



In re Estate of John Leboi Nchiroine Konchellah (Deceased) (Succession Cause 314 of 1994) [2023] KEHC 21596 (KLR) (Family) (21 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 314 OF 1994

MA ODERO, J

JULY 21, 2023

**IN THE MATTER OF THE ESTATE OF JOHN
LEBOI NCHIROINE KONCHELLAH (DECEASED)**

BETWEEN

ERICK KONCHELLAH PETITIONER

AND

PATRICK KONCHELLAH 1ST RESPONDENT

TASUR LEINA EMMANUEL 2ND RESPONDENT

LEINA MORINTAT 3RD RESPONDENT

AND

MARIAM RAJAB OBJECTOR

RULING

1. Before this Court for determination is the summons for Amendment and Rectification of Grant and Register dated 27th January 2020 by which the Objector/Applicant Mariam Rajab seeks the following orders

“ 1. That this Honourable Court be pleased to revoke and nullify the summons of Rectification of Grant and consequent proceedings by the Respondents dated 10th May 2019.

2. That this Honourable Court be pleased to grant an order of cancellation and Rectification of the Register in respect of all subdivisions out of Narok/ Transmara/ Oloborsoito/4 being title No. Transmara/ Oloborsoito 682, 683,



684 and 685 by restoring the original numbers in the names of the deceased herein as the legally registered owner.

3. That this Honourable Court be pleased to order that the Grant confirmed in the year 1994 be maintained in the same way it was before the proceedings initiated by the summons for Rectification of Grant by the Petitioner/1st Respondent dated 10th May 2019.
 4. That this Honourable Court be pleased to make such further orders as may be just and expedient in the circumstances.
 5. That the costs of this application be in the cause.”
2. The summons which was premised upon Section 74 of the *Law of Succession Act*, Cap 160 Laws of Kenya and Rules 43 and 73 of the *Probate and Administration Rules* was supported by the Affidavit of even date, the Further Affidavit dated 10th February 2022 and the supplementary Affidavit dated 29th September, 2022 all sworn by the Applicant.
 3. The 2nd, 3rd and 4th Respondent Patrick Konchellah, Tasur Leina Emmanuel And Leina Morintat all opposed the application through their Replying Affidavit dated 25th July 2022. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated 29th September 2022 whilst the Respondents relied upon their written submissions dated 22nd November 2022.

Background

4. This matter relates to the estate of the late John Leboi Nchiroine Konchellah (hereinafter ‘the Deceased’) who died intestate on 28th June 1993. The Deceased was survived by two widows Priscillah Konchellah And Grace Konchellah as well as by several children. He left an estate valued at approximately Kshs.35,000,000/= consisting of several parcels of land.
5. Following the demise of the Deceased Grant of letters of Administration Intestate was made to Lawrence Sankale Konchellah (now Deceased) and Erick Konchellah. The Grant was later confirmed on 31st March 1995.
6. Under the mode of distribution of the estate provided for by the confirmed Grant the parcel of land known as Narok/Transmara/intona/1 comprising of 179 acres was to devolve to Priscilla Konchellah (hereinafter ‘Priscillah’) who was a widow of the Deceased. Additionally, the parcel of land known as Narok/Transmara/Oloiborsoito/4 (hereinafter ‘the suit land’) was also to devolve entirely to Priscilla Konchellah.
7. The Applicant herein is the widow of Edward Konchellah a son to ‘Priscillah’. Therefore, the Applicant is a daughter-in-law of ‘Priscillah’.
8. Following the demise of Priscillah Konchellah the Administrator in this cause applied to have the Grant rectified on 17th June 2019. According to the rectified Grant the same 179 Acres being Narok/Transmara/Intona/1 was to devolve to Priscillah Konchellah and her children who included Edward Konchellah. Additionally, the parcel of Land known as Transmara/ Oloiborsoito /4 which in the original Grant had been allocated entirely to Priscillah Konchellah, was now to devolve to Patrick and Felix Konchellah the sons of Priscillah and three (3) other persons namely:-

- Tasur Leina Emmanuel



- Leina Morintat
- Elijah Kinyamal Murrampi

The Objector alleges the three are not beneficiaries of the estate of the Deceased but rather are 'purchasers'

9. The Objector alleges that the Administrator in this matter through the rectified Grant has disinherited the beneficiaries of the estate of 'Priscillah' as they were not involved in and did not give their consent to rectification of the Grant. That the parcel of land known as Narok/Transmara/Oloiborsoito/4 was subdivided and distributed leaving out the beneficiaries of the estate of Priscillah Konchellah who was a widow of the Deceased. The Objector states that she is a beneficiary of the estate of Priscillah Konchellah and has resided on the said parcel of land for over twenty (20) years and that is where her late husband was buried. That the rectification of Grant and subsequent subdivision and registration in favour of the Respondents was irregular, illegal null and void. The Objector prays that the rectified grant be revoked in the interest of justice.
10. The 1st Respondent Erick Konchellah stated that the objector does not have locus standi in this matter as she is neither an administrator nor a beneficiary of the estate of the Deceased herein nor of the estate of Priscillah Konchellah.
11. The Respondents averred that the Objector has filed numerous applications all touching on the same subject before different courts. That the application has been brought under the wrong provisions of law.
12. It was argued that the present application is baseless and lacks merit, that the same amounts to an abuse of court process as the Objector has also filed in the Narok ELC Court Suit No. 256 of 2217 seeking to restrain the 3rd Respondent from dealing in any way with the parcel of land known as Transmara/Oloiborsoito /682 which application was dismissed with cost by the ELC Court. The Respondents urge that this application be dismissed in its entirety.

Analysis and Determination

13. I have carefully considered the application before this court, the replies filed thereto as well as the written submissions filed by all parties.
14. The following are the issues which arise for determination:
 - (i) Whether the application is fatally defective;
 - (ii) Whether the Applicant/Objector has locus standi;
 - (iii) Whether the rectified Grant ought to be revoked.

(i) Whether the application is Defective

15. The Respondents argue that the application dated 27th January 2020 is fatally defective as it was brought under the wrong provisions of law. The application is said to be premised upon Section 74 of the [law of Succession Act](#) Cap 160, Law of Kenya and Rules 43 and 73 of the [Probate and Administration Rules](#).
16. The application seeks revocation of a Grant which is provided for by Section 76 of the [law of Succession Act](#). Therefore, it is correct that the application was brought under the wrong provisions of law.



17. However, this does not in my view render the application ‘fatally defective.’ Article 159 (2) (d) of the [Constitution of Kenya](#) 2010 exhorts courts to administer justice
- “without undue regard to procedural technicalities”.
18. In the case of [Kenya Ports Authority v Kenya Power & Lighting Company](#) [2012] eKLR the court held that a procedural technicality is a lapse in form that does not go to the root of the suit and therefore ought not be used to strike out a matter.
19. Likewise in [Anchor Limited v Sports Kenya](#) [2017] eKLR the court stated that:
- “I can think of no better example of a technicality than citing a wrong provision of the law being used as a basis to dismiss a suit or application...”
20. I am persuaded that the mere citing of a wrong provisions of law does not render the present application fatally defective. The same cannot be dismissed on that ground alone.

(ii) ‘Locus Standi’

21. The Applicants have also asserted that the Objector has no locus standi in this matter. ‘Locus standi’ is a latin term which literally means “place of standing”. It refers to the right of a party to act in a particular matter of suit.
22. The Respondents submit that the Objector has no locus standi in this matter as she is not a direct beneficiary of the estate of the Deceased John Leboi Nchiroine Konchellah. The Respondents further submit that the Objector is also not a beneficiary of the estate of the late Priscillah.
23. On her part the Objector asserts that she has requisite locus standi as she is the widow of the late Edward Konchellah who is a beneficiary to the estate of the Deceased in this matter. Further the Objector stated that she has obtained a Grant of letters of Administration *Ad Litem* authorizing her to act on behalf of the estate of her late husband.
24. It is trite law that pleadings filed by a person who has no locus standi are ‘void at intio’. In [Ibrahim v Hassan & Charles Kimenyi Macharia](#) [2019] eKLR, Hon. Justice Nyakundi stated as follows:-
- “Locus standi is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, he means that party cannot be heard, despite whether or not he has a case worth listening. The issue herein is whether the Applicant lacks the requisite locus standi to seek relief form the court to revoke the grant in question issued to the Respondent. In my view, issues as regards locus standi are critical preliminary issues which must be dealt with and settled before dwelling into other substantive issues.”
25. In a Succession matter in order for one to be deemed to have locus standi he/she must be a direct beneficiary of the estate of the deceased person or must be a person who holds letters of Administration in respect of the estate of the Deceased.



26. In *Otieno v Ougo* [1986-1989] EALR 468, the Court rendered itself thus:

“... An administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.”

27. Likewise, any other interested party may file an action in a Succession Cause as provided for by Rule 17 (1) of the *Probate and Administration Rules*. It is not in dispute that the Objector herein is the widow of Edward Konchellah who was son to Priscillah who was one of the widows of the Deceased in this cause. It is also not in dispute that the said Edward Konchellah was a beneficiary of the Deceased John Leboi Nchiroine Konchellah

28. The Objector in this matter applied for and obtained a Grant Ad Litem in respect of the estate of the late Edward Konchellah which Grant was issued to her on 1st September 2020.

29. A copy of the said Grant Ad Litem appears as Annexure ‘MR-03’ to the Objectors Affidavit dated 10th September 2022.

30. The Grant Ad litem was issued to the Objector ‘Mariam Rajab’ for Purposes of defending suit. This suffices to cover the filing of pleadings in this cause by the Objector on behalf of the estate of the late Edward Konchellah. I therefore find that the Objector does have locus standi in this matter.

(iii) Is the Application for revocation of Grant merited

31. Section 76 of the *Law of Succession Act* provides for the grounds upon which a Grant of Representation may be revoked as follows:-

“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 an 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 allegations 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”.

32. The Objector’s position is that the Respondents did not consult the beneficiaries of the estate of Priscillah Konchellah when they applied to rectify the Grant which was issued on 24th March 1995. The Objector complains that some of the persons included in the rectified Grant are not beneficiaries of the estate of the Deceased but rather are ‘purchasers’ to whom the Respondents sold estate property.
33. The Respondents on the other hand argue that the neither Objector nor the other beneficiaries of the estate of ‘Priscillah’ complained when the summons for rectification of Grant was filed. That no complaint was made regarding the subdivision and distribution of Narok/Transmara/Oloborsoita/4
34. I have carefully perused and made a comparison of the two Grants. In the Certificate of Confirmed Grant issued on 24th March 1995, the parcel of land known as Narok/Transmara/Oloborsoita/4 was allocated wholly to Priscillah Konchellah (Annexure ‘MR-01’ to supporting Affidavit)
35. In the rectified Grant issued on 17th June 2019 this same parcel of land was allocated to the following persons:
- (a) Patrick Konchellah - 2.4 Acres
 - (b) Felix Konchellah - 1 Acre
 - (c) Tasur Leina Emmanuel - 8 Acres
 - (d) Leina Morintat - 1.7 Acres
 - e. Elijah Kinyamal Murrampi - 0.9 Acre
36. The Objector alleges that some of the persons named as beneficiaries to inherit this parcel of land are not genuine beneficiaries of the estate but are in actual fact purchasers of the land. Those whom the Objector named as purchasers are Tasur Leina Emmanuel, Leina Morintat and Elijah Kinyamal Murrampi.
37. The summons for rectification of Grant dated 10th May 2019 sought by prayer (2) the following orders:-

“That Parcel No. Narok/Transmara/Oloborsoita/4 be distributed as follows:-

- 1. Patrick Konchellah - 2.4 Acres
- 2. Felix Konchellah - 1 Acre
- 3. Tasur Leina Emmanuel - 8 Acres
- 4. Leina Morintat - 1.7 Acres



5. Elijah Kinyamal Murrampi - 0.9 Acres.”

38. This summons in effect sought to change/modify the original mode of distribution of that parcel of land. In that regard it was essential that all beneficiaries of the Estate give their consent to the new mode of distribution. The consent of all the beneficiaries was all the more necessary given that the Grant was confirmed in March 1995 and it was not until 10th May 2019 more than twenty (20) years after the grant had been confirmed that an application to rectify the Grant was being made. By this time it would be expected that distribution and transmission of the estate to the beneficiaries had already taken place.
39. I have perused the consent which was annexed to the summons for rectification of Grant (Annexure ‘EK 2’). Firstly that consent was neither dated nor commissioned and secondly the consent was only signed by the persons who were to named as beneficiaries to the suit land under the new mode of distribution. Neither Priscillah Konchellah nor her beneficiaries signed the consent. In the original Grant issued on 24th March 1995 Priscillah Konchellah was allocated the whole of Narok/Transmara/Olororsoita/4. It was essential that the consent of the previous allottee of that parcel of land (or her beneficiaries) be obtained before the Grant could be rectified.
40. It is common ground that Priscillah Konchellah passed away during the pendency of this Succession Cause. In her absence the consent of her heirs/beneficiaries ought to have been obtained before the land was allocated to other parties. This was not done. The Applicant who is a widow of one of the sons of Priscillah Konchellah did not append her signature to the undated consent. Her consent was neither sought nor obtained. Thus the rectified Grant was obtained by concealment of material facts and is for revocation.
41. Further the Applicant has alleged that two (2) of the persons who benefitted from this parcel of land were not beneficiaries to the estate of the Deceased but were in actual fact persons who had purchased portions of land from the Administrators.
42. The Applicant has annexed to her supporting Affidavit a copy of an Agreement for sale dated 23rd May 2017 by which Patrick Konchellah a son to Priscillah sold a portion of the land to Tasur Leina Emmanuel for Kshs.1,100,000. There is no evidence that the owners of this land (the heirs of Priscillah) had consented or agreed to the sale of the same.
43. A purchaser is not a beneficiary to the estate. The persons who are deemed to be dependents of a Deceased person and therefore beneficiaries to his estate are clearly set out in Section 29 of the Law of Succession Act Cap 160, Laws of Kenya. I find that it was misleading of the Administrator to name the purchasers as ‘beneficiaries’ to the estate in the summons for Rectification of Grant. The exclusion of the other beneficiaries to the estate and the application to rectify the mode of distribution twenty (20) years after distribution of the estate make the said rectification defective. This again amounts to valid ground to revoke the rectified Grant.
44. If these purchasers wish to claim any part of the estate of the Deceased then they are at liberty to file a suit in the Environment and Land Court to claim what they claim to have purchased from the heirs of the estate. They have no locus standi in this Succession Cause. The inclusion of purchasers as ‘beneficiaries’ to the estate was fraudulent and amounted to a clear attempt by the Administrators to mislead the court and therefore steal a march against the genuine heirs to the estate.
45. It is clear that if the estate is distributed in accordance to the rectified Grant then the Applicant and the other heirs to the estate of Priscillah Konchellah will suffer great prejudice as they will effectively be disinherited.



46. *In Re Estate of Alfred Mutune Munyao (Deceased)* eKLR the court at paragraph 12 and 19, held as follows:-

“... Looking at the applicant’s pleadings there is no evidence to link him to the estate of the deceased or anything to prove that he was a dependant of the deceased. He has not explained his interests in the properties of the deceased and as such he should not prevent the respondents from administering the estate of the deceased. The chief’s introductory letter dated 29th April 2014 has listed the respondents as dependants of the deceased. The applicant is not indicated as a dependant and as such he had the burden to establishing the same. The applicant has not satisfied me that he is a dependant of the deceased. However, should he have any claim to ownership of the properties of the deceased then he is at liberty to proceed to lodge it at the Environment and Land Court. [own emphasis]

Entertaining the applicant in the proceedings herein will serve no useful purpose other than to convolute the matter. The applicant has not satisfied the court that he merits the courts the orders he is seeking as he lacks locus standi. The Objector has not established their legal interest in the estate of the Deceased. He is neither an Administrator, a beneficiary nor a dependant and has not shown any proprietary interest in the estate.”

47. In light of the above a purchaser cannot be named as a beneficiary to the estate of a Deceased person. Any interest such a purchaser may have in the deceased’s estate should be canvassed in the appropriate forums e.g. the Environment and Land Court for land, the Commercial Division of the High Court for matters related to company shares etc. or in the Civil Division as the case may be.

48. For the above reasons I find merit in this summons for revocation of Grant. Accordingly the summon is allowed and the court hereby make the following orders:-

- (1) The Rectified Grant issued on 17th June 2019 is hereby revoked/annulled.
- (2) The Rectification of the Register in respect of all subdivisions out of Transmara/ Oloiborsoito /4 being Title Nos. Transmara/ Oloiborsoito /682, 683,684 and 685 be and are hereby cancelled.
- (3) The Certificate of confirmed Grant dated 24th March 1995 and mode of Distribution of the estate be and is hereby reinstated.
- (4) This being a family matter each side will bear its own costs.

DATED IN NAIROBI THIS 21ST DAY OF JULY, 2023.

MAUREEN A. ODERO

JUDGE

