



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Rajesh Mulji Manji Bhundia (Deceased) (Succession Cause E072 of 2022) [2023] KEHC 20191 (KLR) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20191 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE E072 OF 2022  
G MUTAI, J  
JULY 14, 2023  
IN THE MATTER OF THE ESTATE OF RAJESH MULJI MANJI  
BHUNDIA (DECEASED)**

**BETWEEN**

**DHRUV RAJESH MULJI BHUNDIA ..... 1<sup>ST</sup> PETITIONER**

**KIRAN RAJESH BHUNDIA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**RICHMOND HOLDINGS LTD ..... OBJECTOR**

**RULING**

**Introduction**

1. *Vide* Summons for Revocation of Grant dated March 29, 2023 the Objector/Applicant sought the following orders: -
  1. Spent;
  2. Spent;
  3. That the Grant of Probate of the Written Will issued by this Court on February 24, 2023 be recalled by this honorable Court forthwith for cancellation;
  4. That the Grant of Probate of the Written Will made to the executors on the February 24, 2023 be revoked;
  5. That the costs of this application be provided for.
2. The Objector/Applicant averred that the Petitioners/Applicants failed to disclose that there are 2 pending suits involving the estate to wit Mombasa ELC No 89 of 2020; *Rajesh Mulji Bhundia versus*



*Richmond Holdings Ltd and 5 others* and Mombasa High Court Family Misc No E047 of 2022; *Richmond Holdings Ltd versus Kiran Rajesh Bhundia and Dhruv Rajesh Mulji Bhundia*. In the former suit, the Objector/Applicant has counterclaimed for Kes 17,000.00 against the deceased. It is also averred that the grant was obtained fraudulently by the making of false statements, forgery and concealment from the Court of material facts to the case. The Objector/Applicant is afraid that the Petitioners/Respondents may sell and transfer the assets of the deceased and the Applicant shall not be able to recover the amount it is owed by the deceased's estate.

3. The Summons for Revocation of Grant is opposed. In the main the Petitioners/Respondents aver that the alleged debt has not crystallized as the suit before the Environment & Land Court is pending determination. It was urged that the Objector/Applicant was attempting to initiate parallel litigation in respect of the issues that are before another Court of competent jurisdiction.
4. I have perused the affidavits filed by the parties and read their submissions. The question that requires my determination is whether this Court should revoke the Grant of Probate of the Written Will of the deceased it made on February 13, 2023 at the instance of the Objector/Applicant.
5. Section 76 of the *Law of Succession Act* provides as follows: -

“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.”

6. The jurisdiction of the Court to revoke a grant under section 76 of the said *Act* is available to “any interested party”. Thus a creditor has the right under the said section to file a Summons for Revocation of Grant, and where such Summons are filed, the Court has the discretion to revoke the grant if it is satisfied that conditions therein contained have been met. “Interested party” under section 76 encompasses a wider body of persons beyond that contemplated by section 66 of the Act.



7. Musyoka J expound on the duty of the Probate Court when considering an application brought under section 76 of the Act in *In re Estate of Prisca Ong'ayo Nande (deceased)* [2020]eKLR. In the said matter he pronounced himself thus:-

“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 on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is 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. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.” I am in agreement with the Applicant that the Petitioners/Respondent had a duty to disclose all material information. In my view, all the debts of the deceased must be disclosed. This is important as the beneficiaries are entitled to the net estate can only be established after all the just debts and other liabilities have been settled. Distribution of an estate before the creditors are paid is fraudulent.

8. In this case the Environment and Land Court has not yet established who between the deceased and the Objector/Applicant owes the other money. Given the said situation should the Petitioners/ Respondents have disclosed the pending suit? I do not think there is a requirement for that in the rules. The Petitioners were under obligation to make full disclosure of the debts that have actually crystalized, not a contingent debt, such as that of the Objector/Applicant that is dependent on a court making a favourable finding. It is therefore my finding that the grant wasn't obtained by the concealment of material information.
9. I do not think that it would be advisable in any case to revoke the grant issued herein. I have already referred to the case before the Environment and Land Court in which the deceased was the Plaintiff. As the personal representatives of the deceased the Petitioners/Respondents have the following powers under section 82 of the *Law of Succession Act*

“to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;

To sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best;

Provided that



- ii. no immovable property shall be sold before the confirmation of the grant.”

Were I to revoke the grant there will be no one to prosecute the suit. The estate of the deceased will thereby be strongly prejudiced. The Objector/Applicant has in any case sought to have limited grant issued to the Petitioners/Respondents. Revoking the grant would defeat their very own prayer.

10. In its grounds the Objector/Applicant avers that it will be adversely affected if the Petitioners/Respondents are allowed to proceed to use the grant of probate of the Written Will of the deceased in that they may even proceed to sell and transfer the assets of the deceased and the Applicant shall not be able to recover the amounts owed by the deceased's estate. With respect this is false. As I have already indicated section 82 of the *Law of Succession Act* is very clear that “no immovable property shall be sold before the confirmation of grant”. The grant has not been confirmed. The Grant of probate of the Written Will of Rajesh Mulji Walji Bhundia (deceased) was made on February 13, 2023. It is due for confirmation upon expiry of 6 months. The said period has not lapsed. Once the Summons for Confirmation of Grant is filed the Objector/Applicant will be free to file an appropriate application to protect its interests.
11. If the Petitioners/Respondents purported to transfer properties before the grant of probate of the Written Will of the deceased was confirmed their action would be futile for all persons. My view is buttressed by the finding of the Court. *In re Jamin Inyanda Kadambi (deceased)* [2021]eKLR where it was held that:-

“A valid sale of estate property can only be by those to whom the assets vest by virtue of section 79, and who have the power to sell the property by virtue of section 82. Even then, immovable assets, like land, such as Kakamega/Kegoye/30, cannot be disposed of by administrators before their grant has been confirmed, and if land has to be sold before confirmation, then leave or permission of the court must be obtained. That is the purport of section 82(b)(ii) of the *Law of Succession Act*. Clearly, the sale transaction that was carried out by the administrators was contrary to sections 45 and 82(b) (ii) of the *Law of Succession Act*, and was invalid for all purposes. It cannot be asserted at all, and am surprised that persons to whom administration of the estate herein can purport to support a sale transaction that was carried out contrary to the very clear provisions of the law.

- a. For avoidance of doubt, sections 45, 79 and 82 of the *Law of Succession Act* provide as follows:
- b. “45. No intermeddling with property of deceased person
  - (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
  - (2) Any person who contravenes the provisions of this section shall  
—  
be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and



be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

12. The upshot of the foregoing is that the Court finds no merit in the Summons for Revocation of Grant. Family Miscellaneous case No E047 of 2022; *Richmond Holdings Ltd versus Kiran Rajesh Bhundia and Phruv Rajesh Mulji Bhundia* on the other hand litigates issues before the ELC Court which this Court has no jurisdiction. The same is similarly bereft of merit and is dismissed.

### **Disposition**

13. The upshot of the forgoing is that: -
1. The summons for Revocation or Annulment of Grant dated 29<sup>th</sup> March 2023 is hereby dismissed;
  2. Originating Summons dated December 20, 2022 filed in Mombasa High Court Family Miscellaneous Case No E047 of 2022; Richmond Holdings Ltd versus Kiran Rajesh Bhundia & another is also dismissed. The said file shall be closed forthwith;
  3. The Petitioners/Respondents are ordered to serve the Objector/Applicant with the Summons for Confirmation of Grant when the same is filed;
  4. Each party shall bear own costs; and
  5. Mention on September 25, 2023 for further directions.
- 14 Orders accordingly.

**DELIVERED, DATED, AND SIGNED THIS 14<sup>TH</sup> DAY OF JULY 2023 AT MOMBASA VIA MICROSOFT TEAMS**

.....

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Mr. Mutugi for the Petitioners/Respondent

Mr. Omwenga for the Objector/Applicant

Mr. Arthur Ranyundo – Court Assistant

