



**In re the Estate of Kipbiego Arap Biwott alias Kipyego A Kibiwott - (Deceased)
(Succession Cause E061 of 2014) [2024] KEHC 10221 (KLR) (19 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10221 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E061 OF 2014
RN NYAKUNDI, J
AUGUST 19, 2024**

**IN THE MATTER OF THE ESTATE OF KIPBIEGO ARAP
BIWOTT ALIAS KIPYEGO A. KIBIWOT – (DECEASED)**

THROUGH

BETWEEN

JOAN JEPKETER PETITIONER

AND

MONICAH JEBICHII BIWOTT OBJECTOR

RULING

1. What is pending before me for determination is summons for revocation of grant seeking orders as follows:
 - a. Spent
 - b. That this Honourable Court be pleased to issue an order of preservation of the parcel of land known as; Cheptiret/Kapkoi Block 3 (Mugundoi)/19 measuring approximately 13.84 Ha which forms part of the estate of the deceased person herein.
 - c. That Grant of Letters of Administration Intestate in respect to the estate of the deceased herein issued to Joan Jepketer Kibiwot sometimes on 20th May, 2014 or thereabouts and confirmed on 29th October, 2015 be revoked/annulled.
 - d. The costs of this application be provided for.
2. The summons is supported by an affidavit sworn by Monica Jebichii Biwott, which attempts to put the cause into context and for that reason I shall have it reproduced. The applicant deposed as hereunder;



- a. That I am one of the daughters of the deceased herein Kipbiego arap Biwott alias Kipyego A. Kibiwot, who died intestate sometimes on 27th December, 2007.
- b. That I have been given the authority by my siblings to make this objection proceeding on my behalf and on their behalf as well.
- c. That my late father was married to 2 wives and was blessed with several children namely;
 - i. 1st wife: Esther Taplilei Kibiwott (deceased)
 1. Selly Jepchumba Biwott – Daughter – Adult
 2. Milka Jelimo Biwott – Daughter – Adult
 3. Roda Jelagat Biwott – Daguther – Deceased
 4. Monica Jepichii Biwott – Daughter – Adult (myself)
 5. William Kiprotich Biwott – son – deceased
 6. Noah Kipkogei Biwott – son- adult
 - ii. 2nd Wife – Joan Jepketer Biwott – 2nd Wife
 1. Thomas Kotut Biwott – son – Adult
 2. Sarah Jerono Biwott – Daughter – Adult
 3. Simeon Kipkoech Biwott – son – Adult
 4. Anne Biwott – Daughter – Adult
 5. Amos Kiptoo – son – Adult
 6. Priscillah Jerop Biwott – Daughter – Adult
 7. Betty Jebet Biwott – Daughter – Adult
 8. George Kipkemei Biwott – son – Adult
- d. That our mother passed on sometimes on 30th April, 1983 in Mugundoi Farm Cheptiret, where she was buried
- e. That my late father had 2 parcels of land known as; Uasin Gishu/Ainabkoi North/49 measuring approximately 17.0 Ha and Cheptiret/Kapkoi Block 3 (Mugundoi)/19 measuring approximately 11.4 Ha.
- f. That my late father had settled all of family members at Mugundoi area where my late parents and sister Roda Jelagat Biwott passed on and were all buried in the parcel of land known as; Cheptiret/Kapkoi Block 3 (Mugundoi)/19 measuring approximately 11.4 Ha.
- g. That we lived in Mugundoi until the year 2007 when post-election violence erupted in the year 2007/2008 when we had to relocate to Ainabkoi area.
- h. That the respondent/petitioner commenced succession proceedings in respect to the estate of our late father sometimes in the year 2014 in total secrecy and never involved anyone from the 1st House and obtained Letters of Administration Intestate and the same was later confirmed.



- i. That I got to know that the Petitioner had filed succession proceedings in respect to the estate of my late father in total secrecy when we lodged succession cause No. 125 of 2020, on which they did not consent on the proposed mode of distribution of the estate.
 - j. That the Petitioner did not disclose in her Petition and Affidavit that the deceased person had other dependants and/or another family.
 - k. That the Petitioner in fact deposed that she was to hold the said titles in trust, while it is worth noting that the beneficiaries of the estate are all adults, and who can own property.
 - l. That she cannot claim to hold the same in trust for me yet the share I am claiming is not supposed to be under her in any event.
 - m. That no consent to the confirmation of grant was ever obtained from me and or neither was I called upon to attend court.
 - n. That the property which is being occupied by the 2nd house is more valuable as it is located in a prime place, with close public utilities.
 - o. That it is in the interest of justice that the grant which was obtained by the Petitioner herein sometimes on 20th May, 2014 and confirmed on 29th October, 2015 be revoked because it was obtained by concealing material facts.
3. In response to the summons, Joan Jepketer, the Petitioner herein filed a replying affidavit sworn on 11th April, 2024, in which she stated on oath thus;
- a. That the applicant is a vexatious litigant as she was one of the Petitioners in Eldoret Chief Magistrate Court Succession Cause Number 125 of 2020 – Estate of the late Kipbiego Arap Biwott (deceased).
 - b. Vide a ruling delivered on 12th July, 2023, the applicant and her co-petitioner were issued with a certificate of confirmation of grant in respect of the same deceased person in this matter.
 - c. The interests of all the children of the deceased in both houses have been catered for as the applicant and her siblings in Eldoret Magistrate Court Succession Cause Number 125 of 2020 distributed land parcel known as Uasin Gishu/Ainabkoi North/49 among themselves.
 - d. That it is clear that the applicant’s motivations stem from self-interest and envy rather than a genuine quest for justice.
 - e. That the orders of preservation sought are not merited for the following reasons;
 - i. The parcel of land known as Cheptiret/Kapkoi Block 3 (Mugundoi)/19 does not form part of the estate of the deceased.
 - ii. The applicant has already placed a caution on the said parcel of land.

Petitioner’s Submissions

- 4. The petitioner filed submissions dated 30th April, 2024. Learned Counsel Mr. Kipkurui submitted on two issues; whether the Grant in question should be revoked and how to proceed with the succession cause.
- 5. On the first issue, learned counsel submitted along the provisions of Section 76 of the [Law of Succession Act](#). Counsel cited the case of Re Estate of Prisca Ong’ayo Nande (Deceased) (2020) eKLR and



submitted that each and every ground therein should be proved and/or demonstrated by way of evidence as it was articulated in the case of Titus Mwaniki Njiru versus Jane Igandu (2021) eKLR. That the power to revoke grants is discretionary in nature, and as such discretion ought to be exercised judiciously and not capriciously as held in the case of Albert Imbuga Kisigwa Vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000.

6. It was learned counsel's submission that the objector has failed to demonstrate any evidence of fraud on her part. Further that there was no evidence that the Petitioner/Respondent ever concealed any facts from the honourable court. That her application was confined to the part of the deceased's estate that was entailed to her and her children, in accordance with the express wishes of the deceased with regard to the distribution of the estate.
7. On how to proceed with the cause herein, Learned Counsel proposed that given that there are two distinct houses being awarded two distinct properties, then the ends of justice will be best served if this court rectifies and or amends the certificate of confirmation of grant issued in the instant matter on 29th October, 2015 by adopting the contents of the certificate of confirmation of grant dated 5th April, 2024 but limited only to the extent of awarding the Objector's family land parcel No. Uasin Gishu/ Ainabkoi North/49. Additionally, and house of Joan Jepketer Biwott should remain with that parcel of land known as Cheptiret/Kapkoi Block 3 (Mugundoi)/131 which position mirrors the intention of the parties herein and the way the deceased hoped his estate would be distributed upon demise.
8. Before I go into analysis and determination of this instant Application, it is vital to note that the Respondent/Petitioner obtained Letters of Administration Intestate sometimes on 20th May, 2014 and confirmed on 29th October, 2015. The Certificate of confirmation of the grant was issued on 29th October 2015 by Justice G.K.Kimondo of this Honourable Court.
9. The certificate of confirmation of a Grant issued by this Honourable Court provided as follows;

Schedule

Name Description of Property Share of Heirs

Cheptiret/Kapkoi Block 3 (Mugundoi)19.....13.84(Ha)

1) Joan Jepketer Kibiwott 12.432 Ha

(Widow)

2) William Keter Kosgey 0.046 Ha

3) Erick Kibor Tireiito 0.046 Ha

4) Richard Kiplagat Sangok 0.046 Ha

5) Gideon Kigen Chepsaigut 0.046 Ha

6) Hellen Jeptum Lelan 0.045 Ha

7) Sarah Cherotich Chepsaigut 0.046 Ha

8) Isaack Kipkogei Mondy 0.046 Ha

9) Margaret Chepkorir Kimondi 0.046 Ha

10) Shadrack Kipkogei Chepsaigutt 0.046 Ha

11) Paul Rotich A. Kiplangat 0.81 Ha

12) Salim Kipchumba Murei 0.046 Ha



13) Elizabeth Jebichii Chepsigutt 0.046 Ha

14) Joyce Jerono Kiptanui 0.138 Ha

Total 1.408 Ha

Interest of purchasers named as nos 2 to 14 on the above list of Joan Kibiwott is noted. The balance of the property shall initially be transmitted to the widow Joan Jepketer Kibiwott. She shall thereafter transfer it to the purchasers named nos 2 to 14 Subject to payment of government taxes and stamp duties.

10. However, I also note that there is a Rectified Certificate of Confirmation of a Grant re-issued on 25th September 2019 by this Honourable Court and provided as follows:

Schedule

Name Description of Property Share of Heirs

Chepterit/Kapkoi Block 3 (Mugundoi)19.....13.84(Ha)

1) Joan Jepketer Kibiwot 11.497 Ha

(widow)

2) William Keter Kosgey 0.046 Ha

3) Erick Kibor Tireiito 0.046 Ha

4) Richard Kiplagat Sangok 0.046 Ha

5) Gideon Kigen Chepsaigut 0.046 Ha

6) Hellen Jeptum Lelan 0.045 Ha

7) Sarah Cherotich Chepsaigut 0.046 Ha

8) Isaack Kipkogei Mondy 0.046 Ha

9) Margaret Chepkorir Kimondi 0.046 Ha

10) Shadrack Kipkogei Chepsaigutt 0.046 Ha

11) Paul Rotich A. Kiplangat 0.81 Ha

12) Salim Kipchumba Murei 0.046 Ha

13) Elizabeth Jebichii Chepsigutt 0.046 Ha

14) Joyce Jerono Kiptanui 0.138 Ha

Interest of purchasers named as No's 2 to 14 on the above list of Joan Kibiwott is noted. The balance of the property shall initially be transmitted to the widow Joan Jepketer Kibiwott. She shall thereafter transfer it to the purchasers named nos 2 to 14 SUBJECT to payment of government taxes and stamp duties.

11. Further, I also note that there is a further Rectified Certificate of Confirmation of a Grant re-issued on 29th April 2021, by this Honourable Court and provided as follows:

Schedule

Name Description of Property Share of Heirs

Chepterit/Kapkoi Block 3 (Mugundoi)19.....13.84(Ha)



- 1) Joan Jepketer Kibiwot-widow 11.497 Ha
- 2) William Keter Kosgey 0.046 Ha
- 3) Erick Kibor Tireiito 0.046 Ha
- 4) Richard Kiplagat Sangok 0.046 Ha
- 5) Gideon Kigen Chepsaigut 0.046 Ha
- 6) Hellen Jeptum Lelan 0.045 Ha
- 7) Sarah Cherotich Chepsaigut 0.046 Ha
- 8) Isaack Kipkogei Mondy 0.046 Ha
- 9) Margaret Chepkorir Kimondi 0.046 Ha
- 10) Shadrack Kipkogei Chepsaigut 0.046 Ha
- 11) Paul Rotich A. Kiplangat 0.81 Ha
- 12) Salim Kipchumba Murei 0.046 Ha
- 13) Elizabeth Jebichii Chepsigut 0.046 Ha
- 14) Joyce Jerono Kiptanui 0.138 Ha

Interest of purchasers named as No's 2 to 14 on the above list of Joan Kibiwott is noted. The balance of the property shall initially be transmitted to the widow Joan Jepketer Kibiwott. She shall thereafter transfer it to the purchasers named nos 2 to 14 Subject to payment of government taxes and stamp duties.

12. It is also of importance to note that the Objector/Applicant herein had instituted succession proceedings over the Deceased's estate namely Eldoret Chief Magistrate's Court Succession Cause No. 125 of 2020- In the Estate of Kibiego arap Biwott where she and her family sought the distribution of their respective portion of the Deceased's Estate, being specifically Uasin Gishu/Ainakboi North/49 among the members of the 1st House, per the Deceased's wishes.
13. I have perused the records and gone through the proceedings at the lower court, and it is evident that a certificate of confirmation of a Grant was issued on 18th January 2023 and provided as follows



Beneficiaries	Asset(s)	Share
1. Monica Jebichi Biwott 2. Milkah Jelimo Biwott 3. Selly Jepchumba Biwott 4. Roda Jelagat Biwott 5. William Kiprotich Biwott 6. Noah Kipkogei Biwott 7. Elias Kibet Biwott 8. Thomas Biwott 9. Sarah Jerono 10. Simion Kipkoech 11. Ann Biwott 12. Amos Kiptoo 13. Priscila Jerop 14. Betty Jebet 15. George Kipkemei	Uasin Gishu/ainakboi North/49 Measuring 17.0ha	Equal Share

14. From the record of the lower court, it is also evident that the Grant which was confirmed on 18th January 2023 was rectified on 5th April 2023 and it provided as follows;

Beneficiaries	Asset(s)	Share
1. Monica Jebichi Biwott 2. Milkah Jelimo Biwott 3. Selly Jepchumba Biwott 4. Roda Jelagat Biwott 5. William Kiprotich Biwott 6. Noah Kipkogei Biwott 7. Elias Kibet Biwott	Parcel Of Land Uasin Gishu/ainakboi North/49 Measuring 17.0ha	Equal Share

Analysis and Determination

I have gone through the parties' submissions and the main issue for determination is

Whether applicant has met the requisite threshold for revocation of grant within the meaning of Section 76 of the *Law of Succession Act*.

15. Section 76 of the *Law of Succession Act* provides for Revocation of grant. The grounds upon which the grant may be revoked have been well laid out therein. The said provision provides that revocation can



either be at the instance of an applicant or can be by the court suo moto. However, it is a requirement that the conditions for revocation as set out under section 76 must be proved.

16. The *Law of Succession Act* provides for revocation of grants under section 76, which 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.

17. 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 lost the soundness of his mind or was adjudged bankrupt.

18. In the case of *Jamleck Maina Njoroge –vs- Mary Wanjiru Mwangi* (2015) eKLR the court highlighted circumstances when a grant can be revoked. The court observed:

“ 11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

19. Similarly, Section 76 was clearly expounded on by the court in *re Estate of Prisca Ong’ayo Nande (Deceased)* [2020] eKLR where it was 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.”

20. The Applicant submitted that the Respondent/petitioner commenced succession proceedings in respect to the estate of their late father sometimes in the year 2014 in total secrecy and never involved anyone from the 1st House and obtained Letters of Administration Intestate and the same was later confirmed. Moreover, she submitted that she got to know that the Petitioner had filed succession proceedings in respect to the estate of their late father in total secrecy when they lodged succession cause No. 125 of 2020, on which they did not consent on the proposed mode of distribution of the estate.

21. Furthermore, it was the Applicant’s submission that the Petitioner did not disclose in her Petition and Affidavit that the deceased person had other dependants and/or another family and that the Petitioner in fact deposed that she was to hold the said titles in trust, while it is worth noting that the beneficiaries of the estate are all adults, and who can own property.



22. On the part of the Petitioner/Respondent, it was her learned counsel's submission that the objector has failed to demonstrate any evidence of fraud on her part. Further that there was no evidence that the Petitioner/Respondent ever concealed any facts from the honourable court. That her application was confined to the part of the deceased's estate that was entailed to her and her children, in accordance with the express wishes of the deceased with regard to the distribution of the estate.
23. From all the foregoing it is proved on a balance of probabilities that the Petitioner/Respondent misrepresented facts, acted fraudulently and withheld material facts. In *Re Estate of Moses Wachira Kimotho (Deceased) Succession Cause 122 of 2002 [2009] eKLR*, the court made pronouncements on the importance of disclosing all material facts before a court of Law while seeking letters of administration and confirmation thereof. It observed;
- “I am certain that had the applicants been made aware of the application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of those interests. Further had the respondent been forthright and candid and included the applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is therefore the grant was obtained fraudulently by making of a false statement and or concealment from court of something material to the cause. The respondent knew of the applicants' interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for the confirmation of the grant.
24. I also wish to echo the sentiments of my brother J. Gikonyo in *Re Estate of Julius Ndubi* when he said: -
- “...in any judicial proceedings, parties must make full disclosures to the court of all material facts to the case including succession cases. ...non-disclosure of material facts undermines justices and introduces festering waters into 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.
25. But of relevance in these proceedings is that such material facts were never disclosed to this court during confirmation of the grant so as to enable the court make an informed decision on distribution of the estate. 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 (“uberima fides”) 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.
26. I am satisfied that, there is ample evidence that the Petitioner/Respondent did more than just conceal material facts. He went further and misrepresented facts to the court in order to defraud the Objector/Applicant of their inheritance. The objector has demonstrated within the purview of Section 76 that the grant was fraudulently obtained and there was concealment of material facts and misrepresentation.
27. Subsequent to this decision, on revocation of Grant issued by the High Court on 20th May 2014 and confirmed on 29th October 2015, I have taken the liberty to examine and evaluate the Application petitioning for Grant of Letters of Administration initiated by the Objector before the Chief



Magistrates Court dated 11th December 2020. The question I ask myself is whether the Objector in approaching this Court she has done so with clean hands as the maxim ordains, “He who comes to equity must come with clean hands”. In answering this question, to delve into the proceedings before the Chief Magistrates Court which resulted in the Certificate of Confirmation of Grant dated 18th January 2023, this court invokes the provisions of Article 165 (6) & (7) of *the Constitution* as read with Section 3 & 3A of the *Civil Procedure Act* and Rule 73(1) of the Probate and Administration Rules.

28. What then can one say to be the Inherent Powers of the Court as stipulated in Section 3 & 3A of the *Civil Procedure Act* and Rule 73(1) of the Probate and Administration Rules?

1. It is to ensure convenience and fairness in the legal proceedings.
2. It is to prevent steps being taken that will render judicial proceedings prejudicial or likely to occasion an injustice.
3. It is to prevent abuses of legal processes
4. It is the power to correct, vary or extend and or order the proceedings to prevent injustice.
5. It is also the judicial power to decide the manner in which the court will decide upon a subject matter, more particularly the subordinate courts and inferior tribunals.

29. In this respect, the court in the persuasive case in Ex Parte Millsite Investments Co (Pty) Ltd. 1965 (2) SA 582 (T) at 585 G-H made the following observations on this subject matter.

That Inherent jurisdiction apart from powers specifically conferred by statutory enactments and subject to any deprivations of power by the same source, a Supreme Court can entertain a claim or give any order which, at common law, it would be entitled to entertain or give. It is to that reservoir of power that reference is made where in various judgements Courts have spoken of the Inherent power of the Supreme Court.... The Inherent power is not merely one derived from the need to make the court’s order effective, and to control its own procedure, but to hold the scales of justice.

30. In short, unlike the above jurisdiction the position in Kenya in terms of section 1A, 1(B), 3 & 3A of the *Civil Procedure Act* and also under Rule 73(1) of the Probate and Administration Rules, the legislative framework is such a power entitles any such court exercising jurisdiction can invoke the inherent powers to do any of the following scheme of things;

- a. To regulate their own proceedings
- b. To prevent abuse of the processes
- c. In the case of the High Court, to oversight the subordinate courts and inferior tribunals
- d. To ensure that substantial justice is not denied by a strict adherence to procedural rules as stipulated in Article 159(2) (d) of *the Constitution*.

31. I should emphasize that to the extent of this proceedings in substance and reality, inherent jurisdiction has to be exercised in matters arising while going through the submissions in support of the Summons filed by the Objector for the revocation of Certificate of Grant of Confirmation issued to Joan Jebketer Biwott. Easier to glean is whether the proceedings initiated by the Objector leading to the confirmation of Grant was within the safety net of the *Law of Succession Act*. To shed light to the matter it is necessary to draw an executive summary of the proceedings.

32. The Litigation history of Succession Cause No. 125 of 2020 comprises the following instruments;



- a. A letter from the Chief dated 18th November 2020 identifying the following beneficiaries survived by the deceased

1st Wife

Name Relationship

1. Selly Jepchumba Biwott Daughter
2. Milka Jelimo Biwott Daughter
3. Roda Jelagat Biwott Daughter
4. Monica Jebichi Biwott Daughter
5. William Kiprotich Biwott Son
6. Noah Kipkogei Biwott Son
7. Elias Kibet Biwott Son

2nd Wife

1. Thomas Biwott Son
2. Sarah Jerono Daughter
3. Simion Kipkoech Son
4. Ann Biwott Daughter
5. Amos Kiptoo Son
6. Priscila Jerop Daughter
7. Betty Jebet Son
8. George Kipkemei Son

33. Thereafter, the Objector filed a Consent to Confirmation of Grant and Mode of Distribution dated 18th August 2021 in which the following beneficiaries by design or lack of notice failed to append their signatures to the consent

1. Joan Jepketer 2nd Wife
2. Roda Jelagat Daughter
3. Thomas Biwott Son
4. Sarah Jerono Daughter
5. Simion Kipkoech Son
6. Ann Biwott Daughter
7. Amos Kiptoo Son
8. Priscila Jerop Daughter
9. Betty Jebet Son
10. George Kipkemei Son



34. It is also clear from the record that the Valuation Report from Afriland Valuers Ltd dated 7th April 2022, in reference to Uasin Gishu/Ainakboi North/49 purposed the open market value to be kshs. 30,000,000/= (Thirty Million Kenya Shillings). The Applicant further on 26th September 2022 generated yet another consent to confirmation of Grant and Mode of Distribution without concurrence from the following beneficiaries
1. Thomas Biwott Son
 2. Sarah Jerono Daughter
 3. Simion Kipkoech Son
 4. Ann Biwott Daughter
 5. Amos Kiptoo Son
 6. Priscila Jerop Daughter
 7. Betty Jebet Son
 8. George Kipkemei Son
35. Notwithstanding, the fatal defects in the court process as initiated by the Objector, Monica Jepichi Biwott, a Certificate of Confirmation of Grant dated 18th January 2023, was issued to the following beneficiaries in respect to Uasin Gishu/Ainakboi North/49 to be shared in equal shares.
1. Monica Jebichi Biwott
 2. Milkah Jelimo Biwott
 3. Selly Jepchumba Biwott
 4. Roda Jelagat Biwott
 5. William Kiprotich Biwott
 6. Noah Kipkogei Biwott
 7. Elias Kibet Biwott
 8. Thomas Biwott
 9. Sarah Jerono
 10. Simion Kipkoech
 11. Ann Biwott
 12. Amos Kiptoo
 13. Priscila Jerop
 14. Betty Jebet
 15. George Kipkemei
36. In line with the laid down principles under the *Law of Succession Act*, I have considered the entire spectrum of litigation before the Chief Magistrates Court and it is crystal clear the intestate estate referenced as LR Uasin Gishu/Ainakboi North/49 and its attendant market value as deduced from



the valuer exhibited in the record was far beyond the Pecuniary Jurisdiction of the Chief Magistrates Court in Kenya. In essence, the Chief Magistrate did not have jurisdiction to entertain the cause of action and any consequential orders issued are null and void.

37. It is settled law that courts as constituted by *the Constitution* within the hierarchy of our legal system must confine themselves on jurisdiction as defined in the law. Now and again, the superior courts have emphasized on the issue of jurisdiction as seen in the decision of the Court of Appeal herein Samuel Kamau Macharia Vs Kenya Commercial Bank Limited & 2 Others (2012) eKLR where the court stated as follows:

“A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

38. As demonstrated above, more important is the fact that not all the beneficiaries signed the Consent in support of the distribution model which is a requirement under the *Law of Succession Act*. The best this Court can describe the character of the Certificate of Confirmation of a Grant issued to Monica Jebichi Biwott is an abuse of process of the Court for reason of want of jurisdiction by the forum adjudicating on the cause of action and also misrepresentation of facts on survivorship whose mention is not traceable in the ultimate Certificate of Confirmation of a Grant issued to the Objector.
39. The Learned authors of Bullen & Leake & Jacobs [18th Edition] provide some guidance in this regard. They make the following observation at page 148 of their book;

“The term “abuse of process of the Court” is a term of great significance. It connotes that the process of the court must be carried out properly honestly and in good faith; and it means that the court will not allow its function as a court of law to be misused but will in a proper case, prevent its machinery from being used as a means of vexation or oppression in the process of litigation. It follows that where an abuse of process has taken place, the intervention of the court by the stay or even dismissal of proceedings ‘although it should not be lightly done, yet it may often be required by the very essence of justice to be done.’”

40. In addition, the Black’s Law Dictionary defines abuse as everything which is contrary to good order as established by usage that is a complete departure from reasonable use. An abuse is done when one makes an excessive or improper use of a thing, or to employ such a thing in a manner which is contrary to the natural legal rules for its use.
41. The Court in the case of Amaefule & Other Vs The State (1998) 4SCNJ 69 was emphatic on what constitutes the abuse of Judicial process as a term generally applied to a proceeding which is wanting



in bona fides and is frivolous vexations and oppressive. In his words abuse of process can also mean abuse of legal procedure or improper use of the legal process. It is usually a common feature to cases of this nature where same parties from the same survivorship having failed to reach an agreement on the administration of the estate under section 66 of the Law of Succession Act tend to steal a march against each other by filing separate suits in view of obtaining victory before a Court of Law. I have come to learn over time litigation is not a game of chess where players outsmart themselves by dexterity for purpose and traps. On the contrary, litigation is a contest between two parties on a cause of action within the confines of procedural and substantive law.

42. What do I make of the two judicial processes on the same subject matter being an Intestate estate of the deceased but filed before the Chief Magistrates Court and the High Court seeking the same reliefs? My answer is on point on this subject matter as the court pronounced itself in the persuasive authorities of *Okorodudu Vs Okorodudu* (1977) 3SC21 & *Oyebola Vs Eso West African Inc* (1966) 1 ALL NLR 170 where the court stated

“Thus, the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right rather than the exercise of right per se. the abuse consists in the intention, purpose and aim of person exercising the right, to harass, irritate, and annoy the adversary and interface with the administration of justice.....Essentially, is the inconvenience inequities involved in the aims and purposes of the application which constitute the abuse. Otherwise, when there is a right to bring an action, the state of mind of the person exercising the right cannot affect the rapidity or propriety of the exercise.”

43. Given this background, on the facts giving rise to revocation of initial grant issued to Joan Jepketer, the Petitioner herein, any efforts by the Objector to sustain the same legal processes which culminated in the Chief Magistrate’s Court issuing a similar Grant to the same intestate estate of Kipbiego Arap Biwott is now frowned by the Law of Succession Act under section 76 for reason of the common elements as those raised in her Application.
44. The law is settled in this respect that courts of Law particularly the powers of the High Court under Article 165(6 & 7) of the Constitution is to superintend the subordinate courts and other inferior tribunals and make any order or given directions it considers appropriate to ensure the fair administration of justice. It suffices to state that the High Court is enjoined to ensure it protects itself or other subordinate courts from any possible abuse of its powers or procedures in the conduct of proceedings. It is an implicit obligation for courts to guard against actions by unscrupulous parties who for instance sometimes are not very clear turn the courts into a theatre of non-accountable and non-transparent litigation processes which have referred elsewhere in this ruling as an abuse of the court process.
45. The two Petitioners’ in this Succession litigation are guilty of instituting a multiplicity of actions on the same Intestate estate as against the heirs to the estate which essentially is not condoned under the Law of Succession Act. Instituting a petition for Grant of Letters of Administration in favour of the Deceased Kipbiego Arap Biwott at different forums with different jurisdictions as defined in the Constitution and the statute is honestly detrimental and prejudicial to the entire legal process. The two similar processes were initiated in respect of identifying the beneficiaries, the free estate survived of the deceased and the model of distribution as provided for in section 35, 36, 37, 38, 40 & 41 of the Law of Succession Act. Indeed, each of the Petitioners’ in the two forums is guilty of non-disclosure of material facts and



misrepresentation of all matters affecting the fair administration of the Intestate estate conceived as of right by the deceased.

46. In view of the foregoing, it is my conviction that as the Objector dwelt on the impropriety, irregularity, illegality and unjustness of the Certificate of Grant of Confirmation of a Grant issued to Joan Jepaketer Biwott, her filings were also in violation of section 76 of the *Law of Succession Act*.
47. In the upshot of this, the Certificate of Confirmation of a Grant issued on 20th May, 2014 and confirmed on 29th October 2015 as rectified on 25th September 2019 and 29th April 2021 issued to Joan Jepaketer Biwott and a subsequent one issued on 5th April 2024 to Monica Jebichi Biwott & Milkah Jelimo Biwott be and are hereby revoked/annulled. The Petitioners and the rest of the beneficiaries are to proceed de novo to Petition for the administration of the Intestate Estate of Kipbiego Arap Biwott with no orders to costs.

DATED SIGNED AND DELIVERED VIA EMAIL AT ELDORET, THIS 19TH DAY OF AUGUST 2024.

.....

R. NYAKUNDI

JUDGE

kipkuruiadvocate@gmail.com

