



In re Estate of Jonah Kipkoskei Chumo (Deceased) (Succession Cause 145 of 2010) [2024] KEHC 11953 (KLR) (9 October 2024) (Ruling)

Neutral citation: [2024] KEHC 11953 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 145 OF 2010
JK SERGON, J
OCTOBER 9, 2024**

BETWEEN

SUMMARY CHUMO 1ST PETITIONER

RAELI CHUMO 2ND PETITIONER

AND

JENIFFER CHEBII CHUMO OBJECTOR

RULING

1. The application coming up for determination is a summons dated October 25, 2023 seeking the following orders;
 - (i) Spent
 - (ii) Spent.
 - (iii) That this Honourable Court be pleased to review and/or set aside the orders made on May 23, 2023 to the extent that Jennifer Chebii Kimetto was appointed as a co-administrator of the estate of the late Jonah Kipkoskei Chumo (deceased).
 - (iv) That the Honourable Court be pleased to appoint Raeli Chepngetich Chumo and Summary Cheptonui Chumo as the joint administrators of the estate of the deceased.
 - (v) That the grant issued on May 23, 2023 be revoked and a new grant be issued in the names of Raeli Chepngetich Chumo and Summary Cheptonui Chumo.
 - (vi) That costs of this application be in the cause.
2. The application is supported by grounds on the face of it and the supporting affidavit of Raeli Chengetich Chumo the 1st petitioner herein and on behalf of the co-petitioner.



3. The petitioners aver that they commenced the instant succession proceedings vide a petition dated December 6, 2010 and that the objector filed objection proceedings in 2019 claiming to be a beneficiary of the estate.
4. The petitioners aver that when the objection proceedings came up for hearing, the court noting that no grant had been issued proceeded to appoint the petitioners and the objector herein as joint administrators of the estate and directed them to file summons for confirmation of grant.
5. The petitioners aver that the objector is not qualified to be an administrator of the estate as she was adjudged bankrupt vide an order made in the Nairobi Bankruptcy Cause No. 46 of 2004 and a receiving order issued on April 14, 2004 and published in the *Kenya Gazette Number 4092* dated April 30, 2004. The petitioners further aver that the objector swore an affidavit in Kericho ELC Suit No. 30 of 2016 confirming that she had been adjudged bankrupt.
6. The petitioners aver that the objector in a bid to mislead the court, failed to disclose that she had been adjudged bankrupt and therefore unable to administer the estate and that this information was not known to them when the orders appointing the objector as an administrator were made.
7. The petitioners based on the advice of their advocates aver that under section 76 of the *Law of Succession Act*, a grant of representation can be revoked if the administrator is adjudged bankrupt and that in the instant case there was clear evidence that the objector was adjudged bankrupt in 2004 and the receiving order has never been discharged.
8. The petitioners aver that the objector is a stranger to the estate as she is neither a beneficiary or a dependant of the estate and that the estate and its beneficiaries will suffer great prejudice if her appointment as administrator remains as such.
9. The petitioners aver that justice in the matter will be served if the objector is removed as an administrator of the estate and that she will not suffer prejudice as she will be accorded a chance to ventilate her claim.
10. I have considered the application which is unopposed and I find that the issues for determination are whether to review and/or set aside the orders made on 23rd May, 2023 to the extent that Jennifer Chebii Kimetto was appointed as a co-administrator of the deceased and to revoke the grant issued on May 23, 2023 and appoint Raeli Chepngetich Chumo and Summary Cheptonui Chumo as the joint administrators of the estate of the deceased.
11. On the issue as to whether to review and/or set aside the orders made on May 23, 2023 appointing Jennifer Chebii Kimetto as a co-administrator of the deceased, yet she was an undischarged bankrupt. Section 80 of the *Civil Procedure Act*, clothes this court with unfettered discretion to make such an order as it thinks fit on sufficient reason being given for review of its decision. However, this discretion should be exercised judiciously and not capriciously, section 80 of the *Civil Procedure Act*, Cap. 21 Laws of Kenya which states as follows:

“ Any person who considers himself aggrieved-

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgement to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”



Whereas order 45, rule 1(b) of the Civil Procedure Rules is clear that for the court to review its decision, certain requirements should be met. This section provides as follows:

- “(1). Any person considering himself aggrieved-
- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgement to the court which passed the decree or made the order without unreasonable delay.”

I find that the applicants have met the threshold for review to wit the discovery of a new and important matter that the objector Jennifer Chebii Kimetto was adjudged bankrupt in 2004 and the receiving order has never been discharged, hence the objector is not suitable for appointment as a co-administrator of the estate of the deceased. The applicants aver that this information was not known to them when the orders appointing the objector as an administrator were made.

12. On the issue as to whether to revoke the grant issued on May 23, 2023 and appoint Raeli Chepngetich Chumo and Summary Cheptonui Chumo as the joint administrators of the estate of the deceased. This court is cognisant of section 56 of the Law of Succession Act, which stipulates as follows;

“No grant of representation shall be made - (a) to any person who is a minor, or of unsound mind, or bankrupt; or (b) to more than four persons in respect of the same property.”

In the instant case, it is clear that Jennifer Chebii Kimetto was adjudged bankrupt and the receiving order is yet to be discharged. Under section 76 of the Law of Succession Act, revocation or annulment of grant may be suo moto by a court or on the application of any interested party. It is, however, worth noting that it is not every situation where transgressions or failings by the administrator, will lead to revocation of grant. The court still retains the power to make orders as are fit to meet the ends of justice. Muigai, J in Mary Wangari Kihika v John Gichubi Kinuthia & 2 Others [2015] eKLR, stated that in exercising its discretion the Court ought to take into account the effect of either revoking the grant or relieving all the administrators of their duties and where more injustice would be caused by such action to instead opt for an alternative that would ensure that the estate is properly administered. This court will therefore draw upon section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. The latter rule provides for tapping the inherent power of the court as follows:

“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court.”

The applicants have made out a good case for the removal of the one of the co-administrator(s) on account of bankruptcy and deemed her incapable to diligently carry out and complete administration of the estate of the deceased in accordance with the grant as confirmed by the court.

13. In the light of the foregoing, the application dated October 25, 2023 is hereby allowed with costs being in the cause.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 9TH DAY OF OCTOBER, 2024.



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J.K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

No Appearance for the Parties

