



REPUBLIC OF KENYA



In re Estate of Letoya Ole Lenjoki (Deceased) (Succession Cause 15 of 2017) [2023] KEHC 20736 (KLR) (19 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20736 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
SUCCESSION CAUSE 15 OF 2017**

F GIKONYO, J

JULY 19, 2023

IN THE MATTER OF ESTATE OF THE LATE LETOYA OLE LENJOKI (DECEASED)

BETWEEN

PETER LOLCHOKI OLE LETOYA PETITIONER

AND

VERONICA SEIN LETOYA OBJECTOR

RULING

Background

1. The objector/ applicant filed an application seeking revocation of the grant issued to the petitioner/ respondent. The basis of the said application was that grant was obtained fraudulently and by concealment of material facts resulting in the exclusion of other beneficiaries of the estate of the late Letoya Ole Lenjoki(Deceased).
2. On May 27, 2020, Hon. Bwonwong’a J. delivered a ruling on the said application in favour of the petitioner/respondent herein.
3. Following the ruling delivered on 27/05/2020 the objector/applicant filed chamber summons dated 20/08/2020 seeking the following orders:
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. Spent



- v. That this honourable court be pleased to set aside, vary and / or review the judgment /ruling entered on May 27, 2020 by Hon. Justice J.M. Bwonwong'a together with the consequential orders/decrees arising therefrom;
 - vi. That this honourable court be pleased to give further orders and/or directions as it may deem fit and just to grant; and
 - vii. That costs of this application be in the cause.
4. On October 27, 2020 Hon. J.M. Bwonwong'a J delivered his ruling directing that; -
- a. The DCI conducts an expedited investigations on whether the administrator/ respondent forged the handwritten letter dated 5/8/2004 of chief Samuel Leposo Kodonyo.
 - b. The DCI to forward findings to the court within a reasonable time preferably not later than six months.
 - c. The Deputy registrar serves DCI with this order for his action; and
 - d. In the interim period, on the courts own motion, the judgment/ order dated 27/5/2020 be stayed pending the outcome of the investigations by the DCI.

Directions

5. On 28/3/2023, this court upon perusal of record noted that Njuguna was to file submissions on the DCI report first and Ndolo to reply thereto.
6. This court therefore directed as follows;
 - i. Njuguna to file and serve submissions on DCI report only within 7 days of today.
 - ii. Upon service, Ndolo to file submissions on DCI report and on any new issue Njuguna may have raised in earlier submissions within 7 days of service.
 - iii. Any party who in these filing offend the scope of the submissions cut out by the court and the law, will only have the offending aspects of his filing ignored by the court. Similarly, time is of the essence.
 - iv. Ndolo to withdraw his further submission hereto.
 - v. Ruling on the revocation application on 2/5/2023.

Forensic Document Examiner's Report

7. On 16/11/2022, the DCI filed the forensic document examiner's report on the stamp and letter allegedly written by the chief Keekonyokie location.
8. I have perused the document examiner's report dated 24/05/2022 by CI Miriam Kemunto, forensic document examiner.
9. On the clause on examinations and findings, it was noted as follows;
Examinations and findings



1. I have examined and compared the questioned handwritings pointed by blue arrows on exhibit marked 'QD' with known handwritings on exhibits marked 'D1-D2' and specimen handwritings on exhibit marked 'C1-C2'.

In my opinion the handwritings were made by DIFFERENT authors.

2. I have examined and compared the questioned signature pointed by red arrows on exhibit marked 'QD' with known signatures on exhibit marked 'D2' and specimen signatures on exhibits marked 'B1-B3'

In my opinion the signatures were made by DIFFERENT authors.

3. I have examined and compared the questioned stamp impression pointed by black arrows on exhibit marked 'QD' with known stamp impression on exhibit marked 'D2' and specimen stamp impressions on exhibits marked 'A1-A3'

In my opinion the stamp impressions were made by DIFFERENT authors.

Administrator/Respondent's Response.

10. The administrator/respondent filed an affidavit in response to document examiner's report sworn on 9/2/2023 by Peter Lochoki Letoya.
11. The administrator/respondent averred that the documents submitted to the document examiner to form the basis of examination and report have failed to disclose several other documents and facts that makes the examination and the report skewed and of little or no use to the court in determining the issue before it.
12. The administrator/respondent averred that the document that is being questioned before court is the letter dated 5/8/2004 issued from the office of the chief Keekonyokie location and having his signature and stamp. That both the signature and the stamp are denied and the chief Samuel Leposo Kodonyo is said to have provided his specimen signature as well as his own known signature. That however, the chief has been less than honest in identifying his known and his specimen signature as well as his stamp(s).
13. The administrator/respondent stated that in his estimation from the documents filed in court the chief has no less than four usual signatures and uses different stamps.
14. The administrator/respondent stated that he had found the following signatures attributed to the chief and/ or acknowledged by the chief as his own. He produced Photostat copies which he attached as annexures in his affidavit as follows;
 - I. The questioned document 'RT1'.
 - II. Letter dated 31/8/2004 annexed to the affidavit of Veronica Sein dated 17/2/2012 'RT2(a) and 'RT2(b)'.
 - III. Signature on affidavit dated 20/8/2020 filed in court on 20/08/2020 in support of the application under certificate of urgency filed in court on that date 'RT3'.
 - IV. Signature on the chief's identity card annexed to the chief's affidavit dated 20/08/2020 and filed in court on 20/08/2020 in support of the application under certificate of urgency filed in court on that date 'RT4'.



- V. Letter dated 24/06/2004 marked 'SLK4' annexed to the affidavit dated 20/08/2020 filed in court on 20/08/2020 in support of the application under certificate of urgency filed in court on that date 'RT5'.
 - VI. Letter dated 2/12/2004 marked as 'SLK6' annexed to the affidavit dated 20/08/2020 filed in court on 20/08/2020 in support of the application under certificate of urgency filed in court on that date 'RT6'.
 - VII. Letter dated 6/2/2004 marked 'SLK8' annexed to the affidavit dated 20/08/2020 and filed in court on 20/08/2020 in support of the application under certificate of urgency filed in court on that date 'RT7'.
 - VIII. Signature on affidavit dated 6/10/2020 filed in court on 7/10/2020 in further support of the application 20/08/2020 and contained in a bundle filed on 7/10/2020 'RT8'.
 - IX. The specimen signatures attached to the document examiner's report and described as 'B1-B3' as 'RT9'.
 - X. The 'known signature' on the document attached to the document examiner's report and described as 'C1' 'RT10' and that C2 does not seem to have a signature on it.
 - XI. The 'Known signature' on the document attached to the document examiner's report and described as 'D'. he urged this court to noted page 2 of the said document.
15. The administrator/respondent further stated what he found on the stamp impressions attributed to the chief's stamp / and or acknowledged by the chief as a stamp emanating from his office. He produced Photostat copies of which he attached to his affidavit as annexures as follows;
- a. Stamp on the questioned document 'RT1'
 - b. Stamp on letter dated 31/8/2004 annexed to the affidavit of Veronica Sein dated 17/2/2012.
 - c. Stamp on Letter dated 24/06/2004 marked 'SLK4' annexed to the affidavit dated 20/08/2020 filed in court on 20/08/2020 in support of the application under certificate of urgency filed in court on that date 'RT5'.
 - d. Stamp on letter dated 2/12/2004 marked as 'SLK6' annexed to the affidavit dated 20/08/2020 filed in court on 20/08/2020 in support of the application under certificate of urgency filed in court on that date 'RT6'.
 - e. Stamp on letter dated 6/2/2004 marked 'SLK8' annexed to the affidavit dated 20/08/2020 and filed in court on 20/08/2020 in support of the application under certificate of urgency filed in court on that date 'RT7'.
 - f. The stamp impression on the document attached to the document examiner's report and described as 'C1' 'RT10'.
 - g. The stamp impression on the document attached to the document examiner's report and described as 'D' 'RT11'. He urged the court to note the document on page 2 of the document.
 - h. The specimen stamp impressions attached to the document examiner's report and described as 'A1-A3' RT12.
16. The administrator/respondent argued that the aforelisted signatures and stamp impressions show that the said chief Samuel Leposo Kodonyo has been using signatures at different times and different



- documents. Therefore, taken in context the questioned document is no different in its signature and in stamp impression than the others.
17. The administrator/respondent stated that the chief in his letter dated 2/12/2004, alleged that he knows persons who were forging his signatures but took no action. He however, did not specify that the questioned document was the one being forged.
 18. The administrator/respondent stated that it was only fair that the said signatures and stamp impressions be availed to the document examiner for a comprehensive examination that would be fair and useful to the court.
 19. The administrator/respondent urged this court to note that the chief acknowledges to have written the letter dated 6/2/2012 (RT7) and the letter annexed by the objector to her affidavit of 17/2/2012 dated 31/8/20049 'RT2b' have exactly the same contents but different typescripts.
 20. The administrator/respondent further stated that the two letters misrepresent the name of his deceased father despite the chief stating that he had the death certificate with him at the time. That the letters have described the deceased as Letoya Lolchoki who is a stranger to the respondent as his father's name was Letoya Ole Lenjoki. The letters also name as a son someone called Peter Mwaniki Letoya of whom, the chief and the objector will have to identify him to the respondent.
 21. The administrator/ respondent argues that it is clear that when the letter was written he was not present and he only saw them in court.
 22. The administrator/ respondent sought leave of the court to respond to the materials placed on record by the objector on 7/10/2020.
 23. In the end, the respondent argued that there is no justification for review of the decision of the court already rendered.

Objector/Applicant's Response.

24. The objector/applicant filed an affidavit on the document examine rapport sworn on 23/03/2023 by Veronica Sein.
25. The objector/applicant averred that she faces imminent forceful dispossession, eviction and/or demolition together with her children from their fixed place of abode on original land parcel 118.
26. The objector/applicant argued that Peter Lolchoki Letoya is the petitioner/respondent and not the administrator of the deceased's estate since the same was acquired fraudulently vide cause 2830 of 2004 that she only came to realize through the Kenya gazette of the same year and filed an objection/ revocation.
27. The objector/applicant stated that she agrees with the findings by the document examiner, therefore, a criminal offence was committed and ought to be dealt with accordingly.
28. The objector/applicant averred that the documents submitted that the documents submitted to the document examiner were submitted in accordance with the court order of October 27, 2020 directing the DCI to establish the genuineness of the document marked 'QD' being the document questioned by the court allegedly drafted by the area chief Keekonyokie location, Mr. Samuel Leposo Kodonyo and further in accordance with their requirements to ascertain what they desired. She annexed an exhibit memo marked as 'VER1'.
29. The objector/applicant stated that the report is objective and documents submitted were sufficient for the examination as per the observation of the forensic document examiner.



30. The objector/applicant stated that the respondent in paragraph 27 of his affidavit dated 24/09/2020 averred that the document being questioned in court was manufactured and tailor made document that he used to apply for the letters of administration and strongly condemned as a forgery by the chief in his letter dated 2/12/2004 and his sworn affidavits on record thus questionable document as referred.
31. The objector/applicant averred that the examination was not on the number of signatures, their appearances or the stamps but to ascertain whether the handwritings were made by the same author, whether the signatures were made by the same author and whether the stamp impressions were made by the same instrument.
32. The objector/applicant stated that the findings of the document examiner affirm the averments by the chief as not being the author of the letter dated 5/8/2004 thus a forgery.
33. The objector/applicant stated that save for the questioned document, all other documents attached by the respondent as signed stamped and filed by or filed for the chief have the same stamp impression with the words;
Chief
Keekonyokie Location
BOX 1
N'enkare
34. While the stamp impression on the questionable document as stamped upside down and twisted only bears the words
Chief
Keekonyokie Loc.
35. The objector/applicant averred that the respondent seems to be bothered by the capturing of the name of the deceased as Letoya Lolchoki (deceased commonly known and preferred Maasai pronunciation of the official name as opposed to Letoya Ole Lenjoki (official name) but surprisingly was unbothered to use a forged letter in applying for the letters of administration with a wrong name of the deceased captured in the reference as Letoyo instead of Letoya his own name(the respondent's name) misspelled as Lachoki instead of Lolchoki his brother's name misspelled as Appollo instead of Apolo among other notable elements depicting the letters to have been written without grammatical proficiency as well as due diligence given the gravity of the matter. Therefore, the letter is simply fake from the apparent face of it.
36. The objector/ applicant averred that with leave of the court she filed a further affidavit on 7/10/2020 which the respondent herein cannot be allowed to now respond to almost 3 years later. Further that respondent has demonstrated interest in delaying the court's fair and abusing the process of the court through failed appearances as evidence in the court proceedings disobeying orders and further making related applications outside time after failing to comply with the orders and directions of the court.
37. The objector/applicant averred that there is justification for the review of the decision of the court from his averments in her affidavit dated 20/08/2020, further affidavit dated 6/10/2020, in his submissions and forensics document examiner's report filed on 16/11/2022.
38. The objector/applicant urged this court to consider this matter as of grave importance since her family's livelihood and shelter are at stake and would suffer damage, loss of dignity due to the selfish acts of the respondent.



39. The objector/applicant urged this court to be guided by the findings of the findings of the forensic document examiner to remedy against the injustice that has been meted on her by the respondent. That this court should set aside, vary and/ or review its ruling and revoke the grant as issued in order to protect the constitutional rights of the applicant from fraudulent arbitrarily and unjustifiable acts of the respondent.

Submissions.

Petitioner/Respondent's Submissions.

40. The petitioner/respondent did not file any written submissions.

Objector/Applicant's Submissions

41. The objector /applicant submitted that contrary to the respondent's assertions in his submissions dated 15/10/2020 that having filed an appeal and withdrawn the same, the objector/applicant failed to meet the condition set out in Order 45 rule 1(1)(a). she contends that her application is properly before this court as the applicant was within her rights to withdraw the said appeal in order to pursue a review instead.
42. The objector/applicant submitted that the petitioner/respondent obtained a favourable ruling from this court by fraud and deceit. Further that the actions of the petitioner/respondent not only amount to forgery and perjury but also grave misrepresentations of material facts concerning real beneficiaries of the estate of the deceased Letoya Ole Lenjoki. That it deprived this court the opportunity to make a legitimate adjudication of the matter before it.
43. The objector/applicant submitted that from the findings of the document examiner, the handwritten letter dated 5/8/2004 purportedly written by chief Samuel Leposo Kodonyo presented in evidence by the petitioner/respondent was a forgery. Therefore, since the said letter was used to persuade this court into making a favourable decision in favour of the petitioner/respondent, the ruling dated 27/05/2020 ought to be set aside, varied and/ or reviewed.
44. The objector/applicant submitted that she relied on the ground of discovery of new and important matter of evidence as set out in order 45 rule 3 of the rules. That the new and important matter is the DCI forensic document examiner's report.
45. The objector/applicant submitted that having proven the presence of a sufficient reason for the same, this court should make such orders as necessary for ends of justice and prevent abuse of the processes of the court.
46. In the end, the objector/applicant submitted that she has sufficiently established and proved her case hence deserving of the orders sought.
47. The objector/applicant relied on the following authorities;
- i. [*Ferrotech Industries Ltd Vs Mwadziwe Ali Hare*](#) [2021] eKLR.
 - ii. [*Wilson Kaberia Nkunja v Magistrates and Judges Vetting Board & another*](#) [2018]eKLR.
 - iii. [*Alpha Fine Foods Limited v Horeca Kenya Limited & 4 others*](#)[2021] eKLR
 - iv. [*Samwel Ariga Bosire v Abagusii Otenyo Self Help Group*](#) [2021]eKLR



- v. [Re Estate of Godfrey Nyaga Kamunyori \(Deceased\)](#) [2019]eKLR.
- vi. [Razaro Muriuki M' thuranira v Julius Mbaabu Mukango & 2 Others](#) [2015] eKLR.

Analysis and Determination

Issues

- 48. The court has considered the directions by the court, the examiner's report, affidavit in support and in opposition of the forensic document examiner's report and the submissions filed by the objector/ applicant.
- 49. Whereas the overarching issue is whether the court should review its earlier ruling on the application for revocation of grant, and revoke the grant as sought in application dated 20/08/2020, the court must surmount: the purport and probative value of the report by the DCI on the hand-written letter dated 5/8/2004 purportedly written by the chief, Samuel Leposo Kodonyo, on the process of obtaining the grant herein.

Propriety of process of obtaining grant

- 50. The core ground for seeking review is that the grant herein was obtained fraudulently and in concealment of material facts aimed at excluding some of the defendants of the deceased. The basis for this ground is that the hand-written letter dated 5/8/2004 purportedly written by the chief, Samuel Leposo Kodonyo, was forged- something that the report by the DCI confirmed.
- 51. The ground cited relate to the category mativo J (as he then was) referred to as: 'the propriety of the grant making process;' ([Lucy Wakarima Ngabucha & another v George Mwangi Ngabucha & another](#) [2016] eKLR). Hence, the need to evaluate the purport and probative value of the report by the DCI on the hand-written letter dated 5/8/2004 purportedly written by the chief, Samuel Leposo Kodonyo, on the 'propriety of the grant making process;' (ibid) in this case within the test provided in section 76 of the [Law of Succession Act](#).
- 52. The court is aware of the argument that had been made by the respondents that the chief concerned may have more than one signature and may have signed different signatures at different times for different purposes. But, the argument pertains and is relevant to the substance of the protest during trial.
- 53. The court is also aware that it is disputed whether the objector/Applicant was a wife of the deceased- this again is the substance of the protest which shall be interrogated during the trial.
- 54. Of great significance here is that, the Applicant's gravamen is that the grant herein was obtained on the basis of a forged letter purportedly authored by the chief. According to her, the grant was obtained fraudulently and by concealment of material facts which lead to exclusion of other beneficiaries of the estate of the deceased.
- 55. The court, (Bwonwong'a J) on 27.10.2020 ordered an examination of the said letter to determine whether it was authored by the person stated to be the author. The result of the investigation by the DCI found that it was not. The court was to determine review application upon receipt of the result of investigations by the DCI.
- 56. Is there any reason or sufficient reason to review the decision of the court made on 27.5.2020?



57. Known reasons for review include existence of new evidence which could not, even after due diligence, have been adduced at the time of the decision. The result of the investigation by the DCI was not available at the time of the decision by this court. the allegation was taken as mere allegation. Now, forensic investigation has confirmed that the said letter and rubber stamp impressions thereon were authored by the chief who was the purport author.
58. The routing of the probity of the letter unravels the propriety of the process through which the grant was obtained. And, on the basis of the threshold for review, this is a valid reason to review and set aside the earlier orders of the court.
59. Similarly, on the basis of section 76 of the *Law of Succession Act*, the evidence portends
- ‘...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’.
60. There is also a valid ground in law to revoke the grant. Conclusion and orders
- a. The proceedings to obtain the grant were founded on a forged document which routs the propriety and substance of the proceeding. In the upshot, the court finds that the grant obtained was obtained on the basis of a forged document making it a candidate for revocation under Section 76 *LSA* and is hereby revoked.
 - b. The beneficiaries to present to the court names of persons (not more than four) who should be appointed Administrators of the estate.
 - c. There shall be no orders as to costs given the events in the proceedings.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS’ APPLICATION, THIS
19TH DAY OF JULY 2023**

F. GIKONYO M.

JUDGE

In the Presence of :

1. Ndolo for protestor
2. Mr. Kasaso- CA
3. Njuguna for administrators

