



**In re Estate of Daniel Kiplagat Tuitoek (Deceased) (Probate & Administration
E006 of 2022) [2024] KEHC 4869 (KLR) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4869 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
PROBATE & ADMINISTRATION E006 OF 2022**

RB NGETICH, J

APRIL 25, 2024

N THE MATTER OF THE ESTATE OF DANIEL KIPLAGAT TUITOEK(DCD)

BETWEEN

ELISHA CHEPCHIENG KIPLAGAT 1ST APPLICANT

EMILY CHEPCHUMBA 2ND APPLICANT

AND

DECAMPOWER INVESTMENT LIMITED PROTESTOR

AND

RAEL SOKOME CHEPSERGON RESPONDENT

JUDGMENT

1. The 1st and 2nd Applicants filed summons for revocation of grant dated 28th August 2023 while the protestor filed affidavit of protest dated 14th September 2023 and amended protest dated 26th September 2023. I will determine both the summons for revocation and the protest.

Summons For Revokation By 1St And 2Nd Applicants

2. In application dated 28th August 2023, the 1st & 2nd applicants seeking the following orders:-
 - i. Stay of all dealings and or transactions involving the estate of the deceased pending the hearing and determination of this application
 - ii. The application issued to Rael Sokome Chesrgon on 22nd February 2023 be revoked or annulled.
 - iii. Any other relief and orders as it may deem fit to grant to protect and maintain the deceased's estate in interest of justice.



3. Grounds of the application are that the grant and confirmation thereof was obtained without the knowledge and or consent of the applicants being a daughter and son to the deceased respectively though in the supporting affidavit the 2nd applicant is wife to the deceased.
4. The application is supported by affidavit sworn by 2nd Applicant Elisha Kiplangat dated 28th August, 2023. In the affidavit, the 1st Applicant Elisha Kiplagat avers that he has the authority of the 2nd applicant to act on her behalf.
5. He avers that the issuance and confirmation of the grant is about to be done and the respondent bequeath to herself all the assets of the estate thereby disinheriting the applicants.
6. They aver that the deceased Daniel Kiplagat Tuitoek died on the 29th August, 2021. That the deceased died intestate and left the following surviving him:
 - a) Rael Sokome -wife
 - b) Grace Kabon(deceased)-wife
 - c) Emily Chepchumba -wife
 - d) Kibet Kiplagat (deceased) -son
 - e) Mary Kiplagat -daughter
 - f) Josphine Kiplagat-daughter
 - g) Nolah Kiplagat (deceased)- Daughter
 - h) Jemutai Kiplagat-daughter
 - i) Jane Kiplagat-daughter
 - j) Kiprop Kiplagat- Son
 - k) Kipyegon Kiplagat-son
 - l) Kibichii Kiplagat-son
 - m) Everlyne Kiplagat-daughter
 - n) Fredrick Kiplagat-son
 - o) Elisha Kiplagat-son
 - p) Emily Kiplagat-daughter
 - q) Chepletng Kiplagat-daughter
7. That upon the death of his Father the deceased he was issued with the copy of the death certificate on behalf of the family. He further avers that the chief declined to issue the respondent with a letter as she wanted to exclude other beneficiaries and sometimes in August 2023, he learnt that the respondent herein had petitioned for letters of administration vide Kabarnet High Court Succession Cause No. E006 of 2022 which grant was issued.
8. That he was and has always have been in possession of the deceased's death certificate and does not know what the Respondent used to petition the court for letters of administration and further stated that respondent used a forged death certificate and a fabricated letter from the Chief to mislead



this court into issuing her with the Grant of letters of Administration without the Knowledge and permission of the excluded beneficiaries.

9. That they are apprehensive that the deceased's estate will be misappropriated to their detriment and urge this Court to revoke and nullify the grant as the same was obtained illegally without following due process and prayed for Grant of letters of Administration to be issued to him and or his Step-mother Emily Chepchumba to protect the estate of the deceased and all beneficiaries thereof.

Petitioner's Response

10. In response, the petitioner filed replying affidavit sworn on the 14th December, 2023 and avers that she is the Administratrix of the estate of the deceased Daniel Kiplagat Tuitoek who died intestate on 29/08/2021.
11. She further states that she is the legal wife of the deceased having gotten married to him on 6th April 1968 in the African Inland Church, Kapropita and after the death of the deceased, she commenced the process of acquiring the necessary forms for the institution of succession process but was frustrated by the then area chief James Chepnyeny now deceased who failed or refused to write the chief's letter to enable her Commence succession.
12. She further avers that on 30th October, 2021, they met as a family to deliberate on who to administer the estate of the deceased but the two objectors/applicants, Elisha Chepchieng Kiplagat and Emily Chepchumba absented themselves without apology.
13. That gazette notice relating to the estate was issued on 26th August, 2022 and the grant of letters of Administration was issued to her on 22nd February, 2023; and on 19th September, 2023, she did file Summons for Confirmation of grant and included the two Objectors/Applicants.
14. That the three children included in the affidavit of summons for revocation of grant namely Kipyegon Kiplagat, Everlyne Kiplagat and Fredrick Kiplagat are neither the dependants nor the beneficiaries of the estate of the late Daniel Kiplagat Tuitoek and is within their knowledge.
15. She avers that the 1st Objector's averments that he was issued with the death certificate are unfounded and untruthful. She states that she is the legal wife of the deceased and ranks higher in priority in the administration of the estate than him being a child.
16. The petitioner further stated that she was issued with a burial permit at St. Luke Orthopedic & Trauma Hospital which she used to acquire her deceased husband's death certificate and upon directions from the magistrate, the chief issued her with the letter and all the names of the children and beneficiaries of the estate were written that none was locked out of the estate.
17. She further avers that the 1st objector has been aware of the succession cause and it is laughable for the Objector to aver that the death certificate used for succession cause is a forgery when he cannot substantiate the allegations. She further states that confirmation of grant has not been done and the 1st Objector has misled the court by alleging that she has bequeathed all the property to herself and her children and the objector's application has not met the threshold for nullification of grant as averments contained in his affidavit are farfetched, ambiguous and untruthful.
18. She further aver that Emily chepchumba was not married to the late Daniel Kiplagat Tuitoek and cannot therefore qualify to be a dependant or an administratrix of the deceased estate and urged this court to strike out the summons for annulment.



Applicant's Submissions.

19. The applicants restated averments in the affidavit. They urged this court to take judicial notice of the fact that Form P&A 11 was not executed/signed by the deponents, Form 38 was not executed/signed by the applicants herein, Form 57 was not presented for stamp duty franking and Form 109 was not executed/signed by the applicant thereto making the proceedings defective in substance and urged this court to allow the application and revoke the grant.

Petitioner's Submissions

20. In submissions dated 14th December, 2023, they submit that the application before court is defective and frivolously drafted hence intended to waste the court's time for the following reasons:-
 - a. No leave of court was sought by the protestor before filing an objection to the issuance of grant and thus Objection to making grant is misconceived, bad in law and incompetent, the same having been taken drawn and filed without leave of the court long after the Grant of --Letters of Administration had been made to the Petitioners.
 - b. Objection to the making of the grant offends Section 68 of the Law of Succession Act and Rule 17 (1) of the Probate and Administration Rules hence this court lacks jurisdiction to entertain it.
21. They submit that Rule 17(1) of the Probate and Administration Rules provides for the timelines for lodging an objection by a person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person.
22. That the Gazette notice was issued on 26th August, 2022 and the court required to issue the grant within 30 days if there was no objection to it. That the grant for letters of administration was issued to the petitioner on 22nd February, 2023. That protest was lodged on 14th September, 2023 a period of 6 months later without leave of court being sought and granted. That Furthermore, the Respondent was legally married to the deceased and thus has a higher priority to the Applicants.
23. That the Applicants allege that the death certificate is forged when there is no proof that he was issued with the burial permit or whether he reported the case of forgery to allow investigations to take place.
24. That the summons for confirmation of grant dated 19th September, 2023 and filed on 20th September, 2023 contains all the names of the beneficiaries including the Applicants.

Analysis And Determination

25. The threshold for revocation of grant is provided under Section 76 of the law of Succession which states as follows:-

“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...”

26. From the above provision it is clear that a party seeking to have a grant revoked must prove either, or, all the grounds listed under Section 76 of the Law of Succession Act. The applicants before this court are seeking revocation of grant on grounds that the grant had been obtained fraudulently and on concealment of material facts. They also argue that they had not been involved in the succession process, had not signed the documents before the courts and have never participated in the succession proceedings.
27. The applicants have further submitted that there was concealment of material fact by the respondent who is said to have failed to disclose all the beneficiaries before the court. I have perused chief’s letter dated 25th January, 2022 and note that it has 19 dependents of the said estate. The same dependants are equally listed in the summons for confirmation of grant and in the letters of administration intestate. The applicant’s application on that ground therefore fail.
28. The applicants have also alleged that they did not sign documents presented to court. Rule 26(a) and (2) of the Probate and Administration Rules provides as follows:-
- 26.
- (1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
 - (2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”
29. From the reading of the above rule, it is mandatory for every applicant who wishes to be an administrator to an estate to give notice to every person entitled in the same degree as or in priority to the applicant. Further that, such person of equal or lower priority must give consent or renunciation during filing of succession cause.
30. The applicants have denied giving their consent under Form 38. I have perused the consent form and indeed the applicants herein did not sign the said form. I however note that a meeting was held by the family to deliberate on filing of succession and note from record that the applicants were absent without apology. Those present signed the minutes. Members present resolve that the petitioner herein who is the first wife of the deceased file succession and be administrator of the estate. From the foregoing, the applicants were granted opportunity to participate in the meeting which came up with decision as to who was to administrate the estates of the deceased. The mention of their names in the minutes confirm that the family acknowledge them as part of the family of the deceased. The petitioner further stated that she included the two applicants in the list of beneficiaries.
31. From the foregoing I do not see reason to revoke the grant but the applicants will have opportunity to file protest of not agreeable to mode of distribution to be proposed by the administrator.



Protest By Deampower Investment

32. Deampower Investment filed affidavit of protest dated 14th September, 2023 and amended on the 26th September, 2023 seeking to be enjoined in the proceedings of the estate of Daniel Kiplagat Tuitoek the deceased herein.
33. The applicant aver that on 15th April, 2014 the company entered into a sale agreement with the late Daniel Kiplagat Tuitoek (Deceased) for purchase of 3 acres from LR 260 Kapropita registered in the name of the deceased and upon execution of the Sale agreement, the Applicant effected payments to the Deceased as follows:
 - a. Kshs 660,000/= Bankers Cheque handed over upon signing of the sale agreement.
 - b. Kshs 450,000 Deposited in the Deceased cooperative Bank Account on 20/02/2012
 - c. Kshs 50,000 Deposited in Daniel Cooperative Bank Account 24/02/2012.
 - d. Ksh 100,000/= Deposited in Daniel Cooperative Bank Eldoret Branch on 16/06/2012
 - e. Kshs 50,000/= paid to the deceased in cash on 15/08/2011 by James Sacho -Treasurer
 - f. Kshs 20,000 paid to the deceased in cash on 12/11/2011 by James Sacho-Treasurer
 - g. Kshs 130,000 paid to deceased in cash on 21/12/2011 by James Sacho-Treasurer TOTAL: 1,460,000/=
34. That although the Land was indicated as Kapropita 260 in the agreement, the Applicant confirmed in the Lands office vide a search that the deceased's parcel of Land was Kapropita 360 which was sub-divided into Kapropita 547 and 548 and the parcel sold to the Applicant was established to be Kapropita 547.
35. The Applicant states that immediately after payment of kshs 1,460,000/= and execution of the agreement, the deceased granted possession of the land to the applicant who immediately started its project of constructing a school on the said Land on August 2015 and after the construction of the school was completed on or about December 2015, the deceased requested to be admitted as partner in the school business with similar rights and benefits as members of the Company; that he was majorly instrumental in the management of the completed school of the applicant through his son the Kibet Tuitoek and nephew Peter Kibichii Mulwa.
36. That the deceased requested the company to deduct the Registration fees from the debt owed by the Applicant and the Company deliberated on his request which was approved and the deceased was required to pay kshs 350,000/= which amount was the mandatory registration /subscription paid by all members of the Company.
37. He states that it was recorded in the Company's records that the Company had paid the deceased kshs 350,000/= towards the purchase of land, making the total payment as at August 2015 to be Kshs 1,810,000/=.
38. That the company completed the construction of the school between October and December 2015 and started admitting pupils on January 2016 in play group, middle class and Top Class and the school operated for a period of one year and in January 2017, the company was forced to close down the school due to lack of sufficient funds and donors to sustain the business. Following the closure, the company resolved that due to its aborted business venture and diminishing resources, the Applicant



was not in a position to purchase the entire three acres from the deceased as per the sale agreement of 15th April, 2011.

39. That the Company resolved that the total payments of Kshs 1,810,000 that the company had been paid to the deceased was equivalent to 6.7 plots of 50 *100 and resolved that the land be sub-divided and six plots to be transferred into the company name and disposed of and the proceeds were to be transferred to the Company's account and divided to all members equitably as per their share capital.
40. That the deceased informed the company that the sub-division and transfer of the 6 parcels to the company could not proceed as the Land Parcel No 547 had a caveat entered by the family of the deceased former owner Kimingich Chesire and after the dispute was resolved, the Company resolved to dispose of its parcels of land and made arrangements with the deceased that instead of the land being transferred to the company before it is sold, the deceased was authorized to sell the parcels on behalf of the company and the proceeds be remitted into the company's account to be shared to members as per their contributions.
41. The applicant states that the Company resolved that one plot measuring 50 *100 be sold at the prevailing market price between 1 m to 1.2 M and the deceased reported to the company around June 2018 that he had sold two plots at 1 million each, the buyer had paid for one plot and undertook to pay the remainder at a later date.
42. That the deceased handed over the Kshs 1,000,000/= in cash to treasurer James Sacho at the deceased's home in Soy Uasin Gishu County out of which the deceased was paid 105,042 as per the price of his share in the company.
43. That in the year 2020, the company in utmost shock realized that the deceased had sold the entire land and the proceeds were not remitted to the company and on being confronted, the deceased admitted that he had used most the money for medical expenses and some of the buyers were yet to complete their payments.
44. That the company resolved that out of the six 50 by 100 company plots, one had been fully paid and the remaining five plots were assumed to have been sold at 1 million each totaling to 5 million which the deceased owed the company.
45. THAT out of the 5 million the deceased share was computed to be 525,210/= hence the deceased owed the company 4,474,790/= after deduction of his share. The company further resolved that the buyers of the parcels of land are to compensate the company on the costs of the buildings and the structures that were contained on the parcels of land.
46. THAT on July 2021 the deceased paid 200,000/- in cash to the treasurer James Sacho at his Soy Farm in Uasin Gishu and the outstanding debt stood at kshs 4,274,790/=
47. That the deceased passed away on 7th September, 2021 before clearing the outstanding balance and the company through its representatives consulted with the family on the outstanding debt which the family undertook to pay and the fact that the deceased was in business with the applicant was known by the family as confirmed in the eulogy read in the funeral of the deceased.
48. That one of the buyers who purchased Land parcel Nos 2453,2499 and 2500 informed the company that he had an outstanding debt of kshs 600,000/= which he was yet to pay the deceased and he paid Kshs 50,000/= to the widow of the deceased the respondent herein to offset medical bill and they agreed that the balance of kshs 550,000/- be paid to the company which is to be deducted on the company claim on the deceased estate leaving an outstanding balance of KSH 3,724,7901=



49. That the Company through James Sacho has been in consultation with the family on how the outstanding debt can be cleared and the family have been non-committal on clearing the balance which is still pending to date.
50. That the company sometime in January this year, they realized that the family have instituted succession proceeding vide succession cause no 006/2022 which is currently pending confirmation before this honorable court.
51. That the company is praying to be enjoined into the estate of the deceased as beneficiaries of payment of a debt amounting to Kshs 3,724,790% from the estate of the Deceased which the deceased owned the Company.

Petitioner's Response

52. In response, the Petitioner/Respondent filed a replying affidavit dated 14th December, 2023. She avers that she is not privy to any agreement entered between the Daniel Kiplagat Tuitoek (deceased) for purchase of 3 Acre piece of land parcel registration number 260 Kapropita.
53. That the alleged agreement entered on 15th April, 2014 for purchase of 3 Acre piece of land relating to land parcel registration number 260 Kapropita is challenged on the following grounds;
 - a. LR KAPROPITA 260 does not form part of the deceased estate and there is no proof of search by the applicant that it forms part of the deceased estate.
 - b. The agreement allegedly executed between the deceased and DECAMPOWER COMPANY LIMITED is not duly executed, shambolic and uncertain.
 - c. The agreement does not bear the company's seal/stamp or an advocate's stamp.
54. That she denies the averments by the protestor that upon execution of the sale agreement, payments were witnessed by one Elisha Kiplagat yet there is no proof of his signature as a witness in the sale agreement or any acknowledgment of payment and by virtue of the said "sale agreement," the applicant does not qualify to be enjoined to the estate.
55. That the protestor is on a fishing expedition and James Kibet who is swearing an affidavit of protest as a member and on behalf of Decampower Investment Limited lacks capacity to represent the company.
56. That the deceased has never owned land parcel Kapropita 260 and the applicant lacks facts.
57. That for one to be a member of a limited liability company, there is a procedure to be followed and thus the applicant has failed to produce a list of members, directors, contributions, the company's constitution and thus the deceased estate is distanced from the applicant's endless allegations.
58. That the Applicant cannot pray to be enjoined to a succession cause for a payment of a non-legal debt; that she is not aware of any existing debt between the estate and the applicant and the deceased did not leave any liabilities.
59. That the applicant's affidavit seeking to be enjoined to recover a non-existing debt through succession cause lacks merit, misadvised, miscalculated, frivolous, vexatious, a waste of court's time and the same be struck out with costs to the Respondent.
60. In submissions filed, the applicant restated averments captured above and in conclusion, submit that the applicant seek to be enjoined in the proceedings for payment of kshs 3,724,790/= as stated in the amended Affidavit of protest and annexures attached. That Section 76 of the [Law of Succession Act](#) provides for revocation or annulment of grant.



Respondent's Submissions

61. The Respondents submitted that the applicant's objection is premised on an affidavit seeking to be enjoined to the succession cause proceedings relating to the estate of the deceased and at the same time seeking that the grant issued to the administratrix be revoked or annulled.
62. The respondent submits that this court has been invited to grant orders that are not properly sought as the application to be supported by the affidavit is lacking and thus there is no proper application on record laying out the grounds under which the grant qualifies to be annulled.
63. That Secondly, the pleadings before the Honourable Court are defective and frivolously drafted hence intended to waste the court's time for the following reasons:-
 - a. No leave of court was sought by the protestor before filing an objection to the issuance of grant and thus Objection to making grant is misconceived, bad in law and incompetent, the same having been taken drawn and filed without leave of the court long after the Grant of Letters of Administration had been made to the Petitioners
 - b. Objection to the making of the grant offends Section 68 of the *Law of Succession Act* and Rule 17 (1) of the Probate and Administration Rules hence this court lacks jurisdiction to entertain it.
64. The petitioner further submit that Rule 17(1) of the Probate and Administration Rules provides for the timelines for lodging an objection by a person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person.
65. That Gazette notice was issued on 26th August, 2022 and the court required to issue the grant within 30 days if there was no objection to it and the grant for letters of administration was issued to the petitioner on 22nd February, 2023.
66. The protest was lodged on 14th September-, 2023 six months later without leave of court being sought and granted. That furthermore, the protestor is neither a beneficiary nor a dependant of the estate of the deceased. The debt allegedly owed by the estate is an assumption and a projected debt hence the protestor's affidavit is speculated.
67. That thirdly, the applicant is neither the director of the company nor does he have the power of attorney to represent the company through a clear resolution passed by the Board of Directors and relied on the case of *Yussuf Abdi Adan versus Hussein Ahmed Farah & 3 others* I20171 eKLR in support of their case.
68. That further, it is settled law that an advocate ought to exercise special care to ensure and confirm that his firm or the advocate has necessary authorization by way of clear resolutions of the Board of Directors to institute the suit. They place reliance in the case of *Kenya Commercial Bank limited versus Stage Coach Management limited* [2014] eKLR.
69. That the applicant has attached the Company's Certificate of Incorporation as annexure JK2 and deponed in his affidavit under paragraphs 1 and 2 that he is the treasurer of the applicant (the company) which is duly registered as a limited liability company.
70. The petitioner further submit that there is no proper documentation and certainty of the debt owed. That the administratrix is jealously guarding the estate from mismanagement, wastage, misuse and unaccountability; that the debt is speculated, uncertain and the petitioner is not aware of how and



when it accrued to the estate thus is denied and argue that the protestor has not indicated that there's a decree for recovery of the said debt from the estate and relied on re Estate of Joseph Eric Owino alias Joseph Eric Owino Nyaburi -Deceased (Succession Cause 58 of 2020) [2022] KEHC 15453 (KLR) (18 November 2022) and Re Estate of Mukhobi Namonya (Deceased) [2020] eKLR. stated that:-

“The omission of persons who claim to be claimants from or creditors of the estate is not a ground for revoking a grant. After all, creditors of an estate are entitled to have their debts settled. It is for this reason that debts and liabilities are given priority over distribution of the estate. Debts and liabilities ought to be settled first. Distribution is of the net estate, after the debts and liabilities have been met. The administrators have a duty to identify the creditors of the estate and to pay them off before proposing distribution, or to make provision for them at confirmation of grant. Such claimants and creditors have an obligation to place their claims before the administrators, and should the administrators fail to settle the same or acknowledge them, move the Environment and Land Court to prove their claims, since the High Court no longer has jurisdiction to determine questions around ownership of immovable property in view of articles 162(2) and 165(5) of *the Constitution*.

71. On who is the creditor of the estate or what ought to be treated as a liability of the estate, they submit that the most obvious candidates are individuals or entities that transacted with the deceased during his lifetime.
72. That debts that the deceased left unsettled are a burden that the administrators of his estate ought to take care of transactions that he left incomplete, such as for sale of land by him or to him, should be completed by the administrators. The administrators are able to do so through the powers conferred upon them by section 82 of the *Law of Succession Act*, being mindful of section 79, which vests the assets of the estate in the administrator. Section 83 imposes a duty on administrators to settle such debts before distributing the estate and one of the duties of administrators, set out in section 83(d) of the *Law of Succession Act*, is to ascertain and pay out of the estate all the debts of the deceased.

Analysis And Determination

73. I have perused the affidavit of protest by the applicant and the response by the Petitioner/Respondent, I wish to consider whether the Applicant is entitled to the orders sought. On whether the grant should be revoked the applicable law is *Law of Succession Act* section 76 which provides as follows:-s

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.

74. The court in the case of *in re Estate of Mukhobi Namonya (Deceased)* [2020] eKLR stated that,

“under section 76 of the Act, a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining the grant was attended by glaring difficulties, such as where the same was defective, say because the person who obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant. The second general ground is where the grant is obtained procedurally, but the administrator subsequently runs into difficulties during the process of administration of the estate. Such difficulties include his failure or omission to apply for confirmation of his grant within the period allowed in law, or where he fails to exercise diligence in administration of the estate, such as where he omits to collect or get in an asset, or where he fails to render accounts as and when he is required to do so by the law. The third general ground is where the grant has become inoperative or useless on account of subsequent circumstances, such as where the sole administrator died or loses the soundness of his mind or is adjudged bankrupt.

75. Further in the case of *in re Estate of Magangi Obuki (Deceased)* [2020] eKLR the court quoted the authority in the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No.158 OF 2000, Mwita J. made remarks on the guiding principles for the revocation of a grant. He stated;

“(13) 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.

76. The applicant in its pleading stated that the letters of administration were procured contrary to the provision of the law in that the administrators used untrue allegation purposely to mislead the court and void payment of a lawful debt/liability due and payable by the estate contrary to Section 76 c of CAP 160.

77. That they were excluded in the making of the grant despite being a liability in the estate of the deceased. That further the grant was procured through concealment of materials facts and that since the letters of administration did not include the liability herein, this application is merited in terms of provisions of section 76 of CAP 160.



78. My understanding of the applicants case is that it is based on section 76 (b) which states that a grant can be revoked if 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, in this case the concealment failure to include the alleged debt in the petition for grant of letters of administration and the question that follows is whether the omission amounts to concealment or non-disclosure and can warrant the revocation of the grant.
79. The court in re Estate of Mukhobi Namonya (Deceased) [2020] eKLR stated that,
- “The omission of persons who claim to be claimants from or creditors of the estate is not a ground for revoking a grant. After all, creditors of an estate are entitled to have their debts settled. It is for this reason that debts and liabilities are given priority over distribution of the estate. Debts and liabilities ought to be settled first. Distribution is of the net estate, after the debts and liabilities have been met. The administrators have a duty to identify the creditors of the estate and to pay them off before proposing distribution, or to make provision for them at confirmation of grant. Such claimants and creditors have an obligation to place their claims before the administrators, and should the administrators fail to settle the same or acknowledge them, move the Environment and Land Court to prove their claims, since the High Court no longer has jurisdiction to determine questions around ownership of immovable property in view of Articles 162(2) and 165(5) of *the Constitution*.
80. Who exactly is the creditor of the estate or what ought to be treated as a liability of the estate? The most obvious candidates are individuals or entities that transacted with the deceased during his lifetime. Debts that the deceased left unsettled are a burden that the administrators of his estate ought to take care of. Transactions that he left incomplete, such as for sale of land by him or to him, should be completed by the administrators. The administrators are able to do so through the powers conferred upon them by section 82 of the *Law of Succession Act*, being mindful of section 79, which vests the assets of the estate in the administrator.
81. Duties of administrators are set out under section 83 of the *Law of Succession Act*. Under section 83(d), the administrator is required to ascertain and pay out of the estate all the debts of the deceased. Ascertainment of the debts of the estate is about identifying them, in terms of finding who the creditors were, how the debts were incurred, what documentation is available, before pay out can be done.
82. I have looked at the annexures by the applicant, the sale agreement and the payments made to the deceased and from the exhibits attached, I am of the view the applicant herein is a necessary party in this proceedings. The interest of the applicant in the estate of the deceased will be established during the hearing.
83. The court in in re Estate of Barrack Deya Okul (Deceased) [2018] eKLR stated that,
- “My clear understanding of this requirement is that once a Petitioner is notified of the existence of a liability (debt) by a creditor or once the Petitioner comes to learn of an existing proven liability (debt) owed by the estate, it is mandatory to include such a liability or debt as required above. A decree against a deceased person, in the absence of a variation, setting aside or otherwise being stayed is in my view a proven liability against the estate of the deceased. It must be included in the list of liabilities in form 5 alluded to above.
84. In view of the above I hereby enjoin the applicant as an interested party in this succession cause. The interested party’s claim to be proved during trial.



85. Final orders: -

1. 1st and 2nd applicant's prayer for revocation and annulment of grant issued to petitioner herein on 22nd February 2023 is hereby dismissed
2. The petitioner to file mode of distribution with 30 days from the date of this judgment and if the 1st and 2nd protestors will not be agreeable, they will be at liberty to file protest
3. The protester herein Decampower Investment Limited is hereby enjoined as interested party.

JUDGMENT DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 25TH DAY OF APRIL 2024.

.....

RACHEL NGETICH

JUDGE

In the presence of:

Elvis/Momanyi – Court Assistants.

No appearance by parties.

