



**In re Estate of Kipsaina A Muge (Succession Cause E041 of 2022)  
[2024] KEHC 8846 (KLR) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8846 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E041 OF 2022**

**JRA WANANDA, J**

**JULY 19, 2024**

**IN THE MATTER OF THE ESTATE OF KIPSAINA A. MUGE**

**BETWEEN**

**DANIEL KIPKOECH SAINA ..... 1<sup>ST</sup> OBJECTOR**

**WILLIAM KIPTUM KURESHA ..... 2<sup>ND</sup> OBJECTOR**

**AND**

**STANLEY KIPLAGAT ..... PETITIONER**

**RULING**

1. The background of this matter is that the deceased, Kipsaina A. Muge, died intestate on 31/03/2008. On 1/04/2022, the Petitioner, through Messrs Wagara Koyoko & Co. Advocates, describing himself as a son of the deceased, filed an Application seeking to be granted Grant of Letters of Administration *ad Litem*. The grounds he alleged for seeking the Grant was that it was for the purposes of securing the estate by filing a case for injunctive orders against people whom he alleged, had started intermeddling with the estate. He attached a consent signed by 3 persons whom he listed as his siblings (survivors of the deceased) authorizing the Application and also a letter from the Chief listing the survivors.
2. The Petition came up before Hon. Ogola J under Certificate of Urgency on the same date and the Judge, on the same date, allowed the Petition. The formal Grant *ad Litem* was then issued by the Court on 4/01/2022 limited to the purpose only of filing suit.
3. Now before the Court for determination is the Application brought by way of the Summons dated 2/08/2023 and filed by the Applicants. The Summons is filed through the same Messrs Bulbul Koitui Barmao & Co. Advocates and the prayers sought are as follows:
  - i. .... [Spent]



- ii. That the Limited Grant of Letters of Administration *ad Litem* granted on the 14<sup>th</sup> April 2022 issued to Stanley Kiplagat be revoked or annulled.
  - iii. That the costs of this Application be provided for.
4. The Application is expressed to be brought pursuant to Section 76 of the *Law of Succession Act*. It is then premised on the grounds stated on the face thereof and is supported by the Affidavit jointly sworn by the Applicants.
  5. In the Affidavit, the Applicants deponed that they are the sons of the deceased, that they were appointed Administrators of the estate herein on 24/05/2022 in Eldoret Chief Magistrate's Succession Cause No E094 of 2022 on 22/03/2022 and Letters of Administration confirmed on 14/06/2022 although there is an active Objection filed by a beneficiary. They deponed further that the Limited Grant was issued in this Cause after the Applicants had already filed Eldoret Chief Magistrate's Succession Cause No E094 of 2022 on 22/03/2022. According to the Applicants therefore, the limited Grant herein was issued on the basis of untruthful assertion that the Petitioner was the son of the deceased yet he is not related at all to the deceased and thus misled the Court.

### **Replying Affidavit**

6. The Summons is opposed by the Petitioner vide his Replying Affidavit filed on 26/09/2023 through his new Advocates, Anassi Momanyi & Co. Advocates. In the Affidavit, he deponed that he is a beneficiary and a dependant of the estate and thus, one of the persons allowed to apply for a limited Grant. He deponed further that the Applicants are intermeddling with the estate and the instant Application is part of their scheme to continue with such intermeddling. He also deponed that upon obtaining the Grant, he has filed a suit, Eldoret ELC No E026 of 2022 and that the instant Application is a calculated move to frustrate the ELC suit so as to aid the persons intermeddling, and that it is on account of the Applicant's failure to protect the deceased's estate that he sought the limited Grant.
7. He denied that there was fraud or false statement or concealment of material facts when he applied for the limited Grant and also claimed that in seeking a limited grant, the involvement of all the beneficiaries is not necessary as the same is a special purposes vehicle and that the issuance of a full grant does not preclude one from seeking a limited Grant to protect the estate where the Administrators have failed to discharge their responsibility. He then deponed that he is related to the deceased and he is not therefore a stranger to the estate and that the failure by the Chief to include his name in the list of beneficiaries does not mean that he is not a member of the family of the deceased.

### **Hearing of the Application**

8. The Application was canvassed by way of written Submissions. The Applicants filed their Submissions on 2/08/2023 while the Petitioner filed his on 15/01/2024.

### **Applicants' Submissions**

9. The Applicant's Counsel submitted that the full Grant of Letters of Administration to the estate of the deceased was issued to the Applicants jointly on 24/05/2022 in Eldoret MCSUCC Cause No 94 of 2022, that Section 3(1) of the *Law of Succession Act* defines an Administrator as a person to whom a Grant of Letters of Administration has been made under the Act and that under Section 82 of the same Act, personal representatives have powers to enforce, by suit or otherwise, all causes of action which by virtue of any law, survive the deceased or arising out of his death for his personal representative. Counsel submitted that the Petitioner does not therefore have any authority to bring any action against the Applicants. He cited various authorities.



10. Counsel submitted further that whoever seeks equity must do so with clean hands, that the fact that the Petitioners moved this Court without bringing to the attention of the Court that there was already a Grant given and confirmed was grave and the Court should not entertain him. He submitted further that while Section 54 and 55 of the Law of Succession Act allows the Court to give limited grants, in the case herein, the limited Grant was extinguished once full Grant was issued to the Applicants. He contended further that the Petitioner also failed to disclose to the Court that he is not a beneficiary to the estate as he is not a child of the deceased. According to Counsel, the Petitioner is a busybody and an intermeddler and prayed that the Application be allowed with costs.

### **Petitioner's Submissions**

11. On his part, the Petitioner's Counsel submitted that the deceased was his father and also father to the Applicants, that by the time that the deceased died, he had not sold any portion of his estate to anybody but after the deceased's demise, the Applicants illegally sold a portion of the estate to one Kiprotich David Rutto. He submitted that such sale constituted acts of intermeddling with the estate and that it is this action that prompted the Petitioner, who is a younger brother to the Applicants, to file the case against the purchaser who has since been illegally put in possession of the portion of the parcel of land. He contended that the suit is Eldoret ELC Case No E026 of 2022 and that the Applicants' intention in filing the instant Application is to protect their actions and to defeat the suit. He contended further that the Applicants have concealed the fact that the Grant issued to them is the subject of challenge as there is an Application seeking revocation thereof and that at the moment, there is a stay of distribution of the estate.
12. Counsel maintained that the Petitioner is a son of the deceased and is entitled to petition for the Grant to enable him sue the trespasser and/or intermeddlers, and contended that the issue of whether or not the Petitioner is a son of the deceased can only be resolved through adducing of viva voce evidence subjected to cross-examination and not through Affidavit evidence. He contended further that only then can the Grant be revoked. He added that there was no concealment of material facts since the Petition in the subordinate Court had not been filed or gazetted by the time that the limited Grant in this Cause was granted.

### **Determination**

13. The issue that arises for determination herein is “whether the Grant of Letters of Administration *ad Litem* issued herein should be revoked and/or annulled”
14. Regarding revocation and/or annulment of Grant, Section 76 of the Law of Succession Act provides as follows:

“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.”

15. The grounds relied upon by the Applicants are sub-Sections (a), (b) and (c) above.

16. On the issue of revocation of Grants, Section 76 was expounded upon by Hon. Justice W. Musyoka in the case of *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where he stated as follows:

“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.”

17. Regarding issuance of limited Grants, Section 54 of the *Law of Succession Act* provides as follows:

“A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.”



18. The Fifth Schedule (14) to the Act referred to above then provides as follows:

“When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.

19. On its, part, Section 55 (1) of the Act provides as follows:

“No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71.”

20. In expounding on the above provisions, Hon. D.K. Kemei J in the case of *Winrose Emmah Ndinda Kiamba v Agnes Nthambi Kasyoka* [2021] eKLR, stated as follows:

“13. The above provisions are clear and that such a grant is normally issued due to the exigencies arising in relation to the estate and which could not wait for issuance of full grant through the normal way. It is also issued without prejudice to the right of any other person to apply for full grant of representation to the deceased. As such, limited grant may not be subjected to full and strict compliance with the requirements meant for, as if it is full grant of representation. Again, the person to whom the grant is so made undertakes to administer the estate according to the law but limited for the purpose for which the grant is issued until a further grant of representation is made by the court. I have perused the pleadings filed in the lower court and that the court was satisfied that the urgency warranted issuance of a limited grant which it issued on 10<sup>th</sup> July, 2020.”

21. In this case, the specific grievance raised by the Applicants is that the Petitioner misrepresented to the Court that he is a son of the deceased when in fact there is no such relationship. On his part, the Petitioner has reiterated and insisted that indeed he is a son of the deceased. I note that the respective letters from the Chiefs supplied by the two parties give different set of survivors. Both letters are from the Chief, Ziwa Location. However, although the Chief’s letter produced by the Petitioner is not very legible, I can deduce that the name of the deceased named therein reads something like “Kendagor Tapkwegei Muge”. It is not clear, and neither of the parties has addressed it, whether this person is the same person as the deceased herein, “Kipsaina A. Muge”.

22. I also note that while the letter supplied by the Petitioner is dated 11/09/2014, the one supplied by the Applicants is dated 15/04/2022, 8 years apart. From the signatures on the respective letters, they both appear to have been written by the same Chief. In the circumstances, I agree that the paternity of the Petitioner cannot be determined out of the conflicting Affidavit evidence on record. In any case, since I have been informed, though without any evidence, that the Grant issued in Eldoret Chief Magistrate’s Court Succession Cause No 94 of 2022 is under a challenge raised by the Petitioner, the proper forum to raise that issue of the paternity for determination is in that substantive Cause.



- 23. Regarding the chronology of events, it is not in dispute that the Petition for the limited Grant or Grant *ad Litem* in this Cause was filed on 1/04/2022 and was granted on the same date. On the other hand, the Applicants filed the Petition in Eldoret Chief Magistrate’s Court Succession Cause No 94 of 2022 on 22/03/2022 but I note that the same was gazetted on 22/04/2022 and the Grant then issued therein on 24/05/2022. It is therefore evident that the Grant issued in Eldoret Chief Magistrate’s Court Succession Cause No 94 of 2022 had not yet come into existence by the time that the Limited Grant in this Cause was issued on 1/04/2022. The Petitioner cannot therefore be accused of not disclosing to this Court the existence of the Grant in Eldoret Chief Magistrate’s Court Succession Cause No 94 of 2022. It has not also been demonstrated that the Petitioner was even aware that Eldoret Chief Magistrate’s Court Succession Cause No 94 of 2022 had been filed by that time. Further, I note that only the contents of the Chief’s letter produced by the Petitioner has been challenged, not its authenticity. There is therefore no allegation that the letter was a forgery.
- 24. In the circumstances, my finding is that there is no material before this Court to warrant revocation of the Limited Grant *ad Litem* on the grounds that “the proceedings to obtain the grant were defective in substance” or that it “was obtained fraudulently by the making of a false statement or by the concealment” of material facts or that it “was obtained by means of an untrue allegation of a fact”. There is therefore no material for this Court to make a finding that that the Limited Grant *ad Litem* herein was not issued lawfully or properly.
- 25. Besides, although neither of the parties has supplied copies of the relevant pleadings, there seems to be no dispute that upon obtaining the Limited Grant herein, the Petitioner used it to file a suit, namely, Eldoret ELC No E026 of 2022 and which is ongoing. Although the Applicants have attempted to draw this Court into determining whether that suit is still maintainable considering the fact that a full Grant has now been issued to them in Eldoret Chief Magistrate’s Court Succession Cause No 94 of 2022, I decline such invitation. Whether the ELC suit is still valid or whether the Petitioner can still continue therein as the Plaintiff are matters to be determined solely by the same ELC Court. For this Court to purport to make such determinations will be to stray into the territory and jurisdiction of the ELC Court which action will be irregular.
- 26. All I will say is that the Limited Grant was issued for the specific purposes of filing a suit and the same continued to remain lawfully in force until the full Grant was issued in Eldoret Chief Magistrate’s Court Succession Cause No 94 of 2022. Upon issuance of the full Grant, the Limited Grant became spent as it was at that point rendered obsolete. Being spent does not however render the Limited Grant unlawful. Whatever was done under the Limited Grant, as long as it was done within its boundaries and limits thereof, was lawful and valid unless proved otherwise by evidence.

**Final Orders**

- 27. In the premises, the Applicants’ Summons dated 2/08/2023 is hereby declined and is dismissed, but with no order on costs

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 19<sup>TH</sup> DAY OF JULY 2024**

.....  
**WANANDA J. R. ANURO**  
**JUDGE**

Delivered in the presence of:  
Mr. Wainaina for Petitioner

N/A for Objectors/Applicants

Court Assistant – Brian Kimathi

