



**In re Estate of Yusto Kionge (Deceased) (Succession Cause
18 of 2015) [2023] KEHC 916 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 916 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
SUCCESSION CAUSE 18 OF 2015
RPV WENDOH, J
FEBRUARY 16, 2023
IN THE MATTER OF THE ESTATE OF YUSTO KIONGE
(DECEASED)
IN THE MATTER OF SECTION 3 & 10 OF THE JUDICATURE ACT CAP 8
LAWS OF KENYA
IN THE MATTER OF APPLICATION FOR REVOCATION OF
GRANT
IN THE MATTER OF RETIFICATION OF CERTIFICATE OF CONFIRMATION OF
GRANT
BETWEEN
ANDREA OBONYO OBONYO APPLICANT
AND
KIONGE NGWALLA CHARLES RESPONDENT**

RULING

1. This cause relates to the estate of Yusto Kionge (Deceased) who died intestate on April 15, 2006. The estate is comprised of LR Suna East/Kakrao/694 measuring 27.0HA (suit land). This is a ruling on the application dated January 4, 2022. The applicant seeks the following orders: -
 - a. Spent
 - b. Spent
 - c. Spent.
 - d. Spent.



- e. That the grant of letters of administration issued to the respondent on the January 20, 2020 and amended certificate of confirmation of the grant issued on the June 13, 2017 be annulled and/or revoked and new ones be issued to the applicant.
 - f. That the certificate of confirmation of grant be amended to note that the applicant is entitled to 3.6 Ha of LR No Suna East/Kakrao/694 whilst the respondent to continue holding the rest of the said parcel in trust for the other beneficiaries.
 - g. The respondent do bear costs of this application.
2. Before proceeding to consider the grounds on which the application is based, prayer (e) of the application talks about a grant of letters of administration issued on January 20, 2020 and the amended certificate of confirmation of grant issued on June 13, 2017 be annulled. It is not possible to have the amended certificate of confirmation of grant issued to have a date “older” than the first confirmed grant. The court record indicates that the amended certificate of confirmation of grant is dated January 20, 2020 and not June 13, 2017 as indicated by the applicant.
 3. The application is based on the grounds found on its face and the supporting affidavit of Andrea Obonyo Obonyo, the applicant. The applicant’s contention is that the respondent was to hold the suit land in trust for him, Lawrence Onege and John Kionge; that all the beneficiaries have been living peacefully in their respective land as per the boundaries fixed by the deceased; that the applicant has been living on 3.6 Ha of the suit land; that the respondent has destroyed the boundaries put and therefore he cannot be trusted as an administrator. The applicant further contends that almost a year after the grant was issued, the applicant has not taken any steps towards completing the administration of the suit land; that it is imperative the grant be freshly issued to the applicant while the respondent remains as the one holding the estate in trust for the beneficiaries save for the applicant.
 4. The respondent opposed the application and filed a replying affidavit dated January 24, 2022. The respondent deposed that there is no evidence to support the allegations made by the applicant; that he is in the process of distribution; that every person will get their share as per the certificate of confirmation; that the revocation of grant can only be granted if the applicant was not a party to the whole process but it was upon his consent that the certificate of confirmation was issued; that despite the applicant not being a blood relative by inheritance, he was included in the schedule of beneficiaries, to get a share. The respondent alleged that several family meetings have been called to fast track the distribution but the applicant has never attended any hence causing the delay. The respondent reiterated that nobody will lose their share and he will abide by the law and come up with a schedule of distribution for the court to endorse.
 4. The application was canvassed by way of written submissions. The applicant filed his submissions dated October 27, 2022 in court on evenly. The respondent filed his submissions dated January 18, 2023 in court on January 19, 2023. I have considered the positions taken by each party.
 5. According to the affidavit in support of the petition for letters of administration intestate dated April 1, 2014, the following were listed as the persons surviving the deceased: -
 - a. Kionge Ngwalla Charles - son.
 - b. Hesbon Amollo Kionge - son.
 - c. John Kionge - son.
 - d. Bernard Kionge - son.



- e. Isaka Olang’
 - f. Lawrence Odhiambo Onenge.
 - g. Nashon Onenge.
 - h. Elias Onenge.
 - i. Byron Okeyo.
 - j. Andrea Obonyo.
6. The persons not listed as the sons of the deceased in the affidavit, are listed as interested parties in the chief’s letter dated April 2, 2014.
 7. On April 1, 2019, the beneficiaries and some of the interested parties including the applicant herein, attended the court for confirmation of the grant. The respondent asked the court to proceed with the confirmation of the grant and all parties had agreed that they will individually cater for the costs of the subdivision. The court then proceeded to confirm the grant.
 8. The applicant seems to be displeased with the laxity of the respondent in implementing the grant much as it was confirmed on April 1, 2019 but amended on January 28, 2020. By the time the applicant was bringing this application, a period of over 2 years had lapsed. The applicant seeks to have the amended certificate revoked and a fresh one issued in terms of his proposed certificate marked as “AA-5.” The applicant alleged that he occupies 3.6 Ha of the 27 Ha acreage of the suit land. The respondent has not disputed this position.
 9. The grounds upon which a person can move the court to revoke or annul a grant whether or not confirmed is provided for in Section 76 of the *Law of Succession Act*. The law provides: -

76 Revocation or annulment of grant

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.”

10. The circumstances which a grant can be annulled and/or revoked are statutory and include, where the process of obtaining the grant were defective in substance, the grant was obtained fraudulently or through concealment of material facts, the grant was obtained by untrue allegation of fact essential in a point of law to justify the grant notwithstanding that the same was made in ignorance and that the person to whom the grant was made has failed to apply for confirmation within a year, or to proceed diligently with the administration of the estate, or to produce in court accounts and inventory as and when needed; and the last ground can be where the grant has become useless and inoperative.
11. There was no concealment of facts prior to the grant being confirmed on April 1, 2019. All the parties who had an interest in the deceased’s estate attended court. However, the respondent, who is the administrator, has failed to proceed with the distribution of the estate faithfully and diligently. This can be a ground for annulment or revocation of the grant. Even if he claims that the applicant has been uncooperative in attending the meetings there is no evidence of the said meetings, I do not see the necessity of the meetings.
12. All the beneficiaries and the interested parties told the court that they would cater for the costs of the subdivision. There is no indication that some negotiations over some pending issues was taking place. It seems that there are already defined boundaries on the suit land and each person has been occupying their respective parcels. The boundaries should not be disturbed. What the respondent needed to do was to execute the necessary transfer documents. There is no justification whatsoever in the respondent delaying in initiating the transfer process. Though the applicant has the right to move this court as he has done, instead of taking the long route of annulling the confirmed grant, the applicant should have asked this court to compel the respondent to undertake his duties within a stipulated period of time.
13. The only issue left is lack of schedule of distribution indicating how the suit land will be divided among the beneficiaries and the other interested parties. When the grant was confirmed, the Petitioner / Respondent was to hold the land in trust for all the beneficiaries and the Interested Parties. It is also difficult to commence the process since the Registrar of Lands will need a schedule indicating the parcel of land allocated to each beneficiary of the estate to enable the Registrar of Lands issue titles with the respective acreages.
14. In that regard, the court declines to grant the orders sought but instead the following orders do hereby issue: -
 - a. The Administrator shall procure the services of a Government Surveyor within 14 days to conduct a survey on the suit land;
 - b. The Government Surveyor’s report should indicate the boundaries and the particular acreage occupied by all beneficiaries in the suit land;
 - c. The costs of the Surveyor, if any, shall be shared equally among all the persons who have an interest in the suit property. For avoidance of doubt, this includes even the beneficiaries;
 - d. The Administrator is hereby directed within 21 days after being in receipt of the Surveyor’s report, to file a schedule of distribution on what each party who has a stake in the deceased’s estate is to get. The schedule of distribution should be signed by all parties;
 - e. In preparing the schedule of distribution, the Administrator shall be guided by the Surveyor’s report;



- f. The Surveyor's report should also form part of the documents filed in court by the Administrator;
- g. Any boundaries on the suit land should not be interfered with. *Status quo* should be maintained.
- h. Each party to bear their own costs .
- i. Mention after sixty (60) days on May 24, 2023 to confirm compliance.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 16TH DAY OF FEBRUARY, 2023

R. WENDOH

JUDGE

Ruling delivered in the presence of:

Mr. Odingo holding brief for Ms. Apondi for the Applicant.

No appearance for the Respondent.

Nyauke Court Assistant.

