



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of James Kimarta Ruto (Deceased) (Probate & Administration  
311 of 2018) [2023] KEHC 3513 (KLR) (24 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3513 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PROBATE & ADMINISTRATION 311 OF 2018  
RN NYAKUNDI, J  
APRIL 24, 2023**

**BETWEEN**

**HENRY K. SANG ..... 1<sup>ST</sup> PETITIONER**

**ISAAC K. MARTA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**JAIRUS K. RUTO ..... 1<sup>ST</sup> OBJECTOR**

**ISAAC K. KEMBOI ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. Before me are summons of revocation of grant dated April 26, 2022 in which the applicant seeks the following orders: -
  1. Spent.
  2. The Honourable court be pleased to temporarily stay the execution and consequent activities arising therefrom of the grant of letters of administration issued to the respondents on September 27, 2021 by this Honourable Court pending the inter parties hearing of this application.
  3. That the grant of letters issued to the Respondents herein on September 27, 2021 be revoked and the same be given to the 1<sup>st</sup> objector and the applicant herein or to any other person that this Court may appoint.
  4. Costs of this application be paid out of the estate of the deceased.
2. The application is premised on the grounds therein and is further supported by the affidavit sworn by Isaac K. Kemboi dated April 26, 2022.



### **The 2<sup>nd</sup> Objector/Applicant's Case**

3. The applicant deposed that he is the son of the deceased herein and heir to his estate. Further that both his parents are deceased and his other siblings from his mother include;
4. The applicant further deposed that the deceased herein died on 29<sup>th</sup> February, 2012 while domiciled in Sochoi Nandi and was buried there. That the Petitioner herein applied for the letters of administration which were issued on 24<sup>th</sup> September, 2014.
5. Consequently, the objectors herein filed Summons for revocation of the said grant wherein parties opted to settle on a mode of distribution and to have the summons withdrawn by consent.
6. The applicant maintains that all the beneficiaries of the deceased were to be involved in the process of preparing a mode of distribution of the estate and everyone's consent was to be obtained before finalizing the matter.
7. The applicant further deposed that they participated in the matter and agreed that the estate be distributed equally among all the beneficiaries of the estate. The applicant further maintains that his brother the 1<sup>st</sup> objector and him never signed the consent agreement for the agreed mode of distribution but knew all the beneficiaries were to get equal shares.
8. Subsequently, the estate made an application for Confirmation of grant which grant was confirmed on 27<sup>th</sup> September, 2021 by this Court. That the same was confirmed online and that the parties never appeared before the Court for confirmation. The applicant maintains that nevertheless, he was comfortable knowing that all the beneficiaries were catered for.
9. The applicant contends that a few months later, the 1<sup>st</sup> objector and him were served with a demand notice from their brothers Isaac Marta and Henry Sang the Respondents herein requesting them to surrender title deeds in respect to the properties listed for distribution in the Certificate of Grant issued on the 27<sup>th</sup> September, 2021. The applicant further contends that to his surprise everyone was catered for except him. That he was not included in the list of beneficiaries yet he is entitled to the estate of the deceased like the rest of the beneficiaries.
10. The applicant maintains that further among the listed properties for distribution was his motor vehicle registration number KAS 908F which does not belong to the estate of the deceased and should therefore not be listed among the properties to be distributed.
11. According to the applicant, the action in excluding him and listing his motor vehicle for distribution was malicious.
12. The applicant contends that the respondents herein have clearly acted against their duties as administrators of the estate of the deceased and have provided fraudulent information before this court.
13. The applicant urges that there is therefore a need to revoke the grant issued to the Respondent.
14. The applicant prays that the court appoints his brother the 1<sup>st</sup> objector or him or any other suitable heir to manage and more the court for the distribution of the estate in place of the Respondents.

### **The Petitioners'/Respondents' Case**

15. The Petitioners opposed the applicant's application vide the replying affidavit sworn by Isaac Kipyegi Marta, the 1<sup>st</sup> Respondent herein on 3<sup>rd</sup> June, 2022.



16. The Petitioners maintain that the applicant's application lacks merit, is defective, frivolous, is an afterthought and is made in bad faith.
17. The Petitioners deposed that on 27<sup>th</sup> September, 2021 this Court delivered a judgment in their favour against the objectors herein. That the court ordered that all the (15) beneficiaries to the estate of the late James Kimarta Ruto get an equal share of all the assets that belonged to the deceased.
18. The Petitioners contends that the 1<sup>st</sup> objector and the 2<sup>nd</sup> objector herein are in possession of the Certificate of title to two parcels of land forming part of the estate of the deceased namely: Tulwet/tulwet Block 7 (terige) 25 and Lessos Settlement Scheme/347.
19. The Petitioners contend that the 1<sup>st</sup> objector and 2<sup>nd</sup> objector have however despite several requests and demand refused and or neglected surrender the Certificates of title to the aforementioned parcels of land to the Registrar of Lands for transmission of the said assets to the estate's beneficiaries forcing us to file an application dated 20<sup>th</sup> April, 2022 on 21<sup>st</sup> April, 2022.
20. The Petitioners maintain that the applicant herein withdrew his Summons for Revocation of Grant dated 11<sup>th</sup> December, 2014 on 17<sup>th</sup> September, 2018.
21. The Petitioner maintain that in any case the deceased herein James Kimarta Ruto is not the 2<sup>nd</sup> objector's/applicant's biological father but rather his uncle. The Petitioners contend that even though the applicant lived in their step-mothers' home, he is their cousin and a son to their late uncle Kiprotich Sang and aunt Teresa Sang. That the deceased herein and their late step-mother Elizabeth Jepketer Ruto are both not the 2<sup>nd</sup> objector/applicant's biological parents.
22. According to the Petitioners, they read mischief in the Certificate of Birth as the said certificate was issued on 18<sup>th</sup> January, 2012 (18) days before the demise of the deceased herein who was bedridden and suffering from a brain tumor and hence not in the right state of mind to give consent which demonstrates that the applicant obtained the said Certificate of Birth fraudulently as the consent of the deceased could not have been obtained.
23. The Petitioners maintain that owing to their late father's health they sold land and bought motor vehicle registration number KAS 908F so that they could rush him to hospital whenever he needed medical assistance and thus baffling that the applicant fraudulently registered the said motor vehicle in his name.
24. The Petitioners further deposed that in the Chief's letter on record, the 2<sup>nd</sup> objector/applicant was not stated as a beneficiary of the estate of the deceased as it is colloquially known that he is a nephew to the deceased and not a beneficiary of the estate of the deceased as alleged.
25. The Petitioners contend that the applicant herein is set to inherit from their uncle's estate in the future and it will be prejudicial to the beneficiaries of the estate of the deceased for the applicant to unfairly inherit from their late father's estate.
26. The application was disposed of through written submissions.
27. The applicants filed written submissions dated 16<sup>th</sup> October, 2022 and filed on 17<sup>th</sup> October, 2022 whereas the Petitioners filed their submissions dated 30<sup>th</sup> June, 2022 on 8<sup>th</sup> August, 2022.



## **Determination**

28. Having appreciated the pleadings of the respective parties', the submissions and the authorities cited therein, I am of the considered view that there exists only one substantive issue for determination by the court. I consider that single issue to be whether the sought orders by the applicant can issue?
29. The gist of the applicant's case is that he is a beneficiary of the deceased herein and therefore entitled to a share of his estate. The applicant contends that the Petitioners herein omitted his name from persons entitled to benefit from the estate of the deceased herein. The applicant further contends that the Petitioner herein have also listed motor vehicle registration number as part of the assets of the estate of the deceased herein whereas the said motor vehicle belongs to him and therefore does not form part of the estate herein.
30. The Petitioners on the other hand maintained that the applicant herein is not a beneficiary of the deceased but their cousin and therefore not entitled to inherit from the estate herein. The Petitioners have also called to question the authenticity of the applicant's Certificate of Birth. The Petitioner have alleged fraudulent transactions in the making of the said certificate.
31. Flowing from the above there is no doubt that the parties herein have both raised weight issues surrounding the distribution of the estate of the deceased herein. At this juncture I cannot conclusively render myself on the issues being raised by the respective parties as the same would require naturally require the calling of witnesses and evidence. The court can therefore only determine the issues aforementioned if parties were to tender viva voce evidence.
32. In light of all the above, I do make the following final orders on the application before me: -
  - i. The application seeking Summons for revocation of Grant dated April 26, 2022 to be canvassed vide viva voce evidence.
  - ii. Status quo to be maintained.
  - iii. Each party shall bear its own costs noting that the claim herein is a succession cause involving members of one family.
  - iv. Hearing on 30/5/2023.Orders accordingly.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 24<sup>th</sup> DAY OF April 2023.**

**In the Presence of**

**M/S. Chebet for Yego Present**

.....

**R.NYAKUNDI**

**JUDGE**

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