



In re Estate of Manoah Kisame Aradi (Deceased) (Succession Cause 422 of 2006) [2024] KEHC 552 (KLR) (30 January 2024) (Ruling)

Neutral citation: [2024] KEHC 552 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 422 OF 2006
SM MOHOCHI, J
JANUARY 30, 2024**

IN THE MATTER OF THE ESTATE OF MANOAH KISAME ARADI (DECEASED)

BETWEEN

BRIAN MUSANGA ARADI OBJECTOR

AND

HEBISIBAH MORAA ONDIEKI 1ST ADMINISTRATOR

MARY IRENE ATIENO 2ND ADMINISTRATOR

STEVE BIKO ARADI 3RD ADMINISTRATOR

CHARLES CHAYA ARADI 4TH ADMINISTRATOR

AND

ELPHAS ABASI NDUSU INTERESTED PARTY

RULING

1. What is before the Court for determination is the Summons for Revocation of Grant of Letters of Administration dated 9th January, 2023 filed by the Objector on 27th January, 2023 and brought under Section 76 of the *Law of Succession Act*.
 1. Spent....
 2. Pending the hearing and determination of this summons for Revocation/Annulment of Grant of Letters of Administration herein and in order to avoid further wastage, pilferage and or mismanagement of deceased's estate, all the administrators jointly and severally be and are hereby restrained from acting, holding out acting and or in any other way performing the functions related to and or touching on the administration of the estate of the late Manoah Kisame Aradi.



3. Pending the hearing and determination of this Summons for Revocation/Annulment of Grant of Letters of Administration herein, the Administrators/Respondents and the Interested Parties jointly and severally, their agents, servants, employees and or persons claiming their authority are restrained from selling, charging, mortgaging, pawning, disposing of, parting with possession, subdividing, parceling, transferring, alienating and in any other way dealing with all that parcel of land known as Isukha/lubao/1024 and all assets of the deceased including but not limited to those listed in the certificate of Confirmation of Grant dated 11th May, 2011.
 4. The Administrators/Respondents do render a true and detailed account of the estate of the deceased between the date of death of deceased (7th May, 2006) to date for purposes determination by the total assets and liabilities and for an equitable and or fair redistribution to all the beneficiaries.
 5. All and singular the transfers made in relation to all that parcel of land known as Isukha/lubao/1024 by the Administrators in favour in favour of the Interested Party in favour of Steve Biko and Mary Irene Atienobe and is hereby nullified/cancelled and the initial title number be and is hereby restored and revered into the name of the deceased Manoah Kisame Aradi for purposes of distribution to the respective beneficiaries.
 6. The Grant Letters of Administration issued to the Administrators/Respondents, Hesibisah Moraa Ondieki (a.k.a Ebby Moraa Ondieki) Mary Irene Atieno, Steve Biko Aradi and Charles Chahya Aradi and confirmed on 11th May, 2011 is revoked/annulled and a fresh Grant of letters of administration of the Estate of the late Manoah Kisame Aradi is issued in favour of the Objector Applicant Briang Musanga Aradi.
 7. Such other further orders as the Court shall deem just and expedient.
 8. The estate of the deceased to settle the costs of this application.
2. The Application is predicated on the grounds on the face of the Application and supported by the sworn Affidavit of Brian Musanga Aradi filed on 27th January, 2023. He stated that the Administrators/Respondents have not administered the estate of the deceased according to the confirmed Grant. That the Administrators have allocated the estate of the deceased to themselves without involving the beneficiaries or accounting for the proceeds.
 3. That the 2nd and 3rd Administrators are in the process of sub-dividing with intent to sell LR No. Isukha/Lubao/1024 to third parties that there were assets that were not disclosed to Court. That, as trustee the Interested Party, the 2nd and 4th Administrators fraudulently transferred LR No. Isukha/Lubao/1024 to the 2nd and 3rd Administrators the same was said to have been reported to the Directorate of Criminal Investigations vide OB No. 13/324/2013.
 4. That the Administrators should cease being the estate administrators.
 5. The Application was opposed vide a Replying Affidavit sworn and filed by one Charles Chahya Aradi, the 4th Administrator herein, on 3rd July, 2023. He stated that he found out through the instant application that the deceased had assets that were not included in the confirmed rectified Grant and denied concealing any part of the deceased's estate. He also denied being involved with transfer of LR No. Isukha/Lubao/1024.
 6. In opposition to the Application the 2nd and 3rd Administrators filed a Replying Affidavit on 16th March, 2023 sworn by the Steve Biko Aradi who deponed that the 1st Administrator and the Applicant had consented to the mode of distribution pursuant to the consent dated 20th July, 2006 and there



- has been no objection challenging the administration since the Confirmation of Grant. That the 1st Administrator challenged the ownership of LR No. Isukha/Lubao/1024 vide Kakamega MCELC No. 209 of 2018 challenging it belonged to the Applicant which was dismissed in the Subordinate Court and later in the High Court in ELC Appeal No. E024 of 2022.
7. He added that the Applicant has failed to satisfy the conditions required for Revocation of Grant and that most of the properties have been distributed in accordance with the Grant and the application is an exercise in futility.
 8. In Support of the Application, Hesibisah Morah Ondieki, the 1st Administrator, filed a Replying Affidavit sworn on 31st August, 2023. She stated that, the estate was in debt following the demise of the deceased and the debt surrounded LR No. Isukha/Lubao/1024. She added that, on a gentleman's agreement they as Administrators to the estate decided to transfer the property to the Interested Party to hold until the crisis subsided. That when they sought to have the property transferred back the Interested Party was dodgy only for them to later realize that the property had been transferred to the 2nd and 3rd Administrators only.
 9. She also stated that the 2nd Administrator, her co-wife sold off some of the deceased properties and appropriated rent in one of the rental properties. She had the logbooks and the chief in Maragoli can testify on how two parcels of land were sold in Kakamega. That the 3rd Administrator has been collecting rent in one of the deceased rental properties without depositing proceeds to the administrator's joint account. That the said 3rd Administrator has failed to collect Kshs 300,000 form KCB Bank which stand risk of being transferred to the unclaimed assets authority. That the 3rd Administrator appropriated household goods of the deceased and has failed to protect the interests of the estate. She supports the cancellation of grant
 10. The Court on 4th of July, 2023 directed that the matter shall proceed orally and as such the administrators to file a true and detailed account of the estate of the deceased form 7th May, 2006. Parties complied. The 1st Administrator filed her report on 31st August, 2023. The 2nd and 3rd Administrators filed a joint report on 12th September, 2023. The 4th Administrator filed his report on 29th September, 2023 independent of the other administrators citing differences among the Administrators. The 2nd and 3rd Administrators filed an amended report on 2nd October, 2023. The 1st Administrator filed her reply to the 2nd and 3rd Administrators' report on 1st January 2024.

At the hearing...

11. The Applicant through his counsel Mr. Onsongo submitted that they are seeking that all the administrators be removed and the grant revoked as they have not been accountable and that a fresh administrator be appointed to conclude the distribution. That it appears from the reports that there has never been joint administration. That looking at the Rectified Grant issued on 11th May, 2011 only 4 assets are mentioned and from the accounts filed, there are more than 10 assets and the Administrators have leased, sold, transferred or taken without involving others and also do not distribute benefits to the beneficiaries.
12. Mr. Onsongo further submitted that, the Applicant proposes that before proceeding, there be a list of what has been sold or not and in an order in terms of prayer No. 3 so that there is evidence on the statement of account. Finally, that with consensus, parties can agree on who can replace the administrators. That property Isukha/Lubao/1024 should revert to the estate. The rent to be deposited in Court for the lease in favour of Safaricom PLC



13. The 1st Administrator through Ms Kimathi relied on the Replying Affidavit dated 30th August, 2023 and the 1st Administrator's report as well as the reply to the 2nd and 3rd Administrators report. In principle, they sought the removal of the 2nd and 3rd Administrators from the Administrator ship.
14. On behalf of the 2nd and 3rd Administrators, Ms. Maloba submitted that the power to revoke a grant must be exercised judiciously and Section 76 is couched in mandatory terms, that there must be evidence of wrongdoing. The Applicant claims that Isukha/Lubao/1024 belonged to the deceased and the properties are subject to 5 Court cases on ownership. That this Court lacks jurisdiction to right or interest of property not part of the estate. That parties have filed statements of accounts and the objector ought to file a response. That the Application lacks evidence and ought to be dismissed.
15. On behalf of the 4th Administrator Mr. Nyamunyu joins issue with the Replying Affidavit by the 1st Administrator, regarding Isukha/Lubao/1024 in the attachment of MFI1 entry 9 and 10 of the green card. The 4th Administrator posed the question why Invited Court to consider that the matter is ripe for mediation.
16. Mr. Onsongo in rejoinder stated that the existence of many cases is indicative the administrators are not working together. That there is a statement recorded by the Interested Party. The objector admits he never owned the property. That the property be reverted back to the estate.

Analysis and Determination

17. I have laboriously gone through the pleadings hereto. Revocation of Grant of Letters of Administration and the jurisdiction of this Court to entertain an application by an interested party or on its own motion revoke a Grant is predominantly expressed under Section 76 of the [Law of Succession Act](#) which provides that:

“76. Revocation or annulment of grant

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.”

18. The Court in *Matheka and Another V Matheka* (2005) EA 251 as cited *In re Estate of Njagi Kandii (Deceased)* [2019] eKLR stated as follows:

“A grant may be revoked either by application or by an interested party or on the Courts own motion. Even when revocation is by the Court upon its own of motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegations of facts essential. In point of Law or that the person named has failed to apply for Confirmation or to proceed diligently with the administration of the estate. The grant may also be revoked if it can be shown to the Court that the person to which the grant has been issued has failed to produce to the Court such inventory or account of administration as may be acquired”

19. It must also be considered that, the Court’s Power to revoke a grant is a discretionary power that must be exercised judiciously. The reasons for revocation or annulment must be sound and reasonable and there must be evidence of wrongdoing, concealment of facts or mistake or fraud. For this Court to exercise discretion caution must be taken while factoring the best interest of the estate of the deceased.

20. Section 76 envisages that a grant can be revoked where the grant was obtained procedurally, but thereafter the administrators did not exercise the administration to the expectations as provided by law.

21. Just from the what is on record, the Administrators filed separate reports on assets and liabilities of the estate of the deceased. The 1st Administrator supported the Application, the 4th Administrator alleged to being a stranger to the claims of fraudulent transfer and he too filed a separate report. The 2nd and 3rd administrators filed a joint separate report denying colluding to transfer Isukha/Lubao/1024 to themselves from the Interested Party contrary to what was agreed by all the Administrators.

22. It is the Applicant’s contention that, the Administrators have not administered the estate of the deceased according to the confirmed Grant. That the Administrators have allocated the estate of the deceased to themselves without involving the beneficiaries or accounting for the proceeds. There is no unity amongst all the parties involved and just like the Applicant’s counsel stated there are accusations or counter accusations to the effect.

23. The properties listed by the Administrators were 4, the filed reports have confirmed that there was indeed more than four properties that belonged to the deceased.

24. There are properties which were sold or disposed or still in the name of the deceased but are rental properties and each administrator is accusing another of individually benefiting. Just to name a few: -



- a. The 1st Administrator has been accused of collecting rent from Nakuru Municipality Block 1 (Langa Lanaga- Known as Kanu Street Plot) and has not shared the same with the beneficiaries. An allegation she denies.
 - b. In the Boyani Plot the 1st Administrator received Kshs 13 million and gave each administrator 1.5 million. As to how the rest of the funds were being used the stories were different.
 - c. LR no. 1296 plot at Mbale the 2nd and 3rd and 4th Administrator alluded to the sale of the shop for Kshs 600,000 which was disposed of by all the administrators. the 1st administrator denied knowing the existence of the property as it was excluded in the list of properties owned by the deceased.
 - d. The 2nd and 3rd Administrators have been accused of failing to surrender the tile to LR No. N/ Maragoli Kisatiru Plot 111 to the 4th Administrator who is the main beneficiary of the estate and also denying him access. The 2nd and 3rd Administrators have denied these allegations and claim that the 4th Administrator lives there.
 - e. Wagulu Market Plot No. 6, the 3rd Administrator has been collecting rent monthly from the year 2010 to the exclusion of the others.
25. The list of discrepancies, concealed property and clear allegations of mismanagement and wrongdoing is quite extensive. I have just picked a few cases and if there was a definition of improper exercise of administration of an estate of a deceased then this particular instant case would be it. The way the Administrators have managed the estate to the exclusion of each other and the other beneficiaries is distasteful to say the least. The other beneficiaries have not been accorded the service they expected from the Administrators whom they entrusted the task with.
26. *Albert Imbuga Kisigwa v Recho Kavai Kisigwa* Succession Cause No. 158 of 2000 where Mwita J stated:-
- “Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the Court to invoke section 76 and order to revoke or annul a grant. And when a Court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
27. The Administrators forgot that, the duty to administrate is not a right but a responsibility on trust. Eroding the trust of family members to the extent demonstrated in the instant case is one of the instances this Court is invited to invoke its inherent powers.
28. Regarding Isukha/Lubao/1024, it is alleged by the Applicant, the 1st and 4th Administrators that the property belonged to the deceased at the time of his death but was transferred to the Interested Party to hold in trust to avert an auction. That the property was to be transferred back to the estate but it was only transferred to the 2nd and 3rd administrators.
29. According to the 2nd and 3rd Administrators the said property never belonged to the deceased and does not form part of the estate. It was their contention that the property belongs to the Interested Party who holds a title to it. Counsel for the 2nd and 3rd Administrators submitted that the Court has no jurisdiction to determine the right or interest of property that is not part of the estate.



30. This Court will thus endeavor to trace the history of the suit property as demonstrated by the evidence on record. The suit property was registered to the deceased on 4th July, 1990 and did not change ownership during the lifetime of the deceased up to his demise. A caution was registered in favour of the interested Party on 9th March, 2004 but was withdrawn on 10th January, 2006. The deceased died on 7th May, 2006. At the time of death, the property was in the name of the deceased.
31. On 28th November 2012 and the title was transferred to the name of all the Administrators then transferred to the name of the Interested Party on the same day.
32. Contrary to what is alleged by counsel for the 2nd and 3rd Administrators, this Court has jurisdiction to deliberate on this issue since at the time of the death of the deceased, the property was in the name of the deceased and therefore formed part of the estate of the deceased.
33. As to how the property was transferred to the Interested Party is what not clear. The 4th Administrator in his sworn Affidavit dated 23rd June, 2023 denies being involved in any transactions transferring the subject property to the Interested Party. The 1st Administrator admits to the transfer as a “gentleman’s agreement”. The 2nd and 3rd Administrators deny that the property belongs to the deceased despite entry No. 9 of the Green Card annexed as Exhibit MBA-4” saying otherwise. All the Administrators are listed there.
34. Now, therefore, how did the property get in the hands of the Interested Party? Was it a sale, a gentleman’s agreement, or a gift? Did the Interested Party Purchase the property for value? Had the Interested Party Purchased the property prior to the death of the deceased but the transfer was not effected? There seems to be a disconnect as to how the property came into possession by the Interested Party.
35. In the statement attached made by the Interested Party dated 13th March, 2013, vide OB 13/342/2013 the Interested Party denies ownership by stating that:
- “ On or about 28th November 2012 Hebisibah Morah Ondieki transferred to me Land Title Isukha/Lubao/1024 as a Trustee. Hebisibah Being a widow to the late Manoah Kisame Aradi. That I have never owned the said Parcel of Land.”
36. If the alleged proprietor, the Interested Party denies ownership but the title is registered in his name and claims he was only holding it in trust how did, it suggests that there’s more than meets the eye.
37. Counsel for 2nd and 3rd Administrators contended that, the Interested Party acquired an indefeasible title to the suit property and this Court has no jurisdiction to entertain the issue as the property is being adjudicated in another forum.
38. This Court is tasked with the duty to preserve the estate of a deceased person and as such associates fully with the opinion of William Musyoka’s case book on the Law of Succession at page 581 which states that:
- “ Where the assets have been misapplied by personal representatives and are traceable into the hands of a particular person, the law allows the beneficiaries entitled to such assets to follow them into the hands of the person holding such property.”
39. In RE *Diplock v Wintle* [1984] ch 485 the case makes an exception to the above sentiments that, where the holder of such property is a bona fide purchaser the Court will make a general exception. From what has been demonstrated in the file reports by the Administrators, there is a very being vacuum as to how the property was transferred and the questions that begs is whether the Interested Party a bona



fide purchaser and did he purchase the property for value? None of the administrators have answered these questions.

40. On who a bona fide purchaser for value was, the Court in *Lawrence Mukiri V. Attorney General & 4 Others* [2013] eKLR stated that,

for a purchaser to successfully rely on the bona fide doctrine, he must prove the following:

- a. He holds a certificate of Title.
- b. He purchased the Property in good faith;
- c. He had no knowledge of the fraud;
- d. The vendors had apparent valid title;
- e. He purchased without notice of any fraud;
- f. He was not party to any fraud.”

41. Under Section 26(1) of the *Land Registration Act* 2012, it provides that that a title is prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, and such title can only be challenged on the ground of fraud, misrepresentation or if proved that the initial allocation of the property was unprocedural or illegally, or through corrupt scheme. Therefore, possession of a registered title document by an owner is not conclusive proof of ownership.

42. In the instant case, the 2nd and 3rd Administrators have insisted that the property does not form part of the deceased estate as it belongs to the Interested Party. There being mystery and accusations on how the property was transferred I have no doubt that the transfer of Isukha/Lubao/1024 to the Interested Party was irregular. For this Court to uphold substantive justice and having found that the transfer of Isukha/Lubao/1024 was not procedural, it is my considered view that for substantive justice to be done, it will be important to ensure that any beneficiaries left out of the distribution of the estate of the deceased are given a share of the property that includes Isukha/Lubao/1024 and any proceeds thereto are shared amongst all the beneficiaries.

43. I am therefore persuaded by the Applicant’s arguments that the Administrators concealed material facts and also failed to proceed diligently with the administration of the estate. At this juncture, leaving the Administrators to continue with the administration process will milk the remainder of the estate of the deceased dry to the detriment of the other beneficiaries.

44. Once a Grant is revoked, the Court revokes the power of the personal representatives’ powers to act in respect of the estate of the deceased. The Court thereafter issues directions on the appointment of an administrator or the application of a new Grant, so that the estate is not left un-administered.

45. It is for that reason, that I invoke the inherent powers of this Court granted under Article 159 of the *Constitution*, Sections 47 and 76 of the *Law of Succession Act* and Section 73 of the *Probate and Administration Rules* and make the following orders:

- a. That the Grant of Probate or Letters of Administration confirmed on May, 11th 2011 to Hebisibah Moraa Ondieki a.k.a (Ebby Moraa Ondieki), Mary Irene Atieno Steve Biko Aradi and Charles Chahya Aradi is null and void, as the same was obtained by concealment from Court of material facts, and further the failure of the Administrators to proceed diligently with the administration of the estate. The said grant is hereby revoked and annulled under the provisions of Section 76 Cap Laws of Kenya.



- b. That the transfer of title number Isukha/Lubao/1024 effected on 28th November, 2012 to Elphas Abasi Ndusu to and the subsequent issuance of a title deed to the said person be and is hereby declared null and void for all purposes, on grounds that, the said transfer was illegal irregular, un-procedural and in total disregard of the law and title so issued is cancelled and ownership reverts back to the name of the deceased.
- c. That the Respondents are hereby directed to prepare and place on record herein an accurate account for estate of the deceased including rental income collected from the date of the demise of the deceased on 7th May, 2006 up to 30th January 2024 on how and when they were utilized, spent and or preserved with sixty (60) days of this Ruling.
- d. A fresh Grant of Letters of Administration of the estate of the late Manoah Kisame Aradi is hereby issued to Brian Musanga Aradi.
- e. This Court shall conduct mention in sixty (60) to give directions on all outstanding issues relating to the conclusion of the probate.
- f. That this being a family matter there will be no Order as to costs.

It is so ordered

SIGNED DATED AND DELIVERED AT NAKURU THIS 30TH DAY OF JANUARY, 2024.

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MOHOCHI S.M.

JUDGE OF THE HIGH COURT

