



In re Estate of Josph Muthini Kibwaa (Deceased) (Succession Cause 124 of 2010) [2024] KEHC 12528 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12528 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 124 OF 2010
FROO OLEL, J
OCTOBER 17, 2024**

IN THE MATTER OF THE ESTATE OF JOSEPH MUTHINI KIBWAA (DECEASED)

BETWEEN

PETER KIBWAA MUTHIN 1ST APPLICANT

DENNIS MUTISYA MUTHINI 2ND APPLICANT

AND

ROSE SYOMBUA MUTHINI PETITIONER

RULING

A. Introduction

1. Before the court for determination is the summons for annulment and/or revocation of grant dated 31st January 2024, brought under provisions of sections 76, (c) & (d) of the Law of Succession Act and part VIII Rule 44 (i) of the Probate and Administration Rules. The applicant seeks the following orders that;
 - a. That the confirmation of grant made on 22nd January 2024 or any subsequent orders be annulled and/or revoked.
 - b. Costs be provided for.
2. The Application is supported by the grounds on the face of the said Application and the supporting Affidavit of the 2nd applicant dated 31st January 2024, where he deponed that he was a son of the deceased herein who died intestate. He had read through the court documents and was surprised that the petitioner Rose Syombua Muthini had applied for confirmation of grant without his knowledge and ended up not including all estate properties in the said petition.



3. The applicant further did content that, his deceased father had two wives and unfortunately the grant had been confirmed without the first house being represented. There was a need for a fresh grant to be issued, which should include his brother Peter Kibwaa Muthini as a representative of the first house.
4. The Respondent opposed this application through her Relying Affidavit dated 6th February 2024, where she deponed that the instant application was unmeritorious, misleading, full of falsehoods perjurious, and constituted an abuse of the court process. The initial letter of administration intestate granted to her on 15.01.2016 was revoked on 04.07.2019 by Hon Justice G. V. Odunga and he did direct that new letters of administration intestate be issued to herself and Peter Kibwaa Muthini. This was in recognition of the fact that he would represent the interest of the 1st house.
5. The respondent further stated that she had been open and transparent in her dealing with the estate property and was not aware of any property that she had not included in the distribution list. The applicant had not placed any material/evidence before the court to demonstrate that the assets he listed in his supporting Affidavit belonged to the deceased nor had he proved that she had fraudulently and through misrepresentation of facts procured the confirmed grant. Finally, the respondent also pointed out that both applicants did attend court on 22.01.2022 and concurred with the proposed mode of distribution made as per the supplementary Affidavit filed in court on 30.01.2020 and confirmation of the grant. They were therefore before the court in bad faith making wild and unsubstantiated allegations which she urged the court to dismiss.

B. Analysis & Determination

6. I have carefully considered the Summons for revocation of the grant, the Affidavit in support of the summons, and the Respondent's Replying Affidavit. The only issue which arises for determination is whether the confirmed grant issued herein on 22nd January 2024 should be revoked.
7. Section 76(a), (b), and (c) of the *Law of Succession Act* provides as hereunder:

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;
8. That section provides that a grant of representation may at any time be revoked or annulled as long as the court is satisfied that the facts contemplated under the said section are proved. It is therefore clear that there is no limitation in so far as matters revocation or annulment of grant are concerned. However, it is not in every situation where transgressions are alleged that the grant must be revoked.
9. This position was adopted in the case of *Albert Imbuga Kisigwa vs. Recho Kawai Kisigwa* [2016] eKLR Succession Cause No.158 of 2000, Mwita J Where it was held that;-

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing 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 the interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

10. In Re Estate of Gitau (Deceased) [2002] 2 KLR 43 Khamoni J while addressing this issue also expressed himself as hereunder:

“Distribution of the estate comes during the proceedings to confirm the relevant grant and a party dissatisfied with the distribution may not necessarily be dissatisfied with the grant of letters of administration and vice versa. That being the position, it becomes unreasonable for a person dissatisfied with the distribution of the estate only to proceed to ask for the revocation or annulment of the grant, which has nothing wrong...While section 76 of the Law of Succession Act should therefore be relied upon to revoke or annul a grant it is not proper to use the same section where the objector is challenging the distribution only. There are relevant provisions to be used for that purpose and section 76 is not one of them.”

11. Both Applicants attended court on 22nd January 2024 and confirmed that they had consented to the grant being confirmed. Their counsel on record, Mr Munyolo on 10.06. 2024 also did inform the court and it is on record that his clients were challenging distribution as effected. They were not challenging the administration of the estate. It therefore becomes unreasonable for the applicants to proceed to ask for the revocation or annulment of the grant without proving any wrongdoing on the part of the administrators. They have therefore not proved that the proceedings to have the grant confirmed were defective in substance and/or that the said grant was procured through fraudulent means, or concealment of material facts.

C. Disposition

12. The summons for revocation of grant dated 31st January 2024 therefore lacks merit and I do proceed to dismiss the same with no orders as to costs given that the parties herein belong to one family.
13. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS ON THIS 17TH DAY OF OCTOBER, 2024.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 17TH DAY OF OCTOBER, 2024.

In the presence of:-

No appearance for Appellant

No appearance for Respondent

Susan Court Assistant

