



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Korose Melubo Lelekoko (Deceased) (Succession Cause
6 of 2021) [2023] KEHC 1677 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1677 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
SUCCESSION CAUSE 6 OF 2021
F GIKONYO, J
MARCH 9, 2023
(FORMERLY KISII SUCCESSION CAUSE NO. 571 OF 2012)
IN THE MATTER OF THE ESTATE OF KOROSE MELUBO LELEKOKO (DECEASED)**

BETWEEN

JOHN KISIIOL MAMPULI 1ST PETITIONER

SENTO NOGIKIPEWU LETEE 2ND PETITIONER

AND

TURETO PARSALOI KINOYIAN 1ST RESPONDENT

KIPLANGAT ARAP ROTICH 2ND RESPONDENT

RULING

1. Before this court is the application dated April 14, 2021.
2. The petitioners/applicants vide an application for revocation of grant dated April 14, 2021 seeking the following orders;
 - i. Spent.
 - ii. That the honourable court be pleased to revoke and/or annul the grant of letters of administration issued to the applicants herein vide Succession Cause No. 571 of 2012 at Kisii on May 3, 2018.
 - iii. That pending the hearing and determination of this application, an order of inhibition be registered against the title to land parcel number Transmara / Kimintet 'D' / 451 inhibiting any transfer to a third party or any other dealing in the said land.



- iv. That this honourable court be pleased to issue an order that the Land Registrar Kilgoris do rectify the land register for Transmara/ Kimintete 'D' /451 and revert land parcel Transmara/ Kimintet 'D' /451 back into the names of the deceased; Kerosé Melubo Lelekoko for redistribution.
- v. Costs of the application.
3. The application is expressed to be brought under Section 76(a), (b) & (c) of the Law of Succession Act cap 160 laws of Kenya, Rules 44 and 73 of the Probate and Administration Rules, and is supported by the affidavit sworn by the petitioners/Applicants John Kisiol Mampuli.
4. The respondents did not file a response to the applicant's application dated April 14, 2021 despite being served.

Directions of the court

5. The applications were canvassed by way of written submissions. The respondents did not file written submissions. The petitioners/applicants filed their written submissions.
6. On October 3, 2022, this court directed Ms. Bosibori to file and serve;
 - i. The official search on LR. Transmara/Kimintet 'D' /451
 - ii. Explanation of why petitioners included the said 'strangers' in their supporting affidavit for confirmation of the grant.
7. On December 8, 2022, ordered that the applicants serve the affidavit on the respondents within 7 days. Upon service, the respondents are to file their replies if any within 2 days of service.

Petitioners/Applicants' Submissions.

8. The petitioners/applicants submitted that the error in the certificate of confirmation of grant issued on the May 3, 2018 ought to be rectified to enable the co-administrators to distribute the estate of the deceased to its rightful beneficiaries. The names Tureto Parsaloi Kinoyian and Kiplangat Arap Rotich which were inadvertently included on the list of beneficiaries yet they are not family members or liabilities of the estate ought to be removed.
9. The petitioners/ applicants submitted that upon the revocation and rectification and sub division of the parcel of land comprised of land parcel Transmara/ Kimintet 'D'/ 451 the said 153.387 acres of land be shared equally upon the rest of the beneficiaries to the estate excluding the 1st applicant John Kisiol Mampuli. these beneficiaries are;
 - i. Arani Ene Sankale.....21.912 Acres.
 - ii. Natwaro Kituya Kimpa.....21.912 Acres.
 - iii. Soipei Enole Sinatei.....21.912 Acres
 - iv. Naserian Ole Likama.....21.912 Acres
 - v. Nolari Pendi.....21.912 Acres.
 - vi. Letee Korose Olelekoko.....21.912 Acres.
 - vii. Sento Nogipewu Letee.....21.912 Acres.



10. The petitioners/Applicants submitted that the 1st applicant has renounced his right to entitlement of any share in the estate of the deceased. The petitioners/Applicants and beneficiaries did not renounce the portion of land to the two strangers.
11. The petitioners / applicants pray that their application dated April 14, 2021 for revocation/ annulment of grant of letters of administration issued by this court on May 3, 2018 be allowed and orders as prayed.
12. The petitioners/applicants relied on the following authorities;
 - i. Section 29,38, 76 of the *Law of Succession Act*
 - ii. *Jamleck Maina Njoroge Vs Mary Wanjiru Mwangi* [2015] eKLR
 - iii. *In Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR.
 - iv. *Zebak Limited Vs Nadem Enterprises* [2010] eKLR Cited the Ugandan Case of *Ketende Vs Haridas & Co Ltd* [2008] 2 EA 174

Explanation On The Two Strangers

13. The petitioners/applicants filed a further affidavit giving the explanation of who the two strangers on the suit land are. The further affidavit is sworn by John Kisiol Mampuli on December 7, 2022.
14. The 1st petitioner /applicant averred that prior to the issuance of the grant of letters of administration, the 1st respondent had sought from the beneficiaries of the deceased estate (30) thirty acres from his estate, and in exchange, he was to issue the family thirty (30) acres of land from one of his parcels of land in exchange for the thirty (30) acres they were to give him. The 1st respondent went ahead and brought the 2nd respondent and informed the beneficiaries that he was owing the 2nd respondent some 11 acres of land. He requested them to include the 2nd respondent as a beneficiary with 11 acres. The 11 acres were to be removed from the 30 acres that the 1st respondent was to be issued by the respondents. They honored their part of the bargain by including them in the schedule of distribution of property. The 1st respondent was to get 19 acres and the 2nd respondent was to get 11 acres. The agreement for the exchange was verbal. The 1st respondent never honoured his end of the bargain.
15. During their attempt to transfer part of the suit parcel to the respondents, the Land Registrar noted that the respondents were not beneficiaries. The land registrar advised the parties to institute the instant proceedings.
16. The petitioners have also filed a copy of the green card in respect of the suit parcel of land.
17. Ms. Bosibori stated that Rotich is deceased. His son was present in court. She served all the respondents and the family of the 2nd respondent who is deceased (Rotich).
18. Ms. Bosibori submitted that none of the purported purchasers are on the land. Only members of the family of the deceased and other people live on the land though she had not visited the land herself. She stated that she has confirmed the 1st and 2nd respondents do not live in the land. The 1st and 2nd respondents were included in the grant. They were to be given land in exchange for another but the agreement did not materialize. This was done after the death of the deceased. The agreement was also verbal. There is no basis for the presence of the two. The search shows the suit parcel (451) is registered in the names of the two who are not entitled.



19. Mr. Langat, the son of the 2nd respondent (Kiplangat Arap Rotich) addresses the court and stated that they do not live on that land. He added that the 1st respondent sold 11 acres to them. That his father bought the land on August 24, 2012.
20. In a rejoinder, Ms. Bosibori stated that the grant was confirmed in 2018. She added that she had served Morindat in vain.

Analysis And Determination

21. I have considered the application by the petitioner, replies thereto as well as written and oral submissions by the parties.
22. I do note that, on May 4, 2021, Ndung'u J issued an order restraining any deals on the subject land pending hearing inter parties. Therefore, the main issues left for determination by this court are;
 - i. Whether this court should revoke and/or annul the grant of letters of administration issued to the applicants herein vide Succession Cause No. 571 of 2012 at Kisii on May 3, 2018.
 - ii. Whether the land register Kilgoris should rectify the land register for Transmara/ Kimintete 'D' /451 and revert land parcel Transmara/ Kimintet 'D' /451 back into the names of the deceased; Kerose Melubo Lelekoko for redistribution.

Revocation or annulment of grants.

23. Revocation or annulment of grant of Letters of Administration is governed by Section 76 of the Law of Succession which states that:

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.
24. 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, not every situation of transgressions or failings by the administrator will lead to revocation of grant or setting aside of distribution of the estate orders of the court. The court still retains the power to make orders that meet the ends of justice. See the suggestion by Muigai, J in [Mary Wangari Kibika vs. John Gichubi Kinuthia & 2 Others](#) [2015] eKLR, 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.
25. This is one such case as it will be borne out in the analysis below.
26. The petitioners/applicants have premised their application for revocation of grant on the grounds that; the previous advocates on record fraudulently included two individuals (the respondents herein) as beneficiaries of the estate herein who are not beneficiaries as the case herein, and the information as put to the court by the previous advocates on record was misleading and not true position of the estate of the deceased.
27. The devil is in the transaction underlying these grounds. Fathom these: The deceased died on May 24, 2012. The certificate of confirmation of the grant was issued on May 3, 2018. Yet, according to the petitioners, they entered into a verbal exchange agreement with the 1st respondent where he was to give them 30 acres elsewhere in exchange for the subject estate property. But, he did not. Of greater value to this decision is that, the said verbal agreement for exchange of land was made after the death of the deceased and before issuance of the grant. What does the law say about such transactions?
28. I borrow from Musyoka, J in [Veronica Njoki Wakagoto \(Deceased\)](#) [2013] eKLR that:
- “The effect of [section 45]...is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”
29. There was no lawful authority to enter into such transaction in respect of estate property.
30. In the circumstances, this kind of transaction upon land belonging to the deceased contravenes the [Law of Succession Act](#). The transaction may also attract penal sanctions under section 45 of the [Law of Succession Act](#) as an act of intermeddling with estate property. Therefore, the axe of law falls upon it, and I declare it unlawful transaction. Any or any subsequent transaction drawing upon the impugned transaction, is equally unlawful transaction. The transactions, thus, fall within the category of acquisition about which the [Constitution](#) in article 40(6) of the [Constitution](#) decrees: -
- The rights under this Article [property rights] do not extend to any property that has been found to have been unlawfully acquired [addition mine]
31. I have perused the supporting affidavit in support of the summons for confirmation of the grant sworn on November 27, 2012 by John Kisiol Nampuli. Clearly, Tureto Parsaloi Kinoyian and Kiplangat Arap Rotich are listed as buyers. They are not listed as beneficiaries in the Chief’s letter dated September



- 11, 2012. In any event none claims to be a dependant of the deceased. Their claim draws upon the impugned transaction herein.
32. Notably, the subsequent inclusion of the names of the respondents in the Certificate of Confirmation of Grant, the transfer of the property to, and registration into the names of the respondents was in furtherance of an unlawful transaction, and thus null and void. I call this self-inflicted pain.
33. Nevertheless, despite the offensive nature of the transactions and actions decried above, it will be imprudent to revoke the grant which may set the case in a backward mode or re-open the proceedings to the detriment of the beneficiaries. Courts are now making distinction between revocation of the grant and orders on distribution of the estate. Conflation of the two has seen revocation of grant visiting great injustice to innocent beneficiaries in the hands of unscrupulous ones who are not interested in seeing an end to litigation for varied reasons. Some desire to continue enjoying the estate to the detriment of the others through prolonged litigation; whilst others simply hope that, with effluxion of time, something will come up or avail itself and help them disinherit others especially where the daughters of the deceased are asserting their right.
34. Courts should avoid throwing into total head-spin succession causes where distribution of the estate has been properly ordered and or done except when it is the lawful or justifiable course to take.
35. The intention of the law is to move the process of distribution of the estate forward rather than backward (Mutende, J in *Eric John Mutemi & Another vs. Agnes Mumbanu Kinako* [2016] eKLR.)

Revoke grant or revert property to deceased?

36. In sum, the reasons advanced in the application do not warrant revocation of the grant. The most apt way of remedying the transgressions herein is to revert the property to the estate and then distribute it to the rightful beneficiaries; and as a consequence, review orders on distribution of the estate, and issue appropriate certificate of confirmation of grant replacing the earlier one. Other courts order amendment of the original certificate. Whatever course adopted, no prejudice is suffered.

Of rectification of grant

37. In light thereof, the limited scope of the power of rectification of grant under section 74 of the *Law of Succession Act* is not appropriate or competent to handle such substantive issues (*Hasalon Mwangi Kabero* [2013] eKLR). The less I say about the invocation of section 74 of the *Law of Succession Act* by the petitioner, the better.
38. I am careful, however, not to decimate the application by Morindat dated 26/05/2021. I will order therefore that the distribution of the property herein shall await the determination of the said application.

Conclusion And Orders.

39. The reasons given by the petitioner do not warrant revocation of grant under Section 76 (1) of the *Law of Succession Act*. The petitioner has however, successfully established lawful and justifiable reasons to revert the suit property to the estate of the deceased. Accordingly, this court makes the following orders;
- i. All consequential transactions that were effected upon the grant issued to the petitioners/ applicants herein on May 3, 2018 in respect of land parcel Transmara/ Kimintet 'D' /451 be cancelled by the Land Registrar, Kilgoris.
 - ii. The Registrar to rectify the land register for Transmara/ Kimintet 'D' /451 and revert the said land parcel Transmara/ Kimintet 'D' /451 back into the names of the deceased; Kerose Melubo



Lelekoko the original registered owner pending the distribution of the said property to the rightful beneficiaries.

- iii. The distribution of the said property will however await determination by the court of the application dated May 26, 2021 filed by Mr. Morindat advocate.
- iv. Given the results of the application, and the fact that the administrators herein were part of the offensive transaction herein, I order each party to bear own costs of the application.

40. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT KILGORIS THROUGH TEAMS APPLICATION, THIS
9TH DAY OF MARCH, 2023**

F. GIKONYO M.

JUDGE

In the Presence of:

1. CA - Kasaso
2. Bosibori for Petitioners

