



**In re Estate of Joseph Obo Shakhoi (Deceased) (Miscellaneous Application  
E001 of 2021) [2023] KEHC 1874 (KLR) (6 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1874 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KILGORIS  
MISCELLANEOUS APPLICATION E001 OF 2021**

**F GIKONYO, J**

**MARCH 6, 2023**

**BETWEEN**

**EVERLINE CHEPKIRUI KORIR ..... APPLICANT**

**AND**

**SAHNKATI OLE MENYIKU ..... RESPONDENT**

**RULING**

**Revocation of grant through Miscellaneous Application**

1. The applicant commenced these proceedings via Summons for Revocation of Grant dated April 12, 2021 brought under section 76 of the *Law of Succession Act*, rule 44 of the *Probate and Administration Rules*, rule 40(1) (a) of the *Civil Procedure Rules* 2010, section 1A, 3, 3A of the *Civil Procedure Act* seeking the following orders that;
  - a. Spent
  - b. This honourable court be pleased to revoke and/ or annul the grant of letters of administration intestate issued to the petitioners/ respondents forthwith.
  - c. Pending the hearing and determination of this application interpartes, this honourable court be pleased to issue orders restraining the petitioners /respondents and/or their authorized agents, servants and/or employees from in any way whatsoever administering, dealing and /or interfering with the estate of the deceased herein.
  - d. Costs of this application be provided for.
2. The application is supported by the affidavit of Everline Chepkirui Korir sworn on 12/04/2021.
3. The grounds in support of the prayers sought were that a grant of letters of administration intestate were issued by this honourable court to the petitioners/respondents herein on 16/11/2017. The said



grant was obtained fraudulently by making of a false statement and concealment of material facts from the court and of the family of the deceased; the petitioner/respondent obtained a letter from the chief dated 14/12/2016 and never disclosed the deceased had wife and children who are equally beneficiaries of the estate of the deceased., the petitioner/respondent fraudulently acquired the death certificate of Sahnkati Ole Menyiku of serial no. 02900060/2016-the said death certificate was issued in Narok and not Kilgoris where the cause of action arose. The petitioner/respondent deliberately withheld and/or concealed the aforesaid fact from this court. the proceedings to obtain the said grant were defective in substance to the extent that they claimed that every person having an equal or prior right to a grant of representation therein had consented thereto or renounced such right which is not true. The beneficiaries of the estate of the deceased are likely to suffer and be rendered destitute if the said respondents continue to administer the estate. The respondent has started to dispose some of the assets of the deceased to the detriment of the beneficiaries. The application has been brought in good faith and without any undue delay.

4. The objector/applicant in her affidavit added that she is the wife of the deceased. She petitioned this court for letters of administration vide Kilgoris Succession Cause No. 09 of 2017 and she was consequently issued with a certificate of confirmation of grant on 13/10/2020. In the said cause she was listed as the sole administrator to the estate of her late husband that is Tramsra/Moita/125.
5. The objector/applicant averred that on 11/11/2007 this court issued a grant of letters of administration intestate to the petitioner/respondent herein to represent the interest in the administration of the deceased's estate.
6. The petitioner/ respondent opposed the application vide a replying affidavit sworn on 1/07/2021. He deponed that the summons for revocation of grant is incompetent and the same ought to be struck out for reasons; i) it does not conform to the form provided by the law, ii) the grant to be revoked has not been attached or annexed to the summons. iii) The application is based on allegations of fraud which have not been proved through the criminal process. iv) The grant of letters of administration held by the applicant in respect of the deceased's estate was irregularly obtained with knowledge of earlier grant to him.
7. The petitioner/respondent averred that it is not true that the applicant was the wife of the deceased. To the contrary, he stated that the deceased was his elder brother. The deceased was married to one Mapena as his only wife and they stayed together until her death without being blessed with any children out of wedlock. And based on the information given by the applicant, the applicant is married with seven children who are staying with their father within Nakuru county.
8. The petitioner /respondent averred that it is not true that the court issued him with a grant of letters of administration on 11/11/2007. Further that the alleged copy of grant of letters of administration has not been annexed to the application.
9. The petitioner/respondent stated that it is not legally possible for two certificates of death to be issued in respect of one deceased person. He confirms that he made an application for the certificate of death of his late brother the late Joseph Oobo Shankoi and he surrendered the original national identity card and a certificate of surrender was issued to him
10. The petitioner/respondent averred that at the time of death of his late brother, the deceased had sold land parcel no. Transmara/Moita/125 to a third party and the same was not available for distribution to any beneficiaries. Further that the said parcel of land had been transferred to the said third party. Conversely, he averred that the applicant had illegally and wrongfully and without the authority of any letters of administration purported to sell the said parcel of land to other people. To cure the same, the petitioner/respondent lodged a case at the Environment and Land Court case no. 280 of 2016 against



the applicant herein together with other persons who were involved which case is still pending hearing and determination.

11. The petitioner/respondent contends that the applicant has concealed material facts which were within her knowledge and therefore the application is an abuse of the court process. Further that the grant issued to the applicant on the face of earlier grant issued to him in respect of the deceased's estate is a nullity and ought to be revoked immediately.

### **Directions of the court**

12. This matter has been scheduled for hearing of the application herein on several occasions however, the same has never proceeded and has always been adjourned at the instance of the applicant. This court, therefore, decided to determine the matter on the materials filed.

### **Analysis and Determination**

13. I have considered the summons for the revocation of grant of administration, the affidavit in support and replying affidavit. The application is anchored upon Section 76 of the *Law of Succession Act*.
14. Section 76 of the *Law of Succession Act* gives the court the powers to revoke a grant on grounds stated in the section.
15. In my view, except in appeal, the power to revoke or annul a grant under section 76 of the *Law of Succession Act*, is to be exercised at first instance by the court which made the grant. The power is exercisable suo moto by a court or on the application of any interested party.
16. The applicant objector herein alleged that there are two substantive succession causes filed in respect of the deceased. She filed Kilgoris PMC Succession Cause No. 09 of 2017. She alleges that the petitioner herein filed a cause at Kilgoris and obtained a grant which she now seeks for its revocation. She however neither indicated the number of the said cause nor annexed the grant to be revoked. Contrary to the averments by the applicant, this court has never issued any grant of letters of administration to the respondent. And, certainly, there is no grant that was issued in these proceedings which are commenced as miscellaneous family P & A application by way of Summons for Revocation of Grant.
17. Ordinarily, as first-instance initiative, a Summons for Revocation or Annulment of Grant is an interlocutory application in the substantive succession cause in which the grant was made. And, it is the court that issued the grant which has jurisdiction to hear the Summons for Revocation of Grant except in appeal or where the court did not have the initial jurisdiction. This is not an appeal, and the latter has not been claimed here.
18. Needless to state that, not all procedural requirements may be excused under article 159(2)(d) of *the Constitution* especially those which relate to substantive incidents of litigation and may invite jurisdiction-questions as is the case here. Therefore, the application as it stands now is incapable of resolving issues raised; it is misplaced and incompetent as a proceeding for revocation of grant through a miscellaneous application, and outside the substantive cause in which the grant was made.
19. In consequence thereof, I dismiss the application.
20. Note that, I have not discussed or analyzed the substantive issues raised in this application for the above reasons.

**DATED, SIGNED AND DELIVERED AT KILGORIS THROUGH TEAMS APPLICATION, THIS 6<sup>TH</sup> DAY OF MARCH, 2023.**



**F. GIKONYO M.**

**JUDGE**

In the presence of:

Mr. Ombachi for the Respondent

Mr. Mainga for the applicant - absent

