



In re Estate of Cherotich Lango Kikwai – Deceased (Succession Cause 440 of 2023) [2024] KEHC 15951 (KLR) (18 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15951 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 440 OF 2023
HI ONG’UDI, J
DECEMBER 18, 2024**

IN THE MATTER OF THE ESTATE OF CHEROTICH LANGO KIKWAI – DECEASED.

BETWEEN

REUBEN KIPKEMOI KIPTINGOS 1ST ADMINISTRATOR

ROBERT KIBII KIPNGENY 2ND ADMINISTRATOR

AND

RICHARD KIBET RONO OBJECTOR

RULING

1. The Objector Richard Kibet Rono filed an affidavit of protest to the confirmation of the grant issued to the two respondents herein. The same is dated 9th April, 2024. The reason given is that the objector and others are the dependants of Tapkili Chelangat Langat (deceased) who was the daughter of the late Cherotich Lango Kikwai whose estate is due for distribution. He deponed that the respondents had lied to court that they were sons to the late Cherotich Lango Kikwai and later turned around saying they were creditors.
2. The late Tapkili Chelangat was later issued with letters of grant upon the revocation of the grant issued to the respondents. Upon Tapkili’s death the court re-issued to the respondents letters of grant in respect of the estate of Cherotich Lango Kikwai.
3. The respondents filed a joint replying affidavit. They deponed that the objector claims to be a beneficiary in the estate of Tapkili Chelangat Langat (deceased) yet this case is not in respect of the said estate. They want him to state his claim in the estate of Cherotich Lango Kikwai. Finally, they have stated that the court established them to be creditors to the estate of the deceased herein.
4. The protest was heard by way written submissions.



Objector's submissions

5. These were filed by Ndeda & Associates advocates and are dated 4th October, 2024. Counsel while referring to section 76 of the [Law of Succession Act](#) submitted that the grant was obtained fraudulently by the making of a false statement or concealment from the court of something material to the cause. She submitted that the grant earlier on issued to the respondents was revoked and issued to Tapkili Chelangat Langat. That the respondents had lied that they were sons to the deceased and now claim to be creditors. Further that the respondents had upon the death of Tapkili lied to the court that the deceased had no kin or relative left after her death. Counsel however admitted that the late Tapkili had no biological children.
6. Counsel further submitted that the fact of the respondents having any share in the deceased's estate was opposed by the late Tapkili. It's her argument that the respondents have a chance of ventilating how they purchased the suit premises from Tapkil Chelangat Langat. She referred to part V of the [Law of Succession Act](#) and section 39 of the said Act which provide for the ranking of beneficiaries in the estate of one who has died intestate.
7. On that point she submitted that creditors came last in the list, of beneficiaries. On concealment of material facts reference was made to the case of [Re Estate of Julius Ndubi Javan](#) [2018] eKLR where Gikonyo J stated:

“ ... in any judicial proceedings, parties must make full disclosures (sic) to the court of all material facts to the case including succession cases.

....non-disclosure of material facts undermines justices (sic) 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”.

Administrator/respondent's submissions

8. The same were filed by Omwenyo & Company advocates and are dated 21st August, 2024. On the issue of appointment of creditors as administrators counsel submitted that it is provided for under section 66 of the [Law of Succession Act](#) and the court had pronounced itself on the same when it appointed the respondents as administrators on 28th September, 2023.
9. On this point counsel referred to the case of [Kennedy Mokua Ongiri v John Nyasende & Florence Nyamoita Nyasende](#) [2022] where the court said:

“ A decision of the court must be respected as fundamental to any civilized and just judicial system. Judicial determination must be final, binding and conclusive. There is injustice if a party is required to litigate afresh matters which have already been determined by the court”.

A decision of the court, unless set aside or quashed in a manner provided for by the law, must be accepted as incontrovertibly correct. These principles would be ‘substantially undermined’ if the court were to revisit them every time a party is dissatisfied with an order and goes back to the same court particularly when there is a change of judicial officer in the court station”
10. He thus submitted that the respondents should pursue any interests they may have in Tapkili's estate and not the present one. He referred to the chief's letter and paragraph 1 of the affidavit of protest filed on 12th April, 2024 where the objector is referred to as one of the beneficiaries of Tapkili. He referred to section 29 of the [Law of Succession Act](#) which defines in detail who a dependant is.



11. Counsel filed supplementary submissions dated 15th October, 2024 in which he made clarification on two issues. The first is that in the court orders of 14th May, 2020 the court stated thus:

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4. Upon filing of summons for confirmation of grant, the respondents, Robert Kibii Kipngeny and Reuben Kipkemoi Kiptingos do file their claim as creditors to the estate of Cherotich Lango Kikwai to facilitate determination on distribution of the estate aforesaid if they will not have been provided for by the administrator of the estate”.
12. He thus submitted that the orders not having been appealed against the only issue to concern the objector is whether the administrators would take into account the entitlement of the estate of Tapkili Chelangat Langat. Second is the ruling of 28th September, 2023 which has never been appealed against. That this court cannot go back on it.

Analysis and determination

13. I have carefully considered the affidavit of protest, replying affidavit and the parties’ submissions. I have also gone through the two rulings by Ngetich J (14th May, 2020) and Chemitei J (28th September, 2023).
14. From the record and the Ruling of 14th May, 2020 one Tapkili was issued with the grant of letters of Administration in respect of the estate of Cherotich Lango Kikwai. The court also directed that upon filing of summons for confirmation of grant, the respondents herein were to prove their claim as creditors for the court to make a determination on distribution of the deceased’s estate if not provided for by the administrator (Tapkili).
15. At the point where we are, Tapkili passed on before the estate was distributed. An application was then made by the respondents for letters of grant of administration. The application is dated 25th October, 2022. The objector herein had similarly filed an application dated 4th October, 2022 seeking to replace Tapkili as the administrator. In his ruling of 28th September, 2023 Chemitei J stated that in view of the decision he had made, the application dated 4th October, 2022 was considered dealt with. Therefore, the two respondents herein were appointed administrators for the estate of Cherotich Lango Kikwai and that is what the objector is challenging.
16. There is no dispute that the late Tapkili was the daughter of the late Cherotich Lango Kikwai. Tapkili had no biological children. However, according to the objector and the area chief’s letter dated 19th September, 2022 (RKR1) Tapkili had five dependants the objector being one of them.
17. What I perceive from this cause is that:
- i. The objector claims that the entire estate of Cherotich Lango Kikwai belongs to the 5 dependants
 - ii. On the other hand, the respondents who at first claimed to be sons and now claim to be creditors are claiming a big portion of the deceased’s estate with a smaller portion going to the estate of Tapkili. The estate comprises of land in Plot No 564 – Lenginet Settlement Scheme.
 - iii. The objector wants this court to revoke the grant issued to the respondents and have it issued to him.



18. This issue of the grant of letters of administration was dealt with on 14th May, 2020 by Ng'etich J who issued the grant of Tapkili Chelangat Langat. Unfortunately, Tapkili passed on before distributing the estate.
19. The respondents applied to be issued with letters of grant in place of Tapkili. The objector herein filed a similar application. Chemitei J upon hearing the application by the respondents granted their prayer and issued the grant to them. In his Ruling he stated that by virtue of the orders issued the Objector's application had been dealt with.
20. For the Objector to come up with a similar application amounts to abuse of the Judicial process. I will therefore not address that issue again since it has been dealt with.
21. The respondents will now proceed to file and serve their mode of distribution for purposes of the confirmation of grant. The same should be served on the Objector. Once that is done his counsel will guide him accordingly.
22. The administrators/respondents are hereby directed to file and serve their proposals for distribution of the estate of Cherotich Lango Kikwai within 45 days.
23. Mention on March 11, 2025 to confirm compliance and further directions.
24. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 18TH DAY OF DECEMBER, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

