



**In re Estate of Letoya ole Lenjoki (Deceased) (Succession Cause  
15 of 2017) [2024] KEHC 14334 (KLR) (19 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14334 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
SUCCESSION CAUSE 15 OF 2017  
F GIKONYO, J  
NOVEMBER 19, 2024**

**IN THE MATTER OF THE ESTATE OF LETOYA OLE LENJOKI(DECEASED)**

**BETWEEN**

**PETER LOLCHOKI LETOYA ..... APPLICANT**

**AND**

**VERONICA SEIN LETOYA ..... 1<sup>ST</sup> RESPONDENT**

**BENSON SALONIK LETOYA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Background**

1. The applicant applied for a grant of letter of administration the initial petition was filed by the applicant vide Nairobi High Court Succession Cause No. 2830 of 2004.
2. The 1<sup>st</sup> respondent filed an objection dated 19/11/2004.
3. The objector failed to prosecute her objection. The applicant filed an application dated 27/03/2008 seeking dismissal of the objection for want of prosecution. Vide ruling delivered on 16/07/2008 the application was allowed. Grant of letters of administration was then issued on 16/07/2008 and confirmed on 18/07/2011.
4. The 1<sup>st</sup> respondent applied for revocation of grant on 17/02/2012. The application was canvassed by way of viva voce evidence. Vide ruling delivered on 27/05/2020, the 1<sup>st</sup> respondent's application for revocation was dismissed.
5. On 27/10/2020, this court directed that the chief's letter be investigated for forgery.
6. On 19/07/2023, this court found that the grant was obtained based on a forged document making it a candidate for revocation under section 76 LSA, and revoked the said grant. The court also directed that



the beneficiaries present to the court names of persons (not more than four) who should be appointed administrators of the estate.

7. On 11/10/2023, this court appointed Benson Salonik Letoya to be joint administrator of the estate. The two to move the proceedings and estate administration accordingly.
8. The applicant herein filed an application dated 22/11/2023 seeking revocation of the grant of letters of administration issued to the 2<sup>nd</sup> respondent and the applicant on 11/10/2023 on the ground that proper legal process was not followed for the issuance of the grant.
9. The respondents have opposed the application and filed a notice of preliminary objection.

### **The preliminary objection**

10. The notice of preliminary objection is dated 17/05/2024- it has been filed by the respondents herein.
11. In the Notice of Preliminary Objection, the Respondents raise the following points of law: -
  - a. That based on Section 7 of the Civil Procedure Act, this Honorable Court lacks Jurisdiction to determine the Application dated 22nd November, 2023;
  - b. That based on Section 80 of the Civil Procedure Act, the Application dated 22nd November, 2023 is defective in law and offends the said provision of law;
  - c. That Application contravenes the mandatory provisions of Section 68 of the Law of Succession Act and Rules 17 and 44 of the Probate and Administration Rules; and

### **Directions of the court**

12. The preliminary objection was canvassed by way of written submissions.

### **The respondents' submission.**

13. The respondents submitted that the issues raised in the preliminary objection are all points of law that stand to compel this court to strike out the application before it. The respondents relied on *Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Limited (1969) E. A 696*, and *John Mundia Njoroge & 9 others vs Cecilia Muthoni Njoroge & Another (2016) eKLR*.
14. The respondents submitted that this Court has no Jurisdiction to determine the Application dated 22nd November, 2023, as the application raises issues that the Court of competent Jurisdiction has already determined, and these are the grounds which form the basis of the summons of revocation of grant, and therefore the issues are res judicata
15. The respondents submitted that where a party is not satisfied by a decision of the court, he has a right to appeal or review, and not to move the court in the back door to determine the same issues. The applicant if not satisfied with the ruling of the court dated 19th July 2023, ought to have sought a review of the orders or appeal against the said ruling, or even challenged the ruling of 27th October 2020 in part or whole specifically on the chief's evidence regarding the right beneficiaries on account of the forged document. The respondents contend that the application dated 22/11/2023 is res judicata and therefore this court has no jurisdiction to determine the same. The respondents relied on *Christopher Orina Kenyariri t/a Kenyariri & Associates advocates v Salama Beach Hotel Limited & 3 Others (2017) eKLR*, Section 7 of the Civil Procedure Rules, *Okiya Omtatah Okoiti V Communication Authority of Kenya & 14 others [2015] eKLR*



16. The respondents submitted that the application dated 22nd November, 2023 offends the provision of Section 80 of the *Civil Procedure Act*. From the grounds which form the basis of the summons of revocation of grant, the Applicant was dissatisfied by the Ruling of the Court delivered on 19th July, 2023. The Applicant where aggrieved by the ruling of the Court ought to have filed a review or appeal to the Court of appeal, but instead chose to use the back door to re-litigate the same issues and even further reintroduce the question of criminal case 1265 of 2009 which was dealt with by the criminal court to finality. The respondents relied on Section 80 of the *Civil Procedure Act*,
17. The respondents submitted that the application dated 22nd November, 2023 offends Section 68 of the *Law of Succession Act* and Rules 17 and 44 of the Probate and Administration Rules. Directions were given on 19th July, 2023 that parties do appear in Court on 11th October, 2023 for appointment of administrators when the Applicant did not appear in Court nor provide a list of administrators for his Client, when the 1st Respondent appointed the 2nd Respondent to represent her house as an administrator. The court directed that the Applicant and the 2nd Respondent be joint administrators and a grant be issued accordingly. There is no evidence to show that the proceedings were defective to warrant revocation of grant, and as a consequence, the Applicant ought to have filed an objection to grant of probate, once directions were given on 19th July, 2023. 37. the Applicant ought to have filed an objection to grant of representation as per Rule 17 and Section 68 of the *Law of Succession Act*. The respondents relied on Leah Wairimu Muruga & 8 others v Samuel Mwangi Maina [2016] eKLR quoted with approval from the Supreme Court of India in Anil Behari Ghosh vs SMT. Latika Bla Dassi & Others.
18. The respondents submitted that, in praying that Costs be awarded to the Respondents, the Applicant having been served with a notice for 11th October, 2023, failed to attend Court without reason, and therefore the resulting application dated 22nd November, 2023 is unnecessary and an afterthought.
19. The Respondents pray that the Summons for Revocation of Grant dated 22nd November, 2023 be struck out and the Notice of Preliminary Objection date 17th May, 2024 be allowed with Costs.

#### **The applicant's submissions.**

20. The applicant submitted that due procedure for the issuance of a new grant was not followed. The applicant contends that the absence of a fresh hearing following the revocation of the grant issued on 16/07/2023 raised serious concerns. The applicant relied on Owners of Motor Vehicle M. V. Lillians S Versus Caltex Oil (Kenya) Limited [1989] KLR1, and In Re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR.
21. The applicant submitted that the application aligns with the requirements outlined in section 68 of the *Law of Succession Act* and the relevant rules specifically rules 17 and 44 of the Probate and Administration Rules.
22. The applicant submitted that the court should recognize the applicant's claim as a valid assertion of their rights, deserving of careful consideration and rectification rather than an abuse of the court process. The application is therefore legitimate before the court and the preliminary objection is without merit and should be dismissed with costs.

#### **Analysis and Determination**

23. This court has considered the court record, notice of preliminary objection, and the rival parties' submissions.



## Issue

24. Is the preliminary objection herein potent to decimate the application?

### **The nature of a preliminary objection.**

25. "...a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit." Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696.

26. A preliminary objection should therefore, not require probing of evidence to prove.

### **Applying the threshold**

27. Do the issues raised by the respondents a Preliminary Objection?

28. This court has carefully perused the application dated 22/11/2023 which was opposed by way of a preliminary objection.

29. The application sought orders for revocation of the grant of letters of administration, but the affidavit in support of the application as well as the submissions by the applicant, challenges the process of appointing the administrators and attempts to relitigate matters which have already been determined by the court.

30. Within that context, the Preliminary Objection raises two fundamental, yet inextricable matters. One; that the application for revocation of the joint grant of letters of administration, is an attempt to resurrect the revoked grant that had been made to the petitioner. Two; that the said application relitigates issues which were canvassed and determined in the decision which revoked the grant made to the petitioner. These two matters relate to the jurisdiction of the court.

31. The application by the petitioner is directed at the grant made to the two parties jointly but which is rooted on the revocation of the initial grant made to the petitioner. The affidavit in support and the submissions by the applicant also challenges the appointment of administrators. A muddle is evident here, which may not be resolved in the manner adopted by the respondent.

32. Whereas a party has a right to apply for revocation of a grant, basing the application for revocation of grant on the substantive matters which were canvassed and determined by this court in revoking the grant made to the petitioner, is problematic as it invites the doctrine of res judicata- a jurisdiction-regulating principle. It is inappropriate-even in succession cases- for a party to relitigate in the same court, matters already determined by the same court unless it is a review application based on fundamental error.

33. Similarly, in a joint grant, appointment or removal of administrators is handled otherwise than through an application for revocation of the grant.

34. Another observation. Delay herein is huge. Delay is the ally of the person enjoying the fruits of the delay. The objector has stated that the petitioner has caused considerable delay to the conclusion of this case to her prejudice.

35. The applicant did not file an appeal against or a review of the decision of this Court which revoked the grant made to her. Instead, she applied for revocation of the grant issued to them jointly but which is an appeal against revocation of the grant which had been issued to her. She is purporting to revive the revoked grant through this application which, in the considered opinion of this court,



should be procured otherwise especially from a higher court, if paralysis of and circumlocutions in these proceedings are to be averted.

36. Litigation should come to an end. Therefore, this court finds the preliminary objection to be merited and is upheld accordingly.
37. Consequently, the application dated 22/11/2023 is struck out.
38. Being a succession cause, each party will meet their own costs of this application.
39. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2024.**

.....

**F. GIKONYO M**

**JUDGE**

**In the presence of: -**

1. Ndolo for respondent/objector
2. Njuguna for applicant/petitioner
3. Otolu C/A

