



REPUBLIC OF KENYA



**In re Estate of Kipkoros arap Murgor (Deceased) (Probate & Administration
53 of 2021) [2024] KEHC 14401 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14401 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 53 OF 2021
JR KARANJA, J
NOVEMBER 20, 2024**

IN THE MATTER OF THE ESTATE OF KIPKOROS ARAP MURGOR:DECEASED

RULING

1. The Applicant/ Objector, Emmy Chelimo Chumo, took out the summons for revocation and/or annulment of grant dated 17th March 2012, in which she seeks the main order that the letter of administration issued to the Petitioner, Fredrick Kipkemoi Tarus on the 3rd July 2008 be revoked on the basis of the grounds set out in the summons as fortified by the averments contained in the supporting affidavit dated 17th March 2012 and further affidavit dated 19th June 2024. The additional prayers in the summons are peripheral and more or less dependant on the main prayer with regard to their success or failure.
2. The Petitioner opposed the application on the basis of the grounds contained in his replying affidavit dated 14th June 2012.

On the outset, the application indicates that it is based on the ground that the grant was obtained fraudulently by making of false statements and/or by concealment of material facts.
3. Generally, a grant of letters of administration may be revoked where the process of obtaining the grant was defective for failure to adhere to mandatory procedural requirement or that the Applicant was not qualified or suitable for appointment as a legal representative or that where there is a valid will the Applicant has applied for grant of letters of administration Intestate instead of grant of letters of probate or that the process of obtaining the grant was marred by fraud, misrepresentation and concealment of material facts such as failure to disclose the true and actual beneficiaries or survivors of the deceased or that some of the beneficiaries have deliberately been omitted as such [see, Re-Estate of Prisca Ongaya Nande [deceased][2020] eKLR].
4. Section 76 of the *Law of Succession Act* sets out the parameters for revocation of grant which can be done at any time upon application by an interested party or of the court's own motion. For the purposes of this application as may be deciphered from the supporting grounds, Section 76 [b] of the Act would be the dominant ground for revocation of the subject grant.



5. Both parties filed written submissions in support of and in opposition to the application through Duncan Tallam & Company Advocates for the Objector and Ngigi Mbugua & Company Advocates for the Petitioner/ Respondent.

Having considered the application on the basis of the supporting grounds and the rival submissions it was apparent to this court that the main issue for determination is whether the Objector has established and proved by necessary evidence that the grant was obtained fraudulently in the manner of misrepresentations, false statement and/or concealment of material facts.

6. The court record shows that the petition for letters of administration Intestate respecting the estate of the Late Kipkoros Arap Murgor [deceased] was filed in court on 21st May 1999 by Tapsarami Kesumo Murgor as the surviving widow of the deceased and the sole beneficiary of his estate.

The death certificate dated 15th March 1999 indicated that the deceased died on 9th October 1987 at the ripe age of one hundred [100] years.

7. The necessary gazette notice was issued on the 10th September 1999 [G/N No. 5046], but before the grant could issue, the Petitioner passed away and was substituted with the present Petitioner Fredrick Kipkemboi Tarus vide an application to that effect made on 23rd August 2007, in his capacity as the grandson of the original deceased Petitioner.

Eventually, the grant was issued to the present Petitioner on 5th November 2007 and not on 3rd July 2008 as indicated in this application.

8. Therefore, on the 8th April 2008, the Petitioner took out the necessary summons for confirmation of grant in which it was proposed that the estate property being Land Parcel No. Nandi/Kipsigak/161 be distributed wholly to the Petitioner as the sole beneficiary. A certificate of confirmation of grant to that effect was issued on the 3rd July 2008. This is the date referred to in this application thereby implying that the Objector is actually seeking a revocation of the certificate of confirmation of grant rather than the grant itself on account of having been omitted as a beneficiary, being the second wife of the deceased's only son, Alfred Kiptarus Koros, the father of the Petitioner with his first wife called Bot Seurei.

9. It would therefore appear that if indeed the Objector was the second wife of the father of the Petitioner, hence a daughter in law of the deceased, then she would be entitled to a share of the estate property in priority to the Petitioner who was the deceased's grandson in terms of Section 66 of the Succession Act and given that the interest in the estate property was tied to her and her co-wife through their late husband, father of the Petitioner.

10. A grant obtained on the strength of false claims and on the basis of facts concealed from the court, would surely be liable to revocation or annulment which are alternative remedies for any mischief related to a petition for letters of administration [see, Samwel Wafula Wasike Vs. Hudson Simiyu Wafula [1993] LLR[CAK]].

11. The certificate of official search dated 11th May 1999 shows that the estate property was firstly registered on 21st May 1973 in the name of the deceased and a land certificate in that regard was issued on 19th July 1974. Therefore, upto the time of his death in 1987 all the way upto the time the application for letter of administration was made in 1999, the deceased remained the registered owner of the estate property.

12. At the time of making his application for substitution of the original petitioner for himself as the Petitioner following the death of the original Petitioner on 15th July 2004, the present Petitioner did



not disclose the existence of any other beneficiary to the estate of the deceased. He proceeded on the basis that he was the sole beneficiary as the grandson of the deceased.

13. Even in his summons for confirmation of grant dated 8th April 2008, the Petitioner did not disclose the existence of any other beneficiary who might have been entitled to a share of the estate property.

Here again, he proceeded on the basis that he was the sole beneficiary and caused the estate property to be transmitted wholly to himself thereby giving him the liberty to deal with it in any manner.

14. In his replying affidavit dated 14th June 2012, the Petitioner in paragraph 10 concedes and clearly admits that the Objector is indeed his stepmother, being the second wife of his father. It would therefore follow that in the process of obtaining the subject grant and indeed the certificate of confirmation of the grant the Petitioner concealed from the court the maternal fact that the Objector was also a beneficiary of the estate and was also entitled to apply for letters of administration.

15. Although the Objector's concern was the certificate of confirmation of grant issued to the Petitioner, the evidence herein backed by the court record established and proved that the process of obtaining the grant in this case was marred by misrepresentation and concealment of material facts on the part of the Petitioner/ Respondent.

16. It may therefore be safely stated that the Objector has discharged her obligation of proving that the subject grant and the subject certification of confirmation of grant were both obtained contrary to the law and are therefore liable to revocation and/or annulment.

In sum, the present application is allowed to the extent that the grant of letter of administration Intestate dated 5th November 2001 and the certificate of confirmation of grant dated 3rd July 2008 be and are hereby revoked. Further, whatever action that was undertaken by the Petitioner on the strength of the revoked certificate of confirmation of grant be and is hereby declared null and void "obnatio."

17. Further, a fresh grant be and is hereby issued forthwith in the joint names of the Objector, Emmy Chelimo Chumo and the Petitioner/ Respondent, Fredrick Kipkemoi Tarus, with directive that they take out the necessary summons for confirmation of the fresh grant within the next four [4] months from this date hereof.

The matter shall be mentioned at a later stage to confirm compliance and/or further orders.

Ordered accordingly.

DELIVERED AND DATED THIS 20TH DAY OF NOVEMBER 2024

J. R. KARANJAH,

JUDGE

