



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of Richard Litunya Eschuchi (Deceased) (Succession Cause  
1 of 2022) [2023] KEHC 21810 (KLR) (Family) (14 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21810 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1 OF 2022  
PM NYAUNDI, J  
JULY 14, 2023**

**BETWEEN**

**IRENE ASIKO MAKWATA ..... ADMINISTRATRIX**

**AND**

**AGNES TUTIE ASTIAYA ..... 1<sup>ST</sup> RESPONDENT**

**PATRICK NJOMO LITUNYA ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. By Summons dated August 13, 2021 presented under Section 76 of the *Law of Succession Act*, Rule 44 (1) of the *Probate and Administration Rules* the Applicants herein seek for orders that the Certificate of Confirmation of Grant issued to Irene Masiko Makwata on the February 21, 2017 be revoked on the grounds that-
  - a. The proceedings to obtain the grant were defective as there- was already another succession cause 1182 of 2010 at the High Court at Nairobi in involving the same estate of the deceased and property Marama/shiraha/474 formed part thereof
  - b. The grant was obtained fraudulently by concealment from this court of a material fact that there was already pending in the High Court at Nairobi or ought to have known that a case involving the same property of the estate existed. (sic)
2. The Application is Supported by the joint Affidavit of the Applicants sworn on August 13, 2021 and Supplemental (sic) Affidavit sworn by Agnes Tutie Atsiaya.



3. In summary the Applicants aver that they are the joint administrators of the deceased Richard Litunya Esuchi who died on the March 11, 1986. That they were granted a Letters of Administration of his estate vide Nairobi High Court Succession Cause No. on the May 18, 2011. The said Grant was subsequently confirmed on May 8, 2017 and Rectified on 14<sup>th</sup> day of November 2017.
4. That it is while they were proceeding to transmit the estate to the various beneficiaries that they discovered that the Respondent had Petitioned for letters of Administration in this cause in Kakamega High Court Succession Cause No. 871 of 2015, obtained grant of letters of administration on June 23, 2016, which was subsequently confirmed on February 21, 2017. In her petition the Respondent listed Marama/ Shirama/ 474 as the sole asset of the Deceased.
5. Subsequent to the Confirmation of Grant, the Respondent proceeded to effect transfers to the various beneficiaries culminating in transfers on September 7, 2018 to Ranji Devji Chhabhapta, Kanji Devji Chhabhapta and Chandarakant Devji Chhabhapta.
6. The Applicants are aggrieved as they contend that the said property is an asset of the estate of the deceased and in Succession Cause Nairobi High Court No. 1182 of 2020 they had allocated the same to a beneficiary.
7. It is contended that by so dealing the Respondent has intermeddled with the estate of the deceased.
8. The Respondent opposed the Application and filed an Affidavit in protest sworn on June 10, 2022. She contends that the Applicants are her siblings. She avers that she only took out letters of administration with respect to Marama/ Shiraha/ 474 as this is the parcel of land the deceased had allocated to the 3<sup>rd</sup> House. The Respondent sought that the matters be consolidated and proceed for hearing at the Kakamega law courts.
9. The matter proceeded for hearing on July 4, 2023 via Viva Voce evidence, the Respondent did not attend Court notwithstanding evidence of service.
10. Agnes Tutie Atsiaya testified on behalf of the Applicants and reiterated the contents of her affidavit.

### **Analysis and Determination**

11. Upon reviewing the pleadings on record and evidence of the Applicant in Court, I discern the following as the Issue for determination
  - a. Whether the Court should revoke the Certificate of Confirmation of Grant issued to Irene Masiko Makwata on February 21, 2017.
12. As noted above the grant of letters of Administration herein was issued to the Respondent on 23<sup>rd</sup> June 2016. The Applicants seek to revoke the Certificate of Confirmation and to do so by invoking Section 76 of the *Law of Succession Act*.
13. Section 76 provides;

“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...”
14. It is clear therefore that Section 76 relates to Grant of Letters of Administration and not Certificates of Confirmation of Grant. Courts in previous decisions have had occasion to interpret this Section and have struck out summons that seek to revoke Certificates of Confirmation.



15. I concur with the decision of Musyoka J *in re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where he held that;

"12. As stated above, the principal concern of the applicant is the confirmation of the grant. What he seeks principally is revocation of the certificate of confirmation of grant. The question then that arises is whether a certificate of confirmation of a grant is in fact a grant of representation intestate or the equivalent of a grant, to be revoked or annulled through section 76 of the *Law of Succession Act*. The answer to that question, appears to me, to be that a certificate of confirmation of grant is not a grant of representation.

13. Grants of representation take the form stated in sections 53 and 54 of the *Law of Succession Act*. They are either a grant of probate or of letters of administration intestate or of letters of administration with will annexed or limited grants. A certificate of confirmation of grant does not take any of those forms, and it cannot possibly, therefore, be a grant of representation. It is a document extracted from the orders that a court makes after confirmation of a grant under section 71 of the *Law of Succession Act*, as evidence the fact that a grant of representation has been confirmed. It should be emphasized that the confirmation process does not produce another grant. The grant sought to be confirmed, through that process, remains intact, after confirmation. .... Quite clearly, therefore, a certificate of confirmation of grant is not a grant of representation, and for that reason it is not available for revocation under section 76 of the *Law of Succession Act*."

16. On that ground I would proceed to dismiss the Application. Having reviewed the documentation in this matter the other question that arises for consideration is whether the subject property was subject to distribution as at the time the Applicants herein applied for confirmation of grant.
17. As stated the Respondent, Irene Asiko Makwata applied for grant and the same was issued on June 23, 2016 and confirmed on February 21, 2017. Grant was issued to the Applicants in Succession Cause Nairobi High Court No. 1182 of 2020 on January 21, 2011 and Amended on May 18, 2011. It was subsequently confirmed on May 8, 2017 and Certificate of Confirmation rectified on 14<sup>th</sup> Day of November 2017.
18. The date of rectification is significant as this is when the Applicants first included Marama/Shiraha/474 as an asset of the deceased. Prior to this date, armed with Certificate of Confirmation of Grant, the Respondent had proceeded to transfer the parcel to beneficiaries identified in the succession cause as evidenced by Green Card entry of February 23, 2017.
19. By the time therefore the Applicants were rectifying the grant to include Marama/shiraha/474, the property was not registered in the name of the deceased. In fact, in the Application dated September 8, 2017, the Applicants did not attach proof of ownership in support of the rectification. Marama/shiraha/474 and Marama/eshikomere 474 relate to distinct parcels of land.
20. The subject land was therefore not available for distribution as an asset of the deceased. Reference is made to the decision of Hon. Lady Justice Achode (as she then was) in *Jamleck Maina Njoroge V Mary Wanjiru Mwangi* [2015] eKLR in which the Court as in the instant case, having determined that the land did not belong to the deceased found that the land was not available for distribution.
21. The upshot of the foregoing is that:
- a. The Application dated August 13, 2021 is dismissed in its entirety.



- b. Each party will bear their costs.

It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 14<sup>TH</sup> DAY OF JULY, 2023.**

**P M NYAUNDI**

**JUDGE**

