



**In re Estate of Stansilaus Chacha David (Deceased) (Succession Cause 89 of 2015) [2024] KEHC 2990 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2990 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
SUCCESSION CAUSE 89 OF 2015  
RPV WENDOH, J  
MARCH 19, 2024**

**IN THE MATTER OF THE ESTATE OF STANSILAUS CHACHA DAVID - (DECEASED)**

**BETWEEN**

**DAVID MWITA ..... 1<sup>ST</sup> APPLICANT**

**MWITA CHACHA DAVID ..... 2<sup>ND</sup> APPLICANT**

**AND**

**PAUL MAGUTU CHACHA ..... RESPONDENT**

**RULING**

1. This cause relates to the Estate of Stansilaus Chacha David - (Deceased) who died intestate on 7/4/1990. Paul Magutu Chacha (Respondent) petitioned this court for grant of letters of administration which were issued to him on 24/6/2015. The Summons for Revocation dated 1/9/2023 was filed by David Mwita and Mwita Chacha David (the applicants). The applicants seek the following orders:-
  - a. That grant of letters administration issued to the respondent by the Judge on 24/6/2015 be revoked and/or annulled, because the respondent has used it to file a suit viz Migori ELC 99 of 2018 against the will of the applicants herein.
  - b. That there be an order of stay in respect to Migori CMC ELC No. 99 of 2018, Paul Magutu Chacha v Anne Weisiko Manga suing on behalf of Shadrack Rodgers Mwita, Land Registrar Kuria Sub - County & Attorney General, pending the hearing and determination of this Application.
2. The affidavit in support of the application was sworn and dated 1/9/2023 by David Mwita (the 2<sup>nd</sup> applicant) on behalf of the 1<sup>st</sup> applicant. The 2<sup>nd</sup> applicant deposed that the purported succession done by Paul Magutu (the respondent) and grant issued on 24/6/2015 should be revoked and nullified; that



- they are the sons of the deceased and they discovered the grant was issued when the suit Migori ELC No. 99 of 2018 (formerly Kisii ELC No. 4 of 2016) was filed; that the deceased had two wives Angelina Nyangi and Ann Gati Chacha; that succession was done without their consent; that Mary Wanjeline Chacha as per the death certificate dated 15/3/2014 separated from their father and left for Tanzania where the respondent has been; that their mother Ann Gati Chacha died on 23/8/2003 and not on 9/5/2002 and thus the attached death certificate is fraudulent; that the Chief's letters of 27/10/2015 and 12/2/2015 were obtained without their consent; that it is proper that the grant be revoked to allow their involvement in Migori ELC No. 99 of 2018 as they are witnesses therein.
3. The application was opposed. The respondent filed a replying affidavit dated 11/10/2023 and deposed that the applicants were involved in the issuance of the grant and they gave their respective consents; that the prayer for stay in Migori ELC NO. 99 of 2018 is an afterthought because the suit was filed 6 years ago; that the instant application should be dismissed with costs.
  4. The 2<sup>nd</sup> applicant filed a supplementary affidavit dated 14/11/2023 and stated that the respondent cannot use an illegally obtained grant to their detriment; that the respondent used their mother's name to obtain a grant without their involvement; that there was no consent sought from them prior to these succession proceedings and the fact that there exists two different death certificates, is reason enough to annul the grant.
  5. The summons proceeded by way of written submissions and both parties filed. I have read and considered both parties' respective submissions together with the application, response thereto and the supplementary affidavit.
  6. The guiding principles in considering an application for revocation and/or annulment of a grant are found in Section 76 of the *Law of Succession Act*. They are; where the process of obtaining the grant was defective in substance, the grant was obtained fraudulently or through concealment of material facts, the grant was obtained by untrue allegation of fact essential in a point of law to justify the grant notwithstanding that the same was made ignorantly and that the person to whom the grant was made has failed to apply for confirmation within a year, to proceed diligently with the administration of the estate, he has failed to produce in court accounts and inventory as and when needed; and lastly where the grant has become useless and inoperative.
  7. The main grievance of the applicants is that there was material concealment of facts. It is common ground that the applicants and the respondent are both children of the deceased albeit from different mothers. The applicants state that their mother is Ann Ghati Chacha (Deceased) while the respondent's mother is Mary Wanjeline Chacha (Deceased) as deposed by the applicants which has not been denied by the respondent. The applicants state that a fake death certificate belonging to their mother was used in the succession process, the chief's letter dated 27/10/2015 and 12/2/2015 and the whole succession process was done without their consent.
  8. The estate of interest in these proceedings is that one of Stanislav Chacha David and not any other person. There is no complaint that the death certificate of the deceased herein is a fraud. I have considered the application dated 11/3/2015 which was the petition for letters of administration. The consent to making grant of administration intestate to persons of equal or lesser priority dated 6/3/2015, shows that the applicants signed and gave the respondent consent to proceed with the filing of letters of administration.
  9. The respondent then filed an application for summons for confirmation of grant dated 29/8/2016. On the consent to confirmation of grant, the 2<sup>nd</sup> applicant gave his consent.



10. The application for confirmation of the grant has never been heard by this court. The application came up before this court on 7/11/2016, 5/12/2016, 20/12/2016, 19/1/2017 and 15/2/2017. On all those occasions, the summons for confirmation did not proceed since the applicants were never served.
11. On 15/3/2017, when the applicants appeared in court, the court noted that Bugumbe/Mabera/312 (the suit property) subject of the deceased's estate, was registered in the name of Shadrack Roger Mwita Manga. This court also noted that there was a pending case in the Migori ELC Court No. 99 of 2018 in regard to the suit property. The court directed that the application for summons for the confirmation of grant be stood over generally pending the outcome of the Migori ELC Court No. 99 of 2018.
12. From the foregone, there is no suggestion that there was concealment of facts when the respondent took out letters of administration. The applicants were well informed and gave their respective consents.
13. On the prayer for stay, the pleadings which have been annexed to the application, are those which were filed before the Kisii ELC Court. The suit was transferred to Migori Law Courts. It is not clear whether the pleadings are now being handled before the Chief Magistrate's Court or the Migori ELC Court. I have taken the liberty to find out from the e-filing system on the "Public Information Kiosk" portal. The same is before the Chief Magistrate's Court.
14. I have perused the annexed pleadings. The respondent filed the suit against Shadrack Roger Mwita Manga the person registered as the owner of the suit property subject of the estate of the deceased herein. The issue before the ELC Court concerns alleged trespass and encroachment of land which this court has no jurisdiction to deal with. It would do the applicants no good to stop the proceedings in the ELC Court until the determination of the issue of the title of the suit property which is said to be part of the estate of the deceased is dealt with. This court will still require that the issue of title of the suit property be determined with finality before these succession proceedings resume. It seems to me, that the respondent is actually trying to protect the interests of the estate of the deceased as the named administrator. I see no malicious intent on the part of the respondent.
15. It is the finding of this court that the application falls short of the test in Section 76 of the *Law of Succession Act*. There were no concealment of facts and revoking the grant at this stage when there is an active case concerning the suit property is not in the best interest of the estate of the deceased. Instead of the grant being revoked, the applicants can file a protest if they do not agree with the proposed mode of distribution by the applicant.
16. I find that the summons for revocation of grant is unmerited. It is hereby dismissed with costs to the respondent.

**DATED, DELIVERED AND SIGNED AT MIGORI THIS 19<sup>TH</sup> DAY OF MARCH, 2024.**

**R. WENDOH**

**JUDGE**

Ruling delivered in presence of;-

No appearance for the Applicants.

No appearance for the Respondent.

Emma & Phelix - Court Assistants.

