



**In re Estate of Anna Muthoni Muthui (Deceased) (Succession Cause
33 of 2000) [2023] KEHC 19632 (KLR) (7 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19632 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 33 OF 2000
JRA WANANDA, J
JULY 7, 2023**

BETWEEN

ALICE WAMBUI MUTHUI OBJECTOR

AND

ALEXANDER MUTHUI NGABU PETITIONER

RULING

1. This Cause relates to the estate of one Annah Muthoni Muthui (hereinafter referred to as “the deceased”) who died on 9/11/1997. From the record, the only property comprised in the estate is the parcel of land known as Plot No. UG/Tapsagoi/389.
2. Before Court is the Application by way of the Summons dated 14/02/2023 seeking the following Orders:
 - a) [Spent]
 - b) [Spent]
 - c) The Grant of Letters of Administration issued to Alexander Muthui Ngabu on 29th November 2001 and confirmed on 7th September 2020 be revoked or annulled.
 - d) That this Honourable Court be pleased to order the Land Registrar, Uasin Gishu County to cancel any kind of registrations entered in respect of that parcel of land known as Uasin Gishu/Tapsagoi/389.
 - e) That costs of this Application be provided for.
3. The Application is filed through Messrs D. K. Korir & Associates and is stated to be brought under “Section 76 of the *Law of Succession Act* (Cap. 160 Laws of Kenya), Rule 44 and Paragraph 16 of the 5th Schedule of the *Probate and Administration Rules*”.



4. The Grounds of the Application are basically that the proceedings to obtain the Grant were defective in substance and that when applying for the Grant of Letters of Administration, the Petitioner failed to disclose to the Court that he is not a sole beneficiary of the estate since the deceased was also survived by the Objector, one Victoria Wairimu Muthui and also one Livingstone Mbau Muthui who is now also deceased, hence they are entitled to the estate. It is also stated that the Petitioner sought to disinherit the Objector and his siblings by having the grant confirmed and estate property distributed to his sole name.
5. The Application is supported by the Affidavit sworn by the Objector in which she has deponed that she is related to the deceased by reason of being her daughter, the deceased was survived by the Objector, the Petitioner and the two others already mentioned above, the Petitioner moved the Court by taking out Succession proceedings and consequently confirmed the entire estate property in his name without the Objector's consent and/or knowledge, the Petitioner misrepresented before the Court that he was the only child of the deceased and the sole beneficiary of the estate, the Petitioner failed to disclose to the Court that the Objector is a beneficiary of the estate by virtue of being a daughter of the deceased.

Petitioners' Response

6. The Application is opposed by the Petitioner vide his Replying Affidavit filed in Court on 24/02/2023. The same is filed through Messrs Kipkorir Rono & Co. Advocates. In the Affidavit, the Petitioner deponed that the Objector's Application is an afterthought, the Cause was filed in the year 2000, 23 years down the line, the Objector cannot purport to state that she has never been aware of the Cause since the time of filing to date, the Cause was properly filed and the right rules followed, the same was duly advertised in the Kenya Gazette, no cause to the contrary was shown by the Objector despite her being aware of the whole process, the property in issue was not out of family property, the deceased gifted it to the Petitioner after taking care of her medical expenses and other care during her period of medication

Hearing of the Application

7. The Application was canvassed by way of written Submissions. The Objector filed her Submissions on 27/03/2023 while the Petitioner had filed his earlier on 16/03/2023.

Objectors' Submissions.

8. Counsel for the Objector submitted that the Objector has met the threshold to warrant the revocation or annulment of the Grant, Section 76 of the Law of Succession Act provides for the circumstances under which a Grant can be revoked as was explained in the case of Re Esatate of Prisca Ongayo Nande (Deceased) [2020] eKLR. He submitted that the legal requirements for an Application for grant of representation are set out in Section 51 of the Law of Succession Act, moreso Section 51(2)(g) which is more relevant for purposes of the instant Application and which requires a Petitioner to disclose all the surviving spouses and children of the deceased and any grandchild of the deceased whose own parent is dead, the said provision is couched in mandatory terms, the Petitioner named himself as the only survivor of the estate and failed to disclose that the Objector and his other siblings were also survivors, this amounts to making of a false statement and concealment of something material to the case, the Petitioner has failed to disclose that the deceased had other children apart from himself, the act of the Petitioner of misleading the Court is an act of fraud which was aimed at disinheriting the Objector, the Petitioner has not placed any material before the Court to show that the estate property was given to him as a gift by the deceased during her lifetime as alleged, if that was the case the property would



not have devolved to the Petitioner through the instant Succession proceedings but by way of the said gift, there would be no reason for him to fail to disclose all the survivors as required.

9. Counsel submitted further that the proceedings to obtain the grant were defective in substance because a mandatory procedural step was not followed, the Petitioner and the Objector have equal rights to petition for grant of representation hence the former was required by law to issue a notice to the latter requiring him to renounce her right or give consent to the Petitioner. He cited Section 66 of the Law of Succession Act and added that Part V of the Act, specifically Section 38 provides that where an intestate has left surviving children the net estate shall be equally divided among the surviving children, it was incumbent upon the Petitioner to notify the Objector of his intention to apply for the grant, Rule 26 of the Probate and Administration Rules deals with a situation where Grant of representation is sought by a person with equal or lesser right to another or others who have not petitioned. He cited the case of Re Estate of Seth Nambia Ashuma (Deceased) [2020] eKLR and submitted that there is no evidence that the Objector or his other siblings were notified of the Petition, there is no Affidavit sworn by the Petitioner demonstrating that the Objector had failed or refused to renounce her right or to sign consent allowing the Petitioner to apply for grant of representation.

Petitioners' Submissions

10. On his part, the Petitioners' Counsel reiterated that the Application is an afterthought having been brought over 20 years since the Grant was issued and that the deceased had during her lifetime given the property to the Petitioner as a gift. He cited Halsbury's Laws of England, 4th Edition, Volume 20(1) to buttress his argument that the deceased having gifted the property to the Petitioner, the Petitioner was entitled to proceed and make the gift complete by undertaking Succession. Counsel cited Section 7 of the Limitation of Actions Act which provides that an action may not be brought to recover land after the end of 12 years and submitted that the Objector's Application is based on her wish to recover and/or have part of the property transferred to her name, as such the Act applies in this matter, the Application is therefore time-barred.
11. Counsel also submitted that the Petitioner complied with Rule 26(1) of the Probate and Administration Rules which required him to give notice to every other person entitled to the estate and that the Application fails to meet the strict requirements of Section 76 of the Law of Succession Act. He cited the case of In the matter of the estate of L.A.K (Deceased) [2014] eKLR and Albert Imbuga Kisigwa vs Recho Kawai Kisigwa, Succession Cause No. 158 of 2000.

Analysis and Determination

12. Upon examination of the record, the pleadings filed, including the Affidavits and respective parties' Submissions, I find the issue that arises for determination to be as follows:

Whether the Objectors' Application meets the threshold for the revocation of a grant within the meaning of Section 76 of the Law of Succession Act.

13. Section 76 of the Law of Succession Act provides as follows:

“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.”

14. Section 76 was expounded upon by Hon. Justice W. Musyoka in the case of *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where he stated as follows:

“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.”

15. The Objectors have invited this Court to revoke the Grant of Letters of Administration made to the Petitioners. The grounds alleged are that the proceedings to obtain the Grant were defective in substance and that when applying the same, the Petitioner failed to disclose to the Court that he is



not a sole beneficiary of the estate and that the Grant was therefore obtained by concealment from the Court of material facts.

16. I have looked at the Petition and the documents filed with it. It is clear that the Petitioner described himself as the sole survivor of the deceased. The Chief's letter that he relied upon also lists the Petitioner as the sole survivor. Faced with the Objector's revelation that there were other survivors whom the Petitioner failed to disclose, namely, the Objector, a sister and a brother, the Petitioner readily concedes that indeed there were these other survivors apart from himself. In giving an incomplete list of the survivors, either the Chief was misled or he deliberately agreed to mislead the Court. Insofar as the Petitioner did not make this disclosure at the time of applying for the Grant, the Petitioner did not comply with the requirements of the law.
17. In explaining why he never disclosed the fact that there were other survivors, the Petitioner alleges that he did so because the sole estate property, UG/Tapsagoi/389 was gifted to him by the deceased before she died. He also alleges that all the other survivors, including the Objector, being aware of the gift, agreed to leave the inheritance to the Petitioner. Needless to state, he did not provide any evidence to back these allegations. The Petitioner's allegation therefore remain just that, unsubstantiated claims. Under these circumstances, the Objector's argument that the Grant was obtained through concealment of material facts is merited. Accordingly, I find that there is no evidence that the deceased, during her lifetime, gifted the estate property to the Petitioner.
18. The question now is whether the said non-compliance by the Petitioner is by itself, sufficient to persuade this Court to revoke the Grant.
19. It is not in dispute that the Grant was issued on 29/11/2001, about 22 years ago. The confirmation of the grant however grossly delayed and was eventually effected on 17/11/2020, about 18 years later.
20. The Petitioner claimed that the reason why no one in the family challenged or objected to the grant for all this time is because the family had agreed that the inheritance should devolve to the Petitioner. I note that on her part, the Objector has not bothered to give any explanation why it has taken her 22 years to challenge the grant. She has strangely maintained a studious silence on the issue. She has not even alleged that she has not been aware of these Succession proceedings for 22 years. I would have expected that the first item that the Objector would have tackled in her Application would have been to give the Court an explanation for the long delay. She however never canvassed the issue even after being prodded by the Petitioner. In light of the Objector's loud silence on this issue, the Court is left with no material to make a determination on whether the delay to file the present Objection was excusable or not. I therefore find that the Objector's 22 years delay to challenge the Grant was inordinate and by reason thereof, revoking the Grant at this stage will be wholly unjustified.
21. I am not by any chance making a general statement that a Grant of representation cannot in any circumstances be revoked because of delay to challenge it. That cannot be so. Hon. Musyoka, J. in *Re Estate of Charles Ngoto Gachunga (Deceased)* [2015] eKLR held as follows:

“It is argued that the application has come in too late. In other words, the same was filed after an inordinate delay which has had the effect of rendering it time-barred due to effluxion of time. The answer to this submission is that the office of administrator is for life. He can be called to account at any time so long as he is still alive. Needless to say, that section 76 of the Act does not impose any time limitations within which an application for revocation of grant ought to be filed.”
22. The reason why I have found that the delay in this instant case does not justify revocation of the Grant is because there has been no explanation by the Objector for the 22 years delay. Each case is therefore



dependant on its own peculiar facts and circumstances. It is for this reason that I have not embraced the Petitioners' averment that the Application is time barred under Section 7 of the Limitation of Actions Act. My view is that the said Section deals with actions to recover land, not claims for inheritance made under the Law of Succession Act.

23. On a different ground, as aforesaid, there were a total of four survivors in the family. Apart from the Petitioner and the Objector therefore, there were two other survivors, Victoria Wairimu Ngabu who is very much alive and Livingstone Mbau Muthui who is now deceased. I note however that it is only the Objector who is challenging the grant. The others appear to have had no problem with the same. The position of the other survivors (or at least the spouse or children of the deceased survivor, if they do exist) has not been disclosed to the Court and neither have they participated in this matter. However, their silence and/or taking of no step to support the Objector's present Application seems to point to their satisfaction with the status quo. I find this situation to lend some credence to the Petitioner's claims that there was some kind of agreement within the family that the estate property was to devolve to the Petitioner and that the Objector's present Application is an afterthought.
24. I am therefore of the view that considering the circumstances of this case, revoking a Grant that was issued 22 years ago when there is absolutely no explanation offered for such inordinate delay will be too disruptive, against the interest of justice, unreasonable and wholly unjustified. Litigation must at some point come to an end.

Final Orders

25. In light of the above findings, I make the following orders:
- i) The Summons dated 14/02/2023 filed by the Objector is hereby dismissed.
 - ii) This being a family matter, each party shall bear his/her own costs.
 - iii) This file is now marked as closed.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 7TH DAY OF JULY 2023

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WANANDA J. R. ANURO

JUDGE

