



REPUBLIC OF KENYA



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**In re Estate of Philip Were Sioka (Deceased) (Succession Cause
237 of 2014) [2024] KEHC 11748 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11748 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

SUCCESSION CAUSE 237 OF 2014

WM MUSYOKA, J

OCTOBER 4, 2024

IN THE MATTER OF THE ESTATE OF PHILIP WERE SIOKA (DECEASED)

RULING

1. This case relates to the estate of the late Philip Were Sioka, who died on 5th August 2012.
2. Representation to his intestate estate, was sought by Bonaventure Antony Mulwenge, vide a petition that he filed herein on 2nd July 2014, in his capacity as a purchaser of part of the land belonging to the estate. The individuals mentioned in the petition, as survivors of the deceased, are a widow, a daughter and a son, being Henrika Anyango Were, Leonida Akuku and Julius Bwire Were, respectively. The deceased is said to have died possessed of Bunyala/Bulemia/2389 (also identified as Bunyala/Bulemia/2808). No liabilities are listed. Letters of administration intestate were made to Bonaventure Antony Mulwenge, who I shall hereafter refer to as the administrator, on 10th October 2014, and a grant was duly issued on even date. The administrator filed a summons for confirmation of his grant, dated 14th April 2015, proposing distribution of the estate, between himself and the family of the deceased, so that he was to take 0.405 hectare, with the balance going to the widow, Henrika Anyango, to hold in trust for the family. The confirmation happened on 4th June 2015, and a certificate of confirmation of grant issued, on 11th June 2015, in those terms.
3. I am now called upon to determine a summons, dated 3rd March 2017, seeking revocation of the grant made on 10th October 2014, as allegedly confirmed on 25th November 2015, and that the transmission of the estate, done on the basis of the confirmation orders, be cancelled, so that the property, Bunyala/Bulemia/2808, is reverted to the name of the deceased. The grounds on the face of the application are that the proceedings to obtain the grant were defective, the grant was obtained on the basis of false statements and concealed matter, and non-disclosure that there was another grant issued in Busia CMCS No. 244 of 2016, on 5th September 2016.
4. The said application is brought at the instance of Julius Bwire Were, who I shall refer hereto after as the applicant. In the affidavit in support, the applicant discloses that he was a son of the deceased, and that he had obtained representation to the estate of the deceased in Busia CMCS No. 244 of 2016. He states that the deceased died possessed of Bunyala/Bulemia/2759 and 3752. He identifies the survivors



of the deceased as 1 widow, 1 son, 2 relatives and 3 purchasers, being Hendrika Anyango Were, Julius Bwire Were, John Barasa Were, Charles Mudamba Nabakholo, Henry Odwory Ojiambo, Bonaventure Mulwenge and James Asara Muhombe, respectively. He avers that the administrator had left out some of the beneficiaries of the estate, and not disclosed other facts. He asks that the estate be reverted to Bunyala/Bulemia/2759. He claims that the deceased bought 1 acre out of Bunyala/Bulemia/2759. He states that the citation cause was filed without some of the beneficiaries being informed. The applicant has attached, to that affidavit, letters from the Chief of Bunyala North, dated 22nd February 2016 and 4th May 2016, detailing the individuals who ought to be the beneficiaries of the estate.

5. The administrator was served with the said application, and he has responded to it, vide an affidavit he swore on 26th May 2017. He states that he purchased land from the deceased, sometime in 1992, and that the deceased died in 2012, before transferring the said property to his name. He pestered the applicant, severally, to petition for representation, to no avail, and he had no option but to cite the widow to do so. He argues that the instant application is a non-starter, as transmission of the estate had already taken place. He further argues that the applicant did not obtain orders for his joinder to this cause. He has attached a copy of a citation order, made in Busia HC Miscellaneous P&A Cause No. 192 of 2013, dated 18th February 2014, which allowed him to petition for representation to the estate of the deceased herein.
6. The application was canvassed orally, in a hearing that was conducted on 21st May 2024.
7. The applicant was the first to take the stand. He stated that the deceased was his father, and that he had sold land to the administrator, 1 acre. He testified that the administrator did not get his 1 acre after the deceased died. He said that he did not know that there was a citation, as he was not party to it. He said that he later learnt that the administrator had inherited the entire parcel of land. He said that he was not aware that he only got the 1 acre that he was entitled to. He said that he could not conduct succession proceedings, as the administrator had already initiated the instant cause. James Asara Muhombe followed. He claimed that the deceased had also sold land to him. He acknowledged that the administrator had, similarly, acquired land from the deceased. He said that he had bought ¼ acre from the deceased, and that the deceased died before transferring the land to him. He said that he did not seek to have citations issue to the applicant or the widow, as he had no worries over the matter.
8. John Barasa Were testified next. He was a son of the deceased. He stated that he knew the administrator, but he did not know how he was related to the deceased. He asserted that he had expected that the widow, his mother, would be the one to share out the estate. He said that he did not know that the administrator had bought land from the deceased. He stated that after the administrator did succession on the land, he took the entire parcel. He said that the land had not been subdivided, and that the whole of it was in the name of the administrator. He explained that the administrator had filed a suit at the Environment and Land Court, and that he obtained an order from there to remove him from the land. He asserted that the land did not belong to the administrator. When shown a copy of the title deed for Bunyala/Bulemia/4990, he stated that it was 1 acre, but claimed that he did not know how to read.
9. Hendrika Anyango testified next. She was the widow of the deceased. She identified the administrator as a buyer, who had purchased land from the deceased. She stated that after the demise of the deceased, she had been directed to initiate succession proceedings to facilitate distribution of the estate, but when she attempted to start the process, she established that the administrator had already filed a succession cause, and the entire piece of land had been devolved to him. She asserted that she was the person entitled to have initiated the cause. She said that she wanted the land given back to her, so that she could subdivide it, and distribute it. She said that she did not know the acreage of the land sold to the administrator by the deceased. She said that the administrator did not cause a citation to issue to her,



and she was not aware whether she had attended court. She conceded that she lived on the same land with the administrator.

10. The administrator testified last. He stated that he bought land from the deceased, and was aware of the other 2 buyers. He stated that he bought the same in 1993, and the deceased died before he had had the portion transferred to his name. After the deceased passed on, he moved the court for a citation, of the widow, which he served. He got the order on 18th February 2014, after which he initiated the instant cause. He got the grant, which was confirmed, and he had the estate transmitted. He said that he did not transfer the entire land to himself, for he only took the 1 acre that he was entitled to, and left the rest to the widow, to distribute among the rest of the beneficiaries. He asserted that his title was Bunyala/Bulemia/4990, which measured 0.40 hectare or 1 acre. He stated that Bunyala/Bulemia/4889 is in the name of the widow. He stated that he had initiated a suit in Busia ELC No. 35 of 2013, and the court had ordered that he be given 1 acre. He said that a person had entered the land, and he obtained an order for his eviction. He said that the grant ought not be revoked.
11. At the close of the oral hearings, the parties opted not to file written submissions, and left it to me, to decide the matter based on the evidence on record.
12. The application before me is for revocation of grant. The grounds upon which a grant may be revoked are set out in section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya. The grounds can be summarised into 3 thematic areas: where the process of obtaining the grant is attended by problems, where the administration process has issues, and where the grant has become useless or inoperative on account of emergent circumstances. See *In re Estate of Luka Modole (Deceased)* [2019] eKLR (Musyoka, J). It can even be summarised into just 2; the process of either obtaining the grant, or the inactive use of the grant after being lawfully obtained. See *Joyce Ngima Njeru & another vs. Ann Wambeti Njue* [2012] eKLR (Githinji, Nambuye & Maraga, JJA).
13. The matter herein is fairly straightforward. The applicant seeks revocation of the grant obtained by the administrator, on grounds that the process of obtaining it was defective, and was marred by fraud and concealment of matter from the court.
14. Was that the case? I do not think so. The administrator had moved the court for a citation of the widow of the deceased, to take out representation. She was served. She did not harken to what was required of her in the citation, and the court made an order, on 18th February 2014, authorising him to petition instead, which he did. He obtained the grant, had it confirmed, and the estate was transmitted. The administrator sought representation to the estate after the court gave him the go-ahead. There was a court order authorising him to proceed. That order was not challenged by the applicant, or his mother, the widow, in any way. A person proceeding on the basis of a court order cannot be said to have acted fraudulently or deceitfully. The applicant has not demonstrated the manner in which the grant was obtained through a defective process, or through fraud or concealment of matter from the court.
15. For the record, I called for the file in Busia HC Miscellaneous P&A Cause No. 192 of 2013, and perused it. In it, the administrator had cited the widow of the deceased to take out representation in the estate of the deceased herein, to enable him access the 1 acre that the deceased had sold to him in 1992. There is an affidavit of service, sworn on 22nd November 2013, attesting to the service of the citation on the widow, on 14th November 2013, in the presence of the applicant. Tuiyott J, who was handling the matter, was satisfied with that service, and, upon ascertaining that there was no response to the citation, despite the service, granted leave to the administrator, on 18th February 2014, to proceed to petition for representation in the estate of the deceased, hence the instant cause.



16. Heavy weather was made about the administrator transferring the entire estate land to himself. Was there proof of that? I have not found any. The applicant and the widow conceded that the administrator had bought land from the deceased. According to the applicant, the land sold was 1 acre. The widow did not know the acreage, given that she was illiterate. The administrator concurred with that, that he had bought 1 acre, and stated that the title he held after the transmission, Bunyala/Bulemia/4990, was for 1 acre. That evidence was not shaken by the applicant, for he presented no contrary evidence, that the administrator had transmitted to himself a share larger than the 1 acre he had bought.
17. The applicant disclosed that he had initiated his own succession cause, in Busia CM CSC No. 244 of 2016. He claimed that he had been appointed administrator of the estate of the deceased herein in that cause. He did not provide any proof of that claim. Whatever the case, Busia CM CSC No. 244 of 2016 was initiated after this cause had been commenced in 2014, and after the grant herein had been confirmed. Busia CM CSC No. 244 of 2016 was filed in abuse of court process, with the intention of defeating or frustrating the instant cause, by stealing a march over the administrator. However, the applicant was too late, for the grant herein had been made and confirmed.
18. There should be only one cause in relation to the estate of the same individual. It was said, in *In re Estate of David Chege Jasan (Deceased)* [2019] eKLR (Muchelule, J), that it is not lawful that in respect of one deceased person the beneficiaries should litigate over his estate in two different courts, and that such should be considered to be in abuse of the process of the court, and one of them ought to be dismissed. In *Jeremiah Mukangu Gioche vs. Samuel Kanyoro Ikua & 3 others* [2020] eKLR (Kimondo, J), the court stated that the *Law of Succession Act* would never countenance a situation where two different parties hold two separate grants to the same estate. In *Newton Gikaru Gathiomi & another vs. Attorney General/Public Trustee* [2015] eKLR (Odunga, J), where two grants had been made in respect of the same estate, it was said that the law does not contemplate the issuance of two grants in respect of the same estate, and, therefore, the issuance of the second grant, in that cause, before the revocation or annulment of the first grant, was not procedural.
19. I called for the file in Busia CM CSC No. 244 of 2016, and perused it. That cause was initiated by the applicant herein, vide a petition, filed herein on 5th May 2016. He only listed himself and the widow as the survivors of the deceased. Henry Odwory Ojiambo is listed as a liability. Bunyala/Bulemia/3752 is what the deceased is said to have died possessed of. A certificate of official search indicates that it was registered in 2010 in the name of the deceased. A grant was made to the applicant on 5th September 2016. The grant was confirmed on 25th May 2021, with Bunyala/Bulemia/3752 being shared between the applicant, the widow, Charles Mudambo Nabakholo and Henry Ojiambo Odwory. Going by the decisions that I have cited above, that is to say *Newton Gikaru Gathiomi & another vs. Attorney General/Public Trustee* [2015] eKLR (Odunga, J), *In re Estate of David Chege Jasan (Deceased)* [2019] eKLR (Muchelule, J) and *Jeremiah Mukangu Gioche vs. Samuel Kanyoro Ikua & 3 others* [2020] eKLR (Kimondo, J), the initiation of Busia CM CSC No. 244 of 2016, during the pendency of the instant cause, was in abuse of the process of court, for it resulted in 2 grants being issued in respect of the same estate, and the cause in Busia CM CSC No. 244 of 2016 ought to be dismissed.
20. I note that in Busia CM CSC No. 244 of 2016 the property allegedly distributed was Bunyala/Bulemia/3752, while what was distributed in the instant cause was Bunyala/Bulemia/2808. Bunyala/Bulemia/2808 was registered in 1994, while Bunyala/Bulemia/3752 was registered in 2010, both in favour of the deceased. I cannot tell whether the 2 were different assets. If the 2 are different, then Bunyala/Bulemia/2808 should remain distributed as per the confirmation orders made in this cause, while Bunyala/Bulemia/3752 will have to be distributed afresh, in a summons for confirmation of grant, to be filed by the administrator, as the estate herein vests in him. The distribution of Bunyala/



Bulemia/2808 shall remain intact, because it was the subject of Busia ELC No. 35 of 2013, and the judgment in that case has not been reversed.

21. For avoidance of doubt, I called for and perused the file in Busia ELC No. 35 of 2013. It was a suit between the administrator herein and John Barasa Wanyama and another, over Bunyala/Bulemia/2808 and 4990, the 1 acre that the administrator had bought from the deceased. A trial was conducted, where oral evidence was taken. A detailed reasoned judgment was delivered, on 26th January 2023, by A. Omollo J. In the judgment the instant succession cause and Busia HC Miscellaneous P&A Cause No. 192 of 2013 featured. The background that came out was that the administrator had bought a portion of land from the deceased, being 1 acre, on 20th January 1992, paid the full purchase price and took possession. The deceased obtained consent of the Budalang'i Land Control Board, to transfer the portion sold to the administrator, but died in 2012, before the transfer could happen. Whereupon Busia HC Miscellaneous P&A Cause No. 192 of 2013 was filed, to cite the widow, to take out representation to facilitate that process, and when the widow failed to, the court granted permission to the administrator to file the instant cause. A grant was made to him, it was confirmed, and the estate was transmitted, with the result that the 1 acre Bunyala/Bulemia/4990 was vested in him. It was declared, in Busia ELC No. 35 of 2013, that Bunyala/Bulemia/4990 belonged to the administrator, and John Barasa Wanyama was ordered to vacate it.
22. In view of everything discussed above, I find that there is no merit at all in the application before me, and I hereby make the final orders, as follows:
 - a. That the application, dated 3rd March 2017, is hereby dismissed in its entirety;
 - b. That the applicant and the widow should proceed to distribute Bunyala/Bulemia/4889, between themselves and the other children of the deceased, the other buyers, and any other lawful claimants;
 - c. That the grant made in Busia CM CSC No. 244 of 2016 is hereby revoked, and the confirmation orders made in that cause set aside, and the certificate of confirmation of grant issued in that cause cancelled.
 - d. That I hereby direct the Deputy Registrar to call up the file in Busia CM CSC No. 244 of 2016, for the purpose of being put together with the instant cause, after that file has been closed;
 - e. That the Deputy Registrar shall also call for the files in Busia HC Miscellaneous P&A Cause No. 192 of 2013 and Busia ELC No. 35 of 2013, to be put together with the instant file, for record purposes;
 - f. That Bunyala/Bulemia/3752, if it exists, shall be distributed afresh, in a fresh confirmation application, to be filed herein, by the administrator herein, to be shared out amongst the beneficiaries entitled, excluding the administrator;
 - g. That each party shall bear their own costs; and
 - h. That any party, aggrieved by these orders, has leave of 30 days, to file an appropriate appeal at the Court of Appeal.

23. It is so ordered.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA THIS 4TH DAY OF OCTOBER 2024.

W MUSYOKA



JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Julius Bwire Were, the applicant, in person.

Advocates

Mr. Bororio, instructed by John Bororio & Company, Advocates for the administrator.

