



**In re Estate of Kiplangat Ponde (Deceased) (Succession Cause
862 of 2014) [2023] KEHC 23033 (KLR) (4 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23033 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 862 OF 2014
HM NYAGA, J
OCTOBER 4, 2023
IN THE MATTER OF THE ESTATE OF KIPLANGAT PONDE (DECEASED)**

BETWEEN

ALFRED KIPKEMBOI MOROGO APPLICANT

AND

GEORGE KIPLANGAT MOROGO RESPONDENT

RULING

1. By way of Summons for Revocation or Annulment of Grant dated 13th December, 2022, the applicant seeks annulment of the Grant of Probate issued to Kobilu Kiplangat and George Kiplangat Morogo on 13th March, 2015 and confirmed on 6th October, 2017 and costs of the Application.
2. The application is premised on the grounds that, the proceedings to obtain the grant were defective in substance, the grant was obtained by concealment of material facts, the grant was obtained in total exclusion of the Applicant who is the son of the deceased herein and the grant was obtained by use of forged signatures of the dependents to purport that they signed the consent to allow issuance of the grant.
3. The applicant through his affidavit sworn on 13th December, 2022 in support of the summons for revocation of grant reiterated that above grounds. In addition, he deponed that the respondent never conducted any meetings with all the dependents of the deceased herein to agree on the mode of distribution and that he left out also Loice Jebet Morogo; Beatrice Jepchumba Langat; Rose Jepkoech Langat; and Caren Jerono Morogo who are dependents of the deceased in the sharing of the estate properties.
4. He averred that respondent did not disclose to the court that the property known as Plot No.545 at Kipsyenan Trading Centre form part of the estate and that the respondent without consent of



- the family members trespassed on the Estate Plot No.545 at Kipsyenan Trading Centre in 2019 and constructed shops and rentals houses where he is collecting rent and solemnly benefits from the same.
5. He further averred that the respondent is very rude and uncooperative to family members and he has refused to attend family members meetings in respect of the estate.
 6. He deponed that the respondent without consent of the family members trespassed on estate parcel of land at Kampi ya Moto Block 6/98 (Kipyenan) fenced a portion of land with chain link wire where their mother Kobilu Kiplagat cultivate and denied her to cultivate the land and he has also started to build a house and he is also in the process of blocking their mother from accessing her house.
 7. He averred that the respondent's actions were reported to the area chief who summoned him and he was very arrogant claiming that he is the administrator of the estate and he can do what he wants with the estate and thus it is evident that the respondent intention is to gain from their father's estate single-handedly.
 8. He prayed that the grant be revoked.
 9. The Respondent opposed the application through his replying affidavit sworn on 15th May, 2023.
 10. He deponed that due process was followed in obtaining the grant and all beneficiaries of the estate were involved in the process thereof.
 11. He disputed that he had concealed from the court any material fact in relation to the administration of the estate and the number of beneficiaries of the estate of the deceased.
 12. He also disputed that the signatures of the dependents appearing on the consent were forged as alleged by the Applicant and averred that there is no evidence to support the same.
 13. He contended that the Applicant's complaint appears to be a land dispute and not a succession dispute which should be resolved in another forum and not a succession court.
 14. He deponed that the application has been brought in bad faith, is frivolous and calculated to waste court's precious time and prayed that the same be dismissed with costs to him.
 15. The Applicant swore a further affidavit in response to the above replying affidavit. He reiterated the averments contained in his supporting affidavit and stated that he reported the respondent to the DCI Rift Valley Region vide OB14/15/02/2023 issued by the Nakuru Central Police Station and the matter is being investigated. He attached a copy of the letter dated 22nd February, 2023 to Court by the DCI regional Coordinator.
 16. The Application was canvassed through written submissions.

Applicant's Submissions

17. The applicant submitted that the grant was obtained fraudulently as the respondent forged his signature in order to hasten the proceedings.
18. The applicant contended that the respondent failed to inform the court of his four sisters whom he omitted without their consent and also misrepresented facts to his sister and mother causing them to sign documents they assumed were for something else.
19. The Applicant in urging this court to revoke the grant relied on In the Matter of the Estate of Ngaii Gatumbi alias James Ngaii Gatumbi (deceased) Nairobi HC Succession Cause No. 783 of 1993 where it was held that proceedings to obtain a grant are considered defective in substance where the grant of



letters of administration are issued when beneficiaries who were equally entitled to apply for the grant were not notified of the petitioner's intention to apply for the grant and their consent to the petitioner applying alone was not obtained.

20. The Applicant cited the case of *In the matter of the estate of Yusuf Mohamed (Deceased)* Mombasa High Court P & A No. 434 of 1995 where the court stated that

“Section 29 of the Law of Succession clearly sets out an account on the definition and hierarchy of dependents of the deceased who are bound to benefit from the estate, subsisting at the time of his or her demise. Secondary, Section 35, 37, 38 and 39 of the said Act fundamentally and whether any contradictions sets out the order of priority of the persons entitled to inherit the deceased estate. The provisions point out first it is the spouse or spouses and their children.”

then submitted that in the petition for grant of letters of administration and subsequent confirmation the respondent initiated proceedings without notice to his mother, spouse to the deceased and higher ranking to him and other beneficiaries or obtained their respective consent and therefore the respondent's actions are oppressive and discriminatory against the rest of the beneficiaries.

21. In further support of his case, the Applicant relied on the case of *In re Estate of Epharus Nyambura Nduati (Deceased)* [2022] eKLR where the court in re estate of Prisca Ong'ayo Nande (deceased) (2020)e KLR discussed the grounds upon which a grant can be revoked as provided for under section 76 of the *Law of Succession Act* ; *In Re Estate of Moses Wachira Kimotho (Deceased)* [2009] eKLR where the court found that the grant was obtained fraudulently as the respondent had not disclosed the interest of the applicants who were purchasers for value of a portion of the deceased estate ; the case of *Morris Mwiti Mburugu vs Denis Kimantheni M'Mburugu* [2016] eKLR where the court held that “where any person interferes with the free property of the deceased or deals with an estate of a deceased person contrary to the provisions of sections 45 and 82 of the Act, that is intermeddling, is unlawful and cannot be protected by the court. The transaction is subject to be nullified and set aside at the instance of the innocent beneficiaries who may have been affected by the act but were not involved in the same..” and the case of *Lazarus Estates Limited vs Beasley* (1956) 1 All ER 340 where the court held that;

“No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever.”

22. The Applicant prayed that the Application be allowed.

Respondent's Submissions

23. On whether the proceedings to obtain grant were defective in substance, the Respondent submitted in the negative. On grounds of revocation of grant , the respondent relied on the case of *In re Estate of Epharus Nyambura Nduati (Deceased)* [2022] eKLR where the court cited the case *In Re estate of Prisca Ong'ayo Nande (deceased)*(2020)e KLR(supra).
24. The respondent submitted that the proceedings of 6th October 2017 reveals the beneficiaries whom the applicant alleges were excluded in the process relating to obtaining the grant, were all present in



court as the court proceeded to consent to the confirmation of grant as well as the proposed mode of distribution of the estate of the deceased herein .

25. The respondent submitted that the grant dated 15th August 2017 as well as the affidavit in support of the same show the applicant herein was listed as one of the beneficiaries and he even signed the consent and therefore his contention that he was not involved in the process that resulted in obtaining the grant cannot stand.
26. This court was referred to the provisions of Rule 40(8) of the Probate and Administration Rules and the case of Charles Mutua M'anyoro vs. Maria Gatiria [2009] eKLR where the court stated that it is imperative under the rules that all dependents be in attendance during the hearing of the application for confirmation of grant save where the dependants have signed a consent in writing.
27. On whether 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, the Respondent cited *Charles Mutua M'anyoro vs Maria Gatiria* (supra) where the court held that it is the duty of the applicant to prove on a balance of probability the grounds under Section 76 of the *Law of Succession Act*.
28. The respondent also relied on the case of *Kinyanjui Kamau vs George Kamau Njoroge* [2015] eKLR where the court stated inter alia that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.
29. The Respondent thus submitted that the contention by the respondent that he did not disclose to the court property known as Plot No.545 Kipsyenan Trading Centre formed part of the estate properties of the deceased and was not included in the Succession, and that the respondent forged signatures of the dependants are unsubstantiated.
30. He prayed for dismissal of the instant application.

Analysis & Determination

31. The issue for determination is whether there are sufficient grounds to move the court order that the grant issued to Kobil Kiplangat and George Kiplangat Morogo on 13th March, 2015 and confirmed on 6th October 2017 be revoked.
32. Section 76 of the *Law of Succession Act* cap 160 of the Laws of Kenya which provides as follows:
 76. 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
 - iv. that the grant has become useless and inoperative through subsequent circumstances.
33. The Applicant put forth four major arguments:
- (i) that the Petitioner did not seek the consent of all beneficiaries;
 - (ii) omitted some beneficiaries of the estate including the Applicant;
 - (iii) the Respondent forged his signature together with those of the other beneficiaries in order to obtain the grant; &
 - (iv) the respondent did not disclose all the properties of the deceased.
34. I have perused the affidavit in support of the petition for letters of administration intestate and I note the Applicant and the beneficiaries he alleged were omitted were all actually listed as beneficiaries of the deceased. The list is also in conformity with the letter from the Chief, Makutano Location, dated 27th November 2014. I find that this ground is not proven.
35. The other ground adduced is that some of the beneficiaries did not sign the consent for the letters of administration.
36. I have noted the contents of the supporting affidavit by the applicant. It is only him who alleges that the signature on the consent form is not his. A perusal of the affidavit in support of summons for confirmation of grant and the proceedings of 6th October, 2017 show that the Applicant and other beneficiaries consented to the confirmation of the grant and the mode of distribution.
37. Interestingly, Kobilu Kiplagat, the co-administrator and Loice Jebet Morogo despite alleging that the respondent did not consult them when applying for the letters of administration, acknowledge that they signed the forms. The two also confirm attending court on 6th October 2017, when the grant was confirmed. They claim that they thought that the forms were to be used to pursue the pension payment for their late husband and father respectively.
38. A perusal of the court proceedings for 6th October 2017, shows that the parties, save for Alfred Morogo, the applicant, were before the court and were in agreement as to the proposed confirmation. It is thus clear that the evidence of Kobilu and Loice should be taken with a pinch of salt.
39. It should not be lost that Section 109 of the *Evidence Act* places the burden of proof on him who alleges. The Section provides that:
- “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie in a particular person.”
40. In my view therefore, I am not satisfied that the Applicant has made out a case in support of his allegations in regard to forgery of the signatures. No material has been placed before me, for instance expert testimony of handwriting experts in support of the allegations of forgery. The Applicant has merely asserted forgery of the signatures but no further evidence has been adduced in that regard save for his letter to court by DCI Regional Coordinator in support of his contention that he reported



the forgery issue to the DCI Rift Valley Region and the matter is pending investigation. This was a complaint done this year, and it may be perceived to have been done with this application in mind.

41. The Applicant's contention that the Respondent did not disclose the property known as Plot No.545 at Kipsyenan Trading Centre forms part of the estate is not backed by any concrete evidence. The Applicant did not attach any title deed to ascertain this position. I am thus unable to ascertain that the property forms part of the deceased's estate. If evidence to that effect is availed then the court has powers to give appropriate orders over it.
42. To me, this particular property appears to be the main reason for the applicant being in court. Why do I say so? From the confirmed grant, the applicant has equal shares in all the other listed properties, so it is highly unlikely that he has issues with that arrangement. If he has sufficient evidence to show that the property in question belonged to the deceased then he can avail the same.
43. From the foregoing, I find the Applicant has not made out a case that would warrant this court to revoke the grant in question. Orders for revocation of grants ought to be given in clear circumstances. In the instant case, I think that none are exhibited.
44. The application lacks merit and I hereby dismiss it.
45. This being a family matter, each party shall bear their own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 4TH DAY OF OCTOBER, 2023.

H. M. NYAGA

JUDGE

In the presence of:

C/A Jeniffer

Ms Chepkulul for Kipkoech for respondent

Mr. Mwithi for Ms Murithi for applicant

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