



**Keino (Acting as the Personal Representative of the Estate of the
Late Norman Kiptum Keino - Deceased) v Kemei (Civil Appeal
E008 of 2023) [2024] KEHC 4942 (KLR) (14 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4942 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CIVIL APPEAL E008 OF 2023
JR KARANJA, J
MAY 14, 2024**

BETWEEN

**NELLY JEMELI KEINO APPELLANT
ACTING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE
LATE NORMAN KIPTUM KEINO - DECEASED**

AND

GRACE CHPKEMBOI KEMEI RESPONDENT

*(Being an appeal from the Judgment of Honourable D. A. Ocharo, (Principal Magistrate)
delivered on 12th April 2023 in Kapsabet CM Succession Cause No. 9 of 1987)*

JUDGMENT

1. The appeal is against the judgment of the Principal Magistrate in Kapsabet CM Succession Cause No. 9 of 1987, involving the Estate of the late Samuel Gimnyigei Gimnyige (deceased). The necessary grant of letters of administration intestate respecting the estate was issued on 19th May 1988 to Norman Kiptum Keino, now deceased and Grace Chepkemoi Kemei, the Respondent herein.
2. The grant was later confirmed and a certificate of confirmation of grant dated 21st September 1989 was issued. The Estate property being Land Parcel No. Nandi/Ndudule/3xx was thus distributed to the Respondent as a beneficiary of the estate. She was also a co-administrator of the estate together with the late Norman Kiptum Keino, who reportedly passed away in the year 1993 after conclusion of the entire succession exercise.
3. After a period exceeding twenty (20) years since the confirmation of the grant, Nelly Jemeli Keino, the Appellant herein took out summons for revocation of the grant dated 5th October 2015 and filed herein on 7th October 2015. However, the application was withdrawn by the court on the 10th December 2018, thereby giving the parties the leeway to make fresh application or move the court as appropriate.



4. Ironically, the application seemed not to have gone away as expected and was instead somehow reinstated for hearing and disposal notwithstanding that a fresh application for revocation of the grant dated 7th January 2019 was filed by the same Applicant.

Indeed, the impugned judgment delivered on 12th April 2023, relates to the application for revocation of grant dated 5th October 2015, in which the Applicant/ Objector was the Appellant herein. She brought the application in her capacity as the surviving widow of the deceased Petitioner/ Administrator, Norman Kiptum Keino.

5. The trial court heard the application by way of oral or “viva-voce” evidence after which it delivered the impugned judgment in the terms that follow: -

“The only issue so far as I can see is whether the Objector has made out a case to warrant the grant herein to be annulled. It is not in issue that the Objector and the Respondent herein are sisters. The Petitioner Norman Kiptum Keino (now deceased) was the husband of the Objector. He petitioned for issue of grant of letters of administration to the Estate of his father Samwel Gimnyigei which were issued to him on 19th May 1988. He then filed summons for confirmation dated 28th June 1989 and had the same confirmed on 21st September 1989. The mode of distribution of the estate was that the Respondent Grace Chepkemboi Kemei was registered as the sole proprietor of the Estate i.e. Nandi/ Ndulele/3xx. From the evidence adduced and which I find credible the deceased Petitioner had sold the Estate openly and following due process to the Respondent herein. There is evidence that the Objector herein was aware of the transaction leading to the sale of the estate to the Respondent.”

6. The trial court, in conclusion further slated that: -

“The Objector waited until late of more than 26 years to challenge the validity of the grant. I find no fraud in the issuance of the grant. I equally find no fault in the manner in which the late Norman Kiptum Keino, the Petitioner in this matter disposed of the Estate by way of sale to the Respondent. The application lacks merit and the same was filed after an inordinately lapse of long period. I dismiss it with costs to the Respondent.”

7. The Appellant was aggrieved by the trial court’s decision and judgment, hence preferred the five (5) grounds of appeal set out in the memorandum of appeal dated 9th May 2023 and filed herein on 10th May 2023 in which the Appellant faults the trial court for dismissing the impugned application without good reason and sufficient evidence and on the basis of time limit, yet in an application for revocation of grant there is no set time limit. The Appellant therefore prays for the appeal to be allowed with costs.
8. The Respondent opposed the appeal which was canvassed by way of written submissions. Both the Appellant and the Respondent filed their written submissions through Wambua Kigamwa & Company Advocates and Limo R.K. & Company Advocates, respectively. This court considered the rival submissions as against the appeal and its supporting grounds as well as the file record. Its duty was to revisit the evidence and draw its own conclusions bearing in mind that the trial court had the benefit of seeing and hearing the witnesses.
9. Accordingly, the Plaintiff/ Appellant’s evidence as supported by that of her witness, Grace Busienei (PW2) and Judith Cherotich (PW3) was duly considered against that of the Respondent (DW1) and her witness Japheth Kipchirchir Chumo (DW2). It was clear that the obligation to establish the



necessary ingredients for revocation of grant as stipulated in Section 76 of the *Law of Succession Act* lay with the Appellant/ Plaintiff/ Objector, but this was never discharged.

10. The Appellant (PW1) did not lead credible and sufficient evidence to establish and prove on a balance of probabilities that the impugned grant was fraudulently obtained by false statements, misrepresentation and/or concealment of material facts.

On the contrary, the Appellant succeeded in showing that the grant was regularly and lawfully obtained by the deceased Petitioner and the Respondent. That, there was no particular objection to the two being made the administrators of the Estate nor distribute the Estate in the manner suggested in the summons for confirmation of the grant.

11. A wholesome consideration of the evidence lay it bare that the Appellants objection to the grant and the distribution of the Estate was prompted not by the validity and/or invalidity of the grant or the accruing certificate of confirmation of grant, but by a dispute relating to ownership of the Estate after the distribution process had long been completed. This explains the long delay in bringing the application which was also a pointer to lack of good faith on the part of the Appellant/ Plaintiff/ Objector.

12. Again, distribution of the Estate having long been completed the estate was spent and any dispute arising thereafter on the ownership of the estate property or part thereof was no longer within the jurisdiction of a Succession Court but a Land and Environment Court.

Although the *Law of Succession Act* does not provide for time limit in filing an application for revocation of grant, the same ought however, be done within reasonable time given that whatever is being sought is a discretionary equitable remedy.

13. The Maxim “delay defeats equity” did aptly apply in the context of this matter and the impugned application for revocation of grant which could not in the circumstances succeed even on account of time only.

Besides, Section 58 of the *Interpretation and General Provision Act* (Cap 2 Laws of Kenya) provides that: -

“where no time is prescribed or allowed within which anything shall be done such thing shall be done without unreasonable delay, and as often due occasion arises.”

14. The delay of twenty two (22) or twenty six (26) years in bringing the impugned application was to say the least, most unreasonable and grossly inequitable.

The foregoing reasons militated against exercise of the court’s discretion in favour of the Appellant not only in the trial stage but also this stage of appeal. This means that this court is in agreement with the impugned judgment of the trial court and sees no factual or legal reason to interfere with it.

15. It is in-structure to note that the main prayer in the record of appeal presupposed that the appeal was in relation to the summons for revocation of grant filed herein on 8th January 2019 rather than the summons dated 5th October 2015. The competence of the appeal was therefore doubtful. The reinstatement by the court of the application dated 5th October 2015 for hearing meant that the application filed on 8th January 2019 was rendered obsolete and non-existent for purposes of determination.

16. All in all, the appeal was devoid of meritable grounds capable of being sustained and is therefore dismissed with costs to the Respondent.



DELIVERED AND DATED THIS 14TH DAY OF MAY, 2024.

J. R. KARANJAH,

JUDGE

