



In re Estate of Mang’oli Mukolongolo (Deceased) (Succession Cause 48 of 2005) [2024] KEHC 1696 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1696 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 48 OF 2005**

DK KEMEL, J

FEBRUARY 22, 2024

IN THE MATTER OF THE ESTATE OF MANG’OLI MUKOLONGOLO (DECEASED)

BETWEEN

ALBERT SIKUKU MANG’OLI APPLICANT

AND

MARTIN WAFULA MANG’OLI RESPONDENT

RULING

1. The Applicant herein filed summons for revocation of grant dated May 8, 2023 pursuant to section 76 (d) (iii) and (e) of the *Law of Succession Act* and Rule 44 of the *Probate and Administration Rules*, and all enabling provisions of the law. He sought orders that the grant of representation confirmed on 20th March 2017 be revoked and that the Respondent herein be removed and replaced by one Calistus Wanjala Mang’oli to effect the distribution of the estate of the deceased based on the proposed distribution schedule attached to the said certificate of confirmation of grant.
2. The application was premised on grounds on the face of it and the supporting affidavit sworn by Albert Sikuku Mang’oli on May 8, 2023. He averred that his Co-administrator, the Respondent, has hindered the full distribution and management of the estate of the deceased with his desires to bring on board new beneficiaries who are not even members of the family of the deceased. According to him, the Respondent insists on introducing strangers into the estate of the deceased as beneficiaries and has embarked on re-distribution that is contrary to what was originally consented to accommodate these strangers. He averred that not until he is removed and replaced, the estate of the deceased will stand no chance to be completely distributed thus frustrating the beneficiaries.
3. Opposing the application, the Respondent swore a replying affidavit sworn on August 22, 2023 wherein he averred that the same is misplaced, misconceived and has been filed with the ill motive to delay the hearing and determination of his application for rectification of grant dated July 22, 2022. Further, he averred that the Applicant herein is his co-administrator in these succession proceedings



and thus he cannot move to Court to revoke a grant and remove an administrator and have him replaced with another co-administrator. He averred that the Applicant is not before the Court with clean hands as he engaged numerous mischiefs and sold all his shares to purchasers, interfered with the survey exercise and via confrontation he forcefully acquired other beneficiaries shares to the estate of the deceased herein.

4. The parties agreed to canvass the application by way of written submissions. However, none of them complied.
5. 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](#).
6. 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.”

7. The Applicant's application was grounded on section 76 (d) (iii) and (e) of the [Law of Succession Act](#). Under section 76, a court may revoke a grant based on the grounds listed above. The revocation may



be on courts own motion or on the application of a party. Generally, there are three grounds upon which a grant may be revoked:

- a. 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 or she is a survivor when he/she is not, among other reasons. The above ground has been used by courts to revoke grant in a litany of cases including *Mwathi v Mwathi & another* 1 EA 229, *In the Matter of the Estate of Mwaura Mutungu alias Mwaura Gichingo Mbura alias Mwaura Mbura* Nairobi High Court Succession Cause Number 935 of 2003 and *Musa v Musa*, 2002 1 EA 182.
 - b. Where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he or she fails to apply for confirmation of grant within the time allowed, or he or she fails to proceed diligently with administration, or fails to render accounts as and when required. For example, *In the Matter of the Estate of Mohamed Musa*, Mombasa High Court Succession Cause No.9 of 1997, the Court revoked Grant because the administrators had not kept any records of account of their administration.
 - c. 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 or her duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.
8. A Court of law therefore faced with an application for revocation of Grant may make such orders as it deems fit and just, given the circumstances of the case. In the Matter of the Estate of Esther Wanjiru Mucheru (deceased), Nairobi High Court Succession Cause No.1996 of 1999, the Court noted that section 76 of the [Law of Succession Act](#) is discretionary in that it gives the court discretion whether to revoke or annul a grant.
9. Moreover, it is the duty of the Applicant to prove that any of the grounds set out under section 76 has been committed before the court can revoke a grant already issued. This position was adopted by the court in [Kennedy Opiche Olela v William Ogida Ochuodho & another](#) [2014] eKLR.

In the instant case, the application for revocation is predicated on the ground that the Respondent failed 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 that the grant has become useless and inoperative through subsequent circumstances.

10. Upon perusal of the court record, it is noted that the Respondent herein did file a further affidavit with regard to his application dated 22nd July 2022 together with a proposed mode of distribution. He avers in the said further affidavit that there was dire need for the estate to carry out a new survey exercise and upon consultation and agreement of all the beneficiaries the same was allowed to enable him as the co-administrator determine and establish the real and actual boundaries on the ground. He averred that the survey exercise was conducted on February 27, 2023 by a County Surveyor Bungoma County on the deceased's estate L.R No. E. Bukusu/W.Sang'alo/352 and a report was generated. According



to the surveyor's report and the map annexed to the measurements to the parcels of land as listed in the proposed distribution were altered, with some increasing in size while others being reduced due to new access roads created thus necessitating him to file an amended proposed mode of distribution. He further averred that the beneficiaries were satisfied with the survey exercise, the surveyor's report and the amended proposed mode of distribution.

11. The Applicant herein simply made allegations and did not proceed to prove the same to the court as per the dictates of section 107 of the *Evidence Act*. This simply means that the Respondent is dealing with a difficult co-administrator who is clearly not on the loop on the current happenings with regard to the estate of the deceased. It is clear that the Applicant being a co-administrator to the Respondent is actually rocking the boat from within and thus creating delay in the final distribution of the estate. It would appear to me that the surveyor's report has stirred a hornet's nest and it has made the Applicant uncomfortable and now wants to throw a spanner in the works. It is rather curious that the Applicant being one of the administrators could opt to seek to have the grant revoked and still seek to be retained after elbowing his fellow administrator. Both of them were under obligation to work together in unison for the benefit of the estate. It is also clear to me that the Applicant herein filed the present application with a view to checkmating the Respondent and to forestall the Respondent's application dated July 22, 2022 for rectification of grant following the survey report. It is thus obvious that the Applicant's application herein has been filed in bad faith.
12. All these in totality demonstrates that the Applicant has failed to establish that indeed there is need for this Court to revoke the grant issued to him and the Respondent.
13. The upshot of the foregoing observations is that the application dated May 8, 2023 is devoid of merit. The same is dismissed with no order as to costs. The Respondent is hereby directed to set his application dated July 22, 2022 down for hearing and disposal as a matter of priority.

DATED AND DELIVERED AT BUNGOMA THIS 22ND DAY OF FEBRUARY 2024.

D.KEMEI

JUDGE

In the presence of :

Simiyu for 1st Administrator/Applicant

Angima for 2nd Administrator/Respondent

Kizito Court Assistant

