



REPUBLIC OF KENYA



In re Estate of Korose Melubo Lelekoko (Deceased) (Succession Cause 6 of 2021) [2023] KEHC 4111 (KLR) (8 May 2023) (Ruling)

Neutral citation: [2023] KEHC 4111 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
SUCCESSION CAUSE 6 OF 2021**

F GIKONYO, J

MAY 8, 2023

BETWEEN

JOHN MOMPOSHI TALALA 1ST OBJECTOR
SOLOMON OLOISIRI KITIAPI 2ND OBJECTOR
SAMWEL NGOMBOI KIRUSIA 3RD OBJECTOR
SOLOMON NKORIEN 4TH OBJECTOR
WILSON LEPARAKUWO NANGA 5TH OBJECTOR
MACHARIA OLOLKEDIANYE 6TH OBJECTOR
DANIEL LESHOO NGILATI 7TH OBJECTOR
KINYAMAL OLOLKEDIANYE TASUR 8TH OBJECTOR
EDWARD LETEIPA KETERE 9TH OBJECTOR

AND

JOHN KISOL MAMPULI 1ST PETITIONER
SENTO NOGIKIPEWU LETEE 2ND PETITIONER

RULING

Intermeddling with the estate of deceased

1. Before the court is an application dated May 26, 2021.
2. The objectors/applicants are seeking the following orders;
 - i. Spent.



- ii. That pending hearing interpartes of the application herein this honourable court be pleased to restrain the respondents from sub-dividing selling and transferring parcel No(s) Transmara/Kimintet 'd'/451.
 - iii. That pending the hearing and determination of the summons application herein this honourable court be pleased to restrain the respondents from sub-dividing, selling, and transferring parcel no(s), Transmara/Kimintet 'D'/451
 - iv. That the grant of letters of administration intestate issued to John Kisiol Mampuli and Sento Nogikipewu Letee on 6th November, 2012 and confirmed on 3rd may 2018 be revoked.
 - v. That Costs of this application be provided for.
3. The application is expressed to be brought under Section 47 and 76 of the Law of Succession Act cap 160 laws of Kenya, Rules 44, 49, 63 and 73 of the Probate and Administration Rules, and is supported by the affidavit sworn by the 2nd objector/applicant Solomon Oloisiri Kitiapi.
 4. The application is based on the grounds that; i) the grant was obtained fraudulently by the making of a false statement; ii) the grant was obtained by means of an untrue allegation of a fact essential to the point of law to justify the grant; iii) the petitioners left out other beneficiaries of the estate; iv) the petitioners failed to disclose to this honourable court that they have sold a portion of the said parcel of land Transmara/Kimintet 'D'/451 to the objectors/applicants.
 5. They concluded that it is prudent and just that the orders sought herein be granted. That no party will be prejudiced if the orders sought herein are granted. And, that it is in the best interest of justice that this application should be allowed.
 6. The objector/applicants in their affidavit in support of the summons have made several averments. That they are beneficiaries of parcel of land Transmara/Kimintet 'D'/451. They all entered into land sale agreements with the petitioners herein on different dates and years. That the petitioners commenced succession proceedings without their consent and failed to disclose to this court that they are part of the beneficiaries of the estate herein. That the grant of letters of administration intestate issued to the petitioners herein, John Kisiol Mampuli and Sento Nogikipewu Letee on November 6, 2012 and confirmed on May 3, 2018 be revoked. That the petitioners may further sub divide or dispose of the estate to the detriment of the other beneficiaries unless this honourable court intervenes. That they are in occupation of the said parcel of land.

Petitioner's Reply

7. The petitioners/respondents filed a replying affidavit sworn by the 1st petitioner/applicant John Kisiol Mampuli on July 13, 2021.
8. The petitioners averred that this is family court and does not have jurisdiction to entertain the issues with regard to land dispute addressed by the objectors. That the same land dispute is pending before Kilgoris magistrate court in ELC case No 101 of 2018 and addressing the said land disputes issues raised by the objectors before this court will be interfering with the ongoing suit in Kilgoris. That the objectors herein are not beneficiaries nor liabilities to the estate of the deceased as the purported land transaction raised by the objectors were done while the registered owner of the said parcel was deceased hence the objectors have no locus standi before this honourable court. That the said objectors are strangers to the petitioners and beneficiaries of the estate of the deceased and the purported sale agreements attached in their application indicate that they purchased the parcels of land later after the deceased had passed on. That by their own admission, the objectors herein are guilty of contravening



section 45 of the *law of succession act* by inter meddling with property of a deceased person. That the application is pre mature since the land dispute filed by the objectors herein pending before Kilgoris magistrate's court is yet to be heard and determined. That the parcel No LR No Transmara/Kimintet 'D'/451 is estate of the deceased which was yet to undergo succession at the time of the alleged sales, and the beneficiaries were not aware of the said sale neither did the rightful beneficiaries to the estate of the deceased consent to any sale whatsoever. That the petitioners have been in court until May 3, 2018 when the certificate of confirmation of grant was issued and the alleged sale agreements produced by the objectors herein were done before the certificate of confirmation of grant was issued thus the petitioners had not carried out succession over and in respect of the estate of the deceased and the suit property remained in the names of the deceased. That the alleged sales and subsequent illegal occupation by the objectors is fraudulent, unlawful and amounts to inter meddling with the estate of the deceased. That the applicants' application is frivolous, vexatious and a waste of judicial time and the same ought to be dismissed with costs.

Directions of the court

9. The application was canvassed by way of written submissions. The objectors/applicants did not file written submissions. The petitioners/respondents filed their written submissions.

Petitioners/respondents' submissions.

10. The petitioners/respondents submitted that this is a family court and does not have jurisdiction to entertain issues regarding land dispute. The same issues are pending before Kilgoris Magistrate's court in ELC case No 101 of 2018.
11. The petitioners/respondents submitted that the objectors are not beneficiaries or liabilities of the state of the deceased. The purported land transactions were done while the registered owner was deceased therefore, they lack locus standi.
12. The petitioners/applicants submitted that the objector's application dated May 26, 2021 is frivolous, vexatious, and a waste of judicial time and the same ought to be dismissed with costs.
13. The petitioners/ applicants submitted that the cause was gazetted in Kenya gazette, and parties were invited to challenge it. The objectors never filed any caveat or objection.
14. The petitioners/applicants relied on the following authorities;
 - i. *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] eKLR
 - ii. *In Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR.
 - iii. *Zebak Limited v Nadem Enterprises* [2010] eKLR Cited the Ugandan Case of *Ketende v Haridas & Co Ltd* [2008] 2 EA 174

Analysis And Determination

15. I have considered the application, the petitioner/respondents' replying affidavit, and the petitioners/applicants' written submissions.
16. On May 4, 2021, Hon. Ndung'u J issued an order restraining any deals on the subject land pending hearing inter parties.
17. On 9/03/2023, this court issued the following orders;



- i. All consequential transactions that were effected upon the grant issued to the petitioners/ respondents on 3rd May 2018 in respect of land parcel Transmara/Kimintet 'D' /451 be canceled 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 26/5/2021 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, each party to bear own costs of the application.
18. Therefore, the only issue left for determination by this court is;
- i. Whether the grant issued on May 3, 2018 should be revoked and/or annulled.

Revocation or annulment of grants.

19. Grounds for revocation or annulment of grant of letters of administration are set out in Section 76 of the *Law of Succession* which provides as follows:
- 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.
20. The specific grounds cited by the objectors/applicants for revocation of grant are; i) that the petitioners herein commenced succession proceedings without their consent and failed to disclose to this court that they were part of the beneficiaries of the estate herein; and ii) that the petitioners are guilty of non-disclosure of material facts.
21. The deceased died on May 24, 2012. The certificate of confirmation of the grant was issued on May 3, 2018. The sale of land agreements between objectors and the petitioners were done in the years



on December 27, 2012, September 17, 2013, 6/03/2014, July 22, 2014, 2/08/2014, December 30, 2015, 5/04/2013, 22,07/2014, 3/11/2014, September 24, 2014, February 9, 2015, August 27, 2014, February 1, 2016, February 15, 2016, April 11, 2016, April 19, 2016, and September 16, 2016. Of particular concern in law is the fact that, the said agreements for sale of land relate to sale of land belonging to the deceased, they were made after the death of the deceased but before confirmation of grant.

22. What does the law say about such transactions?
23. The transactions in question are sale of immovable property of the deceased before confirmation of grant; something expressly prohibited by section 82 of the law of succession Act. There was also no authority from the court to sell immovable property of the deceased.
24. Therefore, there was no lawful authority to enter into such transactions in respect of the estate property.
25. Section 45 of the Law of Succession Act states that, 'Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person'.
26. Whereas some argue that an administrator may not be a subject of section 45 but offences under section 95 of the Law of Succession Act, a distinction and argument could be made whether a grant of letters of administration before confirmation expressly authorizes or confers power to sell immovable property of the deceased.
27. Be that as it may, according to Musyoka, J in Veronica Njoki Wakagoto (Deceased) [2013] eKLR:

“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.”
28. In the circumstances, the kind of transactions herein upon land belonging to the deceased contravene the Law of Succession Act. Such transactions may also attract penal sanctions under the Law of Succession Act say, section 45 and 95 of the Law of Succession Act for being acts of inter meddling with, or leading to loss of or damage estate property, respectively. Therefore, the axe of law falls upon the sale of the estate property before confirmation of grant, and declares the acquisition thereof or subsequent acquisitions unlawful. I also have no doubts in my mind that, such transactions, fall within the category of acquisition to which article 40(6) of the Constitution apply and decrees that: -

The rights under this Article [property rights] do not extend to any property that has been found to have been unlawfully acquired [addition mine]
29. I have also perused the supporting affidavit in support of the summons for confirmation of the grant sworn on November 27, 2012 by John Kisiol Nampuli. The objectors are not listed in as buyers. They are also not listed as beneficiaries in the Chief's letter dated September 11, 2012. In any event despite claiming to be part of the beneficiaries of the estate by virtue of the impugned sale of estate property, none of them is a dependant of the deceased in the sense of the law. Their claim draws upon the impugned transaction herein. I do note, however, that these transactions are subject of a case in ELC.



30. Therefore, the offensive transactions herein cannot be a basis for seeking revocation of the grant. Accordingly, the application for revocation of grant has no merit.

Conclusion and orders.

31. The grounds stated by the objectors do not warrant revocation of grant under Section 76 (1) of the *Law of Succession Act*. In the upshot, the court makes the following orders;

- i. The application dated May 26, 2021 is dismissed with costs to the respondent.
- ii. The administrators to file mode of distribution of the estate property for consideration by the court and confirmation thereto.

32. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT KILGORIS THROUGH TEAMS APPLICATION THIS
8TH DAY OF MAY 2023**

F. GIKONYO M.

JUDGE

In the Presence of:

CA - Leken

Bosibori for Respondent

