



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Daudi Kimeto Maina (Deceased) (Succession Cause E049 of 2021) [2023] KEHC 23765 (KLR) (12 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE E049 OF 2021
JK SERGON, J
OCTOBER 12, 2023**

BETWEEN

NAOMI CHEPKOSGEI KIMETO (SUING IN THE CAPACITY AS ADMINISTRATOR OF THE ESTATE OF JOSHUA FRANKLIN KIPRONO KIMETO) 1ST OBJECTOR

WELLINGTON KIPCHIRCHIR RUTO (SUING IN THE CAPACITY AS ADMINISTRATOR OF THE ESTATE OF STANLEY KIPRUTO KIMETO) 2ND OBJECTOR

AND

EDWIN KIMETO PETITIONER

RULING

1. Prior to the instant application the petitioner/respondent had filed summons for confirmation of grant dated October 25, 2022 seeking to have the grant of letters of administration intestate issued by this court on April 21, 2022 confirmed as per the proposed mode of distribution therein. The Applicant herein filed an affidavit of protest against the confirmation of grant dated March 14, 2023, the matter was set down for inter partes hearing but from the record the application was neither heard nor determined. The application that is set for this court's determination is the summons for revocation dated June 22, 2023 seeking the following reliefs;
 - a. Spent
 - b. Spent
 - c. That an inventory or account of administration of the estate be produced and placed before this honourable court by the administrators Nathan Kipkirui Kimeto, Edwin Kiprotich Kimeto and Chepngeno Patricia Kimeto.



- d. That the grant of letters of administration intestate issued to Nathan Kipkirui Kimeto, Edwin Kiprotich Kimeto and Chepngeno Patricia Kimeto herein be hereby revoked.
 - e. That any certificate of confirmation of letters of administration issued (if any) on the basis of the said grant be hereby nullified together with any transactions based upon it.
 - f. That the administrators herein be hereby ordered to surrender all title documents belonging to the Estate of Daudi Kimeto Maina and all accounts to this honourable court.
 - g. That the applicant together with suitable beneficiaries other than the current administrators be at liberty to apply for appointment as joint administrators in intestacy.
 - h. That there be liberty to apply for further orders as may be deemed just and expedient in the circumstances.
 - i. That the costs of this application be provided for.
2. The application was supported by grounds on the face of it and the affidavit sworn by Naomi Chepkosgei Kimeto the applicant/objector in support of the summons for revocation of grant.
 3. The applicant avers that the deceased herein died intestate in Chepkemei in Kericho County on March 5, 2003 and further that the proceedings through which the administrators namely Nathan Kipkirui Kimeto, Edwin Kiprotich Kimeto and Chepngeno Patricia Kimeto obtained grant were defective.
 4. The Applicant avers that in their petition to this court dated November 30, 2021 the administrators namely Nathan Kipkirui Kimeto, Edwin Kiprotich Kimeto and Chepngeno Patricia Kimeto obtained a grant fraudulently by making false statements and concealment of material information from the court.
 5. The Applicant avers that by an affidavit filed in court on June 21, 2023 by one Edwin Kiprotich Kimeto, there was an admission by the administrators of deliberate and wilful omission of known beneficiaries of the deceased from the petition of grant of letters of administration intestate dated November 30, 2021. Further that due to the concealment of material facts in the said petition the objectors filed an objection to the making of a grant on March 11, 2022.
 6. The applicant avers that despite there being an objection on the file and in the register the Registrar issued a grant to the petitioners in total ignorance of the objection filed against the issuance of the grant.
 7. The Applicant avers that the objection was duly filed and served upon the petitioners and that despite being served with the said notice of objection dated March 11, 2022 the petitioners subsequently filed a summons for confirmation of the grant which they deliberately failed to serve upon the applicant and beneficiaries of the estate of the deceased.
 8. The Applicant therefore contended that the grant of letters of administration intestate were obtained fraudulently by making a false statement to the court and should be revoked to accord all the beneficiaries of the deceased an opportunity to apply for a grant intestate and eventually equitably determine the rightful shares of the beneficiaries to the estate of the deceased.
 9. There is a supplementary affidavit by Naomi Chepkosgei Kimeto dated 25th September, 2023 the first applicant objector and a representative of the estate of Joshua Kiprono Kimeto who was her husband and the 3rd born of the deceased she avers that she was aware of the attempt to remove the Mauche Land from the grant and that this was an attempt to eventually evict the children of Alice Cherop Maina from their rightful home which was contrary to the deceased wishes.



10. The Applicant further avers that it is necessary for this court to include all the beneficiaries of the estate of the deceased in these proceedings together with all the assets of the estate.
11. The Application is supported by a further affidavit sworn by Wellington Kipchirchir Ruto dated 13th July, 2023 in support of summons for revocation, the second objector in the instant proceedings and a beneficiary of the estate of the deceased on behalf of the estate of Stanley Kipruto Kimeto (son of the deceased) who was his father.
12. He avers that by the time the instant succession cause was filed a group of the beneficiaries of the estate of the deceased herein and Edwin Kimeto had ignored all calls to commence the succession of the estate of the deceased for over 20 years and further that so vigorous was their rejection of the succession process that they convened a family meeting at the home of Samuel Kimeto (a beneficiary) on 11th October, 2021 when they decided that the estate of the deceased would not be subjected to succession rather that the whole estate would be inherited as one entity with one title deed, under the name Daudi Maina Estate Company and the same resolution was minuted and the minutes circulated to family members.
13. He avers that this prompted the filing of the instant succession cause vide a petition dated 18th October, 2021 by Jackline Chepkemoi Kimeto.
14. He avers that he only just received a copy of the summons for confirmation of grant and noted that the administrators of the estate led by one Edwin Kimeto wished to disinherit him and all the beneficiaries of the estate of the deceased by creating a trust in their names and transferring all assets of the estate into their names.
15. The Petitioner/Respondent filed a replying affidavit dated 22nd September, 2023, the replying affidavit was sworn by Edwin Kiprotich Kimeto in opposition to the applicant's application dated 22nd June, 2023.
16. The petitioner/respondent avers that the applicant resigned on her volition as the administrator before the previous judge handling the matter upon advice by her advocate on record.
17. The Petitioner/Respondent avers that there were no beneficiaries left out as alleged by the applicant further to this all beneficiaries were listed in the chief's letter and that those left out were not direct beneficiaries as provided for under section 29 of the *Law of Succession Act*.
18. The applicant filed written submissions in support of summons for revocation of grant, in paragraph 1-37 of the written submissions set out a factual background to the instant application.
19. The applicant maintained that the administrators intentionally left out the biological children of the deceased in the succession process and further to this no evidence had been produced before this court that the said beneficiaries had renounced their interest in the estate. The Applicant maintained that the beneficiaries that had been left out, were listed in the citation dated October 21, 2021, the objection dated March 11, 2022 and finally the protests dated February 14, 2023 which were duly filed and served upon the administrators.
20. The Applicant maintained that the proceedings to obtain the grant were defective in substance occasioned by skipping and/or ignoring crucial steps such as a citation hearing or duly filed and served objections to the making of the said grant and cited the case of *In Re Estate of Nazir Khan Mohamed (Deceased)* [2020]eKLR.
21. The Applicant contended that the grant was obtained fraudulently by making a false statement and/or by concealment of material facts, the administrators had failed to include some of the biological



- children of the deceased. The Applicants faulted the administrators attempts to remove the Mauche land from the estate as the same was being done with the sole motive of evicting them from the land.
22. The Applicant reiterated that the administrators had failed and without reasonable cause to proceed diligently with the administration of the estate and made reference to clause 7 on the proposed mode of distribution on the summons for confirmation of grant, signed by Edwin Kimeto he proposed that instead of distributing the estate as required by law, he wished to transfer the entire estate into his name and the other administrators in some peculiar trust arrangement.
 23. The Applicant therefore maintained that she had established the grounds for revocation of grant as set out under section 76 [Law of Succession Act](#).
 24. The Applicant urged the court to consider a change in the administrators of the estate. The Applicant reiterated that she had made out a case for the orders that she is seeking, she therefore urged the court to grant the orders sought in the interest of justice and preservation of the estate.
 25. The petitioner/respondent filed written submissions in opposition to the summons for revocation of grant; they maintain that all the beneficiaries of the estate of the deceased were captured well in the chief's letter.
 26. The Petitioner/Respondent reiterated that the applicant was one of the beneficiaries and was also invited as one of the administrators but she willingly opted out as an administrator in open court. They argued that administration of an estate did not confer more rights on the administrators over the properties of the deceased over and above the share entitled to them save for the powers to oversee distribution of the estate thus does not affect the substance of the succession.
 27. The Petitioner/Respondent maintained that the letters of grant dated 21st April, 2023 were issued procedurally and the allegations that it was obtained fraudulently were not warranted and further that the applicant had neither particularized nor proven the allegations of fraud. They cited the Court of Appeal case of [Kinyanjui Kamau v George Kamau](#) [2015] eKLR in which it was observed that it is trite law that any allegations of fraud must be pleaded and strictly proved.
 28. The Petitioner/Respondent reiterated that the application was not merited and ought to be dismissed with costs.
 29. I have considered the application dated 22nd June, 2023 the supporting affidavit in support thereof, the replying affidavit in opposition to the instant application and the parties written submissions and I find that the issue for this court's determination is whether the grant of letters intestate issued to Nathan Kipkirui Kimeto, Edwin Kiprotich Kimeto and Chepngeno Patricia Kimeto should be revoked. I have thoroughly perused the record and the following is clear, there are material discrepancies in the affidavit in support of the petition for letters of administration intestate dated 13th October, 2021 and the affidavit in support of summons for confirmation of grant dated 25th October, 2022 filed by the administrators, I therefore am forced to concur with the applicants/objectors that the affidavit filed in support of summons is characterised by making of a false statement and/or by concealment of material facts, the administrators have left out some of the beneficiaries surviving the deceased and property constituting part of the estate of the deceased to wit the land in Mauche located Molo Nakuru County.
 30. I also find fault with the conduct of the administrators, I find that they have failed and/or without reasonable cause to proceed diligently with the administration of the estate, moreso, the proposal by the administrator in clause 7 on the proposed mode of distribution on the summons for confirmation of grant, signed by Edwin Kimeto whereby he proposed that instead of distributing the estate as required by law, he wished to transfer the entire estate into his name and the other administrators in a trust arrangement, whereas section 83 (g) of the [Law of Succession Act](#) cap 160 Laws of Kenya provides that



an administrator's duty is to diligently administer the estate of the deceased person which entails the transmission of all of the deceased person's property to the respective beneficiaries. I find that the said proposal to administer the estate as a trust to be untenable and the same would be in breach of the duties bestowed upon them by the law.

31. I therefore find that the applicants have ably demonstrated the grounds set out in section 76 of the [Law of Succession Act](#) for revocation and/or annulment of grant. Accordingly, I find that this application is merited. The same is hereby allowed with the following consequential orders;
- (i) The grant of letters of administration intestate issued to Nathan Kipkirui Kimeto, Edwin Kiprotich Kimeto and Chepngeno Patricia Kimeto on April 21, 2022 is hereby revoked and any of the beneficiaries is hereby allowed to apply for the same.
 - (ii) I hereby dismiss the summons for confirmation of grant dated October 25, 2022.
 - (iii) Each party to bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF OCTOBER, 2023

J.K. SERGON

JUDGE

In the presence of:

No Appearance for the Applicant/Objector

Kipkoech Yegon for the Petitioners/ Respondent

