



REPUBLIC OF KENYA



**In re Estate of Philip Kimaru Boito Tegutwo (Deceased) (Succession Cause 163 of 2002) [2024] KEHC 7239 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7239 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 163 OF 2002**

**JK SERGON, J  
JUNE 19, 2024**

**BETWEEN**

**PETER KIBET NGENO ..... APPLICANT**

**AND**

**JOSHUA KIPKORIR NGENO ..... RESPONDENT**

**RULING**

1. The application coming up for determination is a summons for revocation and/or annulment of grant dated 1st August, 2022 seeking the following orders;
  - (i) Spent
  - (ii) That pending the hearing and determination of summons for revocation of grant this Honourable Court be pleased to issue a prohibitory order against the Respondent restraining either by themselves, their servants, employees, agents, assignees, representatives or nominees and/or any other person or persons acting on their own instructions from entering into, trespassing, digging, cultivating, farming, destroying crops, constructing any structures, planting trees, or erecting any building, selling, disposing or in any way carrying out any dealings unto and use of land parcels known as Kericho/Kapkatet/2963, Kericho/Kapkatet/2964, Kericho/Kapkatet/2965, Kericho/Kapkatet/2966, Kericho/Kapkatet/2967 and Kericho/Kapkatet/2896 until this matter is heard and determined.
  - (iii) That the grant issued to Joshua Kipkorir Ngeno and Rachel Chepngetich Ngeno on 5th October, 2003 be revoked and/or annulled.
  - (iv) That the grant of letters of administration made to Joshua Kipkorir Ngeno and Rachel Chepngetich Ngeno on 5th October, 2003 be revoked on the following grounds; (a) That the same was obtained fraudulently by means of untrue allegation of fact (b) That the proceedings to obtain the grant were defective in substance. © That the grant was obtained by untrue



allegation of a fact essential in a point of law by the 1st Respondent fraudulently and without the knowledge of the rest of the family signed letters of administration devoid of the family's consent. (d) That letters of administration were signed by one Sally Koskei who is a stranger to our family. (e) That the grant of letters of administration was obtained by concealment of material facts.

- (v) That pending the hearing and determination of this application, this Honourable Court be pleased to set aside order and/or orders issued by this Honourable Court.
  - (vi) That the costs of this application be provided for.
2. The application is supported by grounds on the face of it and the supporting affidavit of Peter Kibet Ngeno the applicant herein.
  3. The applicant avers that the deceased herein died on 29th March, 2000 and Joshua Kipkorir Ngeno together with Rachel Chepngetich Ngeno obtained the grant of letters of administration on 27th February, 2003 and further that the said grant was confirmed and a certificate of confirmation of grant issued on 5th October, 2005.
  4. The applicant avers that the estate of the deceased consists of two houses, the respondent being the eldest son amongst other siblings in the first house whereas the second house is made up of the applicant amongst other siblings.
  5. The applicant avers that at the time confirmation of grant was made, some of the beneficiaries including the applicant herein were minors and that the respondent and one Rachel Chepngetich Ngeno were to hold and administer the estate in trust at the behest of the beneficiaries.
  6. The applicant avers that upon initiating the succession process, the respondent proceeded to procure signatures of the beneficiaries and forged the signature signed against one Sally Ngeno.
  7. The applicant avers that the respondent failed to indicate to this Court that the estate of the deceased was to be shared equally amongst the two houses. The applicant avers that the said actions were tantamount to concealment of material facts to the instant succession cause thereby rendering the entire process of obtaining the grant as defective.
  8. The applicant faulted the respondent for intermeddling with the estate of the deceased, that upon filing the letters of administration intestate and before the confirmation of grant proceeded to arrogate to himself a portion of the estate which he has since disposed of by way of sale.
  9. The matter came up for inter partes hearing on 25th May, 2024. Mr. Kipleting Learned Counsel for the applicant made oral submissions. The Learned Counsel stated that the respondent had not filed a response to summons for revocation and/or annulment of grant despite having been duly served. The Learned Counsel urged this Court to allow the summons for revocation and/or annulment of grant. There was no representation on the part of the respondent.
  10. Having considered pleadings, the sole issue for determination by this court is whether to revoke and/or annul the certificate of confirmation of grant dated 5th October, 2005 The answer is in the negative. The issue for determination herein is whether the Applicant's application meets the threshold for the revocation of a grant within the meaning of 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 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. In the instant succession cause the applicant invited this Court to revoke the grant of letters of administration for the reasons that respondent proceeded to procure signatures of the beneficiaries and forged the signature signed against one Sally Ngeno. The applicant has not offered this court any evidence to prove his assertion.
13. The applicant avers that the respondent failed to indicate to this Court that the estate of the deceased was to be shared equally amongst the two houses and therefore that failure to disclose was tantamount to concealment of material facts and therefore the procedure culminating in the confirmation of grant was defective, the applicant has not furnished this Court with evidence to support this claim. A cardinal rule of evidence is clear that “He who alleges must prove”. The same was enunciated by Justice Majanja in *Evans Otieno Nyakwana v Cleophas Bwana Ongaro* [2015]eKLR when he said that: “...As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue.” That is the purport of section 107 (1) of the *Evidence Act* (Chapter 80 of the Law of Kenya), which provides as follows: “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist...”
14. In *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No.158 of 2000 it was stated as follows; “The power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order for revocation or annulment of a grant. And when a court is called upon to exercise this discretion, it must take into account the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
15. Consequently, the summons for revocation and/or annulment of grant dated 1st August, 2022 is hereby dismissed with no orders as to costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF JUNE, 2024.**

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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Kipleting for the Applicant

No Appearance for the Respondent

