



REPUBLIC OF KENYA



In re Estate of Kibet Arap Chemurin (Deceased) (Miscellaneous Succession Cause 10 of 2021) [2023] KEHC 20089 (KLR) (17 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20089 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
MISCELLANEOUS SUCCESSION CAUSE 10 OF 2021**

RN NYAKUNDI, J

JULY 17, 2023

IN THE MATTER OF THE ESTATE OF KIBET ARAP CHEMURIN

BETWEEN

RACHEL MIAMI APPLICANT

AND

STANLEY KIPKURUI KINDUIYWO 1ST RESPONDENT

JOSEPH KIPKOECH TANUI 2ND RESPONDENT

TIMINAH JEPKOECH KURGAT 3RD RESPONDENT

RULING

Coram: Before Hon. Justice R. Nyakundi

M/s Cheruiyot Melly & Associate Advocates

M/s Chanzu Victor & Company Advocate

1. The applicant approached this court vide a summons for revocation of grant dated 17th August 2021 seeking the following orders;
 - a) Spent.
 - b) That the Grant Letters of Administration intestate in respect of the Estate of the late Kibet Arap Chemurin (deceased) who died on 5th February, 1984 made to Stanley Kipkurui Kenduiywo, Joseph Kipkoech Tanui and Timinah Jepkoech Kurgat on 10th September, 2022 be revoked and/or annulled.



- c) That the titles/issued in respect of respect of the Grant made to Stanley Kipkirui Kenduiywo, Joseph Kipkoech Tanui and Timinah Jepkoech Kurgat on 10th September, 2022 be revoked and/or annulled.
2. That in case if any development on the parcel of land known as Nandi Keboi/317 either by the Respondent and/or on other interested parties on the Estate be stopped pending the determination of this Application.
3. The summons was premised on the grounds set out therein and the affidavit sworn by Rachel Miami on 17th August 2021 and the supplementary affidavit sworn on 19th May 2022.

Applicant's case

4. The applicant's case is that there is no evidence showing that the respondents herein were dependents or named as the dependents in section 29 of the *act*. Further, that Section 29 of the *law of succession* clearly sets out an account on the definition and hierarchy of the dependents of the deceased who are bound to benefit from the estate, subsisting at the time of his/her demise. Counsel urged that section 37, 38 and 39 of the said *Act* fundamentally and whether any contradictions set out the order of priority of the persons entitled to inherit the deceased estate. The provisions point out first it is the spouse or spouses and their children. This was the finding by the court *In Matter of the Estate of Yusuf Mohammed (deceased)* Mombasa High Court P& A No.434 of 1995.
5. Learned counsel submitted that section 29(1) of the Kenya Law of Succession (Amendment) Act 2021 categorizes dependents as follows; -
 - a) The spouse and children of the deceased whether or not maintained by the deceased immediately prior to his death; and
 - b) Such of the deceased's parents, step parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own brother and sisters as were being maintained by the deceased immediately prior to his death.
6. Further, that the amendment also provides that a person not named in the new section 29 shall not be a dependent for the purpose of the *Act* unless the person proves he/she was maintained by the deceased for a period of two years prior to the deceased's death. Counsel maintained that the respondents were not dependants of the deceased.
7. Counsel for the applicant submitted that the fact that the children of the late Kibet Arap Chemurin were minors an incapable to give consent/permission cannot be construed to mean renunciation of their right to inheritance. Citing rule 26 of the *Probate and Administration rules* counsel urged that the section signifies that a petitioner for grant of letters of administration will be deemed prima facie to have obtained a fraudulent grant, with respect of the estate if he/she fails to issue notice to any of the dependants or beneficiaries to the estate of the deceased, including obtaining necessary consents as mandatory provided in the *succession Act*. That the purported consent from the late Kibet Arap Chemurin's widow (Mary Jeptanui Cherori) whom at the time of application of the grant was mentally of unsound mind and incapacitated clearly denotes the extent respondents tried to validate fraud to get their way.
8. Counsel for the applicant submitted that the respondents are strangers to the estate and are neither holding the properties in trust of the deceased family. Whereas the respondents purport that they obtained consent to apply for a grant of letters of administration from the late Kibet Arap Chemurin's widow (Mary Jeptanui Cherori) now deceased, it is therefore 'imprudent' to presume that the suit



property was held by the respondents on behalf of the applicant and all the heirs of the deceased. He cited the case of *Matheka & Another v Matheka* (2005) EA 251 and submitted that without legal justification, the respondents secretly acquired the grant of letters of administration and certificate of confirmed grant to the estate specifically LR No. Nandi/Kaboi/317 and sub-divided the land amongst themselves to the detriment of legal heirs, which is sufficient ground to revoke the grant. Further, that the Respondents deceitful act to disinherit lawful beneficiaries of the estate add the crucial deficiency of a grant sufficient for the court to grant an order of revocation or annulment as was stated *in a matter of the estate of Ngaii Gatumbi Alias James Ngaii Gatumbi (deceased)* Nairobi Succession Cause No. 783 of 1993 that it had been obtained by defective or irregular process. Additionally, counsel urged that the purported consent to apply for grant of letters of administration from the late Kibet Arap Chemurin's wife now deceased while she was incapacitated taints the validity of the respondents Grant and ownership of parcel No. Nandi/Kaboi/317.

9. Counsel for the applicant submitted that the ground upon which revocation of grant is sought, in the present case is that the process of obtaining the grant and the title to Nandi/Kaboi/317 was fraudulent and deceitful. Further, that the proceedings to obtain the grant were defective in substance obtained fraudulently by making a false statement/misrepresentation as provided under section 76 (a) of the [*Law of Succession Act*](#). Having said so, such defectiveness need to lead to the revocation of a grant.

Counsel urged the court to revoke the grant.

1st, 2nd & 3rd Respondent's case

10. The respondents opposed the application and submitted that the entire process giving rise to these proceedings was approached with clean hands. That the respondents did their due diligence being purchasers of the estate of the deceased by approaching the immediate beneficiaries of the deceased to enquire how they would get their requisite documentation pertaining to their portion of the suit land. Counsel urged that the respondents were granted letters of administration upon gazettelement which was not objected to by the applicant leading to confirmation of grants on 10th September 2002. The applicants' mother (deceased) and her brother never raised any objection.
11. The respondents submitted that the applicant has not produced an iota of evidence to prove fraud on the part of the respondents. Further, that the land registrar filed a report dated 1st February 2023 as directed by the court which indicates that the respondents were duly registered as the administrators of the estate of the deceased on 2nd August 2021 under Kapsabet Succession Cause No. 15 of 2002 which disproves the allegation and indicates they followed due process to obtain the titles.
12. The respondents prayed that the application be dismissed with costs.

Analysis & Determination

13. Upon considering the application and responses thereto, the following issues emerge for determination;
 1. Whether the grant made to the respondents herein on 10th September 2022 should be revoked



Whether the grant made to the respondents herein on 10th September 2022 should be revoked

14. Revocation of grant is governed by Section 76 of the *Law of Succession Act* which states 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 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.”

15. The application is premised on the grounds that the grant was obtained by misrepresentation of facts. Further, that the beneficiaries of the estate were not involved in the petition for grant of letters of administration.

16. The proceedings that led to the grant of the letters of administration issued on 10th September 2002 were the proceedings in Kapsabet Principal Magistrates Court Succession Cause 15 of 2002. In those proceedings the beneficiaries were listed as;

Stanley Kipkirui Kenduiywo



Joseph Kipkoech Tanui
Nelson Kipkorir Kurgat

Whether the applicant is a beneficiary of the estate

17. The applicant claims she is a sibling to the deceased and as such was entitled to a share of the estate. In her affidavit in support of the summons she states that she is a sibling to the deceased but at paragraph 3 she states that he was their father. The chief's letter that is annexed to the summons reveals that the applicant is the daughter to Mary Jeptanui Chamori who was the wife to the deceased.
18. The respondent's case is that they were purchasers of the parcel of land from the deceased and that the wife to the deceased renounced their right to petition the court and they produced documentary evidence to that effect being a form annexed as SKK2 and SKK3. The applicants rely on the chief's letter dated 1st April 2022 as evidence that they were children to the deceased and as such beneficiaries of the estate. There is also a letter from the area chief that was filed in the Kapsabet succession cause that indicated that the plot was to be succeeded by the respondents herein. The same is dated 19th February 2002.
19. I have perused the record of the court in Kapsabet RM Succession Cause 15 of 2002 and it is evident that the wife to the deceased renounced her right to petition for grant of letters of administration.
20. It is trite law that he who alleges must prove. The applicants have not proved the alleged fraud that resulted in the issuing of the grant to the respondents. As the wife to the deceased renounced her right to petition, it is my considered view that the grant was not obtained through concealment of material information. There is no evidence that the consent or renunciation was fraudulently entered into. Further, the only evidence that the applicant is a beneficiary is a letter from the chief that was written in 2022 whereas the deceased died in 1984. I find it hard to believe the current chief has first-hand knowledge of the dependants of the household in the absence of any other evidence that they were beneficiaries to the estate of the deceased.
21. In the premises, the applicant has failed to prove that she is a beneficiary or a dependant to the deceased. The application fails in its entirety and is dismissed.

DELIVERED, DATED AND SIGNED DELIVERED ON THIS 17TH DAY OF JULY 2023

.....

R. NYAKUNDI
JUDGE

