



REPUBLIC OF KENYA



**KENYA LAW**  
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**Tanui v Chepkwony (Succession Cause 194 of 1995)  
[2022] KEHC 3069 (KLR) (27 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3069 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 194 OF 1995  
EKO OGOLA, J  
JUNE 27, 2022  
IN THE MATTER OF ESTATE OF THE LATE KIPYEGO  
KOGO CHEPWONY**

**BETWEEN**

**EDNA CHEPKOECH TANUI ..... APPLICANT**

**AND**

**VERONICAH JEPSUGE CHEPKWONY ..... RESPONDENT**

**RULING**

1. By way of Summons for Revocation or Annulment of Grant, dated 19<sup>th</sup> April 2021, Edna Chepkoech Tanui (hereinafter the Applicant) seeks orders;
  1. Spent.
  2. That the certificate of grant of Letters of Administration issued to the Respondent herein on 20<sup>th</sup> July, 2017 and amended on 10<sup>th</sup> February 2020 in Eldoret High Court Succession Cause No. 194 of 1995 be revoked or annulled on the basis that the same was obtained fraudulently and by concealment from court of material facts relating to the Estate of the deceased.
  3. That an order of inhibition do issue restricting any dealings in all those parcels of land known as Eldoret Municipality Block 6/284; Kaplamai/sirende Block 2/ngonyek/91; Kaplama/sirende Block 2/ngonyek/92; Kiplombe/kiplombe Block 12(chepsirai)/13; Kiplombe/kiplombe Block 12(chepsirai)/73; Plot No. 643/kipkaren Site And Service Schemepending the inter-parties hearing and determination of this application.
  4. That any and all subsequent orders relating to land title numbers Eldoret Municipality Block 6/284; Kaplamai/sirende Block 2/ngonyek/91; Kaplama/sirende Block 2/ngonyek/92; Kiplombe/kiplombe Block 12(chepsirai)/13; Kiplombe/kiplombe Block 12(chepsirai)/73;



Plot No. 643/kipkaren Site And Service Scheme and titles to motor vehicles lorry registration number KYS 497, KYB 841, tractor registration number KUE O94 and KXG 966 be cancelled and titles ordered to revert into the names of the deceased.

5. That the distribution of the aforementioned properties by the Respondent be forestalled pending the inter-partes hearing and determination of this application.
  6. That the court do declare that the Applicant who was left out in the application of grant is a beneficiary to the estate and is entitled to share the assets of the estate.
  7. That costs of this application be borne by the Respondent.
2. The application is premised on the grounds on the face of it and is supported by the Applicant's affidavit sworn on 19<sup>th</sup> April, 2021. The Applicant's case is that the deceased is her biological father having had a brief relationship with her mother Rose Tanui. That the deceased herein died on 3<sup>rd</sup> May, 1994 and the grant of letters of administration was issued to Veronicah Jespuge Chepkwony being the deceased's widow.
  3. According to the Applicant the deceased was survived by his wife Veronicah Jespuge Chepkwony (the Respondent herein) and the following children;
    - a) Edna Chepkoech Tanui
    - b) Geoffrey Kipchumba
    - c) Philip Cheruiyot
    - d) Lilian Chelagat
    - e) Hillary Kiplimo
    - f) Isaak Kipkemboi
    - g) Steve Kibet
    - h) Samson Kimel
  4. The Applicant averred that the Respondent herein is her step-mother and in petitioning for the grant of Letter of Administration Intestate she fraudulently concealed from court the fact that the deceased had a child from another relationship. The Applicant contends that in listing the deceased's beneficiaries, the Respondent knowingly left her out despite knowing that she is one of the deceased's children. Further, the Applicant contends that Respondent refused/failed to inform her of these proceedings and also failed to obtain her mother's consent as she was a minor at the time when this petition was filed.
  5. The Applicant maintains that the deceased was the registered owner of all that land known as Eldoret Municipality Block 6/284; Kaplamai/sirende Block 2/ngonyek/91; Kaplama/sirende Block 2/ngonyek/92; Kiplombe/kiplombe Block 12(chepsirai)/13; Kiplombe/kiplombe Block 12(chepsirai)/73; Plot No. 643/kipkaren Site And Service Scheme and to motor vehicles lorry registration number KYS 497, KYB 841, tractor registration number KUE O94 and KXG 966. That the Respondent has since distributed the deceased's estate namely Eldoret Municipality Block 6/284; Kaplamai/sirende Block 2/ngonyek/91; Kaplama/sirende Block 2/ngonyek/92; Kiplombe/kiplombe Block 12(chepsirai)/13; Kiplombe/kiplombe Block 12(chepsirai)/73; Plot No. 643/kipkaren Site And Service Scheme and to motor vehicles lorry registration number KYS 497, KYB 841, tractor registration number KUE O94 and KXG 966 to the other beneficiaries of deceased's estate.



6. The Applicant maintains that all efforts to reach out to the Respondent have bore no fruits and that despite a demand letter being sent the same is yet to elicit any response from the Respondent.
7. The Applicant is apprehensive that she will lose her inheritance despite being a daughter and beneficiary of the deceased, a fact that she alleges was concealed by the Respondent herein.
8. The Applicant urged court to grant the orders sought as she stands to suffer irreparable harm if the same are not granted.
9. The application was opposed vide a replying affidavit of Veronica Jepsuge Chepkwony, the Respondent, sworn on 4<sup>th</sup> June, 2021 in which she deposed that she is the widow of the late Kipyego Kogo Chepkwony and denied the allegations by the Applicant that she had obtained the grant with respect to the deceased's estate through fraud and concealment of material facts.
10. The Respondent maintains that the Applicant herein is not a daughter to the deceased and neither was she, his dependant. The Respondent further denies the allegations by the Applicant that the Applicant's mother had an intimate relationship with the deceased which had resulted to the Applicant being born. The Respondent contends that the Applicant never participated in the burial of her late husband and neither did the Applicant's mother request that the Applicant be recognized as a child of the deceased. Further the Respondent contends that the Applicant has emerged and brought this instant application (26) years after institution of this cause and (13) years after attaining the age of majority.
11. The Respondent's case is that she and her late husband jointly worked hard and bought the assets in question. Further, that after the demise of her late husband with whom she had (7) children, she has single handedly been able to steer their business enterprises to stability. The Respondent contends that she has been in possession of the grant of letters of administration intestate for (22) years and that the same has never been contested.
12. The Respondent contends owing to the success in her family, her family has attracted a lot of critics from close people including some of her brother in laws who had hoped to benefit from their estate of the deceased's brother. The Respondent alleges that there has been mudslinging and name calling in an effort to bring her down including fronting the Applicant herein to be recognized as a beneficiary of her late husband's estate. That the family has been involved in two formal meetings to discuss the Applicant and the meetings have been conclusive that she is not a beneficiary of the deceased.
13. The Respondent's case is that the Applicant has brought this application in bad faith actuated by malice and greed and whose sole aim is to unjustly enrich herself.
14. The Respondent urged court to dismiss the application with costs.
15. The Applicant filed her written submissions on 12/11/2021 whereas the Respondent did not file any.

### **Determination**

16. I have considered the summons, the affidavits in support and in opposition to the application and the written submissions on record. The only issue for the Court's determination is whether the application meets the threshold for revocation or annulment of grant under Section 76 of the [Law of Succession Act](#).
17. Section 76 of the [Succession Act](#) provides that;

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.

18. It is upon any party seeking the revocation or annulment of a grant to demonstrate the existence of any, some, or all of the grounds set out in Section 76 as outlined above.
19. The Applicant has invited the court to revoke the grant of letters of administration that was issued to the Respondent on 25/1/1996 and confirmed on 20/1/2017 and later amended on 10/2/2020, stating that the same was obtained fraudulently and by concealment of material facts relevant to this cause. It was her case that the Respondent/ Administrator failed to inform court that the deceased herein had another child born out of wedlock and further faulted the Respondent for not informing her about these instant proceedings. She also faulted the Respondent for not seeking her mother's consent at the time of filing this petition as she was minor at the time of filing of this petition.
20. On the other hand, it was the Respondent's contention that the Applicant is not a child of the deceased. The Respondent denies the allegation that the Applicant's mother had an affair with her late husband. It was her contention that the Applicant never participated in the burial ceremony of her late husband and that the Applicant's mother never sought for her to be recognized as a child of the deceased. The Respondent sees malice in the timing of this application as the same has been brought (26) years after the institution of this cause and (13) years after the Applicant has attained the age of maturity. The Respondent further contends that she has been in possession of the grant for (22) years and that the same has never been contested.
21. The question that this Court has to determine is whether the Applicant has laid sufficient evidence to prove that she is a child or a dependant of the deceased. The determination of the rest of the issues raised herein will be dependent on the outcome of the resolution of the question of whether the Applicant is a biological child or dependant of the deceased.



22. Section 29 of the [Law of Succession](#) (Amendment) Bill 2019 provides that:

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- (1) For purpose of this Part— "dependant" means —
- (a) the spouse and children of the deceased whether or not maintained by the deceased immediately prior to his death; and
  - (b) such of the deceased's parents, step parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters and half-brothers, half-sisters, as were being maintained by the deceased immediately prior to his death. (2) A person not named in this section shall not be a dependant for the purposes of this Act unless the person proves maintained by the deceased for a period of two years prior to the deceased's death.

23. Section 3(2) of the [Law of Succession Act](#) describes a child to;

include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, a child born to 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 of whom he has voluntarily assumed permanent responsibility.

24. The Applicant is therefore required to prove that she is a biological child of the deceased or was a dependant so as to be entitled to a share of his estate.

25. The standard and burden of proof provided by the [Evidence Act](#) ought to be discharged; he who alleges must prove. Section 107 of the [Evidence Act](#), Cap 80 of the Laws of Kenya places the burden of proof on the party that alleges. In [Gatirau Peter Munya Vs Dickson Mwenda Kitinji & 3 Others](#) (2014) eKLR, the supreme Court held inter alia:

“The person who makes such allegations must lead evidence to prove the fact. She or he bears the initial legal burden of proof, which she or he must discharge. The legal burden in this regard is not just a notion behind which any party can hide. It is a vital requirement of the law. On the other hand, the evidential burden is a shifting one, and is a requisite response to an already discharged initial burden. The evidential burden is the obligation to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence of a fact in issue.”

26. It is therefore incumbent upon the Applicant to prove on a balance of probabilities that she is the biological child/dependant of the deceased.

27. The Applicant claims to be a biological child of the deceased. It was her case that the deceased was in a relationship with her mother, one Rose Tanui and out of that relationship the Applicant was conceived. The Applicant, however save for mentioning that the deceased was her biological father, failed to produce any evidence to support the said allegations. The Applicant has not tendered any evidence to prove that deceased was in fact her biological father. Further, there is nothing whatsoever



on record to indicate that the Applicant was a dependant of the deceased. In view of the foregoing, I cannot therefore conclusively find that the Applicant has proved that the deceased was her biological father.

28. It is pertinent to note that however, in the interest of justice, it is paramount that all beneficiaries of the deceased are properly catered for. The *Law of Succession Act* in its very nature aims at ensuring all beneficiaries of a deceased person and their interests are protected. It is my opinion that the most efficient way to prove dependency in this matter would be through DNA evidence because the Applicant asserts that she is the biological child of the deceased. This court takes note that the Applicant has not prayed for DNA to be conducted. It is indeed a now settled principle in law that parties are bound by their pleadings. See (*David Sironga Ole Tukai v Francis Arap Muge & 2 others* Civil Appeal No. 76 of 2014 [2014] eKLR). This court can therefore not on its own volition order for a DNA test to be conducted.
29. Accordingly, for the reasons set out above, I find that the evidence tendered by the Applicant is not sufficient for this court to make a finding that she is a biological child or dependent of Kipyego Kogo Chepkwony (deceased) and that she is entitled to any share of his estate. I find that this application lacks merit and the same is dismissed. Parties to bear own costs.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 27TH OF JUNE 2022.**

**E. K. OGOLA**

**JUDGE**

