



**In re Estate of Joseph Chacha Mwita (Deceased) (Succession Cause
1069 of 2000) [2023] KEHC 19469 (KLR) (Family) (5 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19469 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1069 OF 2000
EKO OGOLA, J
JUNE 5, 2023
IN THE MATTER OF THE ESTATE OF JOSEPH CHACHA MWITA (DECEASED)**

RULING

The Application

1. Before the court is a Chamber Summons Application dated 14th February, 2023 where the Applicant prays for the following orders:
 1. That this honorable court be pleased to review its order dated 19th September, 2017 and reinstate this cause for purposes of distribution.
 2. That the grant of letters of administration issued to Judith Nono and Zadock Mwangi Nuno on the 23rd May 2001 be revoked and a new grant be issued to Bramwel Mwita Chacha.
 3. That the costs be in the cause
2. The application is anchored upon section 76 (d) (i) and (e) of the *Law of Succession Act* cap 160 and Rule 73 and 49 of the *Probate and Administration Rules*. The Application is based on the grounds on the face of it and supported by the Affidavit of Bramwel Chacha Mwita sworn on 14th February, 2023.
3. This matter relates to the estate of Joseph Chacha Mwita (deceased) who died on 21st December, 1999. A grant of letters of Administration was issued to Judith Nono and Zadock Mwangi Nuno on 23rd May, 2001. According to the Applicant, the grant has not been confirmed to date due to what the Administrators say is personal and logistical reasons.
4. The Applicant deposes that the deceased left four beneficiaries, two of them who were the deceased's mother and widow have since died and only two beneficiaries are alive that is the Applicant who is now 30 years and one Phelix Marwa Mwita known as Felix Inyanje Isigi who is now 37 years.
5. According to the Applicant, grant was issued to the Administrators while the Applicant and the other beneficiary Felix were minors at age 8 and 13 respectively. The Applicant deposes that the remaining



surviving beneficiaries had a meeting on 9th May, 2021 where they agreed that the Applicant should substitute the administrators as they are incapable of continuing with the Administration as they have not been giving proper updates on the progress.

6. The Applicant further deposes that he has been following up on the progress of the matter with the Administrators since he attained the majority age but the only answer he receives is that the administrators are in the process of administration.
7. The Applicant states that the Administrator Zadock Mwangi Nuno indicated that he had lost interest in the matter and when the Administrator took the Applicant to the Advocate handling the matter, they found that the Advocate had relocated for a long time and the Administrators did not know of the Advocate's whereabouts.
8. The Applicant deposes that he followed up on the state of the matter but was finally informed by the Deputy Registrar of this court that the matter was closed on 19th September, 2017. Applicant deposes further that no notice was received for any dismissal or closure of the cause.
9. The Applicant fears that the deceased's funds at the State Department of Defence will go to waste if this cause is not re-instated.
10. The Application is unopposed.
11. After careful consideration of the Application and the attached documents, there are two issues for determination.
 - i. Whether this succession cause should be re-instated
 - ii. Whether the Grant dated 23rd May, 2001 issued to Judith Nono and Zadock Mwangi Nuno should be revoked

Whether this Succession Cause should be re-instated

12. The Applicant has averred that this matter was closed as per the communication from the deputy Registrar marked "BM4". The Applicant states that when the file was being closed, no notice was issued to them. The Applicant has attached an application dated 24th June, 2022 which could not be heard since the file was declared closed. The Application was made by one of the Administrators Zadock Mwangi Nuno and the Applicant. In that application it was stated that the Administrators were not willing to continue with the Administration; that one of the administrators Judith Nono has never been available to pursue confirmation of the grant.
13. The current applicant and the other surviving beneficiaries were minors when the Grant was issued. It is evident that when they became of age, the Applicant has been following up on the progress of the cause until he found out that file had been closed.
14. Considering this is a Succession cause where the estate of the deceased is at stake, there is no one who will be prejudiced if the cause is re-instated. Failure to re-instate this cause will occasion an injustice to the estate and to the beneficiaries of this estate who were not at fault in the first place.

Whether the Grant dated 23rd May, 2001 issued to Judith Nono and Zadock Mwangi Nuno should be revoked

15. Section 76 of the *Law of Succession Act* provides:

"76. Revocation or annulment of grant



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.”

16. *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required.

17. In the instant case, the Administrators procedurally obtained the grant of letters of Administration but did not follow to obtain the Confirmation of the Grant. One of the Administrators Zadock stated that it was very difficult to meet with the other Administrator so as to pursue the administration further. This is a sufficient ground for revocation.
18. The Applicant has provided a Consent to the making of a grant of Administration intestate to person of equal or lesser priority marked “ZM3” signed by Phelix Marwa Mwita, Zadock Mwangi Nuno and Judith Nono who have agreed to the Applicant being made the Administrator of the estate of the deceased.
19. From the foregoing, this court makes the following Orders:
 - i. This Succession Cause herein is hereby re-instated
 - ii. The Grant issued to Zadock Mwangi Nuno and Judith Nono on 23rd March, 2021 is hereby revoked



- iii. The Applicant Bramwel Mwita Chacha is hereby appointed the new Administrator of the estate of the deceased
- iv. The new Administrator to confirm the grant on 3rd October, 2023.

Orders Accordingly

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF JUNE 2023.

E.K. OGOLA

JUDGE

Judgment delivered online the presence of:

Mr. Musyoki for the Applicant

Ms. Gisiele Court Assistant

