



REPUBLIC OF KENYA



**In re Estate of the Late Kipler Suke Soen (Deceased) (Succession Cause
12 of 2008) [2023] KEHC 21634 (KLR) (7 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21634 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 12 OF 2008
RN NYAKUNDI, J
AUGUST 7, 2023
IN THE MATTER OF THE ESTATE OF THE LATE KIPLER SUKE SOEN
(DECEASED)**

BETWEEN

RODAH CHEPTOO LELEI 1ST PETITIONER

EMMANUEL KIPRONO CHESEON 2ND PETITIONER

AND

EMMANUEL MARITIM OBJECTOR

RULING

1. Before me are summons dated 4/4/2011, filed by objector seeking orders that;
 1. The Grant of Letters of Administration Intestate in respect of the estate of Kipler Suke Soen granted to Rodah Cheptoo Lelei and Emmanuel Kiproni Cheseon made on 24/11/2008 and confirmed on 22/6/2009 be revoked and or annulled.
 2. Costs of this application be provided for.
2. The application is premised on the grounds therein and it is further supported by the affidavit sworn by Emmanuel Maritim on 4/4/2011.

The Objector's Case

3. The Objector's case is that on 9/1/1996, he bought parcel of land known as Ndalat (46) Plot No. 450 from the deceased and that a formal agreement was duly executed. The Objector maintains that at the time when he bought the said subject land, the deceased had not cleared paying his loan to Kaptabee Farmers' Co-operative Society Limited. The Objector further maintains that the terms and conditions



- of the agreement were that he clears the outstanding loan amount of Kshs.14,761/=on behalf of the deceased.
4. The Objector deposed that on diverse dates, he paid Kshs.8,000/=, 2000/= and 2900/= to the said Co-operative on behalf of the deceased with the view of clearing the outstanding loan arrears.
 5. The Objector further deposed that despite making several requests to the deceased to transfer the subject land to him, the deceased refused citing one reason or another and that he died on 7/7/1998 before the said transfer had been effected.
 6. The Objector further deposed that the deceased herein have died on 7/7/1998, the Grant of Letters of Administration Intestate over his estate was granted to the 1st and 2nd Petitioners herein on 24/11/2008 and that said was confirmed on 22/6/2009.
 7. The Objector further deposed that the Petitioners herein failed to disclose to the Court that the subject land namely Ndalat (46) Plot No. 450 was part of the estate of the deceased herein.
 8. The Objector alleges that the grant herein was issued and or granted without the publication of the mandatory notice in the Kenya Gazette as per the provisions of the *Law of the Succession, Act.*
 9. According to the Objector, the non-disclosure of material facts to this Court that he is a beneficiary by virtue of being a purchaser renders the grant of letters of administration null and void and same ought to be revoked and or annulled.
 10. The Objector further alleges that the grant herein was fraudulently obtained by concealment of material facts.
 11. The Objector wants the said grant revoked so that the Court may distribute the estate afresh to all the beneficiaries including himself.

The Petitioners’/ Respondent’s Case

12. The application is opposed by the Respondent’s vide their jointly sworn affidavit dated 30/7/2012.
13. The Respondents deposed that the deceased herein died on 7/7/1998 and that prior to his demise, the deceased had sold no part or portion of the subject land to the Objector herein or anybody at all.
14. The Respondents maintain that the allegation the Objector had purchased the subject land is not true and that the Objector’s annexure marked as “A” is a false document.
15. The Respondents deposed that the deceased herein had allowed or leased a portion of the parcel measuring 1 acre to the Objector’s father in their parcel of land known as Ndalat Settlement Scheme/22. Further that at the time when the deceased leased the said portion, all the family members were present and consented that the consideration of the lease was to be channelled towards offsetting the loan due to the Settlement Trust Fund.
16. The Respondents further deposed that they were informed by the officials of Kaptebee Farmer Co-operative Society Limited that the outstanding loan amount owing to the deceased as at 31/12/1995 was Kshs.13,832 and that the said amount had been subsequently cleared by Co-operative Bank. The Respondents contend that allegations by the Objector with regard to repaying the said loan amount are therefore false.
17. The Respondent further maintain that the parcel of land known as Ndalat (46) Plot No. 450 is unknown to them and that their parcel of land is known as Ndalat Settlement Scheme/22.



18. With regards to allegations that the Cause herein was never gazetted. The Respondents deposed the matter herein was duly gazetted as per the requirements of the [Law of Succession Act](#).
19. The application was canvassed orally in court. Parties were also directed to file written submissions. On 3/7/2023, the Objector filed his submissions dated 29/6/2023 whereas the Respondents did not file any.

The Objector's Submissions

20. On whether the granted herein should be revoked, Counsel for the Objector submitted that the Objector has demonstrated that he entered into a valid land sale agreement on 9/1/1996. Counsel argued that Clause 5 of the said agreement stipulates that parties are bound and shall abide by the terms and conditions of the said agreement.
21. Counsel further submitted that the Petitioners herein were aware of the Objector's interest as beneficiary in the estate herein having purchased 1 acre of the parcel of land known as Ndalat (46) Plot. 45) from the deceased. Counsel argued that despite of the Petitioners being aware that the Objector's interest in the estate of the deceased, they went ahead and took out letters of administration intestate of the deceased's estate without including him as beneficiary.
22. Counsel cited the provisions of Section 76 of the [Law of Succession Act](#) and the case of [Re Estate of Prisca Ong'ayo Nande Deceased](#) [2020] eKLR to support his arguments on the issue of revocation.
23. Counsel further submitted that the Objector's interest as purchaser qualifies him as an interested party with standing to challenge the grant issued on 24/11/2008 and confirmed on 22/6/2009.
24. Counsel urged the Court to revoke and or annul the grant of letters of administration intestate issued on 24/11/2008 and confirmed on 22/6/2009 for reasons that the same was obtained way of concealment of material facts that the Objector entitled to an acre of the estate property having purchased the same from deceased and that the Petitioners failed to disclose to Court and thus the proceedings leading to the obtaining of the said grant were defective in substance. Counsel cited the case of [Musa Nyaribari Gekone & 2 Others v Peter Miyianda & another](#) (2015) eKLR to buttress his arguments on the issue.
25. Counsel also urged the Court to revoke the grant herein for reasons that the Petitioners failed to include the deceased's property known as Ndalat (46) Plot No. 450 in the list of assets and liabilities of the deceased at the time of petitioning the grant herein. Counsel reiterated his averments that the Petitioners herein were aware that the Objector had purchased land measuring 1 acre from the deceased.
26. Counsel further argued that during trial, the Objector was able to demonstrate that there was no lease agreement between him and the deceased as alleged by the Petitioners who did not place any evidence before Court to prove the allegation of the existence of a lease agreement.
27. Counsel further argued that the evidence by the Petitioners' witness PW2 the finger print expert did not assist the Court in anyway as the report exhibited and Pexbit -1 Ndalat (46) Plot No. 450 indicated that the fingerprint was unsuitable for comparison. Counsel blames the Deputy Registrar, Eldoret High Court for not forwarding the original copy of the sale agreement dated 9/1/1996 as per the Court orders despite of the same having been surrendered to Court. According to Counsel if the Deputy Registrar had forwarded the original copy of the agreement to National Registration Bureau the fingerprint impression could have been suitable for comparison. Counsel urged the Court that the mistake by the Deputy Registrar for failing to forward the original agreement date 9/1/1996 should thus not be visited upon the Objector.



28. In the end, Counsel prayed for costs and urged the Court to allow the application as prayed.

Analysis and Determination

29. The issue for determination herein is whether the Objector's application meets the threshold for the revocation of a grant within the meaning of Section 76 of the *Law of Succession Act*.

30. Section 76 of the *Law of Succession Act* states as follows:

76. Revocation or annulment of grant

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.”

31. These sections signifies that a petitioner for grant of Letters of Administration will be deemed prima facies to have obtained a fraudulently grant, with respect of the state if he or she fails to issue notice to any of the dependents or beneficiaries to the estate of the deceased, including obtaining their necessary consents as mandatory provided in the *Succession Act*. Equally the grant of Letters turn out to be defective if the evidence shows that it was issued in error, misrepresentation of facts, concealment or nondisclosure of material evidence relevant and admissible for the making of the grant of representation.

32. The Applicant invited the court to revoke the grant of letters of administration for the reasons that the Respondents obtained the confirmed grant by way of concealment of a material fact that he was entitled to the suit land having bought it from the deceased because both parties evidence confirmed that he bought the suit land.

33. It was the Applicant's submission that the Respondents obtained the confirmed grant by way of concealment of material facts that he was entitled to 1 acre of land from the estate of the deceased having bought the same from the deceased and therefore the proceedings were defective in substance.



34. The Objector added the Respondents herein had failed and or omitted to include the said property as part of the assets and liabilities of the deceased at the time of petitioning for the grant herein. The Objector produced sale agreement dated 9/1/1996, allegedly entered into by him and the deceased for the purchase of the suit land herein.
35. The Respondents on the other hand maintained that the Objector did not purchase any land from the deceased herein. The Respondents dispute the allegations by the Objector that he bought land from the deceased. Respondents also deny knowing the alleged parcel of land known as Ndalat (46) Plot 450.
36. From onset I must remind parties that its trite law that he who alleges must prove. In the present cause, the Objector save for mentioning that he entered into a sale agreement with deceased for the sale of parcel of land known as Ndalat (46) Plot 450, did not tender any evidence as proof the existence of said parcel of land. There is nothing on record to show that indeed the alleged parcel of land truly exists.
37. Be as it may however, the Objector claims a purchaser's interest that by virtue of helping the deceased repay the outstanding loan amount owed to Kaptabee Farmers' Co-operative Society Limited. However, during cross-examination the Objector conceded that Kshs.8,000/= was paid by the deceased and the 2nd Petitioner herein and not by him. The Objector alleges that he also directly paid Kshs.14,700/= to Co-operative Bank and further alleges to have given the deceased and his family additional amounts of monies that were never documented.
38. The Objector save for mentioning that he allegedly gave the deceased the said amount of monies he did not produce any receipts whatsoever as proof of the alleged payment. As evidenced by the copies of receipts on record it is clear that there no nexus between them and the Objector herein. In fact, a perusal of the same only reveals that the alleged sums of monies being paid were made by the deceased and not the objector as alleged.
39. The Objector's only saving grace seemingly is an alleged sale agreement that was entered into by him and the deceased which was allegedly of no importance to the matter herein as the fingerprint officer deemed it unsuitable for comparison due to its lack of a sufficient range of characteristics. What is even more suspicious is that both witnesses in the said agreement are a father and colleague to the Objector herein.
40. In the circumstances of the case herein, one cannot help but wonder why the Objector did not pursue any legal recourse against the deceased before his demise and waited for (14) years after his demise for him to seek a recourse against his estate.
41. To my mind the Objector herein is not a beneficiary or dependant of the deceased. Further the Objector cannot also claim a purchaser's interest whereas he was not able to tender any substantive evidence to that effect.
42. In my view, if indeed the Objector has any claim whatsoever against the estate of the deceased, he should have pursued a legal recourse against the said estate in the Environment and Land Court. In this regard it suffices to cite Musyoka J *In re Estate of Stone Kathuli Muinde (Deceased)* [2016] eKLR that:

“Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the Civil Procedure Act and the Civil Procedure Rules. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained



in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.”

43. In the end, the Objector’s application dated 4/4/2011, lacks merit and is hereby dismissed. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 7TH DAY OF AUGUST 2023

In the Presence of

Ngala for the Applicant

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R. NYAKUNDI

JUDGE

