



In re Estate of Annah Nenchungei Koikai (Deceased) (Succession Cause 4 of 2017) [2023] KEHC 18279 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KEHC 18279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
SUCCESSION CAUSE 4 OF 2017**

F GIKONYO, J

APRIL 20, 2023

**(FORMERLY NAKURU HIGH COURT SUCCESSION CAUSE NO 457 OF 2012)
IN THE MATTER OF ANNAH NENCHUNGEI KOIKAI (DECEASED)**

BETWEEN

SIRERE OLE KOIKAI APPLICANT

AND

MAUREEN SOILA PASWA 1ST ADMINISTRATOR

CATHERINE SAPIATO KOONYO 2ND ADMINISTRATOR

VERONICAH NASEI PARMUAT 3RD ADMINISTRATOR

FRANCO NAURORI KOIKAI 4TH ADMINISTRATOR

MICHAEL KOILEKEN KOIKAI 5TH ADMINISTRATOR

LUCIA NANTOTI KOIKAI 6TH ADMINISTRATOR

RULING

Failure To Diligently Administer Estate

1. Before me is a Summons for Revocation of Grant dated February 21, 2023 and expressed to be brought under section 47, 73, 76, and 79 and of the [Law of Succession Act](#), Rule 44 of the [Probate and Administration Rules](#) seeking the following orders that;
 - a. Spent
 - b. Pending the hearing and determination of these summons, a temporary injunction be issued restraining the respondent s/administrators from cultivating, cutting down trees, leasing,



disposing off or in any manner dealing with the assets making up the estate of the late Annah Nenchungei Koikai.

- c. This Honourable Court be pleased to revoke the amended grant of letters of pursuant to the ruling dated 3rd November, 2022 granting Maureen Soila Pasa, Catherine Sapianto Kooyo and Veronicah Nasei Parmuat as the administrator to the estate of the late Annah Nenchungei Koikai.
 - d. This Honourable Court be pleased to issue a grant of letters of administration intestate to John Purko Koikai.
 - e. Costs of this application be provided for and be borne by the respondents/administrators.
2. The application is premised upon grounds set out in the application, and the supporting affidavit of Sirere Ole Koikaisworn on February 21, 2023.
 3. The major grounds in support of the application are, that the administrators/respondents who were appointed on 3/11/2022, have:
 - i. Blatantly failed to proceed diligently with the administration of the estate of the deceased herein.
 - ii. Inter meddled with the assets of the estate of the deceased by arbitrarily cutting down trees for firewood, charcoal, cultivation, destruction of the fences causing vast obliteration and destruction to the assets of the estate of the deceased.
 - iii. Adopted a unilateral decision to waste and inter meddle with the estate of the deceased to the detriment of the beneficiaries herein more so the application.
 - iv. Failed without any reasonable to administer and distribute the estate of the late Annah Nenchungei Koikaiaas ordered by this Honourable Court on 3/11/2022.
 - v. Neglected and abandoned the fiduciary duty they hold to the estate of the late Annah Nenchungei Koikai thus unfit to continue holding the role of being administrators.
 4. The applicant stated that the summons is brought in good faith and in the greater interest of justice.
 5. The administrators/ respondents opposed the application vide a replying affidavit sworn by Veronica Nasei Parmuat on March 13, 2023.
 6. She denied that they have embarked on a trail of destruction rather than administration of the estate. According to her, since their appointment as administrators they have made substantial progress in the administration of the estate, in that, they have: a) opened an estate account as directed by the court; b) engaged the services of a licensed surveyor to undertake the subdivision of the parcels of land which is at an advanced stage. c) cleared shrubs and put up fences on CIS -Mara/Ololungafollowing the beacons to demarcate each beneficiary's preferred portion. d) have cleared and put in place access roads to give each beneficiary ample access to their parcel of land on CIS-Mara/Ololunga/3486. e) caused survey and subdivision of parcel no. CIS-Mara/Ololunga/74 has been initiated and they expect the surveyor to conclude the work within the next 30 days subject to the availability of funds.
 7. She averred that the surveyor confirmed that the lack of cooperation by the applicant.
 8. The deponent stated that the surveyor's status update on the subdivision of CIS-Mara/Ololunga/3486 dated 24/02/2023 is that the subdivision is complete and that the beneficiaries were present and well represented on the ground during the exercise.



9. It therefore cannot be said that the administrators have been making unilateral decisions that prejudice any of the beneficiaries.
10. The surveyor further confirmed that the resultant parcels of land are equal acreage and have access to the road and thus offers sufficient rebuttal to the claim that the applicant has been barred from accessing the road.
11. It should also be noted that whereas the rest of the beneficiaries are cooperating to raise fund towards completion of the subdivision of the various parcels of land, the applicant herein has time and again failed to contribute and is currently in arrears of Kshs. 23,150/= with respect to the subdivision of CIS-Mara/Ololulunga/3486.
12. That the applicant would rather expend his finances in paying court fees and legal fees to stall the administration of estate.
13. What is termed as an ‘obliteration and destruction of assets’ in that trees have been cut down and harvested for firewood is a gross exaggeration. In reality, bushes and such process as to facilitate the installation of beacons and fences to mark the boundaries were undertaken.
14. The deponent observed that the applicant has constructed a permanent house on the said parcel of land where he lives and derives a benefit from and therefore in making this claim, the applicant is being dishonest and has approached this court with unclean hands and is underserving of audience.
15. That the prayer that John Purko Koikai be appointed as an administrator is misplaced considering that the applicant does not represent him and that the estate is well administered by the current administrators.
16. If the said John Purko Koikai had any intention of applying to be an administrator of the estate he would have made the application himself and thus this court ought not to impose such a responsibility on an individual who is not interested in the said duty.
17. Therefore, they opined that, it is evident that the applicant is yet again making an attempt to spin the wheels of justice in unending circles and in so doing is wasting valuable resources on our part and on the part of the court. That the applicant’s conduct is proof of the fact that he is the only stumbling block to the administration of the estate in finality. That the instant application is devoid of merit and as such it is only ripe for dismissal with costs.

Analysis and Determination

18. The Summons before me is for revocation of grant. The composite issue that arises from the application, the affidavit in support and replying affidavit, and the rival submissions of the parties is: -
Whether the grant of letters of administration issued to, and appointment of the three administrators herein should be revoked, and proposed sole administrator be appointed to administer the estate of the deceased.
19. The threshold of law is in the proof of one or more of the circumstances set out in section 76 of the *Law of Succession Act*.
20. Section 76 of the *Law of Succession Act* provides 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.
21. The gist of the application is that the three administrators have failed to proceed diligently with the administration of the estate of the deceased. and, instead, they have engaged in intermeddling with, and wanton destruction of the estate of the deceased in cutting down trees within the estate for illegal purposes.
22. Accordingly, these complaints fit ground (d)(ii) of section 76 of the [Law of Succession Act](#) which provides 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—
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either;
 - (ii) failed to proceed diligently with the administration of the estate;
24. Matters of intermeddling and wanton destruction of the estate property are matters about which the law takes a very serious view, and may be a basis for criminal liability on the part of the culprit. They should therefore be cited clearly and backed by cogent evidence. They should not be stated just generally or left at a high level of generalization.
25. Has the applicant proved the allegations of intermeddling with, and destruction of the estate property by the three administrators?
26. What does the evidence portend?
27. The applicant has also accused the administrators /respondents of inter meddling with the estate. The respondents have denied the accusation. They have explained the progress made in the administration of the estate since their appointment as administrators of the estate. According to them they have made substantial progress in the subdivision of the estate property in accordance with the grant. They explained further that the nature of the survey work entails clearing of bushes for purposes of survey and placement of the beacons. They stated that the applicant may have confused these acts to intermeddling or destruction of trees.



28. The administrators are pointing fingers at the applicant as the major impediments to the due administration of the estate, and specifically aver that he is the source of the delay to the process of distribution of the estate of the deceased. they stated that he prefers to pay court fees as well as legal fees to advocates in order to derail administration of the estate.
29. Other than merely stating that the administrators have not diligently administered the estate and that they are destroying and have intermeddled with the estate property, there is no such succinct evidence placed before the court to indict the administrators of the alleged unlawful acts. The material before the court and the explanations provided by the administrators and the surveyor paint a different picture from and negate the allegations by the applicant.
30. I only hope the applicant is not the impediment to the administration of the estate as was claimed by the administrators. The less I say about this aspect of these proceedings the better.
31. In the circumstances, I do not find anything which show that the administrators have failed to diligently administer the estate of the deceased. Accordingly, the allegations made against the respondents by the applicant have not been proved to the required standard.
32. I do not also find any ground for the appointment of John Purko Koikai as an or sole administrator of the estate. The three administrators suffer not any legal or specified or general deficiency to warrant appointment of another or other administrator.
33. In the upshot, the Summons for Revocation of Grant dated February 21, 2023 is not meritorious, and is hereby dismissed with costs to the respondents. Orders accordingly.
34. Nevertheless, to move the process of distribution of the estate forward and expeditiously, I direct the administrators to complete the administration of the estate within shortest time possible. I shall mention this case after six months to receive progress report or accounts of completed administration of the estate. I should state also that each beneficiary should cooperate with the administrators and among other things, pay up due share of any costs agreed upon to be necessary or incidental to the process of distribution of the estate. This way, beneficiaries avoid the possibility of part of the estate being sold to cater for administration costs.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 20TH DAY OF APRIL 2023.

F. GIKONYO M

JUDGE

In the presence of:

1. Tanyasis for Applicant

2. Andama for Respondents

3. Court Assistant – Mr. Kasaso

