



REPUBLIC OF KENYA



**Rotich v Kiprotich (Succession Cause E037 of 2021)  
[2023] KEHC 2379 (KLR) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2379 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E037 OF 2021  
RN NYAKUNDI, J  
MARCH 27, 2023**

**BETWEEN**

**JOEL KIPTANUI ROTICH ..... APPLICANT**

**AND**

**DORCAS LANGOK KIPROTICH ..... RESPONDENT**

**RULING**

- 1 The applicant approached this court vide an application dated November 11, 2021 seeking the following orders;
  1. The grant of letters of administration intestate and the subsequent certificate of confirmation of grant issued to Dorcas Langok Kiprotich on July 12, 2021 be revoked.
  2. Costs of this suit be provided for.
- 2 The application is premised on the grounds set out therein and the contents of the supporting affidavit.

**Hearing of the Application**

- 3 Joseph Korir Tuwei relied on his witness statement filed on May 26, 2022. He stated that the deceased was his uncle and further, that the deceased left behind two parcels of land being Kaptagat/Lotonyok Block 2 (Koilel)/18 measuring 28 acres and Sergoit Karuna Block 3 (Tugen) Plot No. 282 which measures 9 acres. It was his evidence that the dispute arose as to the distribution of the land as proposed by the children of the 1<sup>st</sup> wife. He stated that he was surprised when the petitioner secretly filed a succession cause and that it was only fair that the grant be revoked and the property distributed evenly.
- 4 Grace Kibet testified that along with Chief Moses Kiplagat, she was called to mediate on the issue of distribution of the estate, two parcels of land by the deceased being Kaptagat/Lotonyok Block 2 (Koilel)/18 and Karuna Block 3 Plot No. 282. The parties could not come to consensus over the



- distribution of the parcels of land. She denied authoring the letter dated April 12, 2021 used by the administrator to apply for letters of administration.
- 5 Barnabas Kiptoo, nephew to the deceased, filed a witness statement on May 26, 2022. It was his testimony that there arose a dispute as to the distribution of the estate of the deceased between the two houses and that there was no will distributing the land. He stated that both the parties had been unable to resolve their disputes as to the distribution.
- 6 The respondent testified that since the demise of their father the applicant and his siblings had never come to claim any property. That during his lifetime they came to request for their property but their father told them they were not entitled to any property as he had already given them their share. That the applicant reported them to the chief and they held a meeting where the applicant informed the chief and assistant chief that they had been given a smaller share. The chief left them to agree. Then, in January 2021 when they filed succession to enable them divide their property the objector came and filed the application.
- 7 Jonathan Kipkorir, in his witness statement, stated that the siblings from the second house were given a share of land which their father bought for them to cater for themselves. That they attempted to claim a share of their property but their father put it clear to them that the subject property belonged to the first wife. That the applicants went to the chief and reported that they had been given a smaller share of the property and that the suit is meant to frustrate them. Joseph Kipchoge Birir, a brother to the deceased corroborated the statements by the respondent's witnesses and stated that both wives were given property.

### **Applicant's Case**

- 8 The applicant contends that he is a son to the deceased and that upon the death of the deceased the petitioner applied for a grant of letters of administration secretly and the same was confirmed on July 12, 2021. Learned counsel for the applicant submitted that the allegation that the estate was distributed to the wives of the deceased was not a reason to secretly file a petition and leave put the beneficiaries from the second house. He urged that the assistant chief having been party to the deliberation did not author the letter used by the petitioner to obtain a grant of letters of administration intestate and thus the filing of the petition was premised on a forged letter and falsehoods on account of the beneficiaries surviving the deceased and inventory of his assets and liabilities. The applicant urged that the court orders the beneficiaries left out in the petition be included and the objector ought to be made a co-administrator of the estate and parties proceed to canvass the issue of distribution.

### **Respondent's case**

- 9 The respondent opposed the application vide a replying affidavit filed on February 8, 2022. She urged that the applicant's family was given their share of the inheritance and were not entitled to interfere with the possession of the suit property. The estate was well explained to both his wives who are now deceased. She stated that the applicant ought to demonstrate that they were not given a share of the estate by the deceased. Learned counsel for the respondent filed submissions dated February 27, 2023 and stated that respondent in this case had applied/petitioned for grant of letters of administration intestate and was granted a certificate of confirmation of grant to the said property for purposes of subdivision to her siblings hence there is no claim of intermeddling that can be successfully laid against her. Further, that the transfer of the suit land from the deceased's name to the respondent's name was done procedurally according to the law.
- 10 She urged that the application be dismissed with costs to the respondent.



## Analysis & Determination

11 This being an application for revocation of grant, the issues for determination is as follows;

1 Whether the grant of letters of administration issued to the respondent should be revoked  
Section 76 of the *Law of Succession Act* provides;

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.

12 In order to determine whether the grant of letters of administration should be revoked in this instance, the applicant must establish that the grant of letters of administration and certificate of grant were obtained by concealment of material facts.

13 Very much reinforcing this standpoint the dictionary definition strikingly elaborates the meaning of “deceive, trick, “Fraudulent” as adjectives meaning “obtained, done by, or involving deception. Whereas *Black’s Law Dictionary* 6<sup>th</sup> Edition at page 660 defines fraud as “An intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right’ A false representation of a matter of fact, whether by words or by conduct by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury”



- 14 In the case of *Good Willian Loveday AC* (1900) Page422 the court enunciated the following principles that: “The real object which the court must always keep in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto; and I can see no good reason why the court should not take fresh action in regard to the estate where it is made clear that the previous grant has turned out abortive or inefficient. If the court has in certain circumstances made a grant in the belief and hope that the person appointed will properly and fully administer the estate, and it turns out that the person so appointed will not or cannot administer, I do not see why court should not revoke an inoperative grant and make a fresh grant”
- 15 It is not disputed that the applicant was a member of the 2<sup>nd</sup> house. Further, from a perusal of the affidavit in support of the petition, it is evident that the 2<sup>nd</sup> house was not included among the beneficiaries. As at April 19, 2021, when the petitioner made the petition for grant of letters of administration, the estate was indicated to comprise of Kaptagat/Lotonyok Block 2 (Koilel)/18. As per the certificate of official search, said property was registered in the name of the petitioner as at August 2021, which was after the grant was confirmed. In this regard, the respondent did not intermeddle with the property as she had already been appointed an administrator of the estate.
- 16 However, there is a title did on record as annexure JKR(1)(b) to the affidavit in support of the summons which reveals that there is a property known as Sergoit Karuna Block 3 (Tugen) Plot No. 282 which was registered in the name of the deceased. The same does not feature in the petition for the grant of letters if administration. This fact speaks to the allegation of concealment of material facts. This is further compounded by the testimony of the Grace Kibet, assistant chief who disowned the letter dated April 12, 2021.
- 17 It is my considered view that the petitioner failed to disclose the material facts that the deceased had another parcel of land and that there existed a second family. As it forms part of the free property of the deceased, failure to include it, regardless of any allocations that were made without documentation of the same in the lifetime of the deceased, is to be considered failure to disclose material facts. There is prima facie evidence from the affidavit of Joel Kiptanui Rotich dated November 11, 2021, further the witness statement of one Christine Jemagut dated February 4, 2022, similarly the witness statement of Joseph Kipchoge Birir dated February 4, 2022, the witness statement of Barnabas Kiplimo dated May 24, 2022 and finally the witness statement by the assistant chief one Grace Kibet dated May 24, 2022 that the impugned confirmed grant dated July 19, 2021 is tainted with illegality, impropriety, irregularity, misrepresentation and falsehood. The spirit of the law under section 76 of [Law of Succession Act](#) renders the certificate of confirmed grant unenforceable at law. It is trite that where one beneficiary or both commits a procedural legal role or acts in a manner which is otherwise contrary to the provisions of the Law of Succession in the course of petitioning for grant of representation the court is called upon to exercise discretion of rectifying the illegality. That is the true factual matrix of this case and upholding it would certainly occasion an injustice and prejudice to the other beneficiaries. In the making of the grant of presentation what should be the starting point of the petitioner is to apply the doctrine of inclusivity. The court has no discretion to recognize the making of the grant whose scope is fatally defective. My appreciation of the facts and the law leads me to conclude that the succession proceedings giving rights to the confirmation of grant involves conduct of the Administrator of which the law disapproves as being contrary to the interest of justice.
- 18 The other limb of this matter is on grant of interlocutory injunction pending the hearing and determination of the distribution of the intestate estate. The line of authority on the power of the court to grant an injunction is clearly stated by Doplock LG in [Gathwaite v Garthwaite](#) (1964). P.356 at 387. In which his Lordship held as follows: “ A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action



against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction" See also *Giella vs Cassman Brown & Co. Ltd* (1973) E.A358, and *Mrae Ltd v First American Bank of Kenya Ltd & 2 others* (2003) eKLR 1215."

- 19 In the premises the grant issued to the petitioner and the certificate of confirmation of grant is hereby revoked. As already mentioned above the better view is that of granting a temporary injunction against any dealings with the intestate estate of the deceased John Kiprotich pending fresh negotiations by the parties or final decision of this court. The petitioner and the applicant are directed to apply afresh for the grant under section 66 of the [Law of Succession Act](#). There is no order as to cost.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 27<sup>TH</sup> DAY OF MARCH 2023**

**R.NYAKUNDI**

**JUDGE**

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