



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Kipsang Arap Kener (Deceased) (Succession Cause  
63 of 2009) [2023] KEHC 1413 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1413 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 63 OF 2009  
AN ONGERI, J  
FEBRUARY 23, 2023**

**BETWEEN**

**JOHNSTONE KIMUTAI SANG ..... PETITIONER**

**AND**

**GRACE CHELANGAT BOR ..... 1<sup>ST</sup> OBJECTOR**

**LUCY CHEBOO KIPRUTO ..... 2<sup>ND</sup> OBJECTOR**

**ESTHER CHEPKEMOI BENGAT ..... 3<sup>RD</sup> OBJECTOR**

**RULING**

1. The objectors in this case, Grace Chelangat Bor, Lucy Cheboo Kipruto And Esther Chepkemoi Bengat have filed a summons for revocation of grant in respect of the Estate of their father, the deceased herein Kipsang Arap Kener.
2. The summons for revocation is dated 20/06/2019 supported by the affidavit of the 1<sup>st</sup> Objector Grace Chelangat Bor.
3. The objectors who testified as OW1, OW2 and OW3 said that they were biological daughters of the late Kipsang Arap Kener (deceased) who died on 4/4/2003.
4. They further said that the following dependants that were left behind by the deceased at the time of his death;

Jane Kener (who died in 2007), Lucy Cheboo Kipruto, Johnstone Kimutai Sang, Samwel Kipkorir Sang (deceased) survived by his widow Rhoda Cherotich, Grace Chelangat Bor, Zakayo Kipyegon Sang and David Kipngetch Sang (deceased) survived by his son Duncan Ngeno. (jane Kindly List (i) to (viii))



5. The objectors said they recently discovered that the petitioner had secured grant of letters of administration Intestate of the deceased estate dated 26/7/2011 in which they were excluded as the deceased daughters.
6. That the deceased owned a parcel of land LR No. Kericho/kabianga/58 measuring 16.4 acres which was supposed to be sub-divided equally among all the beneficiaries of the deceased.
7. That the said grant was acquired fraudulently as the Petitioner failed to disclose that the deceased was survived by three daughters, the objectors herein, that the said daughters had expressed an interest in the deceased estate and that while the objectors were excluded from taking part in the proceeding, the petitioner included one Mary Chebii Marisin who was a total stranger.
8. That upon conducting official search at the Lands Registry they discovered that the Petitioner had sub-divided the deceased estate with the resultant titles issued to the beneficiaries some of who had since transferred the same to the third parties.
9. They said that they were reliably informed that two of the beneficiaries, that is Zakayo Kipyegon Soi and the Petitioner Johnstone Kimutai Sang were advertising a portion of the land for sale.
10. That they instituted the suit so that the Grant of Letters of Administration Intestate dated 26/7/2011 is revoked and a fresh grant be issued whereby they are provided for as part of the beneficiaries of the deceased estate.
11. That they were apprehensive that the petitioner and the other beneficiaries who were provided for were trying to dispose off their shares to frustrate the objectors claim.
12. They also said that they were neither invited to participate in the Succession Proceedings nor were they summoned to attend court to confirm their position with regard to the final distribution of the deceased estate.
13. The petitioner Johnstone Kimutai Sang said as follows in his written statement;
14. That it was not true that the he fraudulently obtained the grant since he involved everyone in the process and that it was not practical to cancel the title deeds that resulted from LR No. Kericho/Kabianga/58 since the same land had exchanged hand severally.
15. That the objectors' application was tainted by malice since more than 5 years had lapsed since the confirmed grant was issued yet the objectors did not raise any objection then and that it was not practical to revoke the title deeds and revert them back to the name of the deceased since the new owners had already made extensive developments on the land and would suffer irreparable damages.
16. That the three objectors renounced their rights for reasons that they had been married.
17. That one Mary Chebii Marisim was not a stranger since she is a widow of the petitioner's late brother Samwel Kipkorir Sang and was therefore representing the said late brother in the succession process.
18. That a similar application was made om 15/8/2013 but was dismissed for lack of merits
19. The parties were directed to file written submissions but the objectors did not file any submissions.
20. The petitioner submitted that the objectors did not prove any ground for revocation as outlined in section 76 of the *Law of Succession Act*. He cited the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] eKLR, Nairobi Succession Cause 1817 of 2005 and *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR, Kakamega Succession Cause 158 of 2000.



21. It was the petitioner's submissions that the objector's application requested for the certificate of confirmation to be revoked and that a certificate of confirmation of grant is not a grant of representation hence cannot be revoked under section 76 of the *Law of Succession Act*. He cited the case of *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR, Kakamega Succession Cause 836 of 2013.
22. The petitioner further submitted that the applicants are not objector within the bounds of the law as they did not file their objection within 21 days following the cause's publication in the Kenya Gazette rather, they filed their objection 9 years later which was out of the 21 days period without seeking leave to file the said objection out of time. He cited the case of *In Re Estate of Joel Cheruiyot Ronoh* [2016] eKLR and *In re Estate of Prisca Ong'ayo Nande (Deceased)* (Supra).
23. It was the petitioner's submission that all the beneficiaries were informed and fully aware of all the proceedings and they attended court before he was issued with the certificate of confirmation of grant and therefore the petitioner followed the due process in accordance with the law and there was no fraudulent activity as the objectors' purport. The Petitioner continued that the objectors were fully notified of the succession proceedings but they declined to sign the necessary consent forms and that the said objectors waived their rights to inheritance on grounds that they were happily married. He cited the case of *In re Estate of William Waweru Njoroge (Deceased)* [2019] eKLR.
24. The Petitioner reiterated that it was impractical to cancel the title deeds that are a resultant from L.R No Kericho/Kabianga/58 since the same has exchanged hands severally and that the said objectors had executed the Renunciation Deed dated 18/2/2010 renouncing their right to a share of the estate and cannot be heard saying that they want a share of the same estate. He cited the case of *In the Matter of the Estate of Elizabeth Wanjiku Munge (Deceased)* [2015] eKLR, Nairobi Succession Cause 2229 of 2010.
25. The Petitioner submitted that Mary Chebii Marisim is not a stranger but a widow to the late Samwel Kipkorir Sang a son of the late Kipsang Arap Kener as was appreciated in the ruling dated 13/6/2014, that the petitioner had not intermeddled with the deceased property as the sub-division was done after obtaining a grant of letters of administration and that the objectors had not offered a plausible explanation of their delay in filing objection spanning over 8 years.
26. I have considered the evidence adduced in this case together with submissions filed by the petitioner. The objectors did not file any submissions.
27. The sole issue for determination in this case is whether the grant of letters of administration Intestate of the deceased's estate dated 26/7/2011 issued to the petitioner should be revoked.
28. On the said 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 it not in dispute that the objectors are the married daughters of the deceased and that they were left out in the sharing of the Estate of the deceased.
31. I did find that it is not in dispute that the Estate of the deceased comprising L.R No. Kericho/ Kabianga/58 was shared as followings;
1. Johnstone Kimutai Sang.....4.1 Acres
  2. Zakayo Kipyegon Sang.....4.1 Acres
  3. David Kipngetich Sang.....4.1 Acres
  4. Rhoda Cherotich.....2.05 Acres



5. Mary Chebii Marisin.....2.05 Acres
32. The above beneficiaries are the sons of the deceased and Rhoda Cheritich and Mary Chebii Marisin are daughters in law of the deceased being the two wives of Samwel Kipkorir Sang(deceased).
33. The petitioner who shared the Estate to the two widows is now disowning Mary Chebii Marisin.I find that the said issue had been determined and the share for Samwel Kipkorir Sang (deceased) was shared equally between his two widows.
34. Mary said she was chased away from the Estate by the petitioner and she has no place to stay.
35. It is not in dispute that the land was subsequently divided into 5 parcels namely Kericho/ Kabianga/4160,4161,4162,4163,and Kericho/Kabianga/4164
36. I find that it is not in dispute that the objectors who are married daughters of the deceased were left out.
37. I find that the Petitioner has admitted that the objectors are his sisters and that he is willing to share the Estate with them.
38. I find that the solution is not to revoke the grant but to allow the petitioner to make provision for the objectors.
39. I direct that the petitioner files a summons for rectification and caters for the 3 objectors.
40. The summons for rectification to be filed within 30 days of this date. All the beneficiaries to appear in court for rectification of grant.
41. Each party to bear its own costs of this case.

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

**A. N. ONGERI**

**JUDGE**

