



REPUBLIC OF KENYA



In re Estate of the Late Kibowen Komen (Deceased) (Succession Cause 500 of 1997) [2024] KEHC 3339 (KLR) (20 March 2024) (Ruling)

Neutral citation: [2024] KEHC 3339 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 500 OF 1997
SM MOHOCHI, J
MARCH 20, 2024**

IN THE MATTER OF THE ESTATE OF THE LATE KIBOWEN KOMEN (DECEASED)

BETWEEN

**GRACE SAMSON KOMEN 1ST APPLICANT
MICHAEL KIGEN KOMEN KOMEN 2ND APPLICANT
MOHAMED TANUI KOMEN 3RD APPLICANT**

AND

**PETER KIPRUTO KOMEN 1ST RESPONDENT
ABDULGHANI MOHAMED KOMEN 2ND RESPONDENT
ABRULKADIR MOHAMMED 3RD RESPONDENT
EVAN KIPTUI KOMEN 4TH RESPONDENT**

RULING

1. Before Court for determination is the Chamber Summon Application dated 16th May, 2023 and filed on 17th May, 2023. The Summons was brought under Section 51, 52 and 76 of the [Law of Succession Act](#) and Rules 7(1) (e), 26 (1) and (2) and Rules 40 (8), 44 (1) and 73 of the [Probate and Administration Rules](#) seeking the following orders.
 - i. Spent
 - ii. Spent
 - iii. Spent



- iv. That the General Fraud Unit of the Directorate of Criminal Investigations (DCI) be ordered to conduct forensic examination to unearth the identities and status of Sote Komen and Stephen Kiptui Komen and file a report with the Court.
 - v. That the Court be pleased to order the Land Fraud Unit of the Directorate of Criminal Investigations (DCI) to investigate and ascertain the current status of land parcel No. LR No. 10684 Njoro and file a report with the Honourable Court.
 - vi. That the amended Grant of Letters of Administration intestate issued on 30th May, 2022 and confirmed on 30th May, 2022 and the mode of distribution therein be revoked and or annulled forthwith and a new one be issued to the Applicants herein.
 - vii. That the distribution of the estate of the deceased among beneficiaries as indicated in the certificate of confirmation of Grant be varied accordingly upon grant of prayer 6 above to reflect the exact position.
 - viii. That the costs of the Application be in the cause.
2. The Summons is on the grounds set out in the Application and supported by an Affidavit of Grace Samson Komen, sworn on 16th May, 2023. She deposed that, she is the widow of the deceased and that, the amended Grant of Letters of Administration and Certificate of Confirmation of Grant were issued to the Respondents on 30th May, 2022 in the absence of other beneficiaries. She stated that the identities of the beneficiaries and administrators were not verified.
 3. That there was an error on the face of the Certificate of the confirmation of Grant since it did not indicate when the grant was issued.
 4. The Grant and the Certificate of Grant have included properties not belonging to the deceased, Keringet Farm 100 acres, Shares in Nairobi Stock Exchange and KAB 556 Massey Ferguson. Further that motor vehicle registration numbers KLZ 213b- Peugeot and KQZ 227 Fiat no longer exists and therefore no longer available for distribution.
 5. That the Certificate is saddled with errors, and misrepresentation of facts, as the beneficiary listed as Sote Komen alias Sote Chelagat ought not to be included as a beneficiary since she was not a wife of the deceased as she is married elsewhere. (Annex GSK2 a, b, c & d). That her link to the deceased is through Stephen Kiptui Komen (deceased) whom she sired with the deceased.
 6. That the 4th Respondent, the grandson to Sote Chelagat survived his father Stephen Kiptui Komen and has intermeddled with the estate and sold parts of land parcel registration number LR No. 10684, thus he is untrustworthy as an independent administrator. That the 1st Respondent being son of the late William Kiprop Komen has already sold property Plot Zone 58 Kabarnet Municipality and new numbers issued to purchasers prompting its rightful co-beneficiary (the 2nd Applicant) with his deceased father to lodge cautions to protect his interests. (Annex GSK 3 a, b, c & d).
 7. She added that, it would amount to double inheritance and disadvantageous for the other beneficiaries for the 1st Respondent to benefit from the estate as enumerated in the Certificate of Confirmation of Grant whereas his father had been factored in as a beneficiary. That it would be prejudicial for administrator to apportion themselves 66 acres of land from the estate whereas they had been awarded their respective shares of the estate.



8. That it would be unfair for the 2nd and 3rd Respondent to be appointed as administrators whereas their biological father Mohammed Kiptanui Komen (the 3rd Applicant) is still alive. That it is unfair for the estate to be administered by 2 sons of the 3rd Applicant.
9. She added that some of the properties listed in the Certificate of Confirmation of Grant had already been transferred by the deceased and hence do not form part of the estate of the deceased.
10. That some of the properties listed for distribution have been inflated in particular L.R. No. 10013/6 180 acres does not disclose the accurate position since the certificate of title states that the same is 40.47 hectares which is about 100 acres. (Annex GSK4)
11. That it was clear that the administrators clearly concealed the true list of assets and fraudulently obtained the Grant and subsequent confirmation without consent from the rest of the beneficiaries and the management is likely to lead to wastage and depletion if the Honourable Court does not intervene.
12. The 2nd and 3rd Applicants also supported the Application and swore affidavits sworn on 16th May, 2022.
13. The 1st and 2nd Respondent filed a joint response vide Replying Affidavit sworn on 4th March, 2014 opposing the application for being devoid of merit. The Respondents deponed that their appointment was vide a Court Order and the distribution was also vide a Court judgment and each beneficiary is aware of what has been allocated to them. Those orders have not been varied.
14. That the allegation that, the 1st Respondent had sold off Plot No. Zone 58 Kabarnet Municipality being sold is uncalled for since it was an inheritance and can be dealt with by the 1st Respondent as he pleases.
15. That, it was the 1st Applicant who is frustrating the process as she has refused to hand over property Keringet Farm 100 acres, Shares in Nairobi Stock Exchange and KAB 556 Massey Ferguson, KLZ 213-Peugeot ad KQZ 227 Fiat and shares at East African Breweries.
16. The 3rd Respondent filed ground of opposition on 26th May, 2023 stating that there were no sufficient grounds to warrant revocation of the grant. That the Applicant want to derail the process. That the Court is functus officio on matters of distribution of the estate. that the 3rd Respondent was being maintained by the deceased and his claim to the estate is 100 acres. That the Applicants are attempting to re-open the case through the back door.
17. He added that, this is not a matter of the estate of the 3rd Respondent but that of the late Kibowen Komen. That the Applicants have been unwell to see the end of the process hence their numerous applications.
18. The 4th Respondent in opposing the Application filed a Replying Affidavit sworn and filed on 29th May, 2023. He deponed and relied on his affidavit sworn and filed on 1st August, 2022
 - i. That he was appointed as administrator together with his co-Respondents on 30th May, 2022.
 - ii. That prior to that appointment, the 1st Applicant was proposed as an administrator in the Application dated 12th August 2021.
 - iii. That she was duly represented in those proceedings by the firm of Sheth Wathigo Advocates
 - iv. That it was not true that the Court issued orders without the Applicant's knowledge.



- v. That the Court was duly informed of the identity of every administrator.
 - vi. That the other 3 administrators are beneficiaries of the estate as per the judgement of the Court.
 - vii. That there was no error at all as claimed.
 - viii. That the Court replaced the deceased administrator on 30th May, 2022 but the Grant remained as confirmed by Court on 30th July, 2010.
 - ix. That all assets form part of the estate of the deceased as per the judgment of 30th July, 2010
 - x. That the Applicant was an administrator and she should explain what happened to the assets in her affidavit.
 - xi. That the issue of whether or not Sote Komen was acknowledged as a widow was litigated upon and the same cannot be opened for fresh litigation.
 - xii. That the Applicant affirmed that Sote Komen was a widow of the deceased in that petition
 - xiii. That the Applicant is guilty of perjury and appropriate legal action should be taken against her
 - xiv. That he has not intermeddled with the estate or sold any portion as claimed.
 - xv. That LR 10684 was subdivided under the supervision of the Court and the Late Sote Komen and Stephen Kiptui Kibowen were given their share of 150 acres of which they took possession.
 - xvi. That they had not apportioned 66 acres of LR No. 106684 but the same was set aside for a specific purpose.
 - xvii. He further relied on his affidavit sworn and filed on 14th October, 2021 and the affidavit sworn and filed on 4th November, 2021.
19. He added that the 1st Applicant, James Bowen and Emanuel Kibet swore affidavits dated 12th August 2021 and stated that the family of the deceased had met and agreed that they should be appointed as administrators in place of Stephen Kiptui Kibowen. That the Court was not satisfied that they deserved appointment as administrators.
20. He stated that the instant application is an appeal of the Orders issued by the Court on 30th May, 2022. That the Grant was Confirmed pursuant to the judgment of the Court on 30th July 2010 and if there are errors on the Confirmed Grant the same can be corrected by an application for rectification of grant.
21. He added that the 3rd Respondent sought to be relieved of his duties as an administrator due to ill health and cannot now seek reappointment as claimed by him. That the 1st Applicant is an estate intermeddler and is not suitable to serve as an administrator. That the 2nd Applicant has no known interests in the remainder of the estate but is now keen to be appointed as an administrator in order to frustrate the smooth conclusion of winding up of the estate.
22. That the 66 acres that in LR. 10684 were reserved for the purpose of paying just debts of the estate as per the judgement of Court and there is no reason shown to warrant revocation.

Submissions

23. The Applicants in their submissions dated 13th Dec 2023, submitted that, grand children cannot succeed their parents when they are still alive. According to the Applicants the 2nd and 3rd Respondent being children of the 3rd Applicant do not have locus to represent the estate and relied one state of



- Mwaura Makuro (deceased)* (2021) eKLR that the 4th Respondent is the son of the Stepen Kiptui (deceased) and the father was bequeathed his share directly by the deceased and thus does not have residual interest and relied on *Cleopa Amutula v Judith Were* (2015) eKLR.
24. That the Grant violated the provisions of Section 26(2) and (40) 8 of the *Law of Succession Act* in that their consent was never obtained. That it was unprocedural for the Respondent's to conceal the whole process *Christine Wangari Gichingi vs Elizabeth Wanjiru Evans & 11 others* (2014) and *re Estate of Jonyce Kanjiru Njiru (Deceased)* (2017) eKLR.
25. The 4th Respondent filed his submissions on 13th December, 2023 submitted that the Applicants have not met the requirements under the Law for the Revocation of Grant. He contended that the only visible complaint that the Applicants have is that they stood higher in priority in obtaining the grant.
26. The Submissions of the 1st, 2nd and 3rd Respondents are not on record.

Analysis and Determination

27. I have carefully considered the summons, the affidavits of all parties concerned and the submissions. The main issue for determination is whether the Application has met the test of time to grant the orders sought.
28. Section 76 of the *Law of Succession Act* provides 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.”

29. The Court in *re Estate of Prisca Ong'ayo Nande* (Deceased) [2020] eKLR expounded Section 76 and 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.”

30. A brief background is that; the Deceased died intestate on 15th February 1997. Pursuant to the judgment of the Court a Certificate of Confirmation of Grant was issued on 30th July, 2020 to William Kiprop Komen, Racheal Komen, Mohamed Komen and Magadaline Komen pursuant to the consent dated 10th February, 2006. William Kiprop Komen and Racheal Komen resigned and Magdaline Komen passed on. The Grant became inoperative.
31. On 31st July, 2018 Stephen Kiptui was appointed as an administrator but unfortunately passed on in 2021 and again the Grant became inoperative. Vide a Ruling dated 30th May, 2022 the Respondent's were appointed as administrators after the beneficiaries were directed to front their preferred candidates as administrator.
32. The appointment of the current administrators was after the beneficiaries through their advocates on record then agreed for the Respondents to be the beneficiaries.
33. The 1st Applicant is the daughter in law of the deceased, she is the wife to Samson Komen (deceased). The 2nd and 3rd Applicants are the biological children of the deceased.
34. The Applicants have intimated that Sote Komen was not a wife to the deceased and should not have been included as a beneficiary. In the judgement of Koome J dated 30th July, 2010, Sote Komen was considered a wife to the deceased and as such had the right to the estate as a spouse. The Court therefore allocated 150 acres Sote Komen to hold in trust for her children. The Appeal against that decision was



dismissed. Those orders declaring or recognizing Sote Komen as wife to the deceased have not been varied or set aside. Therefore, for the purpose of this suit and the estate of the deceased, Sote Komen is not a stranger to the estate. Prayer No 4 can therefore not issue.

35. The Applicants have also accused the Respondents of allocating themselves 66 acres to themselves. In the said judgment dated 30th July, 2010, 66 acres was hived off from LR. No. 106684 to the Administrators for sale for purposes of defraying the estate liabilities. The allegation that the Respondents allocated themselves 66 acres and that they would be benefiting more than the other beneficiaries does not hold water. The reason why the 66 acres are in the custody of the administrators was explained and it is not true that the administrators allocated themselves the 66 acres. Why haven't the 66 acres been an issue with the other administrators and an issue now? The 66 acres were to settle liabilities of the estate and in essence do not belong to the Respondents as alleged. The Applicants have not also demonstrated how the Respondents have sold off the 66 acres as alleged. There are allegations of the same being sold off to third parties and the same being registered in the names of the third parties. Proof of registration has not been vailed.
36. Just to remind ourselves, in a probate and administration process the determination and settlement of liabilities is given priority over distribution and settlement of the estate to the beneficiaries who are only entitled to the Net Estate.
37. The 1st Applicant contended in her Appeal and throughout her numerous applications that the entire LR. No. 106684 should have been allocated to her. The 1st Applicant filed an Appeal in Civil Appeal 210 of 2013 which challenged the entire judgment of the Court and the same was dismissed.
38. There is also the allegation of the Grant and the Certificate of Confirmation of Grant having included properties that do not belong to the deceased that is Keringet Farm 100 acres, Shares in Nairobi Stock Exchange and KAB 556, Massey Ferguson. Further that motor vehicle registration numbers. KLZ 213- Peugeot and KQZ 227 Fiat no longer exists and therefore no longer available for distribution. Where are the registration documents for these vehicles and Keringet Farm? What of the 100 shares, what about them? It is not enough for the Applicant to put out claims without proof of the same. If the properties do not belong to the estate who do they belong to? The 1st Respondent argued that the 1st Applicant has refused to hand over the said properties frustrating the process of distribution. If in deed the said properties do not belong to the estate, the same should be demonstrated with tangible evidence.
39. The Applicants also suggested that some of the properties listed in the Certificate of Confirmation of Grant had already been transferred by the deceased and hence do not form part of the estate of the deceased. The Applicants have not demonstrated which properties they are talking about. It would have been better if the Applicants had identified the said properties and demonstrated how the properties should not form part of the estate. This argument is baseless.
40. There is a judgment of the Court that determine the mode of distribution. The Grant was confirmed based on the judgment. It was not the Respondents who moved Court and suggested the mode of distribution. The issue of consent of the other beneficiaries is lacking in form.
41. The Court agrees with the 4th Respondent, that the main argument that the Applicants have is that they stood higher in priority in obtaining the Grant and not one of the grounds for seeking revocation of the Grant. At no point in the 2010 judgment does it say that grand children of the deceased are inheriting from the estate.
42. The allegation that 2 sons of the 3rd Applicant cannot be administrators does not hold water. The only objection to the appointment of the at that time was from the widow of the deceased Rachel Komen who felt as a widow held higher priority. The current administrators were appointed by an order of the



Court dated 30th May, 2022 by Matheka J. The appointments were made after proposals were fronted to the Court. These orders have not been varied or set aside.

43. There was also the contention that, there was an error on the face of the Certificate of the confirmation of Grant since it did not indicate when the grant was issued. Further the Applicants contended that L.R. No. 10013/6 does not disclose the accurate position since the certificate of title states that the same is 40.47 hectares which is about 100 acres and not 180 acres. This in the Court's opinion do not warrant revocation of Grant at best amendments by an application for rectification can be done to reflect the correct position.
44. In *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa* Succession Cause No. 158 of 2000 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.”
45. As pertains Order No. 5, the Applicant have not demonstrated why the Court should order an investigation from the Directorate of Criminal Investigations. This Court will not order a government agency to employ state funds to investigate land fraud without being afforded proper evidence of the alleged fraud. This order can also not issue.
46. The Moral compass to the family of the late Kibowen Komen is, to let him “Rest in Peace” by concluding the probate and administration. All of us are not immortal and at an individualistic thinking we all wish to be allowed to rest in peace after we leave this world.
47. The upshot of the above is that, the Court finds the Summons dated 16th May, 2022 to be devoid of merit and the same is accordingly dismissed.
48. There shall be no orders as to costs.

It is so Ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 20TH DAY OF MARCH 2024.

MOHOCHI S. M.

JUDGE

