



REPUBLIC OF KENYA



**In re Estate of Hellen Jemeli Bargutwo (Deceased) (Probate & Administration
42 of 2021) [2024] KEHC 8816 (KLR) (17 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8816 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 42 OF 2021**

JR KARANJA, J

JULY 17, 2024

RULING

1. Pursuant to the petition for Letter of Administration made by Nathan Kibet Koech (Petitioner) on 29th June 2016, respecting the estate of the late Hellen Jemeli Bargutwo (deceased), the subject grant of letters of administration intestate was issued on 29th November 2016 and on the 15th June 2017, an application for confirmation of grant was filed vide the summons for confirmation of grant dated 5th June 2017. To date, the grant remains unconfirmed thereby denoting that the estate property comprising of the parcel of land described as LR No. Nandi/Eisero/325 measuring 136 acres or thereabout is yet to be divided and distributed amongst the rightful beneficiaries including the Petitioner and his siblings. All in all, the deceased was survived by three sons and eight daughters.
2. The court record indicates that the delay in having the grant confirmed and the estate distributed to the beneficiaries was attributable to disputes over the ownership of the estate property or part thereof between the Petitioner and the Objector/ Caveator, Isack or Isaac Kipkalum Koech, said to be a step-son of the deceased. The dispute apparently spilled over to the Environment and Land Court at Eldoret which rendered its decision/ judgement on 25th January 2023 in favour of the Objector who was the Claimant/ Plaintiff in the case.
3. It is instructive to note that the Environment and land Court's decision was confined to Land Parcel No. Nandi/Eisero/425 measuring 36.75 hectares said to be an off-shoot of the estate property land Parcel No. Nandi/Eisero/325 which it was found to have been partitioned and divided into two equal portions to create Parcel No. 425 for which a title was issued to the Objector on the 16th October 1990. Be that as it may, the Objector initially filed an Objection to the making of grant in favour of the Petitioner and a cross petition for the making of the grant in his favour, but later filed the present application for revocation of the grant vide the summons for revocation of grant dated 11th April, 2024.
4. The basic prayer is for revocation of the subject grant on grounds that the proceedings to obtain the grant were defective in substance and that the grant was obtained fraudulently by the making of false statement and/or concealment of material facts. That, the estate property Nandi/Eisero/325 was partitioned on 16th October 1990 thereby creating two parcels of land being No. Nandi/Eisero/425



registered in the name of the Objector and No. Nandi/Eisero/426 registered in the name of the deceased.

5. The Objector therefore implied that the estate property was not part of the deceased's Estate available for distribution in its original form as Parcel No. Nandi/Eisero/325 but rather, was part of the Estate available for distribution in its current form as Parcel No. Nandi/Eisero/426.

The grounds in support of the objection are fortified by the averments and annexures contained in the Objector's supporting affidavit dated 11th April, 2024 and further affidavit dated 8th July 2024 as well as supplementary affidavit dated 5th June 2024.

6. The Petitioner opposed the Objector's application on the basis of the averments and annexures contained in the replying affidavit dated 22nd May 2024 in which he contends that the original title deed/ certificate for the estate property is intact and has never been amended or altered in any manner to create two separate parcels of land. That, titles Nos. Nandi/Eisero/425 and 426 are not availed for distribution and were unknown and remained unknown upto the time they were brought to the fore by the Objector in the case before the Environment and Land Court.

7. The Petitioner contended further that the estate property Parcel No. 325 originally belonged to his late father before it was transmitted to his late mother (deceased). However, his late father divided the property into two portions between the deceased and the Objector, his step-brother. That, whereas his late mother was apportioned $\frac{3}{4}$ of the land, the Objector was apportioned $\frac{1}{4}$ of the land which measured 181 acres at the time.

The Petitioner exhibited a copy of land certificate dated 15th September 1979 which shows that the land actually measured 71.5 acres of which $\frac{1}{4}$ belonged to the Objector and $\frac{3}{4}$ to the deceased.

8. The Petitioner implied that the entire estate property being Parcel No. Nandi/Eisero/325 is the actual estate property jointly owned by the deceased and the Objector in unequal shares since the year 1979 and is available for distribution amongst the beneficiaries of the deceased to the extent of her share in the property i.e. $\frac{3}{4}$ with the remaining $\frac{1}{4}$ share going to the Objector. Thus, the part available for distribution to the Petitioner and other beneficiaries measures one hundred and thirty five (135) acres while the part available to the Objector measures forty-five (45) acres.

9. After due consideration of the application at hand on the basis of the supporting grounds and those in opposition thereto and also on the basis of the rival submissions of both parties and the court record, it was apparent to this court that the bone of contention is the identification of Land Parcel No. Nandi/Eisero/325 as being part of the entire estate property belonging to the deceased and available for distribution amongst the rightful beneficiaries. For the avoidance of doubt this succession case is specific and relates to the said parcel of land (i.e Parcel No. 325) in its original rather than dismembered form. Therefore the land case at the Environment and Land Court in as much as it related to the existence and ownership of different parcels of land being Parcels Nos. Nandi/Eisero/425 and 426 was relevant for the purposes of this succession cause which commenced in the year 2016, month of June, after commencement of the land case within the same year but in the month of January, in relation to the Objector's proprietary interest in Parcel No. 425 which it transpired was a sub-division of the original material Parcel No. 325 alongside Parcel No. 426.

10. The relevancy was clearly manifested when it came to the identification of the assets of the deceased at the time of filing the petition for grant of Letters of Administration intestate respecting the entire estate of the deceased. This was a task undertaken by the Petitioner herein on behalf of all rightful beneficiaries of the estate, inclusive of the Objector herein who ironically was omitted from the list of beneficiaries yet he was a step son of the deceased as readily admitted by the Petitioner.



11. Under section 71 of the Law of Succession Act, a grant of Letter of Administration cannot be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled.

The subject grant is yet to be confirmed but the Petitioner's summons for confirmation of grant dated 5th June 2017 together with the supporting affidavit does not identify the estate property available for distribution among the beneficiaries, neither does it identify the individual beneficiaries and their respective shares in the estate property. In essence, there is no proposed mode of distribution and the consent of all the beneficiaries in respect thereof.

12. Without a confirmed grant, the Petitioner would have no power to distribute the estate property which has been duly and properly identified as such (See, Section 55 of the Succession Act).

An application for grant is normally made in the prescribed form and must include a full inventory of all the assets and liabilities of the deceased "*inter-alia*" (See section 51 of the Succession Act).

In this case, with regard to the assets and liabilities of the deceased, the application by the Petitioner dated 17th June 2016 and filed in court on 29th June 2016, indicated that the estate property comprised of a single parcel of land described as LR No. Nandi/Eisero/325 measuring about 136.155 acres valued at approximately Kshs. 54 million. There was indication that the deceased had unknown liabilities which would mean that the deceased had nil liabilities.

13. The necessary consent to the making of the grant in favour of the Petitioner was included in the application and showed that it was signed by all the beneficiaries. None of whom included the Objector step-son of the deceased. Indeed, the Objector was never included as a beneficiary of the estate in the entire process of applying for the grant. Perhaps, this would explain why he lodged a caveat on the estate and cross-petitioned for grant of letters of administration in his favour.

14. What is clear from the application as presented by the Petitioners is that it was devoid of necessary and accurate information on the identification of the estate property and that's why its measurement as indicated therein is at variance with the measurement of 181 acres indicated herein or 135 acres or 45 acres or even 71.5 hectares indicated in the copy of the land certificate exhibited by the Petitioner in his replying affidavit.

It would therefore follow that the information in the application relating to the size of the estate property and its actual identity was misleading, inaccurate and incorrect thereby raising suspicion, as to whether the estate property is the actual estate property belonging to the deceased either solely and/or jointly with the Objector available for distribution to the listed beneficiaries. This became more suspicion with the failure by the Petitioner to include the Objector as a beneficiary of the estate.

15. The reasons and factors foregoing clearly indicate that the estate property was not properly identified for the purposes of being held out as the actual estate property available for distribution to the listed beneficiaries.

In the circumstances, it would be safe for this court to hold and hereby holds that the subject grant was obtained by the Petitioner in a fraudulent manner, in as much as he made false representations and/or statements and concealed material facts.

The present application is therefore merited and is hereby allowed with orders that the grant of letters of administration intestate issued to the Petitioner on 29th November 2016 be and is hereby revoked and a fresh grant be issued in the joint names of both the Petitioner and the Objector as the appointed administrators of the estate of the deceased with the obligation to take out summons for confirmation of the grant within the next six (6) months from this date hereof or any shorter period that they shall deem fit.



Each party shall bear their own costs of the application.

DELIVERED AND DATED THIS 17TH DAY OF JULY 2024

J. R. KARANJAH,

JUDGE

