



In re Estate of Chepkwony Chumo (Deceased) (Succession Cause E003 of 2022) [2024] KEHC 12208 (KLR) (11 October 2024) (Judgment)

Neutral citation: [2024] KEHC 12208 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
SUCCESSION CAUSE E003 OF 2022
F GIKONYO, J
OCTOBER 11, 2024**

IN THE MATTER OF THE ESTATE OF CHEPKWONY CHUMO (DECEASED)

BETWEEN

SARAH CHEPNGENO PETITIONER

AND

RICHARD KIPYEGON KORIR OBJECTOR

JUDGMENT

Claim under the principle of representation

1. Falling for consideration by the court are two applications by the objector; a) Summons dated 06.08.2020 for revocation and/or annulment of grant issued to the petitioner; and b) application for the preservation of the estate filed on 10.11.2021.

Application for revocation of grant

2. The application is based on the grounds that; the proceedings to obtain the grant were defective in substance; the respondent/petitioner obtained the grant through misrepresentation of facts; the respondent/petitioner obtained the grant by concealing from the court the full and actual beneficiaries to the estate which is material to the case; the grant was fraudulently obtained by concealing from the court all the assets of the deceased; the grant was obtained by means of untrue allegations of facts; it is in the interest of justice that this application is allowed; it is in the interest of justice that the certificate of confirmation of grant issued herein be revoked and or annulled; the applicant together with his siblings are beneficiaries to the estate and have been in occupation of the said parcel of land to wit Transmara/ Kimintet/1426 for over 40 years.
3. The application is supported by the affidavit of Richard Kipyegon Korir sworn on 06.08.2020.



4. The objector averred that he is the grandson of the deceased being the elder son of the late Joseph k. Kirui-who was the son of the deceased. Put differently; his late father was the son of the deceased.
5. The objector averred that he was chosen by the entire family of the late Chepkwony Chumo as the next of kin to the deceased and thus he is entitled to take out letters of administration of the estate of Chepkwony Chumo on behalf of all the beneficiaries.
6. The objector contends that the petitioner produced before the court a fraudulent list of beneficiaries and failed to disclose their relationship to the deceased estate. The petitioner listed herself and her husband Philip Kipkorir Chepkwony as the only beneficiaries and heirs of the deceased which is not true.
7. The objector averred that at the time of filing the succession, the petitioner was aware that the objector and his siblings are the beneficiaries of the estate of Chpkwony Chumo. The petitioner being the daughter in law to the deceased and the objector's late father being the son of the deceased. Therefore, the actions of concealing and leaving them out of the succession proceedings is malicious and fraudulent.
8. The objector averred that to confirm that they have proprietary interest in the estate of the deceased, the objector's late father and the petitioner were sued as personal representatives of the deceased by Kiplangat Arap Korir in Kericho ELC No. 76 of 2007 over the land in issue.
9. The objector averred that the petitioner obtained a certificate of confirmation of grant on 14.07.2016 but failed to disclose to the court all the beneficiaries and properties of the deceased including Transmara/Kimintet/1426 which was not included in the list of assets of the deceased.
10. The objector averred that the petitioner has fraudulently transferred to herself land parcel transmara/kimintet/1426 without following the right procedure and with sole intent to disinherit the beneficiaries
11. The objector averred that he learnt of course of events as a result of the eviction order granted in Kericho ELC No. 76 of 2007.
12. The objector contends that he is legally in occupation of the suit land and has lived there for over 40 years.
13. The objector contends that the deceased was awarded land parcel no. Transmara/Kimintet 'D' /441 vide gazette notice dated 28/10/2012.

Directions of the court

14. The application was canvassed by way of written submissions. The petitioner/respondent did not file any response or submissions despite being served.

The Objector's submissions.

15. The objector submitted that he has satisfied the requirements set out under the provisions of section 76 of the *law of succession Act*.
16. The objector submitted that he has locus to bring this application by virtue of being a beneficiary of the estate of the deceased. The objector relied on section 29,46, 51(2)(g) of the *Law Of Succession Act* and Ibrahim Versus Hassan & Charles Kimenyi Macahria , Interested Party[2019] eKLR.



Analysis and Determination

17. The application for preservation of the estate is a saddle upon the application for revocation of grant; the latter should, therefore, be determined first.
18. Upon careful consideration of the summons for revocation or annulment of grant, the affidavit in support thereof and the objector's submissions, the issue here is;

i. Whether the Applicant has established grounds for the revocation of a grant within the meaning of Section 76 of the Law of Succession Act.

19. The application is premised upon Section 76 of the Law of Succession Act, and more specifically on the grounds:
 - (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;
20. These grounds are process-concerned addressing procedural rectitude; but also substantive in so far as they relate to concealment of material facts, in applying for the grant.
21. See a superb broad categorization of the grounds in section 76 of the Law of Succession Act In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR that:

“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.”

22. The major reason cited is that the grant of letters of administration was obtained and confirmed on the basis of concealment of a material fact; that, he was also a beneficiary of the estate; he is a son of the son of the deceased, and so entitled to inherit the deceased through the principle of representation.



23. He also made a claim that Land Parcel No. Transmara/Kimintet/1426 is estate property but was left out of the estate property list provided to the court. This is an important matter in succession causes and requires full interrogation by the court in determining the estate property.
24. The court, therefore finds that, the letters of grant of administration issued to the Petitioner and subsequently confirmed, was obtained fraudulently by the making of false statement or by the concealment from court of something material to the case particularly in relation to beneficiaries.
25. The circumstances of the case and the interest of justice, supports plenary interrogation of the two issues raised by the objector; identification of beneficiaries and estate property which is not possible unless a legal and appropriate aperture is created as prescribed in law; which in this case, is revocation of the grant and all consequential orders. But, these two parties appear to be in equality with each other for purposes of applying for grant.
26. Thus, in respect of application for revocation of grant, the court makes the following orders;
 - i. The grant of letters of administration made to the petitioner as well as the certificate of confirmation of grant are hereby revoked and set aside, respectively.
 - ii. As the Parties stand in equality in the order of preference to apply for letters of administration, the court hereby issues a grant of letters of administration to both of them jointly.
 - iii. Further directions shall issue on the filing of summons for confirmation of grant as well as interrogations of whether land parcel Trans mara/Kimintet/1426 is estate property.
 - iv. Parties bear their costs.

Application for preservation of the estate

27. Upon consideration of the application for the preservation of the estate filed on 10.11.2021, the court, on 02.02.2023, ordered that no one shall sell, subdivide, lease, or charge the estate property; no one shall evict the applicants from the estate property; the orders shall subsist until the hearing of the application for revocation dated 06.08.2020.
28. Following the decision on the application for revocation of grant, the orders of preservation of the estate remain in situ until these proceedings conclude or otherwise ordered by the court.
29. Parties to bear own costs of the application.
30. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH TEAMS APPLICATION THIS 11TH DAY OF OCTOBER, 2024.

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Hon. F. Gikonyo M.

Judge

In the Presence of:

C/A: Nyangaresi

Koko for Objector – Present

Petitioners in person - Absent

