



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Mukemo Murere Ndege (Deceased) (Succession Cause 61 of 2012) [2023] KEHC 23363 (KLR) (13 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23363 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 61 OF 2012
WM MUSYOKA, J
OCTOBER 13, 2023**

RULING

1. I am tasked with determining a summons for revocation of grant, dated July 27, 2023, which is brought at the instance of John Ouma Ekesa. I shall refer to him as the applicant. He avers that since March 2019, when the grant herein was confirmed, the administrator, Ernest Ochieng Murere had failed to distribute the estate, and that Bukhayo/Kisoko/6802, which had been devolved to him, was still in the name of the administrator. He avers that since the administrator had failed to distribute the estate, his grant should be revoked, and he, the applicant, be appointed administrator, to complete administration. He would also like the certificate of confirmation of grant to be rectified, to reflect Edmond Maloba Bwire as beneficiary with respect to Bukhayo/Kisoko/6802. He has attached a search certificate for Bukhayo/Kisoko/6802, dated July 17, 2023, indicating that the same is still registered in the name of the administrator.
2. There is a return of service, dated August 17, 2023, indicating that the application was served on the Advocates for the administrator, that is to say Nechesa Maina & Associates, through their email address, on August 11, 2023. I have scoured through the file before me, and I have not come across a response, by the administrator, to the application, dated July 27, 2023. So, I shall treat the said application as unopposed.
3. The matter came up for hearing on September 28, 2023. I was informed that the application was unopposed, and was urged to allow it. I opted to allocate a date for ruling to enable me satisfy myself about service, and to acquaint myself with the record.
4. The grant was confirmed through a ruling that was delivered on March 25, 2019. A certificate of confirmation of grant was generated, and issued on April 2, 2019. It devolved Bukhayo/Kisoko/6802 to the applicant herein, and Bukhayo/Kisoko/6803 to Moses Mitigoa Obusubiri. A copy of the said certificate was collected the same day by the administrator.
5. Upon confirmation of the grant, the law, at section 83(g) of the *Law of Succession Act*, cap 160, Laws of Kenya, allows the administrator 6 months to complete administration of the estate, and to file accounts of the completed administration. The court may allow a longer period under that provision.



In this case, 6 months expired on or about September 25, 2019. I have not seen evidence that the 6 months period was extended by the court. Going by the search certificate exhibited, the administrator is yet to distribute or transmit the estate and complete administration, 52 months after the grant was confirmed. I note that the administrator was served with the application, but he has not filed a response, to account for that delay in transmitting the estate as per the certificate of confirmation of grant dated April 2, 2019.

6. Is there a case for revocation of grant herein? section 76(d) of the [Law of Succession Act](#) provides that a grant may be revoked, where the administrator fails to apply for confirmation of the grant, or fails to diligently administer the estate, or fails to render accounts. The issue herein is not about failure to apply for confirmation of grant. It is a lot more about failure to proceed diligently with administration and to render accounts. The 2 often go together, for an administrator is under a duty to render accounts for his administration, and where there is failure to administer, there would be a corresponding duty to account or offer an explanation for the failure to administer the estate.
7. The grant was confirmed on March 25, 2019, and a certificate to that effect was issued on April 2, 2019. Under section 83(g) of the [Law of Succession Act](#), the estate ought to have been transmitted to the beneficiaries named in the certificate within 6 months of the confirmation, unless there was extension by the court, and an account filed to that effect. It is now 52 months since. There is no evidence of transmission, and compliance with section 83(g) of the [Law of Succession Act](#). Failure to transmit the estate for over 52 months after confirmation smacks of failure to proceed diligently with administration. It amounts to a failure of administration, for which the grant is liable to revocation. Since the administrator has failed in his key duty of distributing the estate, and has failed to account for that failure, he should be removed from office, and replaced with another administrator, who ought to complete administration.
8. Who should be appointed? The applicant has offered himself. There are only 2 beneficiaries under the certificate of confirmation of April 2, 2019. The other is Moses Mitigoa Obusubiri. He has not expressed an interest to administer.
9. The other prayer is with respect to amendment of the certificate of April 2, 2019, to reflect the beneficiary of Bukhayo/Kisoko/6802 as Edmond Maloba Bwire, rather than the applicant. Edmond Maloba Bwire is not a son of the deceased. He did not buy the property from the deceased. He has no claim to the estate. He is not a creditor of the estate. There is no basis for him to be involved in the succession. He should look up to the person who sold the land to him. He should wait for transmission to happen, after which he should pursue the person who sold the land to him, to have him transfer the same to him. There should be no shortcuts. As matters stand, he is a stranger to the estate. I shall not allow the amendment sought in the circumstances.
10. In the end, I revoke the grant made to the administrator herein, Ernest Ochieng Murere, for his failure to transmit the estate to the beneficiaries herein, 4 years after the grant was confirmed by the court. I shall appoint the applicant, John Ouma Ekesa, to take his place as administrator, with directions that he shall transmit the estate as per the certificate of confirmation of grant of April 2, 2019, and complete administration of this estate within 6 months. A grant of letters of administration intestate shall issue to him. The certificate of confirmation of grant of April 2, 2019 shall be amended to remove reference to Ernest Ochieng Murere as administrator, to be replaced with John Ouma Ekesa. John Ouma Ekesa shall remain the beneficiary of Bukhayo/Kisoko/6802. The matter shall be mentioned after 6 months, to confirm completion of administration, and for closure of the court file. The application was unopposed, so there shall be no order on costs.
11. It is so ordered.



**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 13TH DAY OF
OCTOBER 2023**

WM MUSYOKA

JUDGE

