



**In re Estate of Martine Asowa Adiang (Deceased) (Succession Cause E007 of 2021) [2024] KEHC 17030 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 17030 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
SUCCESSION CAUSE E007 OF 2021**

**RPV WENDOH, J**

**MAY 8, 2024**

**IN THE MATTER OF THE ESTATE OF MARTINE ASOWA ADIANG  
(DECEASED)**

**BETWEEN**

**MIRIAM ATIENO ASOWA ..... APPLICANT  
APPLYING AS A REPRESENTATIVE OF BENARD ODOYO ASOWA, BOAZ  
ONYANGO ASOWA, SAMUEL MBAGO ASOWA, ANNA ANYANGO, REGINA  
ACHIENG & CLARA ATIENO**

**AND**

**ALOYS WASAGA ASOWA ..... RESPONDENT**

**RULING**

1. This cause relates to the estate of Martine Asowa Adiang Achieng (deceased) who died instated on 15/2/1981. This ruling is in respect of the Summons for Revocation of Grant dated 26/04/2021 (hereinafter referred to as ‘the Summons’). The Summons was filed by Miriam Atieno Asowa (hereinafter referred to as ‘the Applicant’) on 30/04/2021.
2. The Applicant was the third wife of the deceased Martine Asowa Adiang while the other Applicants are the sons and daughters of the deceased and the Respondent’s siblings.
3. The Summons was based on 3 grounds found on the face of the Summons and supported by the Affidavit sworn by the Applicant on 26/4/2021. The Applicant avers that the Respondent filed a Succession Cause No 104 of 2014 in Rongo and fraudulently obtained a Grant by making untrue allegations, false statements and concealing material facts; that the said proceedings proceeded unprocedurally. that the Respondent has since stopped her from cultivating the portion of the deceased’s land she has been using since he had succeeded all of the deceased’s estate. Further, that the Respondent concealed from the court that the deceased was also survived by daughters namely; Anna



Anyango, Regina Achieng and Clara Atieno all of whom have equal rights to inherit a portion of the deceased's estate.

4. It is the Applicant's contention that none of the other family members of the deceased were aware of the said succession proceedings and neither did they agree on the Respondent becoming the Administrator of the estate of the deceased; that the consent purportedly signed by all family members of the deceased was a forgery. She thus maintains that there is need to revoke the said Grant and order that fresh proceedings be conducted in respect to the estate of the deceased to allow for a just and fair distribution of the said estate among all the beneficiaries of the deceased.
5. The Respondents despite being duly served with the Summons, did not file any Replying Affidavit in response thereto or submissions. The Summons herein will therefore be deemed unopposed.
6. Directions were taken and the Summons was disposed of by way of written submissions and only the Applicant filed her submissions, which I have read and considered.
7. I have carefully perused the Summons and the submissions filed herein and it is my considered opinion that the main issues arising for determination is whether the grant was obtained fraudulently, with concealment of material facts and with misrepresentations and consequently, and whether the Certificate of Confirmation of Grant issued to the Respondent should be revoked in the circumstances.
8. I have carefully perused the lower court record in Rongo Succ. Cause No 104 of 2014; particularly the Summons for Confirmation of Grant dated 27/4/2014 and the Affidavit in support thereof.
9. On 30/4/2014, the Respondent made an Application dated 27/4/2014 seeking the Confirmation of Grant. At paragraph 10 of his Affidavit in support of the said Summons, he indicated that the same be confirmed notwithstanding that the 6-month statutory period had not lapsed since the filing of the said Summons. The court went ahead and confirmed the said Grant on the 30/4/2014.
10. Section 71(3) of the Law of Succession provides the circumstances in which a court may proceed to Confirm a Grant before the lapse of the 6-month period. There was no Application seeking the court's indulgence in confirming the Grant before the statutory period. Instead, the Respondent only included the prayer as part of the Affidavit in support of the Summons for Confirmation of Grant. There was no demonstration of the grounds outlined under section 71(3). In my considered view, the grant was confirmed unprocedurally. Be that as it may, I will proceed to analyze the proceedings on merit.
12. I have also noted that from the said Affidavit in support and the annexed Chief's Letter dated 09/03/2014, the Respondent did not disclose and name all the children of the deceased particularly the daughters. Some of the Applicants in the instant case were left out from the said proceedings. It is also unclear on what grounds one, Benter Anyango Aloys was included in the proceedings as a direct beneficiary of the deceased's estate when in fact she is a grandchild of the deceased.
13. Section 76 of the Law of Succession Act provides for the grounds precedent to revocation of a Grant. In expounding the grounds under section 76 of the Act, the court in the case of In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR 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.”

14. Guided by the above decision and taking the facts of the case in their totality, it is the finding of this court that the grant was obtained unprocedurally and irregularly. The manner in which the grant was issued was preceded by fraud and concealment of material facts or misrepresentations on the part of the Respondent. The Respondent did not fully comply with the provisions of law. The daughters of the deceased who are also beneficiaries to the estate were not included as part of the beneficiaries.
15. Further, the proceedings to obtain the grant were defective in substance. It is imperative to point out that even though in the lower court, the respondent presented the Consent dated 7/5/2014, wherein the beneficiaries listed therein purportedly consented to the mode of distribution, there is no evidence that any of the said beneficiaries were called upon to attend Court accordingly on the date of confirmation of the Grant. Further, the date on the said Consent is significantly different. Whereas the said consent is dated 7/5/2014, the Grant was confirmed on 30/4/2014. Was the consent obtained after the fact as an afterthought or to conceal some mischief?
16. Further, I have also noted at paragraph 8 and 9 of the Affidavit in Support for the Summons for Confirmation of Grant sworn on 27/4/2014 that the Respondent averred that they had a family meeting and made a resolution that part of the estate be sold and the proceeds thereof be used to offset the fee balance of Kshs. 48,433/= of one Benter Anyango Aloys, a Form one student at Nyamasare Girls Secondary School. From a perusal of the Chiefs Letter dated 19/03/2014, the said Benter Anyango Aloys has not been included as one of the beneficiaries of the estate. It is therefore not clear on what grounds/ basis or circumstances that the said Benter Anyango Aloys directly benefitted from the estate of the deceased when she was not a direct beneficiary of the estate thereof.
17. Consequently, having established that some of the grounds outlined under section 76 have been proved, it follows that the Certificate of Confirmation of Grant issued to the Respondent on 30/4/2014 should be revoked.
18. In the premises, it is the finding of this court that the Summons for Revocation of Grant dated 02/05/ is merited and the I will proceed to make the following final orders: -
  - a. The Certificate of Confirmation dated 04/05/2017 be and is hereby revoked and set aside.
  - b. The three houses of the deceased to agree on who the administrators will be and file summons for confirmation within 45 days.



- c. In the event they do not agree on distribution, each house to file their own proposed mode of distribution.
- d. Costs of the Summons to be borne by the Respondent.
- e. Mention on 10/7/2024

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT MIGORI THIS 8<sup>TH</sup> DAY OF MAY, 2024.**

**R. WENDOH**

**JUDGE**

Ruling delivered in open Court and in the presence of: -

Miriam Atieno for the Applicants present

No appearance for the Respondent.

Emma/ Phelix - Court Assistants

