



In re Estate of Mariko Kiptarus A. Kosgei (Deceased) (Probate & Administration 37 of 2021) [2024] KEHC 5368 (KLR) (21 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5368 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 37 OF 2021**

JR KARANJA, J

MAY 21, 2024

IN THE MATTER OF THE ESTATE OF MARIKO KIPTARUS A. KOSGEI

RULING

1. The application dated 12th May 2023 is made under Sections 45 and 76 of the *Law of Succession Act* and Rules 44, 45 and 49 of the *Probate and Administration Rules*, seeking the basic orders that the Estate of the late Mariko Kiptarus Kosgei (Deceased) be preserved and the four Petitioners/ Respondents be restrained either by themselves, their agents/ servants from intermeddling with the estate property being the parcels of land described as Nandi/Lessos/361 and Nandi/Lessos/362.

The Applicants also seek orders for appointment of new administrators on account of intermeddling by the present Administrators and for revocation of the grant. Further, that the present administrators be ordered to give a full account of the deceased's entire estate.

2. The grounds for the application contained in the chamber summons rather than the summons for revocation of grant however, indicate that the applicants main prayer is for revocation of the grant.

All the three supporting grounds as buttressed by the Applicant's averments in the supporting affidavits deponed by the first Applicant/ Objector alludes to factors which may render a grant revocable.

However, the supporting affidavit at least the copy filed in court with this application is defective for want of attestation and commissioning. The affidavit is also not dated. In that regard, the application is incompetent and improper before the court and ought to be struck out and dismissed on that ground alone.

3. However, regard being given to the substance of the application rather than its form or procedural irregularity the Applicants contend that the grant was obtained fraudulently by the making of false statement and that the proceedings to obtain the grant were defective in substance, contrary to the requirements of the *Law of Succession Act* and the *Probate and Administration Rules*.

The Applicants also contend that the grant was obtained by concealment and/or non disclosure of other beneficiaries and without their consent.



4. The Respondents/ Objectors opposed the application on the basis of the facts and grounds set out in their replying affidavit deposed by the third Respondent on 10th May 2024.

Both parties filed their written arguments/ submission in support of or opposition to the application.

The Respondents' submissions were filed on their behalf by Messrs. Kipkosgei Choge and Company Advocates while those of the Applicants/ Petitioners were filed by Chebii and Company Advocates.

This court considered the application on the basis of the supporting grounds, the court record and the rival submissions and was of the view that the Petition for grant of letters of administration was properly presented in court and processed as provided by the law. The chief's letter dated 4th June 2019 identified the actual beneficiaries of the estate being the deceased's ten children with his one wife Veronica Jeptoo Kosgei (deceased). The Petitioners and the Objectors were among the named beneficiaries. The same beneficiaries were also listed as the deceased's survivors in the petition which was duly gazetted as Gazette Notice No. 9649 of 11th October 2019.

The court after being satisfied that all the pre-requisites had been fulfilled issued the subject grant to the four Petitioner's on the 26th February 2020.

5. The Applicants desire that the grant be revoked but have failed to demonstrate by necessary facts and evidence that indeed the grant ought to be revoked. None of the elements or ingredients stipulated in Section 76 of the *Law of Succession Act* was established and proved against the Respondents by the Objectors.

Other than the question of revocation of the grant, the Objectors seemed to raise issues with the Petitioner's management and/or administration of the estate prior to the confirmation of the grant. However, they have not shown how the Petitioners are intermeddling with the estate when it is clear that the estate property cannot be dealt with in any manner unless and until the grant is confirmed and the estate distributed to all the beneficiaries.

Any issues on the distribution of the property arising prior to confirmation of the grant ought to be resolved by the administrators and the beneficiaries before summons for confirmation of grant are taken out.

6. As the position stands now, the grant remains unconfirmed long past the prescribed period within which it ought to be confirmed. The delay is unreasonable and opens the grant for revocation even on the court's own motion. This therefore means that the parties herein must without further delay agree on the mode of distribution of the estate property and then take out the necessary summons for confirmation of grant at least within the next four (4) months from this date hereof.

Otherwise, the present application is hereby dismissed in its entirety with each party bearing their own costs.

DELIVERED AND DATED THIS 21ST DAY OF MAY, 2024

J. R. KARANJAH,

JUDGE

