



In re Estate of Lucas Oluoch Mumia (Deceased) (Succession Cause E1489 of 2020) [2024] KEHC 11817 (KLR) (Family) (12 July 2024) (Judgment)

Neutral citation: [2024] KEHC 11817 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE E1489 OF 2020

PM NYAUNDI, J

JULY 12, 2024

IN THE MATTER OF THE ESTATE OF LUCAS OLUOCH MUMIA (DECEASED)

BETWEEN

PRAVINCHANDRA JAMNADAS KAKAD APPLICANT

AND

HABAYaweza MAWAZO ANNE OLUOCH RESPONDENT

JUDGMENT

Introduction

1. Lucas Mumia Oluoch (the Deceased) died on 18th December 2019. November 1992. Habayaweza Mawazo Anne Oluoch, the deceased's wife petitioned this court for grant of letters of administration intestate. The said grant was issued on 26th September 2022. The grant was confirmed on 14th April 2023.
2. The Deceased is said to be survived by the following;
 - a. Habayaweza Mawazo Anne Oluoch – wife.
 - b. Fanuel Onyango Oluoch - son.
 - c. Melissa Atieno-daughter.
 - d. Peter Mboya- son.Assets
 - a. Residential House, South C Nairobi- I.R 37630.
 - b. Kileleshwa Commercial Property-Nairobi Block 109/845.



- c. Westlands Commercial Property- Nairobi/Westlands/047.
 - d. Westlands Commercial Property -Nairobi/Westlands/164.
 - e. Residential Home, Prestige Villas House No. 14 on L.R 7158/36.
 - f. Matrimonial Home/ Ancestral Land in Yala, Kisumu County.
 - g. Motor Vehicle Toyota Land Cruiser Registration Number KBW 444S.
 - h. Motor Vehicle Toyota Rover Sports Registration Number KBJ 333Q.
 - i. Motor Vehicle Range Rover Sports Registration Number KCH 777N.
3. Pravinchandra Jamnadas Kakad (the applicant) filed summons for revocation or annulment of grant dated 25th April 2023 seeking the following orders;
1. Spent.
 2. Spent.
 3. The letters of administration granted to the Respondent Habayaweza Mawazo Anne Oluoch of Post Office Numbers 57180-00200 be revoked and or annulled.
 4. Spent.
 5. The costs of this application be awarded to the applicant.
4. The Summons is brought pursuant to Section 76 of the Law of Succession Act, Rules 44 and 73 of the Probate and Administration Rules and all enabling provisions of the law and is supported by the Applicant's sworn affidavit of even date.
5. It is the Applicants case that the grant should be revoked as the Petitioner failed to disclose that he is owed Kshs. 206,926,300. It is his contention that the deceased died prior to the determination of the matter. He The applicants' case is that the deceased fraudulently obtained from him and used the money to acquire the estate. He seeks that the grant be annulled or stayed pending the determination of the suit between him and the estate of the deceased. (Nairobi HCC No. 582 of 2012, judgment of which he has appealed in Nairobi Civil Appeal No. 174 of 2019).
6. The respondent opposed the summons vide a replying affidavit dated 27th June 2023. She argued that the applicant is a stranger and an intruder to the estate of the deceased and therefore, lacks locus to file an application for revocation. Her case is that the application for revocation is an attempt to waste the court's time and interfere with the distribution of the deceased's estate. The High Court dismissed Civil Case No.582 of 2012 on 18th October 2018 notwithstanding that the same was undefended.
7. The summons for revocation was disposed by way of written submissions.

Applicant's Submissions

8. The Applicants submissions are dated 27th November 2023. Relying on the decision in In *Re estate of David Kyuli Kaindi (deceased)* [2016]eKLR, the applicant submitted that the respondent was required by law to give a true account of the deceased's estate and state debts and liabilities she has paid or intends to settle them. Failure to disclose to the court that he was a creditor amounted to concealment of material facts which is a ground for revocation. He argued that Section 66 of the Law of Succession Act recognizes and allows creditors to petition for letters of administration.



9. Relying on the decision of *Albert Imbuga Kisigwa v Rachel Kawai Kasigwa*, Succession Cause No. 158 of 2000 on the guiding principles for revocation of grant, he argued that in the interest of justice that the confirmed grant should be revoked.

Respondent's Submissions.

10. The Respondent filed written submissions dated 3rd December 2023. Counsel cited the provision of Section 76 of the *Law of Succession Act* which states the circumstances upon which a grant may be revoked. It was argued that although the power to revoke a grant is discretionary, a party seeking for revocation of a grant must sufficiently prove the grounds set out in Section 76 of the Law of Succession Act. To buttress this point, counsel relied on the decisions in *Re estate of the late Epharus Nyambura Nduati (deceased)* [2021] eKLR, *In the Matter of the Estate of L.A.K (deceased)*[2014] eKLR and *Matheka and Another v Matheka* (2005) EA 251.
11. THE Respondent urges that since Milimani Civil Case No. 582 has been dismissed the Application is on shaky ground, especially because he has not been vigilant in prosecuting the Appeal.

Analysis And Determination

12. I have carefully considered this summons for revocation of Grant, the replying affidavit as well as the written submissions filed. The issues for determination are;
- a. whether the Court should revoke the Grant issued on 26th September 2022 and set aside the consequential orders.
 - b. Who should pay costs
13. The principle that guide a Court in considering an Application presented under Section 76 of the *Law of Succession Act* are:-

“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.”

14. The court in the case of *In re Estate of Mukhobi Namonya (Deceased)* [2020] eKLR stated that,

“under section 76 of the Act, a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining the grant was attended by glaring difficulties, such as where the same was defective, say because the person who obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant. The second general ground is where the grant is obtained procedurally, but the administrator subsequently runs into difficulties during the process of administration of the estate. Such difficulties include his failure or omission to apply for confirmation of his grant within the period allowed in law, or where he fails to exercise diligence in administration of the estate, such as where he omits to collect or get in an asset, or where he fails to render accounts as and when he is required to do so by the law. The third general ground is where the grant has become inoperative or useless on account of subsequent circumstances, such as where the sole administrator died or loses the soundness of his mind or is adjudged bankrupt.

15. Further in the case of *In re Estate of Magangi Obuki (Deceased)* [2020] eKLR, the court cited with approval the decision In the case of *Albert Imbuga Kisigwa v Recho Kavai Kisigwa*, Succession Cause No.158 of 2000, Mwita J. made remarks on the guiding principles for the revocation of a grant. He stated;

“(13) 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 wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.

16. The applicant argued that the Respondent did not disclose to this court that he was a creditor and therefore, the grant issued to her should be revoked. He argued that this amounted to material disclosure. In his application and submissions, he indicated that he sued the deceased in Nairobi HCCC No. 582 of 2012. The suit was however dismissed and he has filed Nairobi Civil Appeal No. 174 of 2019 which is yet to be heard on merit.



17. On the other hand, the respondent argued that the applicant has no claim against the deceased or the deceased's estate. In her replying affidavit and submissions, she argued that all the suits filed by the applicant against the deceased and the deceased's estate were dismissed. She argued that although the applicant appealed against the dismissal of HCC No. 582 of 2012, the applicant is yet to prosecute the appeal and she has filed an application to strike out the appeal. She argued that the applicant's application for revocation is frivolous and the same should be dismissed.
18. The applicant states that he is a creditor and failure by the respondent to include him when she filed for letters of administration amounted to concealment of material facts. The omission of persons who claim to be claimants from or creditors of the estate is not a ground for revoking a grant. This was held in *In re Estate of Mukbobi Namonya (Deceased)* [2020] eKLR where the court stated that,

“the omission of persons who claim to be claimants from or creditors of the estate is not a ground for revoking a grant. After all, creditors of an estate are entitled to have their debts settled. It is for this reason that debts and liabilities are given priority over distribution of the estate. Debts and liabilities ought to be settled first. Distribution is of the net estate, after the debts and liabilities have been met. The administrators have a duty to identify the creditors of the estate and to pay them off before proposing distribution, or to make provision for them at confirmation of grant. Such claimants and creditors have an obligation to place their claims before the administrators.....”
19. I am of the view that the Applicant has not laid sufficient basis to warrant revocation of the grant as they have not demonstrated why this Court should not be guided by the order of priority with regards to appointment of an administrator as set out in Section 66 of the *Law of Succession Act* which outlines following order of preference.
 - a. surviving spouse or spouses, with or without association of other beneficiaries;
 - b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
 - c. the Public Trustee; and
 - d. creditors
20. However, Administrators have a duty to ensure that all liabilities are met prior to distributing the estate. They can only distribute the net estate. The amount claimed by the Respondent is substantial and if the estate is transmitted to the beneficiaries, and the applicant if successful at the Appeal, will not be able to recover from the estate.
21. Fortunately, this court is equipped by Section 47 of the Law of Succession Act and rule 73 of the *probate and administration rules*, with the power to make orders that ensure an outcome that is just. Accordingly, there is granted a stay of the transmission of the estate as per certificate of confirmation of grant dated 14th April 2023 pending the determination of Nairobi Civil Appeal No. 174 of 2019 (Court of Appeal)
22. Each party will bear their own costs
23. Mention on 25th September 2024 to confirm status of the Appeal

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 12th DAY OF JULY, 2024.



P M NYAUNDI

HIGH COURT JUDGE

In the Presence of:

Fardosa- Court Assistant

Paul Muchira Advocate for Petitioner / Respondent

