



In re Estate of Joseph Kibiator Chelimo (Deceased) (Succession Cause 222 of 2012) [2024] KEHC 12159 (KLR) (11 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12159 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 222 OF 2012
RN NYAKUNDI, J
OCTOBER 11, 2024
IN THE MATTER OF THE ESTATE OF JOSEPH KIBIATOR CHELIMO**

BETWEEN

**FLORA CHELIMO 1ST PETITIONER
FRED CHELIMO 2ND PETITIONER
SYLVESTER CHELIMO 3RD PETITIONER
AMBROSE CHELIMO 4TH PETITIONER**

AND

SAMMY KIPKORIR CHERUNYA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF KIPTALAM ARAP CHERUNYA) OBJECTOR

RULING

1. Before me for determination are summons for revocation expressed to be brought under the provisions of Section 36,37,39 & 76 of the Law of Succession Act and Rules 37 and 44 of the Probate and Administration Rules. The Objector seeks the following reliefs:
 - a. Spent
 - b. That an order of inhibition be issued stopping any dealings over the property known as IRONG/KESSUP/78 & 79 pending the hearing and determination of this application inter-partes and thereafter pending the hearing and determination of this suit.
 - c. The grant of letters of administration intestate issued on 6th December, 2012 be revoked.
 - d. That the Honourable court be pleased to order for cancellation and revocation of that title known as IRONG/KESSUP/78 & 79 and reversion of the same to the estate of the deceased and thereafter be registered in the name of the Objector herein.



- e. That costs of this application be provided for.
2. The application is premised on the grounds set out therein and the contents of the affidavit sworn by Sammy Kipkorir Cherunya in support of the same. The Objector/Applicant contends that the deceased herein was the registered owner of the property known as IRONG/KESSUP/65. He averred that he purchased the aforesaid property for valuable consideration from the deceased vide sale agreement dated 2nd August, 1980. However, the applicant was surprised to learn that the Petitioners had fraudulently obtained letters of administration without the knowledge of the beneficiaries of the Objector and thereafter proceeded to effect registration of the said property in their names on the strength of the impugned proceedings. That in the circumstances, the entire process of obtaining the grant amounts to abuse of the court process.
 3. In response to the summons, Ambrose Kiptoo Chelimo, being one of the Petitioners filed a replying affidavit in which he deponed as hereunder:
 - a. That I am one of the Administrators of the Estate of the late Joseph Kibiator Chelimo and hereby competent to swear this affidavit.
 - b. That the written sale agreement made on 2nd August, 1980 was never attested to, it was never backed by the consent of the Land Control Board, the same is barred by the Limitations of Actions Act and the same is null and void.
 - c. That while it is admitted that the Objector did testify for the deceased herein, it is denied that he bought the said land his evidence in Eldoret HCC No. 87 of 1994 does not admit to any purchase.
 - d. That the deceased was never indebted to the Objector.
 - e. That there is nothing to show that the Objector has any interest in the said estate.
 - f. That indeed, the said property has passed over to third parties and is no longer estate property and this court has no jurisdiction to handle the same.
 - g. That the claim of fraud is not merited and this court has no jurisdiction over the same.
 - h. That the said property is no longer in the hands of the Administrators and the estate file was completed in 2019 and the said property is now in the hands of third parties for which Respondents have no control over it.

Analysis and determination

4. Section 76 of the [Law of Succession Act](#), sets out situations when a grant can be revoked or annulled, Section 76 provides as follows:

“Section 76

“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.”

5. 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.”

- 6. The grounds cited for revocation are that the Petitioners in this cause fraudulently obtained letters of administration without the knowledge of the beneficiaries of the objector and thereafter proceeded to effect registration of the said property in their names on the strength of the impugned proceedings.
- 7. The Objector averred that he purchased the property known as IRONG/KESSUP/65 vide the sale agreement dated 2nd August, 1980 and therefore the property ought not to form part of the estate of the deceased.
- 8. The Respondent on the other hand challenged the said agreement on grounds that the same was never attested, was never backed up by the consent of the Land Control Board, that is null and void and it is barred by the Limitations of Actions Act.
- 9. Section 6 of the *Land Control Act* Chapter 302 of the Laws of Kenya makes it mandatory for parties to obtain the Land Control Board consent in relation to land transactions in agricultural Land.
- 10. In *David Ole Tukai v. Francis Arap Muge & 2 Others* [2014] eKLR the Court held in part:

“ ... First and foremost, we have already stated that in our opinion granted the express unequivocal and comprehensive provisions of the *Land Control Act*, there is no room for the courts to import doctrine of equity in the Act. This is one simple message of Section 3 of the *Judicature Act*.



Consequently, invocation of equitable doctrines of constructive trust and estoppel to override the provisions of the Land Control Act has, in our view, no legal foundation. We have also noted that this Court has previously held in a line of consistent decisions and in very clear terms that there was no room for application of the doctrines of equity in the Land Control Act.”

11. True to the assertions of the Petitioners, the sale of the said subject land did not have a backing of Land Control Board Consent, which is a requirement in such cases. Further the Petitioners also stated that the sale agreement was not attested to and that the same is barred by the Limitations of Actions Act and as such it is null and void. On this ground itself, I take the view that the transfer of the said property did not meet the requisite requirements and as such incapable of being transferred.
12. Still on the same ground, the Objector argued that the Petitioners in this case failed to disclose during the institution of these proceedings that the deceased herein was indebted to him. My take from the provisions of Section 76 of the Law of Succession Act is that a grant can be revoked if that grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case. In this case the concealment according to the Objector is the failure to include the alleged debt in the petition for grant of letters of administration.
13. The court in In re Estate of Mukhobi Namonya (Deceased) [2020] eKLR 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, and should the administrators fail to settle the same or acknowledge them, move the Environment and Land Court to prove their claims, since the High Court no longer has jurisdiction to determine questions around ownership of immovable property in view of Articles 162(2) and 165(5) of the Constitution.”

Who exactly is the creditor of the estate or what ought to be treated as a liability of the estate. The most obvious candidates are individuals or entities that transacted with the deceased during his lifetime. Debts that the deceased left unsettled are a burden that the administrators of his estate ought to take care of. Transactions that he left incomplete, such as for sale of land by him or to him, should be completed by the administrators. The administrators are able to do so through the powers conferred upon them by section 82 of the Law of Succession Act, being mindful of section 79, which vests the assets of the estate in the administrator. Section 83 imposes a duty on administrators to settle such debts before distributing the estate.....

One of the duties of administrators, set out in section 83(d) of the Law of Succession Act, is to ascertain and pay out of the estate all the debts of the deceased. Ascertainment of the debts of the estate is about identifying them, in terms of finding who the creditors were, how the debts were incurred, what documentation is available, before pay out can be done. If the debts arose during administration, and were necessitated by the exigencies of administration, such as where funds were needed to pay for the administration process, in terms moneys for court fees, advocates costs, land rents and rates, taxes, and attendant expenses, then section 83(c) of the Law of Succession Act would be relevant. That provision requires administrators to pay out of the estate all the expenses of obtaining the grant and



all other reasonable expenses of the administration. Where estate assets have been dissipated to address the expenses envisaged in section 83(c) then it must be stated what these expenses were, how they arose and how they were settled. The same would apply where certain debts and liabilities of the estate needed to be settled and estate assets had to be sold to facilitate the settlement of such debts. Section 83(d) of the *Law of Succession Act* requires administrators to ascertain and pay, out of the estate, all the debts of the deceased. In addition, section 83, at paragraph (e), requires the administrators to render accounts of their administration within six months of their appointment.”

14. In the instant case, I have not had sight of any explanation from the Objector of what took him so long to claim from the estate since the Petition was initiated because then the administrators would have identified him as a credible creditor who ought to draw from the estate. So that then in the end, I don't find any cogent grounds that would warrant the revoking of the grant that is already confirmed. The end result is that the summons for revocation dated November 22, 2023 is unmerited and dismissed with no orders as to costs.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 11TH DAY OF OCTOBER 2024

R. NYAKUNDI

JUDGE

Email: chebiiadvocate@yahoo.com

