interested Parties have not acquired any rights over the land. It was upon the demise



of Joseph Kimutai Tanui, that the 2nd and the 4th Interested Parties forcibly fenced off a portion of the estate.

10. The parties filed submissions on the application.

Objector's Submissions

11. Learned counsel for the petitioners reiterated the contents of the supporting affidavit and urged that the petitioner has not rebutted the said averments for they are nothing but the truth. Counsel submitted that at paragraph 4 of Form P&A5 (filed on 18th June,2013), the affidavit in support of petition for letters of administration intestate, the petitioner swore that the following persons survived the deceased;
 - a. True.
 - b. Silas Kosgei Cheruiyot (the 5th interested party) - Not true.
 - c. Mathew Toroitich Tuitoek - Note true.
 - d. Rosebella Kwambai Kiptarus (the 3rd interested party) - Note true.
 - e. Christopher Cherutich Kimeli - Not true.
12. We submit that the said persons Silas, Mathew, Rosebella and Christopher are not persons that survived the deceased as envisaged within the Law of Succession Act. The said persons are not the children of the deceased neither are they related in any way with the deceased, neither did they have any dealings or transactions with the deceased over the said estate. In fact, they are intermeddlers of the deceased's estate. Their actions run afoul of the Law of Succession Act, more specifically Section 45 of the said Act.
13. Counsel urged that, as if that was not enough, in FORM 9 (the affidavit in support of summons for confirmation of grant of administration intestate, sworn by Gladys Tanui Kandie, the petitioner, on 20th November, 2014), the petitioner again gave perjured evidence when he states at paragraph 2 of the said affidavit that the deceased was survived by him and the said intermeddlers. At Paragraph 4 of the said affidavit, he again lied by stating that the said strangers were entitled to the said estate. Further, in paragraph 3 of the affidavit in support of the summons for rectification/ amendment of grant dated 29th October,2015), he lied again when he deponed that all the beneficiaries attended court.
14. On 11th April,2018 as per Form P&A 54- the certificate of confirmation of a grant, the petitioner actualized his deceitfulness when he left out the objectors/ applicants and other beneficiaries by causing the deceased's estate to be distributed to him and the said strangers/intermeddlers- thereby disinheriting the objectors and other rightful beneficiaries. The petitioner and the interested parties are therefore beneficiaries of an illegal process which is untenable in law.
15. Counsel urged that the objectors have proved that:

The proceedings to obtain the grant were defective, in that-
The petitioner/Respondent did not notify and obtain the consent of the objectors and other beneficiaries, who are equally entitled to apply for the grant, when applying for the grant.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, in that-The petitioner stated that the deceased was survived by the so-called interested parties and yet that was not so.The petitioner never disclosed to court that the objectors and other beneficiaries did survive the deceased and yet this is something material to the cause.Obtaining the grant by means of an untrue allegation of a fact essential in point of law to justify the grant, in that-



The petitioner, in FORM 38 (consent to the making of a grant of administration intestate to person equal or lesser priority), indicated that the interested parties herein were entitled to apply for letters of administration to the estate of the deceased herein in equality with him but that nevertheless they were agreeable to the petitioner applying for the letters alone. The interested parties did not survive the deceased herein as envisaged in the Act for they are not the children of the deceased, neither are they related in any way or manner with the deceased. Further, they are not persons beneficially entitled to the estate herein.

16. Counsel urged the court to allow the application, relying on the decision *in the estate of Prisca Ong'ayo Mande (Deceased)* [2020] eKLR. Counsel submitted that the purported replying affidavit, sworn on 3rd November, 2023, the sale agreements produced were entered into after the death of the deceased. Further, this was before the grant had been obtained confirmation of the grant. The said agreements were between intermeddlers of the said estate. What the said persons did was criminal- their actions went ran afoul. Counsel maintained that the interested parties did not purchase any land from the deceased. The deceased died on 21st April, 1997 and the exhibited agreements were entered onto much later. The said persons are not therefore creditors of the said estate.
17. The petitioner did not hold any grant of letters of administration when the said transactions were taking place. Further, the said transactions did not bind the deceased or his estate whatsoever. Since the said transactions were unlawful and unenforceable in law, the interested parties acquired no legal rights whatsoever under the said transactions. Counsel urged the court to allow the revocation of grant and cancel the titles issued to the interested parties.

Respondent/interested Parties' Case

18. Learned counsel for the respondents filed submissions on 15th January 2023. Counsel urged that they are legitimate purchasers of the contested parcels. Notably, certain purchasers, particularly the 2nd and 3rd Interested Parties, have been actively utilizing their respective portions since as early as 2008, all the while in complete awareness of the Objectors' status as Applicants in this matter. Furthermore, the Interested Parties have not been represented as offspring of the deceased, as asserted by the Objectors/ Applicants, their introduction is based on their rightful status as purchasers. Additionally, the 1st interested party acquired the property after conclusion of the succession cause. The 1st interested party did due diligence and was supplied with the certificate of confirmation of grant showing that the petitioner was the administrator. The 1st interested party purchased from the petitioner after conclusion of the succession cause. It is noteworthy that the 2nd to 5th Interested Parties acquired the contested parcel in the presence of the Objectors, who not only consented to the agreement but also affixed their signatures. The documentary evidence substantiating these assertions is attached in the reply to the application.
19. Counsel submitted that the 1st, 3rd and 5th Interested Parties herein already have titles issued in their names after the survey and subdivision process was duly done as evidenced by the copies of Titles attached in reply to the instant application. The Interested Parties also contend that they bought the suit land after conducting due diligence and finding that the land was in possession of the Petitioner herein. The Interested Parties reiterated that since they purchased the parcels of land, they have developed it by fencing, farming maize, constructing houses, and homes and have been living there since.
20. The respondents urged that their title is indefeasible for the reason that the Interested Parties are bona fide purchasers for value without notice of the alleged fraud and/or irregularly obtained grant. Upon



purchase of the suit property by the Interested Parties, the same was registered under the name of Gledy Tanui Kandie, the Petitioner herein and with full knowledge of the Objectors. For

21. that reason, the Interested Parties cannot be faulted for purchasing the suit property from the registered owner at the time of sale. Counsel cited section 93 (1) of the [Law of Succession Act](#) Cap 160 Laws of Kenya and urged that it explicitly safeguards the validity of transfers of any interest in immovable or movable property made to a purchaser. The provision unequivocally states that such transfers remain valid, regardless of any subsequent revocation or variation of the grant of representation, whether it occurs before or after the commencement of this Act. In the context of the present matter, this statutory provision reinforces the indefeasibility of the Interested Parties' title to the suit property. As bona fide purchasers for value, they acquired the property without any notice of alleged fraudulent or irregularly obtained grants. The statute, by design, protects innocent purchasers like the Interested Parties, ensuring that the validity of their acquisition is not affected by subsequent actions, including the revocation or variation of representation.
22. It is the respondent's case that the Objectors herein have failed to prove that the Interested Parties were aware of any fraudulent dealings on the part of the Respondent (If any) concerning the suit
23. land. They relied on the case of [Shimoni Resort-vs- Registrar of Titles & 5 Others](#) (2016) eKLR, where the court was of the view that a property in the hands of a bona fide purchaser would be protected even if it is shown that at some point in the past before the bona fide purchaser acquired the suit property the same had been fraudulently transacted. Counsel cited section 26(1) of the [Land Registration Act](#), in support of the submission that the Objectors/ Applicants have not demonstrated that the Interested Parties had any knowledge that the Title in favour of the Petitioner/Respondent was defective, if at all.
24. The Interested Parties maintained that they carried out due diligence, which includes a search of the property and discovered that the property was registered in the name of the Petitioner herein. Relying on Petition No. 29 of 2012 and Civil App. No.12 of 2013 [Charles Karethe Kiarie & 2 Others -vs- Administrators of Estate of John Wallace Muthare \(deceased\) & 5 Others](#) (2013) eKLR and the case of [Zebak Limited -vs- Nadem Enterprises](#) (2016) eKLR which adopted the definition of bona fide purchaser in the Ugandan case of [Katende -vs- Haridas & Company Ltd](#) (2008) 2 EA174, counsel urged that the respondents had proved they were bona fide purchasers and urged the court to dismiss the application.

Analysis & Determination

25. Upon consideration of the application, responses thereto and submissions, the issues that arise for determination are as follows;
 - i. Whether the grant should be revokedWhether the grant should be revoked

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.”

Section 76 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.”

26. The deceased passed away on 21st April 1997. When applying for the grant of letters of administration, the petitioner listed himself, the 3rd and 5th respondents as surviving the deceased, as paragraph 5 of the form states that the survivors were the sons of the deceased. Admittedly, only the petitioner was a son to the deceased and as such that is the 1st instance of material non-disclosure. The applicants produced a letter from the chief as evidence that they were indeed children to the deceased. The certificate of confirmation of grant was confirmed on 11th April 2018. The sale agreements were entered into in the years 2008, 2010, 2012 and 2018 and it needs no explanation that these parcels were sold long after the death of the deceased.



27. The administrator, in his accounts on the distribution of the estate, explained that 15.5 acres being Uasin Gishu/Elgeyo Border/53 was given to the three sons of the deceased himself. This gives an allusion of a gift inter vivos but the petitioner did not provide any proof. Further, he stated that Uasin Gishu/Elgeyo Border/435 was sold to Christopher Cherutich Kimeli (Deceased) prior to the death of the deceased but he did not provide any evidence of the same.
28. The 1st interested party purchased Uasin Gishu Elgeyo Border/ 53 vide a sale agreement dated 4th December 2018, which parcel was still registered in the name of the deceased thus rendering the allegation that the deceased had given the same property to the three sons moot. The petitioner entered into a sale agreement with the 5th interested party in 2010 to sell him 2 acres from the property known as 045/53 Uasin Gishu Elgeyo Border. The interested parties also produced a sale agreement dated 9th September 2008 where one Joseph Tanui sold 1 acre of the same property to the 2nd interested party. They produced a third sale agreement dated 20th September 2007, where Joseph Tanui & the petitioner sold 2 acres from the parcel no. 045/58 to the 4th interested party. Additionally, the 4th interested party produced a sale agreement dated 17th June 2008 where William Kiprono Chepkiyeng sold 1 acre from the parcel known as Uasin Gishu Elgeyo Border/53 to the 3rd interested party. He then sold half an acre to the same person on 31st March 2012.
29. In my analysis, it is evident that the petitioner included people who were not children of the deceased as the beneficiaries of the estate under the guise that they were creditors of the estate. However, the sale agreements were at no time entered into between the deceased
30. and the purchasers and it is therefore evident that the property was sold after the death of the deceased. As a matter of fact, as at the time of purchase, they were registered in his name. Additionally, the properties were sold before the grant of letters of administration were confirmed. Had the parties entered into a sale agreement with the deceased before his death, their addition as beneficiaries instead of creditors would have been a point to be debated.
31. It is my considered view that the petition for grant of letters of administration was tainted with falsehoods and concealment of material information. The objectors were beneficiaries of the estate and were excluded by the petitioner. There is no evidence produced to rebut the chief's letter which states that the objectors were children to the deceased and as such, it stands valid as prima facie evidence.
32. In the premises, the grant of letters of administration issued to the petitioner and confirmed on 11th April 2018 is hereby revoked for being fraudulently obtained and concealment of material facts.
33. I hereby appoint Mary Jeruiyot William and Jennifer Kipkoech Kimutai as the administrators of the estate by the dictates of Section 66 of the [Law of Succession Act](#) and Rule 73 (1) of the [Probate and Administration rules](#)
34. Interim stay of 15 days granted.
35. Interim stay for 15 days is granted.
36. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 11TH DAY OF APRIL 2024

In the presence of:

M/s Lelei & Co. Advocates

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R. NYAKUNDI
JUDGE

