



**In re Estate of Emmanuel Wabwile Olwika (Deceased) (Succession Cause  
36 of 1995) [2024] KEHC 2024 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2024 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 36 OF 1995**

**DK KEMEL, J**

**FEBRUARY 29, 2024**

**BETWEEN**

**TECLA NASIMIYU WASIKE ..... PETITIONER**

**AND**

**COSMAS TOBIAS WABWILE ..... OBJECTOR**

**RULING**

1. The Applicant herein preferred this summons for revocation and/or annulment of grant under section 76 of the *Law of Succession Act* and Rule 44 of the *Probate and Administration Rules* seeking orders that the grant of letters of administration issued to the Petitioner herein on 15<sup>th</sup> September 1995 and certificate of confirmation issued on 15<sup>th</sup> July 2010 be revoked and/or annulled, and that in the alternative the Applicant herein be made a co-administrator to the Petitioner herein and that the costs of the application be borne by the Petitioner.
2. The application was premised on the grounds set out on the face thereof and the affidavit in support sworn by Cosmas Tobias Wabwile on 24<sup>th</sup> August 2020. The Applicant's gravamen is inter alia; that the Applicant is a legitimate beneficiary of the estate of the deceased; that the petitioner herein did not list all the beneficiaries of the deceased as she left out some of them such as Linet Nafula Khisa and Humphrey Simiyu Makokha; that the petitioner left out some assets such as LR West Bukusu/ South Mateka/4134; that the petitioner did not seek the consent of all beneficiaries before filing the cause; that the proceedings to obtain the grant were defective in substance; that the grant was obtained by the making of a false statement or by concealing material facts from the court; that it is in the interest of justice to grant the orders sought.
3. The Summons were unopposed.
4. The application was canvassed by way of viva voce evidence. The Petitioner did not tender evidence while the Objector testified and called two other beneficiaries namely Linet Wafula Khisa and Celestine



Namukuru Makokha who all adopted their respective witness statements dated 18.10.2021. It was their evidence that the deceased herein was their biological father and that the Petitioner did not involve them in the succession cause and did not provide shares to them. It was also averred that the petitioner left out one asset namely LR West Bukusu/South Mateka/4134 for distribution yet it belonged to the deceased. It was their testimonies that the Petitioner secretly filed the succession cause without involving them and failed to include them in the distribution of the estate of the deceased and that they now seek to have the grant revoked and that their interests be considered.

5. The Petitioner did not tender evidence.
6. Parties filed written submissions. It is only the bjector/Applicant who filed submissions dated 16.5.2023.
7. I have given due consideration to the application and the evidence tendered. The issue for determination herein is whether the Applicant's application meets the threshold for the revocation of a grant within the meaning of section 76 of the *Law of Succession Act*.
8. For avoidance of doubt, section 76 of the *Law of Succession Act* states as follows:

“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.”

9. Section 76 was clearly expounded on by the Court in *re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where it was stated that:

“Under Section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. 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 circumstances, 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.”

10. The Applicant has invited this court to revoke the grant of letters of administration for the reasons that the Petitioner herein commenced this succession proceedings without his consent and that of two other beneficiaries and that she left out some of the properties that belong to the estate of the deceased. He was categorical that the proceedings initiated to obtain this supposed grant of letters of administration was defective in substances as the same was obtained fraudulently by making of false statements and/or concealment of material facts. Further, he argued that the Petitioner failed to obtain the consent of all beneficiaries and at the time of confirmation of the grant, the Petitioner distributed more than half of the estate to the herself and left a small portion to him.
11. During the routine mention of this cause, i was able to establish that the Petitioner herein had died after the parties' respective cases had been closed.
12. A perusal of the petition documents, the Petitioner did include the Applicant herein in the Petitioning process and listed all the requisite assets of the deceased herein. It is also evident that the Petitioner herein had duly distributed the estate of the deceased herein prior to her demise.
13. The availed letter of the Chief Bumula District listed the beneficiaries of the deceased's estate as one Tecla Nasimiyu Wasike (now deceased); Dennis Mukhwana Wabwile; Anthony Mulongo Wabwile, Esther Khisa Wabwile; Paul Barasa Wabwile; Cosmas Wabwile and Charles Juma Wabwile.
14. As stated in the affidavit sworn by Clement Wasike on 18<sup>th</sup> October 2021, he averred that he is the grandfather of the Applicant herein and that the Petitioner was his daughter in law. According to him, the Applicant grew up with his biological mother and was not aware of the said proceedings.



15. A perusal of the court record shows that the Petitioner did not in any way seek the consent of all the beneficiaries to the estate of the deceased as there was no form 37. It is clear that the distribution made by the Petitioner was not fair in any manner and that some of the children of the deceased in this case Cosmas, Charles, Linet and Humphrey swore affidavits averring that the Petitioner commenced the succession proceedings without their consent.
16. Section 76 signifies that a Petitioner seeking for grant of letters of administration will be deemed *prima facie* to have obtained a fraudulently grant, with respect of the estate if he or she fails to issue notice to any of the dependents or beneficiaries to the estate of the deceased, including obtaining their necessary consents as mandatorily provided in the Succession Act. Equally, the grant of letters turns out to be defective if the evidence shows that it was issued in error, misrepresentation of facts, concealment or nondisclosure of material evidence relevant and admissible for the making of the grant of representation. In one of the leading judgments of the court in this area of law in *Matheka and Another v Matheka* [2005] EA 251 it is clearly 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”
17. Thus, in the circumstances of this case, i find it difficult to conceive how the Petitioner went ahead to obtain letters of grant of administration in absence of notice and consent of the children of the deceased. It was oppressive and unjust for the Petitioner as the administrator of the estate to intermeddle with the assets of the estate yet there was no proper mode of distribution to the other beneficiaries. Again, it is noted that the summons for confirmation of grant were not accompanied by a consent of the beneficiaries.
18. As to what will happen to third parties who might have secured interests in the land after the grant was confirmed, it is noted that the Objector/Applicant did not see it fit to bring them on board even as interested parties so that they do not stand prejudiced. In the premises, this court will be reluctant to make- orders that might affect those parties without giving them a hearing.
19. In view of the foregoing observations, it is my finding that the Objector’s application dated 24.8.2020 has merit. The same is allowed in the following terms:
  - a. The grant of letters of administration issued to the petitioner on 15.9.1995 is hereby revoked.
  - b. The certificate of confirmation of grant issued on 15.7.2010 is hereby cancelled.
  - c. The beneficiaries of the estate are hereby directed to appoint two representatives who will be joint administrators of the estate of the deceased and that once appointed, they will file summons for confirmation of the fresh grant as soon as possible and to identify the inventory of assets and liabilities of the estate.



- d. If there are any transfers of properties of the estate under section 93 of the *Law of Succession Act*, the same shall be determined on merit during the hearing of the summons for confirmation of the fresh grant.
- e. There will be no order as to costs.

It is so ordered.

**DATED AND DELIVERED AT BUNGOMA THIS 29TH DAY OF FEBRUARY 2024.**

**D.KEMEI**

**JUDGE**

**In the presence of :**

**Wattangah for Adongo Petitioner**

**Shikhu for Masengeli For Objector/ Applicant**

**Kizito Court Assistant**

