



In re Estate of Ajit Singh Ram Singh alias Ajit Singh Vadve (Deceased) (Succession Cause E258 of 2022) [2025] KEHC 1655 (KLR) (Family) (27 February 2025) (Judgment)

Neutral citation: [2025] KEHC 1655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E258 OF 2022
PM NYAUNDI, J
FEBRUARY 27, 2025**

BETWEEN

JAGJEET RAM SINGH APPLICANT

AND

KHURSHEED AJIT SINGH VADVE RESPONDENT

JUDGMENT

1. The Application for determination is dated 9th August 2023 and is presented under the *Judicature Act*, the High Court Practice and Procedure Rules (Part 1 rule 3), Section 76 of the *Law of Succession Act*, Rule 44(1) of the Probate and Administration Rules and all other enabling rules and seeks the following orders
 - a. Spent
 - b. Spent
 - c. Spent
 - d. The Honourable Court set aside the Certificate of Confirmation of grant dated 11th October 2000 and rectified on the 21st June 2023 pending the hearing and determination of this application
 - e. The Honourable Court revokes the Certificate of Confirmation of grant dated 11th October 2022 and rectified on the 21st June 2023
2. The Application is accompanied by the affidavit of the Applicant sworn on 9th August 2023. The Applicant avers that he was only made aware of the proceedings herein after the grant was confirmed



when the respondent moved to evict him from the house situated on Land Reference 209/3633 (I.R. 9797).

3. He avers that the deceased is his brother and the house at issue is the only home he has known.
4. The Respondent opposes the Applicant. She avers that she is the Administrator of the Estate of the deceased. That grant was lawfully issued to her. She denies that the Applicant was ever a dependant of the deceased and in any event, he does not fit into the closed list of dependants as defined by Section 29 of the *Law of Succession Act*.
5. She concedes that the Respondent is currently living in the house but denies it was gifted him by the deceased. She avers that the property was acquired through the joint efforts between her and the deceased and no contribution made by the Applicant. There is also an affidavit sworn on 11th November 2023 by Lacmi Devi Ram who is the mother of the deceased and the Respondent. Her factual account mirrors that of the Respondent. She also reiterates that the Applicant was not a dependant of the deceased and the asset was acquired through the joint efforts of the deceased and the respondent.
6. Both deponents aver that the Applicant has never paid the utility bills out of his pocket and first the deceased, now his mother have sent him money to pay the rates owing with respect to the property
7. The Applicant has sworn a further affidavit on 8th October 2024. He asserts that the property was purchased through the joint efforts of the deceased and his siblings, including himself. He contends that the property was registered in the deceased's name in trust for the other family members.

Analysis And Determination

8. Having considered the pleadings herein and the relevant law, I discern the following as the issues for determination-
 - a. Whether the Application herein is competent
 - b. Whether the Court is vested with jurisdiction
 - c. Who should pay costs of this Application
9. The Application is presented under, inter alia, Section 76 of the *Law of Succession Act*. The Applicant seeks the revocation of the Certificate of Confirmation of Grant dated 11th October and rectified on 21st June 2023. This notwithstanding that it is well established by statute and judicial precedent that Section 76 provides for the revocation of a grant and not the certificate of Confirmation of Grant.
10. In *In re Estate of Kiberenge Mukwa (Deceased)* [2021] eKLR Kemei J stated as follows-

[14]. What is sought to be revoked here is not the grant itself, but the certificate that was issued upon the confirmation of the grant. In principle, the Appellant appears to be unhappy with the confirmation process. That is what comes out from the body of the record of appeal and her written submissions. The principal prayer in the application is for revocation of the certificate of confirmation of grant.

[15]. The power or discretion given to the court by section 76 of the *Law of Succession Act* is for revocation of grants of representation. The *Law of Succession Act* does not define grant of representation, as the section that carries definitions or interpretations of terms or words used in the Act, that is to say section 3, does not include the word or term "grant". The Probate and



Administration Rules, the subsidiary legislation made under the Law of Succession Act does define the term, at Rule 2, in the following words:

“grant” means a grant of representation, whether a grant of probate or of letters of administration with or without a will annexed, to the estate of a deceased person.”

19. In any event, as the certificate of confirmation of grant is a mere formal expression of the orders made by the court on a confirmation application, the revocation of the certificate, if at all it is revocable under section 76, which I continue to assert that it is not, would be of little consequence, as it is only the certificate that would be affected by such a revocation order, since the orders on confirmation, from which it is extracted would remain intact. The certificate is a mere extract, its revocation would not affect its source, the orders of confirmation of grant. A grant of representation is not equivalent to a certificate, it is not an extract from some order, and it is the order itself, appointing administrators, and it is the court granting representation. The orders on confirmation of a grant remain unaffected by a revocation or annulment of the certificate of confirmation of grant. The proper thing to do should be to have the confirmation orders vacated and thereafter the certificate of confirmation of grant annulled, following the setting aside of the orders from which it draws its life. Otherwise, failure to vacate the orders would mean that a fresh certificate could still be extracted from the same orders. The grant of representation and the certificate of confirmation of grant are two separate or different things

11. It is impossible to improve on that articulation of the law. The Application as presented is incompetent and should be struck out.
12. On the 2nd issue, the Applicant is essentially challenging the title of the deceased to the subject parcel of land. It is apt at this juncture to consider whether this Court has the mandate to determine the issue of the Respondent’s interest in the parcel of land. In re Estate of Atibu Oronje Asioma (Deceased) (Succession Cause 312 of 2008) [2022] KEHC 11046 (KLR) (22 July 2022), Hon Musyoka J summarised it as hereunder-

There is ample case law to the effect that succession proceedings are not appropriate for determining disputes between the estate and third parties over title to or ownership of assets placed before the court for distribution. One such case is In re estate of Kimani Kimithia [2008] eKLR (Ibrahim J) where it was stated that succession proceedings were not the appropriate way to challenge the title of the deceased to assets said to comprise his estate, on claims that such assets were subject to a trust in favour of the claimant. It was stated that such claims ought to be subjected to separate proceedings, where the claimants have to prove the trust, and thereafter seek revocation of the title or partition, which requires declaratory orders on the existence of the trust. It was asserted that that was not the function of the succession cause, where the claimant was neither a beneficiary nor dependant of the deceased, and that succession proceedings were not appropriate for resolution of seriously contested claims against the estate by third parties.

13. In summary this Court is not the proper forum for the Applicant to canvass his claim.
14. In the final analysis the summons is struck out in its entirety. Owing to the relationship between the parties there shall be no order as to costs.

DATED, SIGNED AND DELIVERED ON THE VIRTUAL PLATFORM, AT NAIROBI THIS 27th DAY OF FEBRUARY, 2025.

PATRICIA NYAUNDI

JUDGE

In the presence of;



