



**In re Estate of Chumo Arap Barngetuny (Succession Cause
223 of 2015) [2023] KEHC 18901 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18901 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 223 OF 2015
RN NYAKUNDI, J
JUNE 15, 2023
IN THE MATTER OF THE ESTATE OF CHUMO
ARAP BARNGETUNY SAMMY KIPKOSKEI**

BETWEEN

SAMMY KIPKOSKEI LETING APPLICANT

AND

ESTHER JELIMO BARNGETUNY RESPONDENT

RULING

1. The applicant approached this court vide a summons for revocation of grant dated March 17, 2021 seeking the following orders;
 - a) That the grant of letters of administration intestate issued to Esther Jelimo Barngetuny on the 28th day of February, 2017 and confirmed on the 1st day of April, 2019 be revoked on the grounds that the proceedings to obtain the grant were defective and that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of material facts.
 - b) That the subdivision of all that property known as Turbo East/Leseru Block 3 (Tuigoin)/49 and the subsequent transfer(s) if at all to the beneficiaries as per certificate of confirmation issued by this honourable court on 5th April, 2019 be rescinded and the property do revert to and be registered in the name of the deceased.
2. The application is premised on the grounds set out therein and the contents of the affidavit annexed thereto.

Objector's Case



3. The objector's case is that he is the biological son of the deceased and he was not involved in the succession proceedings leading up to the grant of letters of administration intestate issued to Esther Jelimo Barngetuny. He seeks revocation of the grant on the grounds that it was obtained by concealment of material facts. He deposed that his father did not sell any portion of Turbo East/Leseru Block 3 (Tuigoin)/49 and further, that strangers have been given portions of his father's estate. He urged the court to revoke the grant on account of these concealed facts.

Respondent's Case

4. The petitioner opposed the application vide a replying affidavit dated May 17, 2021. She deposed that she is the mother to the applicant and that he has been a misery to her and the rest of the family. Further, that severally the court insisted that they serve him and indeed was served but refused to attend court or participate in the entirety of the proceedings. She stated that each of the children got 2 acres of the land and that Benjamin Kipkorir Tum is a direct beneficiary being a grandson of the deceased who was justified to get ½ acres as he took care of the deceased to the time of his demise. Further, that Ann Jepchirchir Koech is a purchaser for value and deserves the portion allocated.
5. Counsel for the respondent submitted that the objector herein signed the consent to the making of grant which is duly filed in the court and was attested to by an Advocate and a Commissioner for oaths and urged that the objection was baseless and the same should be dismissed with costs.

Analysis & Determination

Whether the grant issued should be revoked

6. Revocation of grant is governed by section 76 of the [Law of Succession Act](#) 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.”

7. The applicant’s basis for seeking revocation is that there was concealment of material facts, said material facts being that he was not involved in the proceedings. Other than alleging there were material facts that were concealed, he has not provided any concrete evidence to support these allegations. It is trite law that he who alleges must prove and considering the contents of the supporting affidavit, I am hard pressed to find that he has proved any of his allegations. In the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* (2015) eKLR the court held as follows:

“The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the courts own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material for the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

8. Essentially revocation of a grant as espoused under section 76 of the Act is discretionary to be exercised judiciously with cogent evidence by the mover of the application. The pertinent questions mainly revolve around omission of the beneficiaries eligible under Section 29 (a) & (b) to inherit the estate of the deceased. On the other hand, would be concerns on the subject matter of distribution survived of the deceased under Section 3 (1) of the *Act*. That jurisdiction of the probate court was revisited in the case of *Pricilla Ndumbi and Zipporah Mutiga v Gerishon Gatobu Mbui*. Meru Succession Cause No 720 of 2013 the court held that :

“The primary duty of the probate court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus where, issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration rules was enacted so that claims which are prima facie valid should be determined before confirmation.”

9. I have perused the record of the file and it is evident that the objector signed the consent to making of the grant. He has not alleged that there was forgery of his signature and therefore it follows that the same was genuine. It is also clear that he has been catered for by being given an equal share of the estate and therefore he is adequately provided for. None of these claims by the objector received robust empirical evidence from the objector to permit this court to revoke the grant in terms of Section 76 of the *Law of Succession Act*.

10. Given the foregoing flaws in the objection proceedings and evidence it is only just and fair that the discretion is not exercised in his favour for lack of merit. This order abides of no costs to any party to this cause.

DELIVERED VIA EMAIL DATED AND SIGNED AT ELDORET ON THIS 15TH DAY OF JUNE 2023

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R. NYAKUNDI
JUDGE

