



REPUBLIC OF KENYA



**In re Estate of Late John Mukhuyu Were (Deceased) (Succession Cause
61 of 2007) [2024] KEHC 790 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 790 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 61 OF 2007
DK KEMEL, J
JANUARY 31, 2024**

BETWEEN

PATRICK OSORE OBONGITA 1ST OBJECTOR

TOM BOSSWORTHICH OBONGITA 2ND OBJECTOR

AND

JOSEPH SHIBONYA MUKHUYU PETITIONER

RULING

1. By a summons for revocation or annulment of grant dated 6th June 2023 and filed in Court on 14th June 2023, the Objectors herein sought principally the following orders:
 - i. Spent.
 - ii. Spent.
 - iii. The revocation and/or annulment of grant of letters of administration intestate issued to the Petitioner on 12th July 2007 and its subsequent confirmation on 20th November 2007 revoked.
 - iv. That this Court be pleased to revoke, cancel and/or rescind the title deed issued on 3rd November 2022 to Mary Achola Mukhuyu, Joseph Shibonya Mukhuyu & Kassim Mukhuyu and that the same revert back to the original owner John Mukhuyu Were, the deceased herein.
 - v. That a fresh and all-inclusive succession process be conducted on the estate of the deceased herein.
2. According to the Objectors, they are the beneficiaries of the estate of the deceased and that they have been staying on the contentious parcel for more than 12 years with no disruption. They alleged that the Petitioner herein concealed the fact that the Objectors are the beneficiaries to the deceased estate and that they were not captured as beneficiaries. The grant obtained is therefore marred with untrue



- allegation of facts, misrepresentation, falsehood and non-disclosure of facts. That the true beneficiaries of the estate have been left out from benefiting from the estate. That the petitioner is not fit to administer the estate of the deceased.
3. In response, the Petitioner vide a replying affidavit sworn on 12th September 2023 and filed in Court on even date wherein he averred that the cause was concluded and the grant was confirmed on 20th November 2008. According to him, his co-brothers filed an objection which was dismissed and that he proceeded to register the two parcels of land left behind by his deceased father. He averred that the Objectors are not the sons of the deceased herein and that the estate of the deceased was fully distributed. He averred that the Objectors lacked a recourse in this Court as they lack the capacity and *locus standi* and that they could only find recourse at the Environment and Land Court.
 4. Parties took directions on the 14th September 2023 to the effect that the Objectors application for revocation of grant dated 6th June 2023 be canvassed by way of written submissions. However, none of the parties complied.
 5. In the summons for revocation of grant, the Objectors have alleged fraud and concealment of material facts premised on section 76 of the *Law of Succession Act*. The aforesaid summons state that it was not disclosed to the Court that the Objectors herein are beneficiaries to the deceased's estate which his late father obtained fraudulently and has not named them as the beneficiaries.
 6. I have carefully considered the application, the affidavits tendered by both parties in support and in rebuttal of issues herein. I take the following view of the matter. The issues for determination herein are:
 - a) Whether or not the Objectors lack *locus standi* to institute these proceedings.
 - b) Whether or not the Objectors are entitled to the relief sought.
 7. The first point for determination is whether or not the Objectors herein lack *locus standi* to bring this application as alleged by the Petitioner in his replying affidavit. My understanding of the matter at hand is that the Objectors herein brought this suit before Court as beneficiaries of the estate of the late John Mukhuyu Were. According to the Petitioner's replying affidavit, he averred that the Objectors are not sons of the deceased whose estate has now been fully distributed.
 8. *Locus standi* is elementally the right to appear or be heard in Court or other proceedings (Ibrahim v Hassan & Charles Kimenyi Macharia, Interestedparty[2019] eKLR). That means if one alleges the lack of the same in certain Court proceedings, he means that party cannot be heard, despite whether or not he has a case worth listening to. The issue herein is whether the Objectors lack the requisite *locus standi* to seek relief from the Court to revoke the grant in question issued to the Petitioner. In my view, issues as regards *locus standi* are critical preliminary issues which must be dealt with and settled before dwelling into other substantive issues.
 9. My perusal of the Petition for grant of letters of administration intestate clearly indicates that the Objectors herein were not listed as the beneficiaries of the deceased under form P& A 5 and that the assets of the deceased were listed as E/Wanga/Malaha/537 and E/Wanga/Malaha/454. The official certificate of search duly attached showed that the late John Mukhuyu Were was the registered proprietor of both parcels of land. Further, the letter from the Office of the Chief East Wanga Location dated 19th March 2007 clearly did not capture the Objectors as the beneficiaries of the Estate of the late John Mukhuyu Were. This simply means that there was no relationship between Objectors and the deceased herein for them to be termed as beneficiaries to his estate.



10. This Court finds that failure to get consent from the Objectors did not constitute concealment as envisaged in the *Succession Act*. The Petitioner did not owe them any duty of care to get their consent as they are mere strangers and/or busy bodies to the estate of the deceased. It is also noted that upon the objector being served with the petitioner's replying affidavit claiming that the objectors were not sons of the deceased, it behoved upon them to file a rejoinder on that critical issue of relationship with the deceased. They did not do so even after being given leave to do so.
11. A perusal of the summons for revocation bring out the issue as to whether deceased was the *bonafide* owner of parcel E/Wanga/Malaha/454. From the material before me, I am of the further considered view that the issues in the summons for revocation herein are deeply rooted in the grant confirmed on 20th November 2008 which only an Environment and Labour Court possesses the jurisdiction to hear and determine. The Environment and Land Court has jurisdiction to determine ownership of land. It is therefore my view that the Objectors do take their issue before the relevant forum. In any case, it has emerged that the estate has since been distributed to the beneficiaries and that new titles have since been issued. Already the duty of the court in distributing the estate of the deceased has already been concluded. The only remaining port of call for the objectors is the Environment and Land Court.
12. In the result, it is my finding that the Objectors summons for revocation dated 6th June 2023 and filed in Court on 14th June 2023 lacks merit. The same is dismissed with costs to the petitioner.

It is so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 31ST DAY OF JANUARY 2024.

D. KEMEI

JUDGE

In the presence of:

Ondegu for Objectors/Applicants

Olonyi for Sichangi for Petitioner/Respondent

Kizito Court Assistant

