



REPUBLIC OF KENYA



**In re Estate of Late Kipkurer Chesire (Deceased) (Succession Cause
546 of 2014) [2023] KEHC 21643 (KLR) (31 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21643 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 546 OF 2014**

HM NYAGA, J

JULY 31, 2023

IN THE MATTER OF THE ESTATE OF LATE KIPKURER CHESIRE (DECEASED)

BETWEEN

MERCY CHELANGAT ROTICH APPLICANT

AND

JAMES KIPTOO NGETICH 1ST PETITIONER

LILIAN KIMOI MWANGI 2ND PETITIONER

MICHAEL KEMBOI 3RD PETITIONER

WELDON KOIMA CHELIMO 4TH PETITIONER

SARAH TEMUKE 5TH PETITIONER

JUDGMENT

1. The deceased herein Kipkurer Chesire died intestate on December 8, 1998. A certificate of death of entry number xxxx is on record to this effect. At the date of his death, he was domiciled in Kenya.
2. On 12th October, 2014 James Kiptoo Ngetich, the 1st respondent herein, filed a Petition for Letters of Administration Intestate of the deceased's estate. In the affidavit sworn in support of the petition, it was deposed that he was the son and sole beneficiary of the deceased and that the only asset comprising his intestate estate was 120 shares at Kipsyenani Farmers Company Limited Equivalent to 3.6 Hectares with an estimated value of Five Hundred Thousand Shillings (Ksh. 500,000/=) only. Annexed to the affidavit was a certificate for Ordinary Shares which indicated that the deceased was registered as the proprietor of the aforesaid shares.



3. On 30th December ,2014, the grant of letters of Administration intestate was issued to the 1st Respondent by my sister Hon. Lady Justice Janet Mulwa and subsequently confirmed on 9th June,2016 by my brother Hon. A. K. Ndungu J.
4. On 13th June,2019 the Applicant/Objector filed summons for annulment of grant pursuant to Section 76 (a) (b) and (c) of the Law of Succession Act seeking for Orders: -
 1. That the Grant of Letters of Administration made to James Kiptoo Ngetich on 9th June,2016 and confirmed on the 9th June,2016 be annulled.
 2. That the estate be preserved pending the hearing of the Motion herein.
 3. That an order of the temporary injunction does issue against the Respondents and agents/ Representatives from dealing with, disposing off, alienating, leasing and in any manner intermeddling with the estate pending the hearing and determination of the Application and the suit herein.
 4. That an order of a permanent injunction does issue against the Respondents and agents/ representatives from dealing with, disposing off, alienating, leasing and in any manner intermeddling with the estate upon the hearing and determination of the suit herein.
 5. That the costs of this Application be granted.
5. The Application is premised on the grounds on its face and supported by an Affidavit of Mercy Chelangat Rotich, the Applicant herein, sworn on the even date.
6. She averred that she is the only surviving child of the deceased herein and that following the deceased's demise, the 1st Respondent connived and falsely disguised himself as the son of the deceased and only heir of his estate when he petitioned for letters of Administration of the Estate of the deceased when he knew such assertions were false and in a bid to obtain letters of administration to his own advantage and benefit.
7. She deposed that the Respondents upon obtaining the letters of administration illegally disposed of the properties of the Estate to themselves and to third parties to her total exclusion.
8. She contended that the Respondents' deliberate actions are proof of criminality, fraud, illegality and unjust enrichment on account of the bonafide beneficiary.
9. She enumerated particulars of fraud against the 1st Respondent as passing out and knowingly misrepresenting his kinship ties with her father, as a son and the next of kin when he knew the same to be grossly false; listing strangers as beneficiaries of the estate of the deceased while aware of who the true beneficiaries were in the matter; forging letters and public documents more so the chief's letter to earn a wrongful status, to her harm and loss;& falsifying and misrepresenting the true status of the estate to her detriment, even uttering false testimony.
10. She averred that the respondents blatantly and in utter disregard, perpetuated the offence of perjury as they in full awareness of the need for truth, and while under oath intentionally and maliciously, furnished the court with documents containing false information in order to benefit from the estate and which they did when they were granted orders and letters of administration.
11. She deposed that she was a minor at the time and that she later discovered the illegal developments when she became of age and live to this matter but it was too late to lodge objection proceedings since the period within which to do so as per the gazette notice issued had lapsed.



12. She averred that she stands to suffer irreparable harm since she was never informed, served or furnished with any proceedings in this cause albeit illegally and without procedure, and unjustly she has been denied her legal rights to the suit property and inheritance from the estate.
13. She prayed that the application be allowed.
14. The summons is opposed.
15. The 1st respondent James Kiptoo in his replying affidavit dated 26th July,2019 deposed that the Applicant is neither a child or dependent of the deceased and that the deceased was the real brother of his father and to his understanding his father.
16. He averred that the deceased was once married to one Kongato while he lived in Rare and they were unable to bear children and he went and brought him to buy the subject parcel of land at Kipsyenan when he started growing old.
17. He deposed that the deceased sold that land at Rare through his assistance and they bought shares at Kipsyenan Farmers Company Ltd where he built a house in the year 1993 or thereabouts.
18. He stated that the deceased's wife left when they could not bear children and were growing old leaving the deceased alone but the deceased kept cohabiting with several women briefly who also left having not conceived any of his child.
19. He averred that in 1993 or thereabouts the Applicant's mother came along with the Applicant but she left her in the neighbour's house one Mr. Kosgei while she stayed with the deceased for a short while as was the deceased's normal practice.
20. He contended that the Applicant's mother was pregnant when she came and later delivered a baby boy and then left the deceased and thereafter got married to another person in East Pokot where he understood the boy passed away.
21. It was his deposition that the Applicant stayed at Mr. Kosgei's House and was brought up there until she became an adult.
22. He stated that the Applicant's mother never introduced to them the Applicant as the deceased's child and that the Applicant never stayed with the deceased nor got his support at any stage in her life and her claim hereof is a matter of speculation driven by other forces.
23. He asserted that neither the Applicant nor her mother attended the burial of the deceased although they knew about it.
24. He accused the Applicant of concealing the identity of her father with a view of unjustly benefitting herself from the estate of the deceased.
25. He further averred that the Applicant was never adopted by the deceased in his life time and that her family never handed her over to them to bring her up.
26. He denied concealing any true facts and engaging in fraud while taking out letters of administration as claimed by the applicant and confirmed that he has since sold the subject property to the 2nd, 3rd, 4th and 5th Respondents and transferred their respective portion in their names.
27. He deposed that he remained with a small portion for his benefit as an administrator and stated that if the Applicant was in Lower Primary school in the year 1998 then she had sat on her perceived right once she became an adult, and that her move is not her own initiative but pressure from other people because the land is now of high value.



28. The 2nd, 3rd, 4th and 5th Respondents similarly opposed the Application vide their respective replying affidavits sworn on 26th July, 2019
29. It was their case that they bought part of the parcel of land comprised in 120 shares at Kipsyenani Farmers Company Ltd equivalent to 3.6 Hectares or thereabouts from the 1st Respondent whom they knew to be the legal representative of the estate of the deceased herein and title deeds excised from the said land registered in their respective names.
30. The Applicant swore a supplementary Affidavit in response to the Respondents' aforesaid Replying Affidavits.
31. She reiterated that she is the sole beneficiary of the estate of the deceased and annexed thereto copies of family meetings held on 25th January, 2019 and 2nd February 2019, a copy of the chief's letter and a letter from a former Director of Kipsyenani Farmers company limited all acknowledging her as the only child of the deceased.
32. She denied that the deceased was a biological brother of the 1st respondent's father and stated that the 1st respondent falls lowest in hierarchy of relatives who can inherit in the nearest degree of consanguinity.
33. She averred that the 1st respondent failed to honour several summons by the area chief to attend family meetings to discuss the land dispute and had also on several occasions deceived her and the deceased's family into believing that he had only leased out the suit property while in fact he had already sold the same to the 2nd to 5th Respondents herein.
34. She averred that the 1st respondent did not serve her with notice before filing the petition and neither did he obtain her consent but in fact forged the signatures of the deceased's family members while initiating the process of taking out letters of administration.
35. She deponed that 2nd, 3rd, 4th and 5th respondents ought to have carried out due diligence to ascertain the true owner of the suit property and that the Law of Succession prohibits the distribution of the capital assets before a grant is confirmed yet it is clear from the agreements and title deeds annexed by the 2nd, 3rd, 4th and 5th respondents that they procured the same before the grant was fully confirmed.
36. The matter was heard by viva voce evidence

Objector's Case

37. OW1 was the Applicant. She adopted her statement filed on 3rd February, 2020 as her evidence in chief. It was her testimony that she was born in 1992 and that the deceased herein was her father and her mother's name was Serah Jebotibina. She confirmed that her mother was married to someone else before the deceased's demise. She told court that her mother left her in custody of the deceased when she was 1-year-old and that the deceased took care of her until she turned 4 years old then took her to stay at a neighbour's house one John Kosgei. She said by this time the deceased had grown old and was sickly. That after the demise of the deceased she continued staying with her neighbour until she joined class eight then the 1st Respondent enrolled her at Kabarbesi Primary School in Emining where she only schooled for three months then went back to Kipsyenani where she registered to sit for her KCPE at Kipsyenani Primary School. She said that during this period she saw people on the suit property building and on enquiring from the 1st Respondent, he told her that he had leased the subject land to them. She reported the matter to the chief and the 1st respondent was summoned to the chief's office but he failed to honour the summons. She said upon advice given by the chief she conducted a search on the suit land and found that the same was still registered in the deceased's name. Thereafter, she decided to file a succession cause and that is when she discovered that the 1st Respondent had sold the



subject land. It was her further testimony that she applied for her ID card using Lina Cherotich's name because the 1st respondent had refused to give her the deceased's ID Card.

38. In Cross examination, she confirmed her birth certificate did not bear the deceased's name and that the name indicated therein of Evalyne Jeragat and John Kosgei as her mother and father respectively were for her guardians. She also stated that the name Rotich in her ID card was for her employer one Lina Cherotich. She said she did not register the deceased as her father when she joined school because at that time he had passed away and she did not have his ID card. She disputed that some people instigated her to file this case claiming to be the deceased's daughter. She said that she attended the deceased's burial and confirmed that her mother did not. It was her further testimony that she did not know where her mother was.
39. OW2 was Vincent Kipkemoi Kiptoo, the son of the 1st respondent. He testified that he was the caretaker of the deceased and that when he passed away he left the Applicant under his care when she was just 4 years old.
40. He said that in mid-2004 the 1st respondent broke into his house and took birth certificate, ID and other documents belonging to the deceased. In 2009 he realized the suit land had been sold by the 1st respondent. On enquiring from him, he told him that he had only leased it. Since there were houses being built thereon, he decided to report the matter to the chief and the chief in turn summoned the 1st Respondent twelve times but he failed to honour his summons. He said the Applicant used to live with their neighbour one John Kosgei and that the 1st Respondent had taken the Applicant to Eminging for a while. He said the letter the 1st Respondent used to obtain the chief's letter was fraudulent. He produced a letter that was presented by the 1st Respondent to the chief as Exhibit No.1.
41. During cross examination, he stated that he did not have a good relationship with his father and that he was being threatened. He disputed that he was the one who broke into his father's house and stated that the 1st Respondent transferred the Applicant to Kabarbesi Primary School so that he could sell the subject land.
42. In re-examination he said the names that appear in OW1 birth certificates as her parents were her guardians' name while the name in her OD was for her employer.
43. OW 3 was Robert Kibet Langat the chief of Makutano location in Rongai within Nakuru County. He testified that in 2013 the 1st respondent went to his office saying that he wanted to file for succession. He showed him the deceased's death certificate and he advised him to bring the family minutes. That the 1st respondent went back home and later visited his office and presented to him a letter purportedly signed by his family members. He said around the year 2015, the Applicant went to his office and told him that the land the 1st respondent claimed to be his belonged to her. He summoned the neighbour John Kosgei and OW2 and upon interrogating them, he learned that the Applicant was the deceased's child. He said upon his advice the Applicant conducted a search on the subject land that revealed that the same was still registered in the deceased's name. Thereafter he wrote a letter to the land registrar to stop further transactions on that land.
44. OW4, was Luka Kiplagat, a brother of the 1st Respondent. He stated that the Applicant was the deceased only child. He said after the demise of the deceased, the 1st respondent informed them that the directors of Kipsyenani Farmers Company LTD wanted someone to be the trustee of the subject land since the Applicant was minor. He told court that they only signed up that the subject land be held in the name of the 1st respondent in trust of the applicant. They never consented to the sale of the same. He said he was sure the Applicant was the deceased's daughter as she was introduced as such during the deceased's funeral.



45. In cross examination, he stated that the in 1992 deceased, the Applicant's mother, the Applicant and applicant's brother went to live with them in Emining during clashes.

Respondents' Case**

46. The Respondent in his testimony reiterated the averments contained in his Replying Affidavit. In addition, he confirmed that OW2 took care of the deceased prior to his demise but stated that his testimony was untrue. He said OW2 was bitter because he sold the land and educated his siblings and never gave him any money. He also stated that the Applicant never asked for the deceased's documents when applying for her Identity Card.
47. In cross examination, he confirmed that the deceased was his uncle and stated that the Applicant was a daughter to a man called Kosgei. He disputed taking the Applicant to school and forging Elders' signatures as alleged. He stated that he attended the family meeting of 25th January, 2019 but he was not satisfied with the resolution since some of the family members were absent. He testified that according to their customs the land of the deceased with no children is usually given to the person chosen by the family.
48. In re-examination, he stated that John Kosgei is alive and he never told him that the deceased left Applicant under his care. He said his family had agreed that he inherits the subject property.

Applicant's/objector's Submissions

49. The Applicant filed her submissions on 18th April, 2023.
50. Regarding the paternity of the Applicant, the applicant's counsel submitted that it is trite that whoever seeks to establish paternity should carry out DNA. He contended that it will be mere hearsay to admit the wild allegations by the 1st respondent that the deceased did not bear children on several attempts with several women. He contended that 1st respondent never requested for a DNA test to be done to establish the paternity of the applicant.
51. He submitted that a birth certificate is proof of paternity but not the only and final proof of the same. He argued that the circumstances under which the applicant took over the name of John Kosgei were understandable as he lived with the Applicant at some point.
52. On whether the grant should be revoked, the applicant referred this court to the provisions of Section 76 (a) (b) and (c) of the *Law of Succession Act* and the case of Jamleck Maina Njoroge vs Mary Wanjiru Mwangi [2015] eKLR where the court inter alia held that for a grant to be revoked there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.
53. The counsel then submitted that the petitioner concealed to court material facts that he was not the son of the deceased and that he ranked lowest in hierarchy of relatives who could inherit in the nearest degree of consanguinity as provided for under Sections 39(1) and (2) & 66 of the *Law of Succession Act*.
54. The counsel for the Applicant submitted that the signatures of Luka Kiplangat, Nelson Kimaru Langat, Ruto Kipieko Korwo, Zakaria S. Kiptoo & Edward Korir appended on the meetings held on 20th January, 2019 and on a letter addressed to the Chief Makutano location are fraudulent.
55. In urging this court to revoke the grant in question, the Applicant's Counsel referred this court to the cases of In the Estate of Ezekiel Mulanda Masai, P & A No. 4 of 1992 wherein the grant was revoked for failure to disclose all the beneficiaries of the deceased estate & In the Matter of the Estate of Muriranja



Mboro Njiri, Nairobi H.C. Succ. Cause No. 890 of 2003 wherein a grant of letters of administration was revoked for failure by persons with equal priority to consent to the petitioners therein applying for grant of letters of administration

56. The Counsel further submitted that the grant can be revoked and the properties sold to third parties traced to the applicant who is the rightful owner.
57. He cited the case of *In Re Estate of Ceaser Riungu (Deceased)* [2010] eKLR where the court found that a land transfer of the deceased immovable property can be traced as it was done by a petitioner who was not a beneficiary of the deceased, the case *Rebecca Veronica Adela vs Prisca Khatambi Kibukosya & Ano*. Succession Cause No. 2853 of 2003 where the court stated that The correct reading section 93 of the [Law of Succession Act](#) will indicate that the transfer to a purchaser, if shown to be either fraudulent and/or upon other serious defects and/or irregularities can be invalidated and the Court of Appeal case of *Priscilla Nyawira Gitungu vs George Kariuki Kabugu & Ano*. Civil Appeal Case No. 343 of 2002 while considering the provisions of section 93 observed that a transfer of the deceased property carried out by an administrator who had no legal basis of being an administrator is traceable
58. The Counsel thus submitted that the threshold for revocation of the grant has been established and urged this court to allow her application.

Respondent's Submissions

59. The Respondents filed their Submissions on 12th April,2023.
60. The Counsel for the Respondent submitted that the proceedings to obtain grant was not defective as it was done in utmost good faith and there was no anticipation that there was going to be an objection because the deceased did not have any children. He contended that the deceased was a brother of the 1st Respondent's father and in Tugen customs, he was the 1st Respondent's father. He further contended the description of father/uncle was a mere technicality shielded by Article 159 of [the Constitution](#), 2010.
61. It was submitted that the 1st Respondent did not conceal any material facts from the court as there was nothing to link the applicant to the deceased.
62. It was argued that in absence of a spouse, children, or brothers of the deceased, the 1st Respondent was the nearest in accordance with the degree of consanguinity as provided under Section 39(1) of the [Law of Succession Act](#) to petition for letters of administration and hence the confirmed grant cannot be annulled.
63. The Counsel submitted that the grant was obtained regularly as the 1st Respondent obtained authority from his family and a letter from the chief.
64. He urged the court to dismiss the application with costs to him

Analysis And Determination

65. Having carefully perused through the pleadings, evidence and submissions of the respective parties, it is my considered view that the main issues that arise for determination are: -
 - a. Whether the Applicant was a child of the deceased.
 - b. Whether the Applicant's application meets the threshold for the revocation of a grant within the meaning of section 76 of the [Law of Succession Act](#).



Issue no.1-whether the applicant was a child of the deceased

66. The Law of Succession Act under Section 3 (2) of Law of Succession Act provides as follows:

“References in this Act to “child” or “children” shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born of her out of wedlock and in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility”.

67. The Applicant herein claims that the deceased was her father. That her mother left her under the care of the deceased when she was 1-year-old and the deceased took care of her until she turned four years then left her under the care of a neighbour one John Kosgei.
68. OW2, 3 and 4 all concurred that the Applicant was the deceased’s child. OW2 and OW4 were the 1st Respondent’s son and brother respectively. The chief also confirmed that one John Kosgei informed him the Applicant was deceased’s only child.
69. The Applicant stated that the names of the parents indicated in her birth certificate were for her guardians. This position was corroborated by her witnesses OW2 and OW4. The evidence advanced on how the Applicant ended up having John Kosgei as her father in her birth certificate, in my view, is credible.
70. The Applicant vehemently denied that the Applicant was the deceased’s child.
71. It is my considered view that the 1st respondent was not a credible witness for reasons that when he applied for letters of administration intestate he disguised himself as a son of the deceased, a position he knew was false and secondly during hearing of this matter precisely in cross examination he stated that John Kosgei was the Applicant’s father yet in his replying affidavit he had clearly deponed that the said John was a neighbour. His evidence also was not corroborated.
72. The burden of proof in civil cases on the balance of probability was defined in the case of Kanyungu Njogu vs Daniel Kimani Maingi [2000] eKLR that when the court is faced with two probabilities, it can only decide the case on a balance of probability, if there is evidence to show that one probability was more probable than the other.
73. The standard of proof in civil cases was discussed in the Court of Appeal decision in Civil Appeal 15 of 2016, Samuel Ndegwa Waithaka vs Agnes Wangui Mathenge & 2 others [2017] eKLR. The Court while referring to Lord Nicholls observed as follows;

“12. In Civil cases such as this case, the standard of proof is on the balance of probabilities. This standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. In H (Minors) [1966] AC 563 at pg 586, Lord Nicholls explained that the test on the balance of probabilities was flexible. Said he,

“When assessing the probabilities, the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury.....



.....Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue, the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

74. It is my considered view that in as much as there is no documentary evidence to show that the deceased was the biological father of the Applicant, he was involved in her school fee payment, welfare and upkeep. This would lay credence to the averment that the deceased had accepted her as his child, even though he did not live with her. The evidence tendered by the applicant and her witnesses is plausible and on a balance of probability I hereby find that the applicant was a child/dependant of the deceased for purposes of the Act.

Issue No.2-Whether there are valid grounds for revocation of the grant.

75. These circumstances under which a court will order revocation of grant are well laid out under Section 76 of the *Law of Succession Act*.
76. A reading of the applicant’s application leaves no doubt that the grounds cited fall under section 76 (a), (b) & (c) of the *Law of Succession Act* which provides 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;”

77. The court, in the case of *Jamleck Maina Njoroge vs Mary Wanjiru Mwangi (2015) eKLR* at paragraph 11 of its ruling in revoking a grant reiterated the grounds upon which a grant can be revoked. It stated as follows:

“. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

78. The applicant alleged that the respondent concealed a material fact, that she was a child the deceased and the sole beneficiary of his estate. It has turned out that the applicant was indeed a child of the deceased. The Applicant also alleged that grant in issue was fraudulently obtained by the 1st Respondent as he disguised himself as the son of the deceased when he petitioned for the same.



79. This position is clear from the evidence on record. The 1st respondent was indeed not a son of the deceased but his nephew, yet he misled the court into believing that he was his son when he petitioned for grant of letters administration intestate.

80. At the time the respondent was making the petition for letters of administration, he knew that he was only a nephew of the deceased. The law is clear on how the net estate of a deceased shall devolve when he/she has left no spouse or children. This is provided under section 39 of the Act as follows;

“ 39. Where intestate has left no surviving spouse or children.

- (1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—
 - (a) father; or if dead
 - (b) mother; or if dead
 - (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
 - (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
 - (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.
- (2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.”

81. The respondent, as a nephew was under a duty to disclose all the beneficiaries who ranked equally or on higher order of priority. His own father ranked higher than him but he did not mention him in his petition, even if he was deceased. Further if he had siblings they should also have been listed in his petition. These are the requirements of the Probate and Administration Rules. Rule 7 states as follows;

“ Application for grant: general provisions

- (1) Subject to the provisions of subrule (9), where an applicant seeks a grant of representation to the estate of a deceased person to whose estate no grant or no grant other than one under section 49 or a limited grant under section 67 of the Act has been made, the application shall be by petition in the appropriate Form supported by an affidavit in one of Forms 3 to 6 as appropriate containing, so far as they may be within the knowledge of the applicant, the following particulars—
 - (a) the full names of the deceased;
 - (b) the date and place of his death, his last known place of residence, and his domicile at date of death;
 - (c) whether he died testate or intestate and, if testate, whether his last will was written or oral, and the place where and the date upon which it was made;



- (d) a full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or become known since that date) together with an estimate of the value of his assets movable and immovable and his liabilities;
- (e) in cases of total or partial intestacy—
 - (i) the names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with section 39(1) of the Act;
 - (ii) whether any and if so which of those persons is under the age of eighteen years or is suffering from any mental disorder, and, if so, details of it;
 - (iii) for the purposes of determining the degree of consanguinity reference shall be made to the table set out in the Second Schedule;
- (f) the relationship (if any) which the applicant bore to the deceased or the capacity in which he claims;
- (g) ..”

82. It is thus clear that at the time the respondent presented the petition, he flouted very express and mandatory provisions of the law. He knowingly withheld crucial information from the court which led to him been confirmed as the sole beneficiary of the estate.
83. The 1st Respondent on his part claimed that the family agreed that he inherits the subject land. He also claimed that the letter he presented to the chief was genuine. He did not avail any witness to corroborate this position.
84. The respondent further averred that the customs allowed him to inherit the estate. He has not provided those customs. And in any case, the customs did not exempt him from providing the required information. Customs cannot override express provisions of the law.
85. In the circumstances, it is my opinion that the process leading up to the petition and confirmation of the grant was fraudulent and as such the grant in issue is liable for revocation.
86. It also emerged that the respondent went ahead to dispose some of the estate to third parties. Given my findings above, these transactions are null and void. The purchasers, who had no reason to doubt the respondent, are entitled to compensation from him, including a refund of all the consideration paid.
87. In the upshot the following orders should issue: -
- I. The Grant of Letters of administration issued to James Kiptoo Ngetich on 30th December,2014 and confirmed on 9th June,2016 is hereby revoked.**
 - II. Any transaction undertaken by the said James Kiptoo Ngetich on the strength of the said grant is declared null and void.
 - III. A permanent injunction is hereby issued restraining the 1st Respondent by himself, his agents, servants, or any of them whatsoever from dealing with, alienating, leasing, disposing of the estate’s property.
 - IV. The respondent, or the applicant is at liberty to apply for fresh letters of administration.
 - V. Each party to bear its own costs.



DATED, SIGNED AND DELIVERED AT NAKURU THIS 31ST DAY OF JULY,2023.

HESTON M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

N/A for parties

