



**In re Estate of Elijah Nkabio M'Rutim alias Elizah Nkabo Kayoyi
alias M'Nkabo M'Rutimi (Deceased) (Miscellaneous Succession Cause
E004 of 2022) [2023] KEHC 20817 (KLR) (11 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20817 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS SUCCESSION CAUSE E004 OF 2022**

**LW GITARI, J
JULY 11, 2023**

BETWEEN

WILSON KINYUA E NKAMIO PETITIONER

AND

MAINGI NKABO APPLICANT

RULING

1. The matter pending before this court is a summons dated January 26, 2022 filed by the applicant Maingi Nkabo who was seeking orders that inhibition be issued preventing any dealings like sub-division, transfer, petition alienation, lease or any other dealing with land parcels No Kiera/Magutuni/3261, 3262, 3263 and 3264 pending the hearing and determination of this application or till further orders of this court.
2. It also seeks an order that the grant issued on February 20, 2019 and confirmed on June 11, 2019 be revoked and annulled and the said land parcels do revert to the deceased's name. The main contention by the applicant is that the respondent disinherited him by giving out his share of the estate to third parties. He contends that the respondent filed the succession secretly and failed to distribute the estate fairly and equitably, and or in accordance with the law.
3. The application was supported by the affidavit of the applicant which I have considered. He deposes that he is a son of the deceased who was entitled to the estate of the deceased in 'pari pasu' with the respondent but he did not seek his consent to administer the estate. He only came to know of the succession when strangers interfered with his tenants claiming ownership.

He realized that the land was subdivided and sold to strangers. He has urged the court to revoke the grant so that he can get a share of the estate of his deceased father. The respondent was duly served and here is an affidavit of service sworn on January 24, 2023.



4. The respondent was given time to file a response to the application severally. On March 6, 2023 the respondent was given seven (7) days to file a replying affidavit but he failed to comply with the directions of this court.
5. I have considered the application. I find that it is not opposed as the respondent did not file a replying affidavit.

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 has ordered or allowed; 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.”

The section sets down the parameters upon which a court will revoke a grant. [In Re Estate of Prisca Ongayo Nande \(deceased\)](#) it was stated that-

“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 is where the process was defective, either because some mandatory procedural step was omitted, or the person applying for representation was not competent or suitable for appointment, it could also be that the process was marred with fraud and misrepresentation or concealment of matters, such as where the survivors are not disclosed or the applicant lies that he is a survivor. The second reason where the administrator fails to apply for confirmation within the time allowed or fails to render an account as and when required. The third is where the grant has become useless and in operative following subsequent circumstances..... “

6. The applicant has urged the court to revoke the grant as the grant was issued through none disclosure of some material facts. The applicant has also alleged fraud as the respondent sub-divided the estate and sold it to strangers without leaving him his share of the estate. I have perused the lower court file No 203/2017 and note that the name of the applicant does not appear on the list of beneficiaries on the certificate of the confirmed grant dated February 25, 2019. The applicant did not sign a consent on



the distribution of the estate. He was also not named as a beneficiary who was entitled to the estate of the deceased. The fact that he was a son of the deceased who was entitled to a share of the estate is not in dispute as the respondent did not oppose the application. Under Section 29 of the [Law of Succession Act](#) a child is named as a dependant who is not required to prove dependency.

7. I find that failure to disclose that the applicant was a dependant of the deceased and disinheriting him are sufficient grounds to warrant this court to order revocation of the grant. I find that this application has merits. I order that-
 1. The grant issued to Wilson Kinyua E Nkabo on May 30, 2018 and confirmed on February 25, 2019 is revoked forthwith.
 2. The estate shall revert back to the deceased and all the orders issued under the said grant are nullified and set aside.
 3. The appointment of the petitioner as the administrator is revoked.
 4. The applicant Maingi Nkabo is appointed by this court as the administrator of the estate of the deceased.
 5. The applicant to move the court within 30 days to have the grant confirmed as the matter has been pending in court.
 6. Costs shall be in cause.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 11TH DAY OF JULY 2023.

L.W. GITARI

JUDGE

