



REPUBLIC OF KENYA



**In re Estate of Francis Wasilwa Saratuki Achuti (Deceased) (Succession Cause 18 of 2006) [2023] KEHC 2070 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2070 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 18 OF 2006**

**DK KEMEL, J**

**MARCH 16, 2023**

**IN THE MATTER OF THE ESTATE OF FRANCIS  
WASILWA SARATUKI ACHUTI (DECEASED)**

**BETWEEN**

**MAURICE NASICHE KUDONDO ..... OBJECTOR**

**AND**

**BEATRICE NALIKA SITUMA ..... PETITIONER**

**RULING**

1. Vide summons for revocation of grant dated April 23, 2021, filed on April 26, 2021, filed under section 76 of the *Law of Succession Act* and Rules 44 and 73 of the *Probate and Administration Rules*, the objector herein, Maurice Nasiche Kudondo, sought that; the grant of letters Administration issued to the Petitioner herein, Beatrice Naliaka Situma and confirmed on September 30, 2009, over the estate of the deceased herein, Francis Wasilwa Saratuki Achuti (Deceased) be revoked; the deceased's shares in Trans-Nzoia Investment Co Ltd of land Plot No 1 Namanjalala Farm be included to the list of properties comprising of the estate of Francis Wasilwa Saratuki Achuti (Deceased); a fresh grant of letters of administration be issued to the Objector, Maurice Nasiche Kudondo son of the deceased; and costs of this application be paid out of the estate.
2. The application is supported by the objector's affidavit sworn on April 23, 2021 in which he states that the deceased herein, Francis Wasilwa Saratuki Achuti, died on May 12, 2005 and grant of letters of administration intestate were made to Beatrice Naliaka Situma by this honourable court. The Grant was confirmed on September 30, 2009 and that the same was obtained fraudulently by making of false statements by the Petitioner and concealment of material facts to this succession cause.
3. He averred that the deceased was a shareholder in Trans Nzoia Investment Company Limited and owned a share of land measuring 68 Acres, Plot No 1 Namanjalala Farm as evidenced by the annexure marked MNK-2.



4. He averred that in 2015 or thereabout, two beneficiaries of the deceased, Pailomena Nawanga Wasilwa and Bernard Nyongesa Saratuki, fraudulently caused the said deceased's share of land to be transferred and registered in the name of Pailomena Nawanga Wasilwa and a land title was issued as Kwanza/ Namanjalala Block 5/1.
5. He averred that when he came to know about it, he immediately obtained letters of administration ad litem and filed a case in the Environment and Land Court at Kitale vide ELC Case No 81 of 2018 to get back the deceased's property.
6. He averred that the deceased's land plot No 1 Namanjalala Farm is at risk of being lost to non-beneficiaries and/or unequally distributed if the confirmation of grant dated September 30, 2009 is not revoked.
7. He further averred that as a beneficiary and dependent of the deceased, he was left out during the confirmation of grant dated September 30, 2009, and that he stands to be disinherited unless the grant confirmed is revoked and/or annulled.
8. In opposition to the said summons of revocation and/or annulment of the grant, on September 20, 2021 the Petitioner filed a replying affidavit dated September 14, 2021. She asserted that prior to his death, the deceased had four wives and one of the deceased's widow is Pailomena Nawanga Wasilwa, a shareholder of Trans Nzoia Investment Company wherein she held a share certificate for a land measuring 68 acres on the company's Namanjalala Farm and that is where she used to live prior to the demise of their husband and thus there was no need to include the said property as part of the deceased's properties.
9. She averred that the objector and 25 others signed a consent to the making of the grant of letters of administration intestate to a person of equal or lesser priority in the year 2005 as required by law before the same was issued.
10. She averred that she has carried out her duties as an administrator of the estate of the deceased diligently to completion and that it has been 12 years since the same grant was issued and confirmed but the objector has never filed any application to revoke it.
11. She averred that the Objector participated in all the succession proceedings thus the allegations that the grant was obtained through fraudulent means and by concealment of material facts was not true as the parcel of land that he insists was not included as one of the deceased's properties has never been part of the deceased's properties as the same was registered under the name of Pailomena Nawanga Wasilwa.
12. She averred that there has been inordinate delay by the objector in bring up this application and that the same is a waste of judicial time.
13. She averred that the estate of the deceased is no longer in existence and that there is nothing to be redistributed even if the grant was revoked and thus it will serve no purpose.
14. She averred that the revocation of the grant will affect 3<sup>rd</sup> parties who have since bought land from some of the beneficiaries herein and are not parties to the suit and this may in the long run re-open a series of cases.
15. She averred that the land in contention was never part of the deceased's properties in paper and it was upon family members to deliberate on how the same would be distributed among the beneficiaries if at all the same was to be distributed.



16. She urged this Court to find that the application for revocation of the grant lacks merit and dismiss the same with costs.
17. The application was canvassed by way of written submissions. Each party filed and exchanged their respective submissions.
18. The Objector vide submissions dated October 4, 2022, filed on November 3, 2022, on the issue as to whether the grant should be revoked, it was submitted that there existed a share certificate issued to the deceased by Trans Nzoia Investment Company Limited showing that the deceased owned 68 acres of land in untransformed shares in Trans Nzoia Investment Company Limited and that the same was in the knowledge of the Petitioner but she excluded the same from the schedule of assets forming part of the estate of the deceased thus the land was fraudulently disposed of and its recovery was the subject matter in Kitale ELC Case No. 81 of 2018.
19. It was submitted that the allegations that the land belonged to Pailomena Nawanga Wasilwa as she was a shareholder of Trans-Nzoia Investment Company Limited were not backed with evidence as she failed to place before this Court the said share certificate issued by the company.
20. On the law regarding transfer of shares, it was submitted that a share can be defined as a single unit of ownership in a company and that it is transferred from one person to another through transfer document duly executed by or on behalf of both the transferor and the transferee. It was further submitted that subject to section 323 of the *Companies Act*, shares in a company are personal property of the shareholder which means that the shares form part of the estate of the deceased.
21. It was further submitted that the petitioner purported that the share in the company giving rise to the share of 68 acres had been registered in one Pailomena Nawanga Wasilwa while fully aware that the same belonged to the deceased and coupled with the concealment of material facts from the court makes the petitioner unsuitable to continue as an administrator of the estate as beneficiaries are likely to suffer great prejudice.
22. Vide submissions dated November 11, 2022, the petitioner submitted that the objectors have not presented sufficient evidence to warrant the revocation of the grant. It was submitted that the objector participated in the confirmation of grant and duly signed the consent to the said confirmation and duly attended court over the same.
23. I have given due consideration to the application and the submissions. It is not in doubt that both the objector and the petitioner are agreed that there are third parties who have an interest in the property in dispute namely Kwanza/ Namanjalala Block 5/1 and who have not been served with the application or roped in as interested parties so that they are not condemned unheard. As there was such a serious omission, I find that this court cannot proceed with the matter in the absence of those parties or their responses to the present application. The prudent thing to do is to vacate the earlier orders and direct the parties to ensure that those third parties are served with the application for their information and action before this court dispenses with the same.
24. In view of the foregoing observations, the following orders are hereby issued:
  - a) The order reserving this matter for ruling is hereby vacated.
  - b) The objector/applicant is ordered to serve the application dated April 23, 2021 upon the third parties and or interested parties who are granted leave to file and serve responses thereto within ten (10) days upon being served.



- c) The objector/applicant and petitioner/ respondent are each granted leave to file further affidavits within three (3) days upon being served with a response by the interested parties.
- d) Mention on the April 12, 2023 for further directions.

**DATED AND DELIVERED AT BUNGOMA THIS 16<sup>TH</sup> DAY OF MARCH 2023**

**D.KEMEI**

**JUDGE**

**In the presence of :**

No Appearance Kraido for Objector/Applicant

Miss Njomo for Petitioner/Respondent

Mr Kizito Court Assistant

