



REPUBLIC OF KENYA



**In re the Estate of Chebet Maritim (Succession Cause 58 of 2015)
[2024] KEHC 10013 (KLR) (9 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 58 OF 2015
RN NYAKUNDI, J
AUGUST 9, 2024
IN THE MATTER OF THE ESTATE OF CHEBET MARITIM**

BETWEEN

HELLEN JEPCHOGE NG'ESIREI OBJECTOR

AND

ROSA JEMAIYO KOTI RESPONDENT

RULING

1. The Applicant approached this court vide the application dated 20th February 2024 seeking the following order;
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. That the Honourable court be pleased to annul the Grant of Letters of Administration and the Certificate of Confirmation of Grant issued to the Petitioner/Respondent herein.
 - v. That the Honourable Court be pleased to revoke the transfer of Land Parcel No. Cheptiret/ Kipchamo Block 2(Mogobich)/71 from the name of Chebet Martim (deceased) to the name of the Petitioner/ Respondent.
 - vi. That The Honourable Court be pleased to revoke the subdivision of Land Parcel No. Cheptiret/Kipchamo Block 2(Mogobich)/ 71 and the transfer of the resultant titles upon subdivision to the name of the Petitioner/Respondent and any further transfer and subdivision of the resultant parcels from the sub-division of Cheptiret/Kipchamo Block 2(Mogobich)/71.



- vii. That an order of rectification of title be issued rectifying the register to revert the ownership of Cheptiret/Kipchamo Block 2(Mogobich)/71 to its original number and into the name of the deceased.
 - viii. That the honourable Court be pleased to grant any additional or alternative orders that this Court may deem fit and just to grant in the circumstances.
 - ix. That the costs of this application be provided for.
2. The application is premised on the grounds set out therein and the contents of the affidavit in support of the same.
 3. In her affidavit in support of the application, the applicant urged that she was a second wife to the deceased as per Nandi customs as the respondent had abdicated her duties as a wife. She stated that after the death of the deceased the petitioner came back to the home claiming for her share of the estate and they resorted to solving their disputes through the assistant commissioner's office. However, the petitioner had obtained a grant of administration by misleading the court that she was entitled to the entire estate of the deceased. She alleged that the petitioner forged her signature in the succession proceedings and holds the view that the mode of distribution presented to the court was fixed without her consent. She maintained that her share of property was distributed to the petitioner despite the deceased's wishes on the same. She urged the court to revoke the grant.
 4. The application was opposed vide a replying affidavit dated 12th April 2024. I note that the affidavit was annexed to the submissions and was not filed on its own as a pleading. That notwithstanding, I shall consider the contents of the same. She deponed that she was married to the deceased as her wife in line with Nandi customs and traditions in order to assist her bear children. They were blessed with two issues and the only one alive is one Tecla Jepkemei. She stated that the objector is the daughter to the deceased's sister.
 5. She stated that she left her matrimonial home and returned after their husband had passed on. She urged that she had attempted to include the objector in the proceedings but she had been uncooperative and stubborn. She refuted that the deceased did not leave a will but she intends to equitably split the estate of the deceased amongst the beneficiaries.
 6. In her submissions, the respondent submitted that the allegation that the respondent did not involve her in the succession proceedings is false in that the Objector was served by court documents by licensed process servers to wit; a hearing notice dated the 19th of October 2018, by one George Ochieng an Authorized Process server . The hearing notice served was for confirmation of grant. On top of that the Cause was Gazetted on the 17th of April, 2015 as Cause No. 58 of 2015.
 7. Counsel for the respondent submitted that there is no record of a Will or any other document. Further, that from the application, the Objector clearly stated that she was the Daughter to the deceased and further confirmed that the Petitioner/Respondent was the wife to the deceased. She urged that the application be thrown out with prejudice.

Analysis & Determination

8. Upon consideration of the application, responses thereto and the submissions, the following issues arise for determination;
 1. Whether the grant should be revoked



Whether the grant should be revoked

9. Revocation of grant is governed by section 76 of the [Law of Succession Act](#) which provides as follows;

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.”

10. Before delving into the merits of the case, I must state the brief facts underlying the application. The applicant is listed as a daughter to the deceased in form P&A 5. She has also deponed that she is the daughter to the deceased. From the record of the court, it is evident that the beneficiaries of the estate are the petitioner and the objector as the daughter of the deceased herein waived her interest in the estate of the deceased. A perusal of the proposed mode of distribution reveals that the estate was to be divided equally between the parties herein. The question that arises is whether a revocation of grant would serve any purpose as the property is to be distributed between them equally. That notwithstanding, I shall delve into the merits of the application.

11. Given that the applicant is the daughter of the deceased, I must lay out the provisions on preference on administration of an estate. Section 66 of the Laws of Succession Act provides that preference has to be given to certain persons to administer a deceased’s estate where the deceased died intestate and further that the court shall save as otherwise expressly provided, the final discretion as to the persons and person to whom a grant of letters of administration shall, in the best interests of all parties concerned, be made. It will however accept as a general guide the order of preference as set out in Section 66(a) – (d). Section 66 provides as follows:-

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration



shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the 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 interest as provided by Part v;
- c) the Public Trustee; and
- d) Creditors:

Provided that, where there is a trial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

12. In the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* (2015) eKLR the court discussed circumstances when a grant can be revoked. The court observed:

“ 11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

13. The applicant contends that the grant was obtained by concealment of material facts. Further, that the petitioner forged signatures to obtain the grant. It is trite law that he who alleges must prove. The burden of proof of the forgery rests on the petitioner. She has not tendered any report by a forensic document examiner to buttress the claim that there was a forgery. I also note that the applicant was served with the hearing notice for confirmation of grant and therefore, she cannot claim to have not been made aware of the proceedings.

14. 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.”

15. I have considered the application and responses in its totality and in my considered view the same is an abuse of the court process. There was no evidence produced by the applicant to lend credence to the claim that the petitioner concealed material facts. The application does not meet the merit for revocation of grant and is hereby dismissed. Each party shall bear its own costs.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 9TH DAY OF AUGUST 2024.

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R. NYAKUNDI



JUDGE

In the presence of;

Mr. Chepkwony for the petitioner

Mr. Menjo for the Objector.

