



REPUBLIC OF KENYA



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**In re Kibusio Arap Samoei (Deceased) (Probate & Administration
60 of 2021) [2024] KEHC 11821 (KLR) (2 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11821 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 60 OF 2021**

JR KARANJA, J

OCTOBER 2, 2024

IN THE MATTER OF KIBUSIO ARAP SAMOEI(DECEASED)

RULING

1. The summons for confirmation of grant dated 17th November, 2023 was presented for hearing before this court on 15th February 2024 but in view of the protest thereto vide the affidavit of protest dated 4th March 2024 it was directed that the protest be heard prior to the summons by way of affidavit evidence and written submissions.

In that regard, the Protester/ Objector, Noah Kiptoo Samoei, and the Respondent/ Petitioner, Onesmus Tirop Busio, filed further affidavits and written submissions through their respective counsel on record.

2. Having considered the protest on the basis of the rival submissions and in the light of the summons for confirmation of grant, it dawned upon this court that the determination of the protest and by extension the summons for confirmation of grant would largely be dependent on the history of the matter and the chronological events relating thereto than anything else.
3. A perusal of the record reveals that the matter commenced more than ten (10) years ago in the year 2013 when Respondent and Obadiah K. Samoei (deceased) petitioned for grant of letters of administration intestate respecting the estate of the late Kibusio Arap Samoei (deceased) in their respective capacity as sons of the deceased who was survived by a widow and several other sons inclusive of the Protestor/ Objector as well as two daughters and a daughter-in-law. At the time of his demise, the deceased owned several parcels of land and shares in different limited liability companies, all with an estimated monetary value of Kshs. 50million.
4. The petition was allowed and on the 28th May 2013, a grant of letters of administration intestate was issued to the two Petitioners by the High Court at Eldoret, but before it was confirmed, the objector filed an application for revocation of the grant vide the summons for revocation of grant dated and filed herein on 17th June 2013. This was followed by several other interlocutory applications by respective



beneficiaries in relation to the estate property as a whole or in part. However, on the 20th January 2021, a consent letter dated 13th April 2021 was filed herein.

5. Vide the consent letter the parties agreed that: -
 1. Following the demise of the second Petitioner, Obadiah Kichwen Samoei on 2nd September 2020, the Objectors summons for revocation dated 17th June 2013 be and is hereby marked as withdrawn with no orders to costs.
 2. A fresh grant of letters of administration be issued jointly to Onesmus Tirop Busio and Noah Kiptoo Samoei.
 3. Upon issuance of the fresh grant, the new administrators be at liberty to take out summons for confirmation of the said grant expeditiously.
6. The consent was impliedly approved by the court on 24th May 2021 when the Objector through his advocate at the time, Mr. Magut asked the court to adopt the consent as an order of the court so that the matter may proceed to confirmation stage. The court therefore fixed the matter for mention seemingly to fix a date for confirmation of grant on the presupposition that the parties would have by then taken out the necessary summons for confirmation of the new grant. The first mention date was slated for 12th July 2021 but on that date, a further mention date was fixed i.e. 11th October 202, on which date the matter seemed not to have been mentioned and remained inactive until the 4th August 2022 when it was mentioned before the court ostensibly for substitution of the previous departed Petitioner, the Late Obadiah. The court directed that a formal application be made and that the matter be transferred to the High Court at Kapsabet where it was fixed for mention before the Deputy Registrar on 28th November 2022.
7. The Deputy Registrar in turn fixed the matter for direction on 27th February 2023 but it was never mentioned before the court although there seemed to have been an attempt to mention it before the Deputy Registrar yet again. Since that date, nothing was heard of this matter until the 20th April 2023 when it was placed before this very court for mention, but the parties did not appear. The court however, noted that another application for revocation of grant dated 4th April, 2016 was withdrawn although there was already a consent to that effect on 11th September 2017. That, the previous application for revocation of grant dated 17th June 2013 had seemingly been reinstated for hearing and was actually the application due for mention for directions on that 20th April 2023 and because the parties did not appear in court the matter was fixed for further mention on 7th June 2023.
8. The matter never came up for mention on 7th June 2023. Instead an application vide the chamber summons dated 15th May 2023 was filed by the Objector/ Petitioner seeking substitution of the first, Petitioner/ Administrator with a beneficiary called Erastus Bungei Busio for reasons that the first Administrator had completely failed to administer the estate. An order to rectify the grant issued on 28th May 2013 was also sought. The application came up for hearing on 5th July 2023, but the parties expressed an intention to settle the matter out of court. Several mentions of the matter on the way forward followed thereafter and on the 21st November 2023, the application withdrawn. In the meanwhile, the Respondent/ Petitioner filed an application for confirmation of grant vide the summons for confirmation of grant dated 17th November 2023 containing a proposed mode of distribution of the estate as specified in paragraph seven (7) of the supporting affidavit.
9. However, when the application came up for hearing on 21st March 2024, an affidavit of protest against confirmation of the grant dated 4th March 2024, had already been filed by the Protestor/ Objector. The court therefore directed that the protest be heard prior to the summons for confirmation by way of



affidavit evidence and written submissions. It is in-structure to note that as at that point a beneficiary known as Hillary Korir joined the matter as an interested party, but he opted not to participate in the protest.

It was after the filing of the submissions and related documents by all the participants that the matter was set for ruling today, the 2nd October 2024.

10. It is quite clear from all the foregoing factors that the protest is against the confirmation of the grant as proposed by the Respondent with the approval of the beneficiary daughters and daughter-in-law of the deceased.

However, a closer look at the impugned summons for confirmation of grant dated 17th November 2023, indicates that the grant sought to be confirmed was the grant issued or made on 28th May 2013. The protest is anchored on the summons for confirmation and if the summons meets its “waterloo” at this juncture, then the protest would have no effect even though it signifies that the parties are far from agreeing on the distribution of the estate and unless they arrive at an amicable settlement on the distribution of the estate the matter would be further and unnecessarily delayed to create an impression that the administrators are unable to fulfil their lawful obligation in relation to the estate and ought therefore step aside to make room for appointment of new administrators or for the matter to be referred to the public trustee for necessary administration and distribution of the estate.

11. The history of the matter as may be deciphered from the record and the observations made herein above in relation thereto renders the impugned summons for confirmation of grant a foregone conclusion along with the protest against it for the basic reason that the grant sought to be confirmed is that which was issued on 28th May 2013 and is no longer in existence by dint of the consent entered between the parties on 13th April 2021 to the effect that a fresh grant of letters of administration be issued jointly to Onesmus Tirop Busio and Noah Kiptoo Samoei and that upon issuance of the fresh grant, the new administrators be at liberty to take out summons for confirmation of the said grant expeditiously.

The two new administrators are of course the Applicant and not Protestor herein. They are actually the main disputants in this matter and that is why they refer themselves as Applicant/ Petitioner/ Administrator and Protestor/ Objector/ Administrator/ Petitioner respectively. This reference is informed by the fact that they were appointed as the new administrators of the fresh grant which should be the one due for confirmation and not the non-existent grant dated 28th May 2013 which effectively stood revoked after the filing of the consent in court on the 20th May 2021.

12. Indeed, the Objector appreciated this truism in paragraph twelve (12) of the affidavit of protest and so did the Petitioner/ Applicant in paragraph three (3) and five (5) of his replying affidavit to the protest dated 11th April 2024. Despite their knowledge that a new or fresh grant was made respecting the estate of the deceased and that the previous grant was stale and no longer in existence the two soldiered on with their application for confirmation and the protestor thereto thereby abusing the court process and wasting valuable judicial time.

The previous grant dated 28th May 2013 having been invalidated and there being no fresh grant to be confirmed both the present application for confirmation and the protest thereto are misconceived, incompetent and improper before this court. Both are accordingly struck out and dismissed with parties bearing their own costs with directions that the fresh grant be issued and extracted forthwith and all the beneficiaries inclusive of the two administrators do engage with the seriousness deserved and arrive at a consensus on distribution of the vast estate property prior to taking out necessary summons for confirmation of the fresh grant within the next four (4) months from this date hereof when the matter shall be mentioned for further directions and/or necessary orders.



It is accordingly ordered.

DELIVERED AND DATED THIS 2ND DAY OF OCTOBER, 2024

J. R. KARANJAH,

JUDGE

