



**In re Estate of Ibrahim Keya Kigamu alias Abraham Keya Kigamu (Deceased)
(Succession Cause 444 of 2013) [2025] KEHC 7186 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7186 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 444 OF 2013**

PJO OTIENO, J

MAY 29, 2025

**IN THE MATTER OF ESTATE OF IBRAHIM KEYA KIGAMU ALIAS
ABRAHAM KEYA KIGAMU (DECEASED)**

BETWEEN

NEBERT KIGAMU KEYA ADMINISTRATOR

AND

JOSEPH ESHISILA MASIALI OBJECTOR

RULING

1. The estate herein comprises of land parcel Butso/1655 relating to the deceased Ibrahim Keya Kigamu alias Abraham Kigamu. Its Grant of Letters of administration was first issued to the protestor Joseph Eshisila Masiali on 17th October 2013 and were later confirmed on 21st October 2015.
2. *Vide* summons dated 14th January 2020, the administrator sought for the revocation of the the grant issued and confirmed in favour of the protestor on the grounds that protestor fraudulently obtained the grant by making false statement and concealing material facts to the court regarding the existence of other rightful dependants of the deceased. Further, he alleged that the protestor had carried out succession on the deceased's estate without the consent of the rightful dependants of the deceased.
3. The court after hearing the summons revoked both the grant and its certificate of confirmation issued to the protestor and issued a fresh grant of letters of administration intestate to the Administrator on 19/1/2023. The administrator thereafter filed summons for confirmation of grant dated 15/5/2023 with a detailed proposal on distribution and annexed a consent to distribution evidently signed by 13 people.
4. The summons was opposed by the petitioner's affidavit of protest sworn on the 17th July 2023 on grounds that the land parcel No. Butso/1655 emanated from the sub-division of Land Parcel No. Butso/684 which was owned by and registered in the name of his father,



Siliphas Masiali. That the sub-division of the property by Keya Kigamu resulted to parcels Butsotso/Shibeye/1655 and 1656. Parcel no. Butsotso/Shibeye/1656 was sold to Masiki Makoa Lanogwa while the land subject of this cause remained registered in his name.

5. The petitioner avers that the deceased, Keya Kigamu, was not a beneficiary of his father's estate and that the ownership and change of title of land parcel number Butsotso/Shibeye/684 to Keya Kigamu was fraudulent and without letters of administration.
6. In response to the protest by the petitioner, the administrator filed an Affidavit in Reply to the protest and averred that even if there had been citation proceedings by the protestor as alleged, those citation proceedings ended when the Honourable Court directed that a grant of administration of the estate be issued to him. He asserts that at the time of deceased's death, there was no pending case in any court of competent jurisdiction challenging the registration of the said parcel in favour of the deceased.
7. Although the court directed that the protest be canvassed by way of written submissions, when the matter was mentioned to confirm compliance, only the administrator had filed submissions. The court has read and appreciated the submissions and given same due regard in this determination. It is of note that on the date for mention, neither the objector nor the counsel attended court.

Analysis

8. I have considered submissions by the Administrator. The court notes that in the proceedings leading to the revocation of the grant initially issued to the petitioner, after filing of the summons for revocation by the administrator, the matter was fixed for several mentions for the hearing of the objection. That on some occasions either parties attended while some no appearance was totally made in court. At some point following the parties conduct, the matter was stood over generally but the court revived the matter by giving to the objector the last chance to have his objection heard on 1/11/2022.
9. On the said 1/11/2022, the petitioner having been acting in person, the court guided that a counsel be appointed to offer him pro-bono services in the cause and which was done and the matter adjourned at the instance of the petitioner to allow his counsel to prepare and file response to the application. Being an old matter, the court directed it be the last adjournment and the matter was stood over to 19/01/2022.
10. On the 19/01/2022, the petitioner had not responded to the direction issued by the court in the last adjournment of filing response to the revocation application. Following the non-compliance by the petitioner and/or his counsel, the court allowed the administrator's revocation application unopposed, revoked/annulled both the grant and Certificate of Confirmation initially given to the petitioner and issued new Grant to the administrator.
11. In light of the above, Joseph Eshisila Masiali cannot possibly be sincere in asserting that objection by the administrator resulting to the said grant was based on an order out of citation proceedings which had not been set aside having opted to participate in the hearing and determination of the revocation application. The petitioner having made appearance, been attending court, took court directions in relation to the cause and at no point in the cause raised such contentions is a direct implication that the petitioner consented in taking part in the cause proceedings.
12. Further, the petitioner foregone the citation proceedings by giving instruction to his counsel to act on his behalf in the cause and was ready to accept the outcome of the application. The petitioner cannot now turn afterwards after an unfavourable outcome on their ends to the great prejudice to the administrator who had acted in good faith. When the orders were made by the court, the petitioner



had not filed any response to the to the revocation application. In any case it is on record, then it is belated and was filed without leave of court. However, I shall consider it only on its merits.

13. The affidavit of protest dated 17th July 2023 by the Petitioner attaches a document said to be a copy of land certificate of parcel Butso/684 under the names of Siliphas Masiali. It is contended that the said Siliphas was the petitioner's father and the initial owner of parcel Butso/684. That the ownership and change of title of land parcel number Butso/684 to Keya Kigamu was fraudulent and without letters of administration. It is further averred that from the parcel Butso/684, the deceased subdivided it into Butso/1655 and 1656 and whereby he retained Butso/1655 and sold parcel Butso/1656.
14. If that be the case, then the deceased Ibrahim Keya Kigamu had no good title to pass to the administrator or any other person in the said estate. That would make him a meddler under section 45 of the Laws of Succession Act. Issues however would arise as to how the deceased acquired the title of the property. Of course, the administrator has responded to the affidavit of protest by the petitioner and does not in any way address the issue raised by the petitioner on how his father acquired the said land parcel.
15. Where such claims arise, the estate ought not be distributed, instead the dispute on whether or not the deceased acquired good title of the land before subdividing it into two and selling one portion ought to be determined first. Unfortunately, the High Court has no jurisdiction to determine that dispute in these succession proceedings in view of Articles 162(2) and 165(5) of the Constitution. The proper court for that purpose ought to be the Environment and Land Court or empowered subordinate courts.
16. The court shall not revoke the grant by the administrator nor hear its confirmation application, for it is a disguised land case, which the petitioner should have filed in the court with jurisdiction. The court instead directs the petitioner Joseph Eshisila Masiali to file his claim at the appropriate court and have it determined within the shortest period possible.
17. In the meantime, it is guided that the administrators responsibilities be legally undertaken awaiting the outcome of the suit to be filed by the petitioner. If transmission has been done, then the petitioner shall have to obtain the relevant orders from the Environment and Land Court or the empowered subordinate court, for once transmission is done, the probate court would have no powers whatsoever over the property the subject of the transmission. The matter shall be mentioned after one year for monitoring and further orders. It is so ordered.

DATED AND SIGNED THIS 29TH DAY OF MAY, 2025.

PATRICK J O OTIENO

JUDGE

DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 29TH DAY OF MAY, 2025.

S. MBUGI

JUDGE

In the presence of:

Mr. Isiako holding brief for Mukavale for Administrator

Munyendo for Objector absent

C/A: Agong'a

