



**In re Estate of John Akibaya Chugi (Deceased) (Succession Cause  
6 of 2022) [2023] KEHC 20342 (KLR) (21 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20342 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
SUCCESSION CAUSE 6 OF 2022**

**WM MUSYOKA, J**

**JULY 21, 2023**

**JUDGMENT**

1. The application for determination is the summons dated November 24, 2021, which seeks revocation of the grant herein, made to Ephraim Musambuli Akibaya and Abisai Likomba Akibaya, on June 27, 1992, who I shall refer to hereafter as the administrators. It is brought at the instance of Hassan Yohana Chugi, who I shall refer hereto after as the applicant.
2. The applicant seeks revocation of the grant on the grounds that the administrators had failed to diligently proceed with administration of the estate, and had failed to produce an account of the administration, as required of them under section 83(e)(k) of the *Law of Succession Act*, Cap 160, Laws of Kenya. He avers that the grant herein had been confirmed, and a certificate of confirmation of grant issued, but the administrators had failed to advance the administration of the estate beyond that. He claims that he had even written a demand letter to their Advocates on that issue.
3. The administrators responded to the application, vide an affidavit sworn on January 25, 2023, by Ephraim Musambuli Akibaya. He avers that the fact of the confirmation of their grant is indication of dutifulness on the part of the administrators. He avers that he has administered the estate, including distributing 1 acre to the applicant. He concedes that a demand letter was sent to their Advocates. He states that he should be compensated for the expenses that he incurred for carrying out the administration. He has attached copy of a vague title deed, which does not show the property and the registered proprietor. He has also attached a copy of RL 7, being a transfer document by a personal representative, dated January 13, 2020, and documents evidencing payment.
4. I directed, on September 22, 2022, that the said application be disposed of by way of written submissions. The administrators filed written submissions, the applicant did not. I have read through the written submissions by the administrators, and I have noted their arguments.
5. The application is really about the duties of an administrator, specifically that relating to transmission of the estate and completing administration, after confirmation of grant.
6. Duties of administrators are set out under section 83 of the *Law of Succession Act*. Of interest in this case, should be that under section 83(f)(g)(i), which requires that the estate be distributed within 6



months of the confirmation of the grant, and completion of administration within that period, and production of an account of the completed administration.

7. For avoidance of doubt, section 83(f)(g)(i) states as follows:

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| “(e) | ...  |
| (f)  | subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be; |
| (g)  | within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.                                    |
| (h)  | ...  |
| (i)  | to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”                                |

8. The record indicates that the grant herein was confirmed on April 10, 2019. A certificate of confirmation of grant was issued, dated May 9, 2019. Six months began to run from April 10, 2019, and elapsed on or about October 10, 2019.

9. Is there evidence that the assets had been distributed by October 10, 2019? October 10, 2019 is the date by which the administrators ought to have had distributed the assets, and completed administration, after which they were to file an account of the completed administration. I have no material before me demonstrating that that had been done by October 10, 2019. The title deed exhibited is virtually blank. It proves nothing. I am surprised that it was filed at all. What did the administrators seek to achieve by filing a blank document? It does not show the property registered, the registered proprietor, or the date of registration. It is a completely useless annexure. The transfer document is dated January 13, 2020, and so is the certificate accompanying it. It would mean that it was raised 3 months after the 6 months



expired on October 10, 2019. In any event, the transfer form is not evidence of registration. It provides no proof whatsoever that the administrators transmitted the property to the beneficiaries. The only proof of such transmission is the title document itself, or a certificate of official search, showing that the property was registered in the name of the beneficiaries. There is no such document in the record, and I have no proof, therefore, that the transmission ever happened.

10. Have the administrators filed an account of their completed administration? I see none. There is no document indicating that Kakamega/Bugina/224 was ever subdivided into 5 portions. There is no document showing that the subdivisions were registered in the names of the 5 beneficiaries listed in the certificate of confirmation of grant. There are no copies of 5 title deeds in the names of the 5 beneficiaries named in the certificate of confirmation of grant dated May 9, 2019. There is no document narrating when the alleged transmissions were done, in whose favour, and at what cost. No account of what the exercise cost the estate, and whether all the debts and liabilities of the estate have been cleared.
11. The applicant has a statutory right to call for an account from the administrators. The administrators have a statutory duty to render that account. The application, dated November 24, 2021, is, essentially, a call to the administrators to account. They should have taken the opportunity to account, and to bring themselves into compliance with section 83(f)(g)(i) of the *Law of Succession Act*. Instead of complying, they have chosen to engage in a needless fight with the applicant.
12. Non-compliance with the duties set out in section 83 of the *Law of Succession Act* is a fertile ground for revocation of the grant, under section 76(d)(ii)(iii) of the *Law of Succession Act*, for failing to diligently administer the estate and to render accounts. Failure to distribute the estate and to complete administration within the 6 months' timeline is a non-compliance, which falls under section 76(d)(ii); while the failure to render accounts on the completed administration is a non-compliance, which falls under section 76(d)(iii). The failure to comply with both would mean that the estate has not been transmitted and administration has not been completed, way beyond October 10, 2019.
13. There is merit in the application, dated November 24, 2021, for the reasons given. I shall revoke the grant of June 27, 1992, but not the distribution ordered on April 10, 2019. I shall appoint the applicant, Hassan Yohana Chugi alias Hassan Yohana Agibai, administrator of the estate herein. I shall re-appoint Ephraim Musambuli Akibaya, for continuity. The 2 shall work together to complete administration, by transmitting the estate, as per the certificate of confirmation of grant, dated May 9, 2019. A grant of letters of administration intestate shall issue to them. They have 45 days to complete administration, and to file an account of the completed administration, in terms of section 83(i) of the *Law of Succession Act*. The matter shall be mentioned before by successors at Vihiga for compliance and further directions. Each party shall bear their own costs. There is 30 days leave to appeal to the Court of Appeal, by whoever may be aggrieved by these orders. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 21ST DAY OF JULY 2023**

**WM MUSYOKA**

**JUDGE**

**Mr. Erick Zalo, Court Assistant.**

**Appearances**

**Mr. Godia, instructed by Godia & Company, Advocates for the applicant.**

**Mr. Orlando, instructed by Orlando & Company, Advocates for the j administrators.**

