



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Alphonse Liyayi (Deceased) (Succession Cause  
E085 of 2022) [2024] KEHC 6889 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6889 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE E085 OF 2022**

**G MUTAI, J**

**MAY 24, 2024**

**BETWEEN**

**GUDRUN SCHIRMER LIYAYI ..... 1<sup>ST</sup> OBJECTOR**

**MWANAIMA WASAI RAMADHAN ..... 2<sup>ND</sup> OBJECTOR**

**HALIMA SHIRWATSO LIYAYI ..... 3<sup>RD</sup> OBJECTOR**

**AND**

**ANGELA MAGARA LIYAYI ..... RESPONDENT**

**RULING**

1. The deceased, whose estate is the subject of these proceedings, died on 9<sup>th</sup> May 2015. According to the letter written by Omari Mwakumanya, the Deputy County Commissioner, Msambweni Sub County, dated 18<sup>th</sup> January 2017, the deceased was survived by a widow, Elsa Akinyi Adenyo, and a daughter Angela Maraga Liyayi, the Petitioner herein. He was listed as owning 6 parcels of land, all of which are in Kwale County.
2. On the 26<sup>th</sup> October 2022, the Petitioner filed the instant Petition. Ms Angela Maraga Liyali described herself as being the daughter of the deceased. She also listed her mother as a dependant of the deceased. The Petitioner annexed to the Petition a copy of the death certificate of the deceased, together with her national identity card as well as that of her mother, and the letter dated 18<sup>th</sup> January 2017 from the Assistant Chief, Msambweni Location. In addition to the 6 properties I mentioned, the Petitioner listed motor vehicle registration number KAE 843C as owned by the deceased.
3. The Petition was gazetted on 22<sup>nd</sup> September 2023. On 19<sup>th</sup> October 2023, the 1st Objector objected to the issuance of the Grant to the Petitioner through a Notice of Objection dated 18<sup>th</sup> October 2023. The Objection wasn't brought to the attention of the Court, and on 31<sup>st</sup> October 2023, the grant was issued to the Petitioner. The said Grant was slated for confirmation on 7<sup>th</sup> May 2024.



4. *Vide* Summons for Revocation of Grant dated 11<sup>th</sup> January 2024 the 1<sup>st</sup> Objector sought the following orders: -
  - a. Spent;
  - b. Spent;
  - c. Spent;
  - d. That the grant of letters of administration to the deceased's estate dated 31<sup>st</sup> October 2023 to Angela Maraga Liyayi be revoked as she is not the Petitioner in this matter and a complete stranger in the matter;
  - e. That the Applicant's Objection dated 19<sup>th</sup> October 2023 and Answer to Petition and Cross Application, both dated 29<sup>th</sup> November 2023 be deemed properly on record, heard and determined on merit;
  - f. Any other order that the Honourable Court may deem just and expedient in the circumstances; and
  - g. Costs of this application be provided for.
5. The 1<sup>st</sup> Objector/Applicant listed 10 grounds of objection in her Chamber Summons. The Objection was also supported by the affidavit the 1st Objector/Applicant deposed to before a Notary Public in Dortmund, Germany.
6. The 1<sup>st</sup> Objector/Applicant stated that the Petitioner/Respondent is a stranger to her. She averred that the Petitioner/Respondent filed Succession Cause No.72 of 2017 in the Chief Magistrate Court regarding the same estate, which she withdrew before the hearing date. Despite knowing about her and her children, the Petitioner/Respondent never cited them or otherwise sought their concurrence.
7. She stated that the gazette notice published on 22<sup>nd</sup> September 2023 was defective as it does not describe the Petitioner or the deceased sufficiently for purposes of Law of Succession which defeats its purpose. She lodged an objection on 19<sup>th</sup> October 2023, within the stipulated time given in the notice. She deposed that there is no time limit to filing the Answer to the Petition and or a Cross-Petition unless set by the court, which is not the case herein.
8. She stated that the documents used to petition for grant do not meet the basic requirements provided by the law and that the grant issued is defective and ought to be revoked.
9. In response the Respondent filed a Replying Affidavit sworn on 30<sup>th</sup> January 2024. She stated that she is a daughter of the deceased and that she withdrew her petition for grant of letters of administration filed in the lower court on grounds that the court lacked pecuniary jurisdiction.
10. She also denied the contents of the application herein and stated that the prayers sought have already been overtaken by events and that the Applicant is only out to frustrate her.
11. The Petitioner/Respondent alleged that the Objector/Applicant is a stranger and that she was not married to the deceased. Further her father had two wives Elsa Akinyi Adenyo (her mother) and Mwanaima Wasai Ramadhan whom he divorced before his death. That all properties listed are in the name of the deceased and none is registered in trust for the Applicant herein.
12. She further stated that her father's name was Alphonse Liyali Iberia and that the name and signature on the marriage certificate presented by the applicant do not belong to her father as well as his age therein. She stated that the application has no merit and urged the court to dismiss the same with costs.



13. In response to the Replying Affidavit the Applicant filed a further affidavit sworn on 13<sup>th</sup> February 2024. She reiterated the position in her supporting affidavit and stated that the petition in the lower court was withdrawn without valuation of the estate and that the issue of pecuniary jurisdiction had already been dealt with by Honourable Kiage, who transferred the matter to Hon. Kyambia, whom both parties agreed had jurisdiction. She averred that the withdrawal of the said Petition was in bad faith.
14. She further stated that the issuance of the grant of representation was fatally defective and the grant ought, therefore, to be revoked.
15. She stated that she is in possession of all original title deeds and in control of all properties, that the Respondent has never managed the deceased's estate, and thus that she is the appropriate party to be appointed as administrator of the estate. Thus, she urged the court to revoke the grant issued to the Respondent.
16. The Respondent then filed a Further Replying Affidavit sworn on 29<sup>th</sup> February 2024. She stated that the lower court matter was withdrawn by consent of all the parties in open court, and if the applicant had any objection to the same, she ought to have raised the same then. She urged that the value of the properties is over Kes.200,000,000/- beyond the pecuniary jurisdiction of the lower Court. That at the time of filing the lower court matter, she had not ascertained all properties and their market value, and it was upon doing so that she saw it best to withdraw the matter.
17. She further stated that she has no control over the process of gazettelement, which is done by the Judiciary in conjunction with the Government Printer. Thus, the allegation that she concealed material facts is neither here nor there. She said that if there are any errors, they ought to be rectified, but not by way of revocation of the grant. She then urged the court to dismiss the application for lack of merit.
18. The 1<sup>st</sup> Objector/Applicant also filed a supplementary affidavit sworn on 19<sup>th</sup> March 2024. She reiterated the position in her other affidavits and opposed the contents of the Respondent's Further Replying Affidavit.
19. She stated that the value of the estate had never been ascertained by a proper valuation and thus the allegation by the Respondent that the same is over Kes.200,000,000/- is not true.
20. She reiterated that the Respondent concealed material facts from the court by deliberately and fraudulently averring that she was the only daughter of the deceased, whereas she was aware of the 1<sup>st</sup> Objector/Applicant's children and her marriage to the deceased from a lower court matter. She urged the court to revoke the grant issued to the Respondent and to hear her objection to the issuance of the same on merit.
21. The application was canvassed through written submissions. The learned Counsel for the Objector/Applicant identified two issues that need to be determined: whether the grounds raised by the Objector/Applicant are sufficient for revocation of the grant of letters of administration and what orders ought to be issued.
22. On the first issue counsel relied on Section 76 of the *Law of Succession Act* and submitted that the process used to obtain the grant by the respondent was substantially defective to wit the disguising of the names of the petitioner and the deceased in the gazettelement process.
23. Counsel referred to paragraph 3 of the Petition for grant of presentation and submitted that the applicant was never cited and that she has never renounced her right to grant of letters of administration



despite ranking higher than the respondent. Counsel relied on Section 66 of the *Law of Succession Act* and Rule 26(1) of the *Probate and Administration Rules*.

24. Counsel submitted that the Petitioner/Respondent deliberately omitted to include the 1<sup>st</sup> Objector/Applicant and her children in the beneficiaries list, and thus contravened Section 52 (1) of the *Law of Succession Act*.
25. On the second issue, counsel submitted that the grant issued to the Respondent ought to be revoked and the Objector/Applicant's Answer to the Petition and Cross- Application be heard and determined on merit.
26. On the other hand, the Respondent, through her advocate Mwaniki Gitahi & Partners Advocates, submitted that the typos on the last name of the deceased and the respondent in the gazette notice call for rectification of the grant and not revocation of the same.
27. Counsel submitted that the Objector/Applicant had not proved her claim that the proceedings to obtain the grant were defective in substance and that the grant was obtained fraudulently by making false statements or by the concealment of material facts. That revoking the grant will result to intermeddling with the estate assets by the Objector/Applicant and urged the court to dismiss the application with costs.
28. I have considered the application, the responses therein, and the rival submissions by both counsels. The issue that emerged for determination is whether the grant issued to the respondent on the 31st day of October 2023, should be revoked.
29. Section 76 of the *Law of Succession Act* provides for grounds for revocation.

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.



30. The grounds for revocation under Section 76 of the [Law of Succession Act](#) were expounded on in the case of In [re Estate of Prisca Ong'ayo Nande](#) (Deceased) [2020] eKLR where the court stated:-

“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.”

31. I have noted the difference on the last name of the deceased and the respondent as indicated in the documentation used in processing gazettement at the government printers which emanate from the court's registry compared to the documentation presented before court petitioning for grant of letters of administration. It is my view that the same do not go to the root of the matter as the same may be termed as typing errors by the registry which can be rectified. I am guided by Section 74 of the [Law of Succession Act](#) which provides:-

Errors in names and descriptions, or in setting fourth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.

32. On the issue non-disclosure, the court in the case of [In re Estate of Julius Ndubi Javan \(Deceased\)](#) [2018] eKLR observed as follows on non-disclosure of material facts from the court:-

“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (uberimaefidei) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law.”

33. The fact that the respondent did not list the applicant and her children as beneficiaries is not in dispute. What the parties appear to be disagreeing about is who are the rightful beneficiaries. Both parties are calling each other strangers. Further there are now 2<sup>nd</sup> and 3<sup>rd</sup> Objectors/Applicants, as an alleged divorced wife, Mwanaima Wasai Ramadhani and her daughter have moved also moved this



court via application dated 5<sup>th</sup> April 2024. In my view the Petitioner/Respondent should have made full disclosure of all the issues in this matter. She concealed the fact that she had filed a succession cause before the Court below. Despite knowing about the 1<sup>st</sup> Objector/Applicant she made no mention of her or the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors/Applicants. This failure on the part of the Petitioner/Respondent warrants the revocation of the grant issued in her favour.

34. I note that the grant was issued despite the fact that an Objection had been lodged and the 30-day period within which an Objection could be lodged hadn't expired. That being the case, the process of issuing the grant was defective. In the circumstances, the only remedy, in my view, is the revocation of the grant.
35. The upshot of the foregoing is that the application herein has merit and is hereby allowed. As the grant has been revoked, it follows logically that the application of the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors/Applicants has also been allowed. I, therefore, need not consider it any further than I have done.
36. The grant herein is revoked. I order that Angela Maraga Liyayi, Gudrun Schirmer Liyayi and Mwanaima Wasai Ramadhan file a joint petition for letters of administration intestate within 30 days of the date hereof. If they do not do so within the period I have stated, the Grant shall issue to the Public Trustee.
37. This being a family matter, parties shall bear their own costs.
38. Orders accordingly.

Dated and signed at Mombasa this 24<sup>th</sup> day of May day of 2024

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

No appearance for the 1<sup>st</sup> Objector/Applicant;

No appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors/Applicants;

No appearance for the Petitioner/Respondent; and

Arthur - Court Assistant.

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