



**In re Estate of Enock Kitoi Maina (Deceased) (Succession Cause  
191 of 2000) [2023] KEHC 1783 (KLR) (23 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1783 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 191 OF 2000  
AN ONGERI, J  
FEBRUARY 23, 2023**

**BETWEEN**

**EMILY CHEPKIRUI RONO ..... PETITIONER**

**AND**

**JOSEPH KIPTONUI RONO ..... OBJECTOR**

**JUDGMENT**

1. The Objector herein Emily Chepkirui Rono filed the summons for revocation dated February 21, 2021 which is the subject of this Judgment.
2. The Objector filed a written statement and stated that she was one of the surviving widows of Daniel K Rono who is a son to the deceased, therefore she is entitled to a share in the estate with her co -wife Sarah Chepngeno Rono.
3. The Objector stated that Nondin Arap Langat was the only liability entitled to a portion of 3 acres of Kericho/Kapsuser/709 which portion was sold to him by the deceased, however, the deceased died before effecting the transfer to him.
4. The Objector stated that the Petitioner had intermeddled with the deceased's estate by allowing 3<sup>rd</sup> parties to take occupation, use and possession of sizeable portions of the deceased land parcel Kericho/ Kapsuser/709 and the continued use and possession was a waste of the estate and therefore detrimental to her beneficial interest in the estate.
5. The Objector stated that the certificate of grant herein was obtained by concealment of material facts and information namely the existence of other beneficiaries whom the Petitioner neither involved or sought consent prior to seeking confirmation of grant.



6. The Objector stated that the Petitioner herein intermeddled with the estate and/or failed to discharge his responsibilities as an administrator and sought the court to consider discharging him of his responsibility and appointing her to continue with the administration of the estate.
7. The Objector stated that it was in the interest of justice that the grant issued to the Petitioner on September 29, 1998 and subsequently confirmed on November 23, 2017 be revoked and/or annulled so as to pave way for a fresh distribution of the estate herein amongst the deceased's two households.
8. In her oral evidence in Court, the Objector said that Enock Kitoi is her brother-in-law. She said her husband was called Daniel Rono.
9. She said her mother-in-law Sophia Maina was the Objector. She said Joseph Kiptonui Rono did not tell Sophia Maina about this Petition.
10. The Objector said the deceased herein Enock Kitoi Maina had two wives. Joseph Kiptonui Rono the Petitioner was from the 1<sup>st</sup> wife.
11. The objector asked the Court to share the property equally between the two houses.
12. She said her husband Daniel had two wives. She said she will share with her Co-wife Sarah.
13. The Petitioner Joseph Kiptonui Rono said he is the only son of the deceased from the 1<sup>st</sup> wife.
14. The Petitioner said the Objector is the wife of his brother from the 2<sup>nd</sup> house.
15. The Petitioner said the deceased share his property between the two houses.
16. The Petitioner filed a written statement which he adopted as evidence in Chief.
17. The Petitioner stated that the deceased died on October 9, 1988, on September 29, 1998 he was granted letters of administration intestate and later on Sophia Chebet Maina (deceased) his step mother was enjoined as a co-administrator in the estate of Enock Kitoi Maina. On September 8, 2017 they applied for summons for confirmation of grant where the objector consented to the mode of distribution dated September 8, 2017.
18. The Petitioner stated that prior to propounding the summons for confirmation of grant, they had various meetings and subsequently the mode of distribution was per the wishes of the deceased and all the beneficiaries were catered for.
19. The Petitioner conceded that before the grant herein was confirmed, sale of some portions of land was done out of necessity firstly, to facilitate the filing of the succession proceedings and secondly, to educate and provide for the beneficiaries as the matter had taken for over twenty years in Court.
20. The Petitioner therefore sought to have the summons for revocation dismissed as they were done in bad faith as the objector herein was aware of the bona fide third-party purchasers and all beneficiaries to the estate were catered for.
21. In Cross-Examination, the Petitioner denied that he did not tell Sophia Maina (now deceased) about this succession cause.
22. The Petitioner also said that it was the deceased who gave him his portion of the estate.
23. The Objector filed submissions in support of the summons for revocation of grant. The Objector contended that 3<sup>rd</sup> party inclusion to a share in the estate was prejudicial to her beneficial interest in the estate of the deceased.



24. The Objector conceded that the Petitioner and Sophia Chebet Maina were duly appointed by the court as administrators but since her demise there was no replacement/substitution drawn from beneficiaries of the second house.
25. The Objector reiterated that the certificate of confirmation of grant issued on November 23, 2017 and ought to be revoked and the estate redistributed as the Petitioner proceeded to have the grant confirmed without notice to the objector whilst misleading the court that the shares of all beneficiaries had been identified and ascertained. The objector cited rule 40 (4) of the *Probate and Administration Rules* and the case of *Re Estate of Joseph Kibera Gituro (Deceased)* [2019] eKLR.
26. The Petitioner did not file submissions.
27. The issues for determination are as follows:-
- i. Whether the grant herein should be revoked.
  - ii. How the Estate should be shared.
28. On the issue as to whether the grant should be revoked, the law provides for revocation of grant is Section 76 of the *Law of Succession Act*, CAP 160, Laws of Kenya, 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;
  - (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 has ordered or allowed; 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.”



29. Section 76 of the *Law of Succession Act*, CAP 160, Laws of Kenya 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.”

30. I find that the Petitioner did not administer the estate faithfully and that he sold parcels of land to 3<sup>rd</sup> parties.
31. There is evidence that the Estate was illegally shared to Jonathan Sigei, Danny Billy Sang, Seventh Day Adventist church, Kiptule Church of Christ and Kipkoech Tonui.
32. These are not family members and I find that the summons for revocation herein has merit.
33. The grant of letters of Administration issued to Joseph Kiptonui Rono dated September 29, 1998 and the Certificate of Confirmation issued on November 28, 2017 is accordingly revoked and annulled.
34. This court directs that a fresh grant be issued to Emily Chepkirui to administer the Estate.
35. The Administrator to file a summons for confirmation within 30 days of this date.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2023.**

**A. N. ONGERI**

**JUDGE**

