



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Samson Chepkwony Bunei (Deceased) (Succession Cause
337 of 2007) [2023] KEHC 23760 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23760 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 337 OF 2007**

JK SERGON, J

OCTOBER 12, 2023

IN THE MATTER OF THE ESTATE OF SAMSON CHEPKWONY BUNEI (DECEASED)

ANNAH CHEPKORIR CHEPKWONY.....1ST PROTESTOR/APPLICANT

LEAH CHELANGAT TOO.....2ND PROTESTOR/APPLICANT

VERSUS

LILY CHEPKIRUI BUNEI.....PETITIONER/RESPONDENT

JUDGMENT

1. The application coming up for determination by this court is a summons for revocation of grant dated March 14, 2022. The applicants are seeking for an order that the certificate of confirmation of grant issued on the 7th day of October, 2021 be revoked. The applicants are relying on grounds on the face of the summons and a joint affidavit sworn by both applicants.
2. The application is supported by the joint affidavit in support of summons for revocation sworn by Anna Chepkorir Chepkwony and Leah Chelangat Too the protestors/ applicants herein.
3. The applicants aver that Samson Chepkwony Bunei died on 28th December, 1998 at Chemosot in Kericho County intestate and a grant of probate (letters of administration) was made to Lily Chepkirui Bunei, the respondent herein.
4. The applicants aver that on October 7, 2021 without their consent and knowledge counsel for the respondent herein informed the court that the beneficiaries had agreed by consent to share the estate as per the proposed mode of distribution in summons dated May 12, 2009 and filed in court on June 3, 2009.
5. The applicants aver that the mode of distribution was prepared solely by the respondent and further that on October 7, 2021 counsel for the respondent proceeded to record a consent confirming the distribution of the estate without their consent. They were therefore adamant that they did not participate in the instant succession proceedings.



6. The applicants aver that on October 7, 2021 their advocate on record was not present in court and when they raised their hands to try and protest to the said mode of distribution the court overruled their request and subsequently, a certificate of confirmation was issued on the 10 October 9, 2021.
7. The applicants aver that they have their proposed mode of distribution which is as follows (a) Anna Chepkorir Chepkwony - 5.25 Acres, (b) Leah Chelangat Too - 5.25 Acres, (c) Mathew Kipkemoi Soi - 2.5 Acres and (d) Lily Chepkemoi Bunei - 0.5 Acres. They further aver that the said mode of distribution is captured in the affidavit sworn by the applicants on December 3, 2012 and filed in court on December 4, 2012.
8. The applicants aver that the confirmation of grant is irregular, unlawful and goes against the provisions of the Law of Succession Act as their consent was neither sought nor obtained.
9. The applicants aver that the respondent herein is currently in a hurry to sub-divide the land with a view to sell her unlawfully acquired share as she is married and has land in her matrimonial home.
10. The respondent filed a replying affidavit in response to the applicants application dated March 14, 2022.
11. The respondent avers that before she commenced the succession process, she obtained a letter from the chief for purposes of the succession proceedings in which all beneficiaries were included.
12. The respondent further avers that she filed all the required documents for the granting of the letters of administration intestate.
13. The respondent avers that the court issued her with letters of administration intestate and that she caused gazette notice no. 98 dated November 30, 2007 to be published.
14. The respondent avers that all beneficiaries were informed and fully aware of the succession proceedings and were in court when she was issued with the certificate of confirmation of grant.
15. The respondent further avers that contrary to the averments of the applicants in their joint supporting affidavit, all parties had agreed by consent for the estate to be distributed in terms of the summons for confirmation of grant dated May 12, 2009 and filed in court.
16. The respondent further avers that when the matter came up for hearing on October 7, 2021 the advocates of the applicants being M/S Sang & Sang Advocates, LLP were present in court and the applicants were out to mislead and misguide the court on plain facts which are on record.
17. The respondent avers that the application dated March 14, 2022 is an afterthought as it has been brought six (6) months since the certificate of confirmation of grant dated October 7, 2021 was issued and no plausible explanation has been given for the delay.
18. The respondent avers that the application was brought in an effort to cleanse the applicants from their acts of intermeddling with the estate of the deceased and that through fraud, illegality and collusion with the officials in the land registry transferred land parcel no. Kericho/kabartegan/360 into their names as the registered proprietors.
19. The respondent further avers that she became aware of the illegality as she was in the process of distribution and promptly filed the application dated February 16, 2022 under a certificate of urgency for the transfer to the applicants be cancelled and that the said parcel of land revert back to the estate of the deceased and that the applicants filed the instant application to defeat the ends of justice and cog the wheels of justice from spinning.



20. The respondent avers that there is not the remotest suggestion of coercion, fraud or undue influence in regard to the consent recorded in the granting of the certificate of confirmation of grant and further that the applicants had failed to establish grounds for revocation of grant as set out in section 76 of the *Law of Succession*.
21. The court directed the parties to canvass the instant application through written submissions.
22. On the issue as to whether the grant should be revoked and/or annulled, the respondent cited section 76 of the *Law of Succession Act* which sets out the circumstances in which a grant may be revoked or annulled and relied on the following cases in support of her case *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* (2015) eKLR and *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No. 158 of 2000. The respondent maintained that the applicants had not established any of the grounds for revocation as outlined in section 76 of the Law of Succession.
23. The respondent pointed out that the gist of the instant application and affidavit submitted in support of the application revealed that the applicants were dissatisfied with the mode of distribution of the estate.
24. The respondent submitted that section 76 of the Law of Succession gives the court power to revoke grants of representation, the respondent argued that a certificate of confirmation of grant is not a grant of representation and relied on the case of *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR.
25. The respondent submitted that contrary to the applicants assertion that the proceedings to obtain the grant were defective; all beneficiaries were informed and fully aware of the succession proceedings in court and further that she followed due process in accordance with the law.
26. The respondent maintained that contrary to the averments of the applicants in paragraph 3 of their supporting affidavit, the parties agreed by consent for the estate to be distributed in terms of paragraph 6 of the summons for confirmation of grant dated May 12, 2009 and filed in court. Further, that on the October 7, 2021 when the matter came up for hearing, the advocates of the applicants were present in court which fact is on record. The respondent further submitted that the contention that the mode of distribution was prepared solely by the respondent was a falsehood and cited the case of *In Re Estate of Julius Ndubi Java* (2018) eKLR (Deceased) where Gikonyo J. stated the importance of parties bringing forth truthful information to court.
27. The respondent reiterated that the applicants failed to establish the grounds for revocation of a grant as set out in section 76 of the Law of Succession Act and the instant application was aimed at delaying the fair finalization of the succession proceedings.
28. The applicants submitted that the proceedings to obtain the grant were defective in substance and cited the case of *Muriranja Mboro Njiri* Nairobi HC Succession Cause No. 890 of 2003 on defective and irregular proceedings leading to the issuance of a grant.
29. The applicants further submitted that on October 7, 2021 counsel for the respondent unilaterally informed the court that the beneficiaries to the estate had agreed by consent to share the estate as per the mode of distribution in the summons dated May 12, 2009 and filed in court. The applicants were therefore seeking to vacate the entire proceedings of October 7, 2021 that culminated into confirmation and subsequent issuance of certificate of grant.
30. The applicants maintained that from the onset the mode of distribution was prepared by the respondent and her advocate to the exclusion of the applicants herein.



31. The applicants submitted that the circumstances leading to the confirmation of the grant on October 7, 2021 were irregular and unlawful and against the provisions of the Law of Succession Act.
32. The applicants cited the case of *Isaac Kireru Njuguna (Deceased)* Nairobi HC Succession Cause 1064 of 1994 where the court found that a grant is liable for revocation where all heirs have not consented to the mode of distribution.
33. The applicants relied on section 73 of the *Probate and Administration Rules* to fortify their application, the said section clothes the probate court with inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of court process.
34. I have considered the application for summons for revocation herein, the replying affidavit filed in response to the said application dated March 14, 2022 and the rival submissions filed by the parties. I find that the sole issue for this court's determination is whether certificate of confirmation of grant issued on the 7th day of October, 2021 should be revoked.
35. I have taken cognisance of the fact that this matter was referred for mediation by this court on June 7, 2022, the parties went through mediation proceedings and the mediator filed a report that a mediation agreement was not reached and the matter referred back to court. It is therefore in the interest of justice to have this matter resolved.
36. I have carefully examined studied the court record and proceedings of the instant succession cause, there is a copy of minutes of a meeting held on February 10, 2001 in which all beneficiaries of the estate were in attendance, whereby it was resolved that the land should be shared equally after the sale of 2.5 acres to Mathew Soi, this therefore contradicts the applicants assertion that the mode of distribution in the summons dated May 12, 2009 and subsequently adopted by this court was prepared by the respondent and her advocate to the exclusion of the applicants herein. I have also noted that on the material day, October 7, 2021 when the court issued a certificate of confirmation of grant there was an advocate present on behalf of the applicants herein Learned Counsel G.K. Kiletyen was present in court which fact is on record. Furthermore, the applicants have not established any of the grounds for revocation and/or annulment of grant as set out in section 76 of the *Law of Succession Act*. In the circumstances, I find that the instant application for revocation is not merited.
37. Accordingly, I dismiss the summons for revocation of grant dated March 14, 2022 and I hereby uphold the certificate of confirmed grant dated October 7, 2021.

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

.....
J.K. SERGON

JUDGE

In the presence of:

Court Assistant - Rutoh

No Appearance for R. K. Langat for the Protestors/applicants

Kefa for the Petitioner/respondent

