



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mugasha Patrick (Deceased) (Succession Cause
E008 of 2024) [2024] KEHC 15192 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15192 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE E008 OF 2024**

**WM MUSYOKA, J
DECEMBER 3, 2024**

IN THE MATTER OF THE ESTATE OF MUGASHA PATRICK (DECEASED)

RULING

1. I do not quite understand why this cause was filed at the Busia High Court registry, yet the asset, the subject of these proceedings, is at Mombasa. I note that the Advocates, who filed the cause, on behalf of the petitioners, Messrs. Wambo Muyala & Company, are also based at Mombasa. There should be more to Mombasa, than meets the eye, but I shall revert to it later.
2. What has been placed before me is a petition, seeking the sealing of a grant of representation, made by a court in Uganda.
3. The law on sealing of Commonwealth and foreign grants is sections 77 and 78 of the *Law of Succession Act*, Cap 160, Laws of Kenya. See *In re Estate of Nyoro Julia Ngubi Wanjiru (Deceased)* [2019] eKLR (Achode, J) and *In re Estate of Abdulla Mohamed Sumar (Deceased)* [2019] eKLR (Muchelule, J).
4. Only subsection (1) of section 77 is relevant, for the purposes of this ruling, and it states as follows:

“Where a court or other authority, having jurisdiction in matters of probate or administration in any Commonwealth country or in any other foreign country designated by the Attorney-General by notice in the Gazette, has, either before or after the commencement of this Act, granted probate or letters of administration, or an equivalent thereof in respect of the estate of a deceased person, such grant may, on being produced to, and a copy thereof deposited with the High Court, be sealed with the seal of that court, and thereupon shall be of like force and effect, and have the same operation in Kenya, as if granted and confirmed by that court.”
5. Section 77 is about the sealing of a grant made by a court of “any Commonwealth country” or “any other foreign country designated by the Attorney-General by notice in the Gazette.” It is a notorious fact that Uganda is a member of the Commonwealth, and thus a Commonwealth country, within the meaning of section 77(1) of the *Law of Succession Act*, and, therefore, a grant made by the High Court of Uganda would be available for sealing by this court.



6. Section 78, on the other hand provides:

“For the purposes of this Act, a duplicate of any grant sealed with the seal of a court or other authority in a Commonwealth or foreign country, or a copy thereof certified as correct by, or duly on behalf of, that court or authority, shall have the same effect as the original.”

7. The effect of section 78 is that, for the purposes of sealing, a duplicate or certified copy of the grant, sought to be sealed, may be placed before the High Court, in lieu of the original Commonwealth or foreign grant. What has been placed before me is not an original grant, nor its duplicate, but a certified copy of the grant, made on 1st March 2022, by the High Court of Uganda, at Mbarara. The copy was certified by a Mombasa-based Advocate, Lilian A. Fwaya, on 8th October 2024.
8. Has there been compliance, with section 78 of the *Law of Succession Act*, with respect to reliance on a copy of the grant sought to be sealed? The requirement is that where reliance is on a copy of the grant, the same ought to be certified. The certification of the copy of the grant should be “by, or duly on behalf of, that court...” The purpose of the certification is authentication of the copy, for section 78 talks of “or a copy thereof certified as correct.” Authentication of a document, such as a grant issued by a court, can only be by the issuing court itself. See *In re Estate of Mohamed Abeid Al-Bagi (Deceased)* [2021] eKLR (Onyiego, J). An Advocate, least of all one based in Kenya, cannot possibly authenticate a document issued by the High Court of Uganda. Such an Advocate cannot vouch for the correctness of the contents of a grant emanating from the Ugandan court, and cannot even vouch for the genuineness or validity of the document itself. Section 78 is specific, that the certification should come from the issuing court.
9. The procedure for the sealing of a Commonwealth or foreign grant, also referred to as re-sealing, is set out in Rule 42 of the *Probate and Administration Rules*. Re-sealing, as the grant sought to be sealed, with the seal of the High Court of Kenya, will have been first sealed with the seal of the court of the Commonwealth or foreign country, that would have made and issued the grant. The sealing, by the High Court of Kenya, would be a second sealing. That would mean that the grant, sought to be sealed under section 77, should have been first sealed by the court which made and issued it, before its sealing, by the High Court of Kenya, is sought.
10. Rule 42(1) indicates where the application for sealing or re-sealing should be filed, and it states as follows:
- “An application under section 77 of the Act for the sealing of a grant issued by a court or other authority of a Commonwealth country or other country to which that section applies shall be made to the principal registry or to the Mombasa registry by the person to whom the grant was made or by his attorney empowered in writing to apply on his behalf.”
11. The effect, of Rule 42(1) of the *Probate and Administration Rules*, is that that application can be filed in only 2 registries in Kenya, which do not include Busia, and that is at Nairobi and Mombasa. The High Court registry at Busia would have no jurisdiction to handle the petition for sealing of the grant envisaged in section 77 of the *Law of Succession Act*. See *In re Estate of GNC (Deceased)* [2017] eKLR (Muigai, J), *In re Haile Michael Desta Malu* [2017] eKLR (Onyiego, J) and *In re Estate of Abdulla Mohamed Sumar (Deceased)* [2019] eKLR (Machelule, J).
12. The nature of the pleadings to be filed is set out in Rule 42(2), and it should be by way of a “petition in Form 81 or 82 supported by affidavit in Form 7.” It would appear that there has been compliance



with that, and its placing before me is, apparently, in purported compliance with the requirement that the petition “shall be dealt with by a judge of the High Court.”

13. The other consequential provision is in Rule 42(6) of the *Probate and Administration Rules*, which states:

“The registrar shall cause to be inserted in the Gazette and to be exhibited conspicuously in the courthouse attached to the registry a notice in Form 71 of the application for the sealing, inviting objections thereto to be made known to that registry within a period to be specified in the notice of not less than thirty days from the date of such respective publications.”

14. Upon a petition, for a sealing of a foreign grant, being filed, the same ought to not be placed before the Judge for orders. Instead, the file should first be placed before the Deputy Registrar, to confirm compliance with sections 77 and 78 of the *Law of Succession Act*, and Rule 42 of the Probate and Administration Rules, and for processing, for the purposes of publication by way of gazette and exhibition at a noticeboard at the courthouse. A petition filed under section 77 and Rule 42 is subject to publication, by way of gazette and exhibition at a noticeboard at the courthouse, in the same manner as that filed under section 67 of the Act and Rule 7 of the Probate and Administration Rules, inclusive of the calling for objections. See *In re Estate of Mohamed Abeid Al-Bagi (Deceased)* [2021] eKLR (Onyiego, J). Consequently, the petition herein should not have been placed before me, but before the Deputy Registrar, for processing for publication purposes, through gazette and exhibition at the noticeboard at the courthouse. The file should only be placed before the Judge, for dealing, in terms of Rule 42(2), after expiry of the period in the published notice, and, upon the petition being allowed, if at all, the draft sealed grant shall be placed before the Judge for signature.
15. I believe that I have said enough, to demonstrate that the petition herein has been filed at the wrong registry, and that there has not been full compliance with the relevant law and process.
16. What should I do with it, in the circumstances? Ideally, I should order that the file be transferred to the proper registry, which appears to be Mombasa, on account of what I have observed in paragraph 1 of this ruling. However, such physical transfer of the file is no longer feasible, on account of the reality of e-filing and CTS, which have no provision for such transfer. The only option I have is to strike out the petition, which I hereby do, so as to enable the petitioners file an appropriate petition, at the relevant or correct registry. The file herein shall be closed. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 3RD DAY OF DECEMBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Messrs. Wambo Muyala & Company, Advocates for the petitioners.

