



**In re Estate of the late Simotwo A . Sang (Deceased) (Succession Cause 361 of 2015) [2022] KEHC 385 (KLR) (20 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 385 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 361 OF 2015  
AN ONGERI, J  
MAY 20, 2022**

**IN THE MATTER OF THE ESTATE OF THE LATE SIMOTWO A. SANG (DECEASED)**

**BETWEEN**

**JOSEPH CHEPKWONY ..... PETITIONER**

**AND**

**DAVID MITEY ..... PROTESTOR**

**RULING**

1. The Application coming for consideration is the summons for revocation of grant dated 13/9/2021 seeking revocation of the grant issued to Joseph Kiplangat Chepkwony on 22/6/2016 on the following grounds:-
  - i. That the Grant was obtained fraudulently by the making of a false statement or by the concealment from the Court of material fact to the case including concealment of all beneficiaries of the Estate of the Deceased.
  - ii. That the Grant was obtained by untrue allegations of fact essential in point of Law to justify the Grant, including following untrue allegations:-
    - a. That the Petitioner is a beneficiary of the Late Simotwo Sang (Deceased) yet he filed citation against the beneficiaries of the Late Simotwo Sang (Deceased) in his capacity as a Personal representative of the Estate of Daudi Chepkwony Arap Bett (Deceased).
    - b. That the Petitioner indicated the date of Death as “2012 or thereabouts”, the correct date of death of the Deceased being the 11<sup>th</sup> of January, 2011.



- iii. That the proceedings to obtain the Grant were defective in substance as it was rooted from the Citation Cause Number 11 of 2014 that was based on misrepresentation of facts and concealment of material facts from the Court.
2. The summons is supported by the Affidavit of the Applicant David Mitey sworn on 13/9/2021 in which it is deposed as follows: -
  - i. That he is a beneficiary of the estate of the late Simotwo A. Sang, who died intestate leaving behind 14 beneficiaries.
  - ii. That the petitioner was issued with grant of letters of administration in respect of the estate of the late Simotwo A. Sang in contravention of the Probate and Administration rules and Succession Act, as he is not a beneficiary to the said estate and he had failed to disclose all the beneficiaries of the estate.
  - iii. That preceding the issuance of the grant, the petitioner had filed a citation cause in contravention of the rules as he failed to include and serve all the beneficiaries of the estate.
  - iv. That the petitioner, who claims a portion of land parcel known as LR No. Kericho/koiyet/149 on behalf of his late father, claims trust in land which can only be adjudicated and determined by the Environment and Land Court and not a Probate and Administration court.
  - v. That the petitioner obtained the grant by concealing material facts from the court, misrepresentation and by concealing the whole process from all the beneficiaries of the estate.
3. The Petitioner Joseph Kiplangat Chepkwony had filed a summons for confirmation dated 2/11/2018 seeking to have the grant issued to him on 22/6/2016 confirmed.
4. In the Supporting Affidavit to the Summons for Confirmation dated 2/11/2018, the Petitioner proposed to inherit 32 Acres from land Parcel Kericho/Koiyet/149 and the children of the deceased herein inherit only 5 Acres.
5. The Petitioner did not include the name of the Applicant as a beneficiary of the estate of the Deceased in the said Summons for Confirmation.
6. The Applicant filed an Affidavit of protest to the said Summons dated 22/3/2021 in which he deposed as follows:-
  - i. That the petitioner is claiming a portion of land parcel LR No. Kericho/koiyet/149 on behalf of the estate of his late father Daudi Chepkwony A. Bett.
  - ii. That the claims by the petitioner of fraudulent transfer of the said portion of land and the issue of trust can only be adjudicated and determined by an Environment and Land Court.
  - iii. That the petitioner filed citation cause no. 11 of 2014 without serving all beneficiaries of the estate of Simotwo A. sang.
  - iv. That the grant was issued to the petitioner is defective as the same was issued based on the petitioner fraudulently misrepresenting to court who the true beneficiaries of the testators are.



- v. That this court lacks jurisdiction to adjudicate and determine this matter as filed, as the petitioner should have filed a claim in the Environment and Land court for determination.
- vi. That the application for confirmation of grant dated 2/11/2018 be dismissed.
7. The Petitioner/Respondent did not file any response to the Summons for Revocation dated 13/9/2021.
8. The protestor filed written submissions as follows:  
It was submitted by the protestor that the certificate of confirmation of grant dated the 20/3/2017 issued to the petitioner be revoked, as it was obtained by reliance on false statements and concealment of important matters and information.
9. It was further submitted by the protestor that the proceedings used in obtaining the certificate of grant of letters of administration were defective in substance in that a stranger to the estate filed petition for grant of letters, obtained the said grant without proper citation process and without proper documents to back up the claim for trust in land; and also that the petitioner deliberately and in bad faith did not disclose all the beneficiaries of the estate of the deceased and the date of death of the deceased.
10. The Petitioner/respondent did not file written submissions.
11. I find that the averments in the Affidavit of Protest dated 22/3/2021 and also the summons for Revocation dated 13/9/2021 have not been challenged by the Petitioner/Respondent who did not file any response or any Affidavit to respond to the issues raised by the Applicant David Mitey.
12. I find that the Law is very clear as to who ranks higher in priority when it comes to right to petition for Grant of Letters of Administration.
13. In the current case, I find that the Widow Elizabeth Sang ranks highest on the priority list.
14. I accordingly revoke the grant made to the Petitioner Joseph Kiplangat Chepkwonyas he is not a family member of the deceased herein and I direct that the beneficiaries of the Estate to choose two Administrators to be substituted with the Petitioner.
15. The matter to be mentioned within 30 days for compliance.
16. Failure to agree on Administrators, this Court will appoint the Administrators.
17. This matter will be mentioned on 27/9/2022 for compliance.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 20<sup>TH</sup> DAY OF MAY, 2022**

**A. N. ONGERI**

**JUDGE**

