



REPUBLIC OF KENYA



**Chesekweli & another v Sichangi (Succession Cause 125 of 2014)
[2024] KEHC 7140 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 7140 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 125 OF 2014
REA OUGO, J
APRIL 26, 2024**

BETWEEN

MARGARET NAGILA CHESEKWELI 1ST PETITIONER

THOMAS WEKESA LUMBUKU 2ND PETITIONER

AND

ROBERT WEYA SICHANGI OBJECTOR

RULING

1. This succession cause relates to the estate of Jesekwel Sichangi alias Chesekweli Sichangi. The deceased only asset was parcel no. Bokoli/Chwele/259 measuring 1.15 Ha. According to the petitioners, the deceased was survived by Norah Chesekwel – widow (deceased) and the two petitioners Margaret Nagila Cheseke (daughter) and Thomas Wekesa Lumbuku (son). On 21/8/2014 they filed a summons for confirmation of the grant and proposed that Margaret and Thomas should get 0.96 Ha of the land and a purchaser Newton Wekesa Wangusi get 0.19 Ha. A certificate of Confirmation of grant was issued on 10th December 2014.
2. The application before the court is the Summons of Revocation of Grant dated 15th February 2022 seeking the following orders:
 1. Spent
 2. Spent
 3. That this Honourable Court issues an injunction stopping any dealings respecting all parcels of land emanating from land parcel no. Bokoli/Chwele/259 including but not limited to land parcel nos. Bokoli/Chwele/3319 and 3320 and all other parcels derived from these, interpartes (sic) pending the hearing and determination of this succession cause.



4. That the grant of temporary letters of administration to the subject estate issued on 27/05/2014, rectified on 12/11/2013 and confirmed on 9/12/2014 be revoked so as the same reverts to land parcel number Bokoli/Chwele/259- in the names of the deceased namely Jesekwel Sichangi alias Chesekweli Sichangi.
5. That the Director of Criminal Investigations (DCI) Bungoma Central be ordered to investigate the Petitioners'/Administrators' on any crime that may have been committed in the transfers of parcels of land emanating from Land Parcel No. Bokoli/Chwele/259 including but not limited to land parcel numbers Bokoli/Chwele/3319 and 3320 and the Deputy Registrar to follow up on the progress of investigations to its logical conclusion.
3. The application is on the grounds that the grant confirmed on 9/12/2014 was obtained fraudulently by making a false statement and/or concealment of a fact material facts to this succession cause. That the grant was obtained using untrue allegations and that it is in the interest of justice that that said grant be revoked. In the supporting affidavit, it was averred that the objector is the grandson of the deceased and his father was Aggrey Sichangi Chesekweli.
4. He avers that his father, aunt and grandmother were not included in these proceedings as beneficiaries. The petitioner did not also inform the court of Succession Cause No. 22 of 2018 which had been commenced by the late Aggrey Sichangi Chesekweli. It was advanced that Thomas Wekesa Lumbuku and Newton Wekesa Wambusi were strangers to the deceased's estate and therefore not entitled to benefit from the estate. The applicant also filed a supplementary affidavit dated 11/1/2023.
5. Margaret Nagila Chesek opposed the application and filed a replying affidavit dated 15/3/2022. She avers that she only has one surviving sibling, Hellen Nafula Chesekweli. The process leading to the grant of representation was done openly and they consulted all beneficiaries including Judith Namalwa Sichangi (deceased) who was the wife to her brother Aggrey Sichangi Chesekweli. She advanced that Aggrey Sichangi Chesekweli sold a large portion of the estate to different people before he died and that after confirmation of the grant she embarked on transferring portions of land sold by Aggrey Sichangi Chesekweli. She advanced that her late brother sold land to Gabriel Mayeku, Major Gabriel Wakasiaka, Geoffrey Wekesa, Winston Wanyama, Ben Elisha Chonge, Christopher Namukhasi, Judith Mutekhele, Sussy Nafula Wanjala, Joseph Soita and Catherine Nangata.
6. She averred that the portion that Aggrey Sichangi Chesekweli sold was larger than the portion he would have ordinarily been entitled to. She avers that the 2nd petitioner is her cousin and was appointed by the clan as an administrator. They sold 0.19 Ha to Newton Wekesa Wangui to help them meet the cost of succession. She avers that the application had been brought too late in the day with bad faith.
7. At the hearing of the application, Robert Weyao Sichangi (Pw1) testified that Margaret Nagila Chesek is the sister to her father, Aggrey Chesekweli. He recalled that his father died when he was 10 years old and did not know of any succession cause. He told the court that he has been thrown out by the administrators, no longer has a shamba and is presently residing in a rental property in Chwele town. In his witness statement he testified that the 2nd petitioner is also known as Festo Wekesa and is a distant clan member who has since died.
8. Benah Musicha Murunga testified as Pw2. He testified that he was the chairman of the Babulo clan and the deceased was his cousin. He testified that the deceased only had one son, Aggrey Sichangi who died on 30/06/2008. Aggrey Sichangi had 2 boys and 2 girls, the objector is one of his sons. In 2014, Joan Nekoye (wife to Aggrey Sichangi) and the objector told him they had been left out as beneficiaries. Pw2 conducted a search of parcel 259 and found that it has been vastly subdivided.



9. Richard Mauka (Pw3) testified that he is the secretary of the Babulo clan. He adopted his witness statement dated 11/1/2023. He testified that the deceased was succeeded by Aggrey Sichangi who was his only son. The deceased's land is currently occupied by third parties who misled the area chief that they were the beneficiaries of the estate. On cross-examination, he testified that the objector was the son of Aggrey Sichangi.
10. Newton Wekesa Wangusi (Dw1) adopted his affidavit sworn on 30/7/2022 as his evidence in chief. He testified that the grant herein was confirmed on 12/11/2013 and he subsequently bought land from the administrators on 8/1/2015. He advanced that no orders are stopping him from utilizing land parcel no. Bokoli/Chwele/3375 and he has no immediate plans to develop the same. On cross-examination, he testified that the surviving son and daughter came to him for financial help to start the administration process. He bought land from the administrators. He gave them money before they started the process. To safeguard the money he gave them, he had them sign the agreement. He testified that 30 purchasers had developed the parcels which they bought.
11. Margaret Nangila Chesekweli (Dw2) adopted her statement as her evidence in chief. She testified that the deceased had three children, Margaret Nangila Chesekweli, Aggrey Sichangi Chesekweli and Helen Nafula Chesekweli. Thomas Wekesa Lumbuku was not a beneficiary of the deceased and his description as a son of the deceased was a mistake. Her later brother Aggrey Sichangi Chesekweli sold a large portion of the estate to third parties before he died. After the grant was confirmed Dw1 embarked on transferring the portions sold by Aggrey Sichangi Chesekweli to:
 1. Christopher Wekesa - Parcel No. Bokoli/Chwele/3399
 2. Ben Lukorito Chonge - Parcel No. Bokoli/Chwele/3426
 3. Judith Masaba Wakhungu- Parcel No. Bokoli/Chwele/3427
 4. George Wanyonyi Wekesa- Parcel No. Bokoli/Chwele/3636
 5. Aggret Khisa Kitui- Parcel No. Bokoli/Chwele/3643
 6. Vitencia Wangila Chonge- Parcel No. Bokoli/Chwele/3819
 7. Joshua Natembea Mayeku- Parcel No. Bokoli/Chwele/3916
 8. Gabriel Juma Simiyu Wakasyaka- Parcel No. Bokoli/Chwele/3917
12. The objector in his submissions identified the following issues for the determination by the court:
 - a. Whether or not the proceedings to obtain the grant were defective in substance
 - b. Whether or not the grant was obtained fraudulently by the making of false statement or by the concealment from the court something material to the case.
 - c. Whether or not 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. Who should bear the cost of this application
13. The objector submits that the proceedings in Sirisia P&A No 22 of 2018 were not produced in court yet the proceedings touch on the same estate. They submit that there was concealment of something material and/or the making of a false statement that led to the issuance of the grant. The objector was never identified as one of the beneficiaries (grandson to the deceased) yet he is a beneficiary. He relied



on the case of the *Estate of Katana Vuko Wale v Hamisi Katana Vuko* where the court addressed itself on the issue of revocation of grant. They urged the court to find their application as merited.

14. The petitioners in their submissions have questioned whether the appellant was ‘an interested party’ capable of bringing this instant application. They submit that the objector has not availed any document to show that he was the son of Aggrey Sichangi nor did he call his mother to testify as the petitioners told the court that Aggrey Sichangi was married to one Judith Namalwa Sichangi. They argue that a letter of administration ad litem is not proof of paternity. The applicant has failed to prove that he had an interest in the estate of the deceased.
15. They submit that nothing before the court suggests that the petitioners withheld crucial material from the court or obtained the grant by misrepresentation of facts. Evidence of the sale agreement showed that the proceeds of the sale were shared between the 1st petitioner, Hellen Chesekweli and the widow of Aggrey Sichangi. The 2nd petitioner did not benefit from the proceeds of the estate despite being described as a son. She contends that revoking the grant at this stage, 10 years after it has been confirmed will not be reasonable as it will affect several innocent parties.

Analysis And Determination

16. I have considered the evidence and the submissions by the parties. First, it is irregular for two causes to be filed over the estate of one deceased person. In this case, P&A No.125 of 2022 was filed by Margaret Nangila Chesekweli and Thomas Wekesa Lumbuku while Sirisia P&A No. 22 of 2018 formerly P&A No. 17 of 2008 was filed by his son Aggrey Sichangi Chesekweli. Aggrey Sichangi Chesekweli died before the grant was confirmed in Sirisia P&A No. 22 of 2018 formerly P&A No. 17 of 2008. However, for good order, we cannot have two succession causes over the same estate and as a result Sirisia P&A No. 22 of 2018 formerly P&A No. 17 of 2008 which was transferred to this court and shall be consolidated with P&A No.125 of 2014. P&A No.125 of 2014 shall be the leading file.
17. Having heard the parties, it is not in dispute that the deceased had the following children:
 - a. Margaret Nangila Chesekweli
 - b. Aggrey Sichangi Chesekweli
 - c. Helen Nafula Chesekweli
18. It is also not in dispute that Thomas Wekesa Lumbuku is not a beneficiary of the deceased. However, the petitioners in their petition and affidavit in support of the petition described him as the deceased’s son. The real beneficiaries of the deceased were therefore left out.
19. The objector claims to be the son of Aggrey Sichangi Chesekweli and has obtained a limited grant of letters of administration ad litem for his estate. He therefore has locus in this court. The issue of whether he is a son of Aggrey Sichangi Chesekweli will be determined in the succession cause of the said Aggrey Sichangi Chesekweli. Similarly, all the beneficiaries of Aggrey Sichangi Chesekweli will be identified in a separate cause.
20. Therefore, the only issue before the court is whether the objector has proved a case for revocation of the grant. The deceased’s only asset was parcel no. Bokoli/Chwele/259 measuring 1.15 Ha. Interestingly, Dw2 instead of distributing the same to the deceased’s beneficiaries, has subdivided the same to third parties (as listed in paragraph 10). She argues that the transfers to those parties were on the basis that Aggrey Sichangi sold the deceased property to them. Did Aggrey Sichangi have the power to dispose of



the deceased's immovable property before the confirmation of the grant? This issue was addressed by the court in *Re Estate of Mukhobi Namonya (Deceased)* [2020] eKLR where the court stated:

“26... As I have stated above, the fact of appointment as personal representative of the deceased vests the assets of the estate in the person so appointed, by virtue of section 79 of the Law of Succession Act. It is only then that the person so appointed, and upon whom the estate has vested under section 79, can exercise the powers that are set out in section 82 of the Law of Succession Act and incur the duties imposed by section 83 of the same Act.

27. What the above means is that any transaction that is entered into with regard to the assets before representation is obtained, be it selling or leasing or contracting in connection with the assets, would be unlawful, and the contracts entered into would be unenforceable for that reason. A grant-holder can bind the estate since the assets vest in them by virtue of section 79, and any contracts entered into with regard to estate assets would be enforceable. However, there is a restriction with respect to immovable assets. The proviso in section 82(b) (ii) of the Law of Succession Act is to the effect that immovable property is not to be sold before the grant has been confirmed. That would mean that where it becomes necessary to dispose of estate assets for whatever reason, the administrators have to have regard to that provision. It bars them from selling such property before confirmation. If the estate requires funds so urgently that it cannot wait for confirmation, then the prudent thing would be to move the court for leave to dispose of such property before confirmation for reasons that they should place before the court. Otherwise, any contracts that they would get into contrary to that proviso would leave them with contracts that they cannot enforce on account of their unlawfulness.”

21. According to section 82(b) (ii) of the *Law of Succession Act* immovable property can not be sold before the grant is confirmed. Therefore any purported between Agrrey Sichangi and any third party was unlawful and was contrary to section 82(b) (ii) of the *Law of Succession Act*. Similarly, the sale to Newton Wekesa Wangusi made *vide* the agreement dated 16/3/2014 for 0.19 Ha of the deceased's estate was unlawful and without leave of court. However, I note that the sale of 0.05 Ha made on 8/1/2015 was done after the confirmation of the grant and therefore lawful.

22. In the end, there is evidence that the petitioners did not disclose to the court all the beneficiaries of the deceased. The 2nd petitioner is not a beneficiary yet he was described in the petition as the deceased son which is incorrect. For the 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.”

23. Therefore, the objector has proved 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. The 2nd petitioner was not the deceased’s son and his actual son, Aggrey Sichangi Chesekweli, was not listed as a beneficiary.

24. The petitioners have also entertained unlawful transfers of the deceased’s immovable property contrary to section 82(b) (ii) of the Law of Succession Act. Therefore, there is a need to have the title revert to the deceased’s name. However, the evidence shows that Newton Wekesa Wangusi bought 0.05 Ha on 8/1/2015 from the petitioners after the grant was confirmed and in the circumstance, he shall be a liability to the estate in respect to the 0.05 Ha bought.

25. In the end, the grant issued to Margaret Nangila Chesekweli and Thomas Wekesa Lumbuku is hereby revoked, the certificate of confirmation the grant dated 10th December 2014 is therefore inoperative. A fresh grant shall be issued to Margaret Nangila Chesekweli And Robert Weya Sichangi as joint administrators of the deceased estate forthwith. The administrators shall apply to confirm the grant to be issued within 30 days from the date of this Ruling.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 26TH DAY OF APRIL 2024

R.E. OUGO

JUDGE

In the presence of:

Mr. Maloba -For the Petitioners

Mr. Owour -For the Objector

Wilkister - C/A

