



REPUBLIC OF KENYA



In re Estate of Crescent Were Hezron (Deceased) (Succession Cause 53 of 2003) [2024] KEHC 2988 (KLR) (22 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2988 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 53 OF 2003
WM MUSYOKA, J
MARCH 22, 2024**

IN THE MATTER OF THE ESTATE OF CRESCENT WERE HEZRON (DECEASED)

RULING

1. The Motion, dated 26th October 2023, seeks the setting aside of orders allegedly made on 17th December 2021, which revoked the grant made to the administratrix. The applicant is the ex-administratrix, whose grant was revoked. She argues that Mary Kubende Were had filed a summons for revocation of grant, which she had not prosecuted.
2. There is a reply by Mary Kubende Were. She avers that the date of 14th December 2021 was given in open Court on 22nd September 2021, in the presence of both parties. Mention was to confirm whether the parties had agreed on distribution. None of them attended court, on the due date, hence the revocation. She states that the revocation was indication that the administrator was not keen on her duties as such. She argues that the ex-administratrix should have appealed the order of 14th December 2021.
3. The ex-administratrix then filed a further affidavit, to say that she was unwell on 14th December 2021, and that was why she did not attend court.
4. The application was argued orally, on 30th January 2024.
5. There is quite some historical background to the orders of 14th December 2021. Kiarie J had delivered a ruling on 11th November 2020, where the ex-administratrix, then in office, was directed to file a proposed distribution of the estate, within 60 days, in line with what the Judge had discussed in that ruling. There was a further order that in default of filing an application on distribution, within 60 days, the grant would automatically be revoked. The matter was then mentioned on 10th March 2021, before Karanjah J, the ex-administratrix did not attend the court. It was placed before Karanjah J again on 14th April 2021, none of the parties attended court. It was mentioned again on 15th June 2021, the court was informed that the parties had not agreed on distribution. Karanjah J commented that no summons for confirmation of grant had been filed, despite the orders of 11th November 2020, which meant that the grant had been revoked, and there was nothing to confirm. The matter was again mentioned on



29th September 2021, both sides were represented by their Advocates. Karanjah J, again, pointed out that the orders of 11th November 2020 had not been complied with, and that that had paved way for revocation of the grant. The Judge threw them a lifeline, by asking them to agree on distribution, and directed them to appear before him on 14th December 2021. On 14th December 2021, the parties were not in court, hence the order to revoke the grant.

6. Kiarie J's order of 11th November 2020 gave the ex-administratrix 60 days to file a summons for confirmation of grant. That is how proposals on distribution are placed before a court, according to section 71 of the *Law of Succession Act*, Cap 160, Laws of Kenya, and Rule 40 of the *Probate and Administration Rules*. There was a default clause, that should that not be done within 60 days, the grant would stand revoked. 60 days, from 11th November 2020, expired on or about 11th January 2021. By 11th January 2021, no summons for confirmation of grant had been filed, hence the default clause kicked in, and the grant stood revoked as at that date. Karanjah J alluded to that on 16th May 2021 and 29th September 2021, but the parties did not take the Judge seriously. That grant ceased to exist on 11th January 2021, and the order of 14th December 2021 merely confirmed that.
7. This is a case where the ex-administratrix did not appear to appreciate what she should have been doing. She either did not understand the process, or the orders that the court had made, or she did not care. Karanjah J bent over backwards, several times, to accommodate her, but to no avail. Whether she was unwell on 14th December 2021 or not is of little relevance, as her grant was as good as useless and inoperative as at 11th January 2021, going by the orders of Kiarie J of 11th November 2020.
8. The other thing is that the revocation order was made on 14th December 2021, the application to revise that order was filed on 26th October 2023, some 1 year 10 months later. It was filed after inordinate delay, which Mary Musiko Were has not explained. If she is keen to administer the estate, why wait for nearly 2 years before coming to court to ask it to re-think its orders of 14th December 2021?
9. There can be no merit in the application, dated 26th October 2023, and I hereby dismiss the same, with the contempt it deserves. The grant has been revoked. There is no administrator in office. Fresh administrators ought to be appointed. The matter shall be mentioned, for that purpose, on a date that I shall appoint at the delivery of this ruling.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUSIA THIS 22ND DAY OF MARCH 2024

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Mary Musiko Were, the applicant in person.

Advocates

Ms. Achala, instructed by Abalo & Company, Advocates for Mary Kubende Were.

