



**In re Estate of Sabuni Marita Gilbert (Deceased) (Succession Cause
2 of 2019) [2023] KEHC 23114 (KLR) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23114 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
SUCCESSION CAUSE 2 OF 2019**

JN KAMAU, J

SEPTEMBER 25, 2023

IN THE MATTER OF THE ESTATE OF SABUNI MARITA GILBERT (DECEASED)

BETWEEN

ESTONE NYANGORI GODFREY SABUNI.....PETITIONER

VERSUS

HELLEN YABOKE SABUNI.....OBJECTOR

RULING

1. In her Summons for Revocation or Annulment of Grant dated and filed on 30th October 2020, the Objector herein sought that the Grant of Letters of Administration intestate made on 30th April 2020 be revoked and/or annulled. She further prayed that the assets belonging to Sabuni Marita Gilbert (hereinafter referred to as “the deceased”) who died on 3rd May 2017 which the Petitioner sold to a 3rd party namely Yusabia Bonareri Omwenga on 12th January 2017 be nullified and cancelled and the same do revert to the deceased’s estate. The remaining two (2) substantive prayers were spent as they were to be granted pending the hearing and determination of the Summons for Revocation or Annulment of Grant.
2. Her said Summons was supported by a Supporting Affidavit that she swore on 30th October 2020. She averred that she was the deceased’s wife and that together they were blessed with three (3) daughters and three (3) sons, one of whom was the Petitioner herein.
3. She stated that the Petitioner fraudulently and mischievously petitioned for the Grant of Letters of Administration Intestate of the deceased’s estate without her consent or that of the other beneficiaries with the sole intention of mismanaging, wasting, disposing off (sic), alienating and dispossessing her of the deceased’s estate to her detriment and to the detriment of other beneficiaries.
4. She pointed out that she filed ELC No 38 of 2019 to protest the sale of part of the deceased’s estate at the time she filed the said Summons for Revocation or Annulment of Grant that was pending before the court. She thus urged this court to allow her said Summons for Revocation or Annulment of Grant.



5. In response to the said Summons for Revocation or Annulment of Grant, the Petitioner swore a Replying Affidavit and Answer to Objection. The same was sworn on 9th November 2020.
6. He asserted that on 27th February 2020, the court granted preservative orders which were still in place and that he had not breached the same warranting the Objector to seek similar orders herein.
7. He averred that the deceased subdivided L.R. No Mwongori Settlement Scheme (hereinafter referred to as “the subject property”) into four (4) equal portions measuring approximately seven (7) acres. He contended that one (1) portion was allocated to the Petitioner and the daughters while he and his brothers namely, George Morara Sabuni and Dickens Omasire Sabuni were each allocated the remaining three (3) portions. He annexed a copy of Minutes evidencing the said apportionment. He pointed out that upon sub-division, boundary features were fixed and each beneficiary put up his homestead.
8. It was his contention that while the deceased was still alive, he sold half (½) acre to raise school fees. He annexed a copy of the Agreement for Sale. He asserted that the deceased died before he could effect transfer to enable each beneficiary acquire title deeds for their respective portions. He was emphatic that he had never sold any other property after the deceased’s death or interfered with the subject property at all. He added that the Objector had deliberately concealed that the beneficiaries sold four (4) acres of the land after the deceased’s death to pay hospital bills that he had incurred. He also annexed a copy of the Agreement for Sale in support thereof.
9. He averred that he had indicated the liabilities and all beneficiaries in his Summons for Confirmation of Grant and there had therefore been no concealment, irregularity or false statement at the time he petitioned for the Grant of Letters of Administration Intestate.
10. He said that the Objector had the liberty to present her proposal of how the deceased estate could be shared. He also stated that he had no objection to the Objector being made a co-administrator of the deceased’s estate so as to complete administration of the same.
11. On 15th July 2021, Maina J who was at the time seized of this matter directed that the same would proceed by way of viva voce evidence and directed the parties herein to file their Witness Statements within thirty (30) days thereof.
12. On becoming seized of this matter, on 31st January 2022, this court directed the parties to cross-reference their Witness Statements to their indexed and paginated Bundle of Documents and to also file any additional Witness Statements and documents, if need be. The parties complied and a hearing date was fixed. The Objector and the Petitioner closed their respective cases on 19th September 2022 and 23rd September 2022.
13. The Objector did not testify. Her daughter, Grace Mora Moku (hereinafter referred to as “PW 1”), Bundi Charles Obaba (hereinafter referred to as “PW 2”), the Petitioner herein and Yusabia Bonareri Omwenga (hereinafter referred to as “DW 2”) all adopted their Witness Statements as their examination-in-chief.
14. The Objector’s Written Submission were dated 14th October 2022 and filed on 25th October 2022 while those of the Petitioner were dated and filed on 28th November 2022. This court ceased handling matters from Nyamira High Court in October 2022 but directed that this matter be placed before it on 30th November 2022 to confirm filing written submissions. This was not done.
15. However, this file was transferred to this court on 27th March 2023 whereupon it directed that the Ruling herein be reserved as opposed to mentioning the matter on 8th May 2023 with a view to fixing



a Ruling date as it was on annual leave. The Ruling herein is therefore based on the said Written Submissions which both parties relied upon in their entirety.

Legal Analysis

16. The Objector submitted that the deceased maintained control over his land throughout his life and therefore died intestate. She added that although she annexed a document showing that he sub-divided the subject property in favour of his sons, the Petitioner herein did not testify on the document or testify if the conditions therein were met.
17. She placed reliance on the provisions of Section 51(2)(g) of the *Law of Succession Act* which stipulates that every application shall list all the beneficiaries to a deceased's estate. She pointed out that the Petitioner did not list the three (3) children of his deceased sister, Rose Bosibori Sabuni, yet they were legitimate beneficiaries of the deceased's estate.
18. In this regard, she referred this court to the case of *In Re Estate of Kimitei Cherop (Deceased) 2021 eKLR* which cited the case of *Christine Wangari Gachenge vs Elizabeth Wanjiru Evans & 11 Others (eKLR citation not given)* where it was held that a grandchild would take the share of his father or mother if they predeceased his or her grandfather or grandmother. She pointed out that a similar conclusion was arrived at in the case of *In Re Estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR*.
19. She conceded that the proceeds from the sale of four (4) acres were used to pay the hospital bills that the deceased had incurred. She agreed with the Petitioner that he ought to be given his portion. She averred that although little was known about the half ($\frac{1}{2}$) and two (2) acres that were sold to Borabu Primary School and Peter Boko respectively, the same may have been sold by the deceased when he was alive and hence they could be given their shares.
20. She referred to the case of *Ripples International vs Hon AG & 2 Others [2022] eKLR* where the court declared Section 35(1)(b) of the *Law of Succession Act* to the effect that a deceased's widow held life interest in his property unconstitutional. She asserted that out of the twenty eight point four (28.4) acres, twenty one point nine (21.9) acres then ought to be distributed between her, her children and the children of her daughter, Rose Bosibori Sabuni (deceased) equally.
21. In this regard, she placed reliance on the case of *In Re Estate of Godana Songoro Guyo (Deceased) [2020] eKLR* where the court directed that the deceased's assets be distributed equally among all the deceased's beneficiaries.
22. She contended that the Petitioner's proposal for distribution of the deceased's assets be disregarded except where it coincided with her proposal as all she wanted was that the deceased's estate should be distributed as per the laws governing distribution of a deceased's estate and not according to the Petitioner's whims.
23. On his part, the Petitioner submitted that the Objector had no capacity to donate a power of attorney for PW 1 to address the court on her behalf in a succession matter.
24. He added that the Grant of Letters of Administration Intestate that was issued on 30th April 2020 did not exist because a new Grant was issued on 25th November 2020. He pointed out that the Objector did not adduce any evidence to demonstrate that he had wasted the deceased's estate. He asserted that the fact that DW 2 purchased the property before the deceased died showed that he had not interfered with his estate.



25. He termed the present Summons for Revocation or Annulment of Grant as an abuse of the court process. He relied on the cases of Satya Bhamu Gandhi vs ODPP & Others [2018] eKLR and Mary Wangari Kiarie vs Safaricom (K) Limited [2021] eKLR where the common holding was that abuse of the court process was improper use of legal process intend to annoy the opponent.
26. It was his submission that the Objector could not refer herself as an objector as she was an administratrix of the deceased's estate. He added that she had not satisfied any of the conditions of the revocation of the Grant of Letters of Administration.
27. PW 1's evidence was that the only asset of the deceased that was to be shared was the subject property. As the Objector herein had stated in her Written Submissions, she proposed that after the land that belonged to Jared Nyagwachi Bichanga, Peter Bokoo and Borabu Primary School had been excised, the remaining acres ought to be distributed equally amongst the beneficiaries of the deceased's estate, a position she reiterated when she was cross-examined.
28. On being cross-examined further, she stated that the Petitioner and her two (2) other brothers were each occupying six (6) acres each giving a total of eighteen (18) acres. She explained that she had a problem with beneficiaries selling their portions of land because the demarcations were not conclusive, which she re-stated when she was re-examined.
29. She denied knowing DW 2 but indicated that she had been told that there was a house that belonged to her.
30. PW 2's testimony was that he wished to see the dispute regarding the distribution of the deceased's estate resolved as per the laws of Kenya.
31. When he was cross-examined, he stated that he was the deceased's nephew. He was emphatic that the deceased's subject property ought to be shared by the beneficiaries of the deceased's estate.
32. PW 3's evidence was on all fours with that of PW 1. When she was cross-examined, she stated that she had come to stand in place of her deceased mother to claim a share of the deceased who was his grandfather.
33. On his part, the Petitioner reiterated the averments of his Replying Affidavit and Answer to Objection. He urged the court to allocate the purchasers the land they had bought.
34. On her part, DW 2 asked this court to give her the half (½) acre she purchased from the deceased when he was alive. She asserted that she had constructed a house and toilet.
35. When she was cross-examined, she admitted that the Objector did not sign the Agreement of Sale that she entered into it with the deceased before he died.
36. This court became seized of this matter on 29th November 2021. On the said date, the Objector's counsel alluded to her Summons for Revocation of Grant dated and filed on 30th October 2020.
37. In his written submissions, the Petitioner submitted on the said Summons for Revocation of Grant. He stated as follows:-

“The Objector herein has only concentrated on the revocation of grant which does not exist and/or is overtaken by events whatsoever. The Objector did not adduce any evidence to confirm what was wasted by the Petitioner. The Petitioner requests that the honourable court to dismiss the summons for revocation and annulment of the grant dated 30th October 2020...”



38. He had also submitted that there had been no concealment, irregularity or false statement at the time he petitioned for the Grant of Letters of Administration Intestate. As seen hereinabove, he added that he had not breached the conservatory orders warranting the Objector to seek similar orders herein.
39. Notably, this court did not interact with the parties on 31st November 2022 when it ought to have reserved a date for delivery of its decision herein. It would have been a good time to clarify what exactly was being determined. As the Objector did not make any reference to the Summons for Confirmation of Grant, only having been mentioned the Summons for Revocation and Annulment of Grant that was dated and filed on 30th October 2020 when her counsel addressed first addressed court, after seeing the Petitioner's Written Submissions, this court got was not certain if the parties were ad idem and/or of the same mind regarding the Summons that it was to deliver a decision on.
40. Having said so, this court came to the conclusion that it would not add value for it to make a finding on whether or not the Objector had demonstrated any of the grounds in Section 76 of the Law of Succession Act to persuade this court to revoke and/or annul the Grant of Letters of Administration for the reason that the Summons for Revocation and/or Annulment of Grant had since been compromised by Maina J and the Objector herein enjoined as a co-administrator of the deceased's estate.

Disposition

41. For the foregoing reasons, the upshot of this court's decision was it could not make a Ruling in respect of the Objector's Summons for Revocation or Annulment of Grant dated and filed on 30th October 2020, the same having been dispensed with after Maina J who was then seized of the matter appointed another co-administrator herein.
42. It could also not render its decision relating to the Petitioner's Summons for Confirmation of Grant that was dated 28th September 2020 and filed on 2nd October 2020 as the Petitioner did not address its Written Submissions on the same but appeared to have only concentrated on the grounds of revocation or annulment of grant, which this court also thought was what was to be addressed.
43. It is hereby directed that this matter be mentioned before the Presiding Judge at Nyamira High Court on 16th October 2023 for directions on the hearing of the Summons for Confirmation of Grant dated 28th October 2020 and filed on 2nd October 2020.
44. As the Objector is the Petitioner's biological mother, each party will bear its own costs.
45. It is so ordered.

DATED AND DELIVERED AT NYAMIRA THIS 25TH DAY OF SEPTEMBER 2023

J. KAMAU

JUDGE

