



In re Estate of Mohamed Anwar Fatehdin (Deceased) (Probate & Administration E1198 of 2023) [2025] KEHC 654 (KLR) (Family) (31 January 2025) (Ruling)

Neutral citation: [2025] KEHC 654 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
PROBATE & ADMINISTRATION E1198 OF 2023
H NAMISI, J
JANUARY 31, 2025
IN THE MATTER OF THE ESTATE OF MOHAMED ANWAR FATEHDIN (DECEASED)**

BETWEEN

SABEEL ANWAR FATEHDIN APPLICANT

AND

MEHNAZ FATEHDIN RESPONDENT

RULING

1. By Petition dated 22 September 2023, the Respondent herein petitioned the Court for grant of Probate for the estate of Mohamed Anwar Fatehdin, who passed away on 4 December 2022, at the Nairobi Hospital. At the time of his death, the Deceased was resident in Lavington, Nairobi County. The Deceased died testate, leaving a Will dated 8 July 2021. The Respondent is the named Executor and Trustee of the Will. In the Will, the Deceased named 3 Beneficiaries, one of whom is the Applicant herein.
2. The Grant of Probate of Written Will was issued on 9 April 2024. Thereafter, the Applicant has filed 3 applications, two of which are before this Court presently for determination.

Summons for Revocation or Annulment of Grant

3. By Summons dated 12 June 2024, the Applicant seeks the following orders:
 - i. Spent
 - ii. spent
 - iii. That this Honourable Court be pleased to revoke/Annul the Grant of Probate herein issued to Mehnaz Fatehdin on 9 April 2024 on the ground that the Grant was obtained fraudulently



by making of a false statement together with concealment from the Court of the existence of an earlier filed Succession Cause No HCFP&A E878 of 2023 filed by Sabeel Anwar Fatehdin on 22 June 2023;

- iv. That the costs of this Application be provided for
4. The Summons is supported by an Affidavit sworn by the Applicant, which consists of lengthy narrations of events that transpired following the demise of the Deceased and in Succession Cause No P&A 878 of 2023 filed by the Applicant. Further, the Applicant avers that upon review of the Will presented by the Executor/Respondent herein, there are a number of discrepancies which require further investigation, including forensic examination of the document and signature.
 5. The Applicant also accuses the Executor/Respondent of intermeddling, by selling off properties belonging to the estate and pocketing the proceeds thereof. Attached to the Supporting Affidavit is an Affidavit sworn by Fizan Ashraf in which he depones that the two daughters of the Deceased, Taskeen Rabbani and Mehnaz Fatehdin, sold 4 vintage vehicles, 2 later model vehicles and considerable collection of workshop tools belonging to the Deceased between December 2022 and January 2023. While living at the residence owned by the Deceased, the deponent witnessed the two sisters collect not less than Kshs 10 million. The exact items or motor vehicle registration numbers are not provided.
 6. Attached to the Supporting Affidavit is an Affidavit dated 8 September 2023 sworn by Shahnaz Khan, widow of the Deceased, who resides in the USA. The Deponent states that her husband, the Deceased, died testate, leaving a Will dated 14 June 2012, the original of which was in her possession and which she duly deposited in Court in Succession Cause No P&A 878 of 2023.
 7. In response, the Respondent filed a Replying Affidavit discounting the Summons as a disingenuous effort to scuttle the execution of their late father's Will. The Respondent dismissed the Applicant's averments as baseless claims of fraud, deliberately skewed to give a false impression that the Grant was irregularly issued.
 8. The Respondent avers that the existence of the Will dated 8 July 2021 was brought to her attention vide letter dated 6 September 2023 from Okanga Omondi & Company Advocates, which was the firm that had prepared the said Will. The existence of the Will dated 8 July 2021 thus invalidates the Will dated 7 June 2012 and the Applicant cannot base his claims over an invalid Will.
 9. In his submissions, the Applicant argues that being the only son of the deceased and a dependant/beneficiary of the Estate, he was not notified of the present proceedings nor of the existence of the will that is relied on herein. That is an omission that renders the proceedings leading to the issuance of the Grant defective in substance. The Applicant relied on the case of *Estate of Amos Kiteria Madedda-Deceased* (Probate & Administration E004 of 2021) [2022]KEHC 12950 in which the Court stated thus:

“It is well settled that an application for grant of probate is a proceeding in rem. A probate when granted not only binds all the parties before the court but also binds all other persons in all proceedings arising out of the will or claims under or connected to the estate. Being a 3 judgment in rem, a person who is aggrieved thereby and having had no knowledge about the proceedings and proper citations having not been made, is entitled to file an application for revocation of probate on such grounds as may be available to him.....”
 10. The Applicant further argued that it is disingenuous of the Respondent to use the very firm of Ahmednasir Abdullahi Advocates to file the present proceedings while ensuring that neither the Applicant herein nor the widow of the deceased are made aware of the same, bearing in mind the history



of the matter. He relied on the case of the *Estate of the Late Epharus Nyambura Nduati (Deceased)* [2021] eKLR in which Justice Charles Kariuki stated thus:

“For the foregoing reason, I find that the grant should therefore be revoked *In Re Estate of Moses Wachira Kimotho (Deceased)* Succession Cause 122 of 2002 eKLR the Court made pronouncement on the importance of disclosing all material facts before a court of law while seeking letters of administration and confirmation thereof. It observed: I am certain that had the Applicants been made aware of the Application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of those interests. Further had the Respondent been forthright and candid and included the Applicants as beneficiaries of a portion of the Estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is therefore the grant was obtained fraudulently by making of a false statement and or concealment from court of something material to the cause. The Respondent knew of the Applicants interest in the estate of the deceased yet she chose to ignore them completely in her petition for letters of administration intestate. She also ignored them completely when she applied for confirmation of the grant.”

11. On her part, the Respondent argued that based on the provisions of Section 76 of the *Law of Succession Act*, the Applicant has not met the threshold for revocation of the Grant. The Respondent relied on the case of *Re: in the matter of the Estate of Seth Namiba Ashuma (Deceased)* [2020] eKLR.
12. Relying on the case of *Re: in the matter of the Estate of Robert Ngundo Nyiwa (Deceased)* [2018] eKLR, the Respondent contended that publication of succession proceedings in the Kenya Gazette serves as formal public notice, allowing anyone with a claim or objection to present the same.
13. On the issue of the validity of the Will, the Respondent submitted that claims of forgery of signature ought to be referred to handwriting experts and document examiners for comparison over the disputed signatures. The Respondent further submitted that it is trite law that he who alleges fraud must prove it.

Petition for Letters of Administration Pendente Lite

14. Even before the previous Application could be heard and determined, the Applicant filed yet another application in his capacity of a son of the Deceased. The Applicant seeks Letters of Administration pendente lite in place of the Respondent, having applied for revocation of the Grant issued to the Respondent. This is based on the averment that the role of administration/Executorship of the estate has been neglected, to the detriment of the estate.
15. In his Affidavit, the Applicant listed 6 matters pending before various courts, in which the Deceased was involved. In particular, the Applicant cites ELC Case No 316 of 2016 – Mohamed Anwar v Mohamed Ashraf & Cresco Investment limited, which abated on 19 June 2024 on account of non-attendance of personal representative, yet the Grant was issued to the Respondent in April 2024. The Applicant further notes that to date, the Respondent and their sister are yet to file any response in the other succession cause P&A 878 of 2023.
16. The Respondent filed a Replying Affidavit, denying the allegations by the Applicant. The Respondent avers that the Applicant has not provided any evidence to substantiate the claim that the Respondent has neglected her role as Executor. Regarding ELC Case No 316 of 2016 – Mohamed Anwar v



Mohamed Ashraf & Cresco Investment limited, the Respondent states there is a pending application seeking to reinstate the matter.

17. Similarly, this application was canvassed by way of written submissions.

Analysis and Determination

18. I have carefully read the Applications, Affidavits and respective submissions. In my understanding, the first issue for determination is whether to revoke the Grant issued to the Respondent. If the response thereto is in the affirmative, then the next question would be whether to grant the petition for Letters of Administration pendente lite.

19. Section 76 of the *Law of Succession Act* provides for the revocation or annulment of Grant. It states:

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
- (e) that the grant has become useless and inoperative through subsequent circumstances.

20. This provision was expounded upon by the court in the case of *Re Estate Of Prisca Ong'aya Nande (Deceased)* 2020 eKLR where it was held as follows:

'A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was



obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstance, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore becomes unqualified to hold any office of trust.'

21. Firstly, the Applicant has not tendered any evidence to demonstrate that due process was not followed in the issuance of the Grant or that some mandatory procedural step was not followed. I have read the averments by both parties concerning P&A 878 of 2023, relating to the same estate and filed by the Applicant herein. The said cause seems to have served its purpose. In fact, the file indicates that the case was terminated.
22. Secondly, the Applicant has not provided any evidence to demonstrate that the Respondent has failed to proceed diligently with administration or failed to provide accounts as and when required. Other than the allegation of intermeddling, which is based on the evidence of a third party who claims to have seen the Applicants' sisters receive Kshs 10 million, the Applicant has not identified the particular assets that have been sold and/or disposed of. It is very difficult for this Court to revoke the Grant based on the averments of the third party, which do not provide any conclusive evidence of intermeddling.
23. On the issue of ongoing litigation, the fact that the Respondent took steps to regularise the situation in ELC Case No 316 of 2016 – Mohamed Anwar v Mohamed Ashraf & Cresco Investment limited, which was dismissed for non-attendance, is a clear indication that the Executor/Respondent takes her role seriously and is quick to remedy any mishap.
24. What appears to be the bone of contention herein is the validity of the Will presented herein by the Respondent. I concur with the Respondent's submission that if indeed there is an issue of forgery, then the documents ought to be exposed to handwriting experts and examiners to ascertain their authenticity. The principle of testamentary freedom is sacrosanct in law. Courts are reluctant to interfere with and/or tinker with a written will except in very exceptional circumstances. No exceptional circumstances have been shown to exist in this case to demonstrate why this Court should interfere with the wishes of the Deceased in appointing the Respondent as his Executor.
25. Based on the foregoing I find no merit in this summons for revocation of Grant. The same is dismissed in its entirety. Having dismissed the Summons, it goes without saying that the Petition dated 29 July 2024 is equally dismissed. Each party to bear its own costs.

DATED AND DELIVERED AT NAIROBI THIS 31 DAY OF JANUARY 2025

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

.Mr. Odongo.....for the Applicant

.Mr. Athman h/b Ms. Asli.....for the Respondent

Libertine AchiengCourt Assistant

