



REPUBLIC OF KENYA



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**In re Estate of Kiprop Maina (Deceased) (Succession Cause 26 of 2004)
[2022] KEHC 16524 (KLR) (16 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16524 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 26 OF 2004
AN ONGERI, J
DECEMBER 16, 2022
IN THE MATTER OF THE ESTATE OF THE LATE KIPROP
MAINA (DECEASED)**

BETWEEN

HENRY KIPNGETICH CHEPKWONY PETITIONER

AND

CHARLES KIPNGENO 1ST OBJECTOR

PAULINE MAINA 2ND OBJECTOR

STEPHEN CHERUIYOT 3RD OBJECTOR

SUMMARY CHEPKURUI CHERUIYOT 4TH OBJECTOR

EDWIN KIPYEGON MUTAI 5TH OBJECTOR

JUDGMENT

1. The deceased herein Kiprop Maina referred to as the deceased hereafter died domiciled in Kenya on March 30, 1988 and the petitioner filed this succession cause alleging that the deceased died leaving behind one son, one daughter in-law and two grandchildren and one property namely Kericho/ Kiptere/2092.
2. The petitioner was granted letters of administration intestate on September 27, 2004. The petitioner Henry Chepkwony Korosis the son of the deceased.
3. The grant was first confirmed on February 8, 2018 and the property was shared between the son and daughter in-law as follows;
Henry Chepkwony Koros – 13.2 acres



- Alice Chebet Koros – 11.25 acres
4. The certificate of confirmation was changed on April 16, 2018 to the following names.
Henry Kipngetch Chepkwony - 13.25 acres
Koros Alice Chebet - 11.25 acres
 5. The five objectors, Charles Kipngeno, Pauline Maina, Stephen Cheruiyot, Summary Chepkurui Cheruiyot and Edwin Kipyegon Mutai filed a summons for revocation or annulment of grant dated September 25, 2018 which is coming for consideration in this judgment.
 6. The summons for revocation is supported by the affidavit of Charles Kipngeno(the 1st objector/applicant).
 7. The 1st objector/applicant avers that he is a grandson of the deceased and the petitioner herein is his uncle. He further avers that his grandfather died sometime on March 30, 1988 and left behind five dependents.
 8. The 1st objector/applicant avers that his father Shadrack Koros (deceased) had two wives.
 9. The 1st objector/applicant avers that the petitioner obtained letters of administration and subsequently applied for confirmation of grant of letters of administration which was allowed on April 16, 2018 and the estate distributed to the exclusion of the 1st House of Shadrack Koros.
 10. The 1st objector/applicant avers that the letters of administration was obtained fraudulently and/or by means of deceit, misrepresentation of facts and concealment of material information and ought to be revoked.
 11. The 1st objector/applicant avers that the petitioner in support of his application for the letters of administration filed a consent dated February 1, 2018 purportedly signed by the 1st objector/applicant. The 1st objector/applicant contended that he did not consent for the confirmation or sign the alleged consent.
 12. The 1st objector/applicant avers that the 2nd, 3rd, 4th and 5th applicants/objectors herein including a church bought their respective portions of land parcel Kericho/kiptere/2092 from Shadrack Koros and have since enjoyed quiet, peaceful and uninterrupted use and occupation of their respective portions which ought to be considered in the distribution of the estate of the deceased yet they have been threatened with eviction notices by Koros Alice Chebet. Furthermore, the 2nd, 3rd, 4th and 5th applicants/objectors herein had made extensive developments on their respective portions and would suffer irreparable loss and damages if proceedings and consequential orders in Kericho Civil Suit No 37 of 2018 are not stayed.
 13. Alice Chebet Korosa widow of the Shadrack Koros (deceased) and beneficiary of the deceased's estate herein filed an affidavit in opposition to the objector's application for summons for revocation of grant dated September 25, 2018, she stated that she was holding the suit property in trust for herself and her children on the one hand, and the children of her co-wife on the other hand.
 14. She stated that in light of the instant application she proposed to transfer a total of 4.376 acres to her co-wife's four children and remain with 6.564 acres to hold in trust for herself and her five children in equal shares. She further stated that the proposal took cognizance of the 2.3 acres that she was occupying which was ceded to her by Philip Sigei who ought to receive an equivalent 2.3 acres from her deceased husband estate pursuant to an understanding in the deceased's lifetime.



15. She further stated that the 2nd, 3rd, 4th and 5th objectors/applicants were not bona fide purchasers of the various portions of land of the suit property from Shadrack Koros (deceased) as they had not demonstrated any evidence of transactions entered between them and the deceased and as such, their proprietary interests were tantamount to intermeddling with the deceased estate.
16. She further stated that she instituted Kericho CMCC No 37 of 2018 to secure the interests of her deceased's husband dependents against the 2nd – 5th objectors who had colluded with the 1st objector to intermeddle with the deceased's estate.
17. Henry Kipngetich Chepkwony(the petitioner herein), filed an affidavit in opposition to the objector's application for summons for revocation of grant dated September 25, 2018, he stated that when he filed the succession proceedings herein sometime in 2004 he listed himself and his brother Shadrack Koros(deceased) as the sole dependents of the deceased estate to the exclusion of his three sisters Sally Chepkemoi Kurgat, Mary Chepkirui Kulgat And Eunice Koskeas they had intimated to him that they had no interest in the deceased parcel of land.
18. The petitioner stated that his brother Shadrack Koros(deceased) passed on some time in 2017, leaving his widow Alice Koros Chebetand her five children and Esther Koros(pre deceased) and her four children surviving him.
19. The petitioner stated that on application for grant he intended to petition the court to allocate the said Shadrack Koros(deceased's) share to his surviving widow Alice Chebet Korosto hold it trust in equal for herself and her children on the one hand and the children of the deceased's co – wife on the other hand.
20. The petitioner stated that they consulted and sought the consent of all the deceased's beneficiaries but the objector back tracked and started claiming a superior interest in the deceased's estate.
21. The hearing of the case proceeded viva voce. The 1st objector/applicant said the deceased who was his grandfather had five children as follows:
 - a. Henry Kipngetich Chepkwony
 - b. Shadrack Koros(Deceased)
 - c. Mary Kalya
 - d. Sally Kurgat
 - e. Eunice Koskei
22. The father of the objector was Shadrack Koros who had two wives as follows:

1St House

- a. Esther Chepkoech Koros (Deceased widow)
- b. Charles Kipngeno - son
- c. David Cheruiyot - son
- d. Erick Cheruiyot - son
- e. Nancy Cherono - (Deceased Daughter)



2Nd House

- a. Alice Chebet Koros - Widow
 - b. Eliud Cheruiyot - son
 - c. Bernard Cheruiyot - son
 - d. Stephen Cheruiyot - son
 - e. Asha Cherono - daughter
 - f. Joyce Chepkoech - daughter
23. The 1st objector/applicant said the petitioner did not tell them he was petitioning for grant of letters.
 24. The 1st objector/applicant said their father sold land to Pauline Maina, Summary Chepkirui Cheruiyot, Stephen Cheruiyot and Edwin Mutai.
 25. The 1st objector/applicant said the land should have been divided equally between the petitioner and his father. He asked the court to revoke the letters of administration.
 26. The 1st objector/applicant relied on his witness statement in which he stated that his father Shadrack Koros (deceased) a beneficiary to the deceased's estate had two wives namely Esther Chepkoech Koros (deceased) and Alice Chebet Koros.
 27. The 1st applicant/ objector stated that due to the constant wrangles between the two wives, sometime in the 1970s in order to keep the peace, a meeting was convened by family and clan members it was resolved that Alice Koros Chebet and her children be relocated to another parcel of land measuring 2.3 Acres, subject to a lifetime agreement Philip Sigei ceded 2.3 acres of his land to Alice Koros Chebet and that she and her children been in occupation of the said land parcel to date which information ought to have been considered in the distribution of the estate, which information that was never availed to the court.
 28. The 1st applicant/objector stated that the petitioner did not obtain his consent whilst he was seeking confirmation of letters of administration.
 29. The 1st applicant/objector further stated that the petitioner was effecting distribution of the estate in line with the impugned certificate of confirmation of grant dated April 16, 2018 and Koros Alice Chebet having obtained a title for her share and being the registered proprietor of the suit land was now threatening the 2nd, 3rd, 4th and 5th objectors/applicants herein including a church that had purchased their respective land parcels from Shadrack Koros, they ought have been considered in the distribution, which information was never availed to the court.
 30. The petitioner Henry Kipngetich Chepkwony said he filed this petition in 2004 with his brother Shadrack who died in 2018.
 31. He said he shared the property with his brother. He filed a witness statement in which he stated that he had no issues with the mode of distribution as per the confirmation of grant dated April 16, 2018 and that they had agreed with the other beneficiaries on the mode of distribution.
 32. The petitioner called two witnesses, Alice Koros and David Kipyegon Cheruiyot who adopted their witness statements as follows.



33. Alice Koros the second wife to the deceased brother of Henry Kipng'etich Chepkwonythe petitioner herein, stated that she has no issues with the mode of distribution as per the confirmation of grant dated April 16, 2018.
34. She further stated that it was agreed that after the confirmation of grant she would sub divide the land as per the terms of a prior agreement.
35. David Kipyegon Cheruiyot, the son to the co – wife to Alice Koroswho is also the second petitioner in this matter, he stated that he has no issues with the mode of distribution as per the confirmation of grant dated April 16, 2018 and that Alice Koroswas to distribute the land pursuant to a prior agreement.
36. I have considered the evidence adduced by both parties in this case. The issues for determination in this case are as follows;
 - i. whether the grant should be revoked
 - ii. How the property should be shared.
37. On the issue of revocation section 76 of the Law of Succession Act provides for grounds for revocation of the grant 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 interested party or its own motion: -

 - a. That the proceedings to obtain the grant were defective in substance;
 - b. That the grant was obtained by the making of a false statement or by concealment of from the court of something material to the case.
 - c. That the grant was made by an untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.
 - d. The person to whom the grant was made has failed, after die notice and without reasonable cause either: -
 - i. To apply for confirmation of the grant within a year from the date thereof or such longer period as the court has ordered or allowed; 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 paragraph (e) and (g) of section 83 or has produced such investigation or account which is false in any material particular; or
 - e. That the grant has become useless and inoperative through subsequent circumstances.”
38. The court in the case of Jamleck Maina Njoroge v 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.”

39. In the case of *Albert Imbuga Kisigwa v Recho Kavai Kisigwa*, Succession Cause No 158 of 2000, Mwita J made remarks on the guiding principles for the revocation of a grant. He stated; “Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant.”
40. In the current case I find that the grant was fraudulently obtained since the petitioner failed to disclose all material facts.
41. I find that there were untrue allegations and deliberate omissions and concealment of facts by the petitioner.
42. of the deceased and the petitioner herein was his uncle. He further avers that his grandfather died sometime on March 30, 1988 and left behind five dependants.
43. There is evidence that the deceased died on March 30, 1988 and left behind five dependents as follows;
 - a) Henry Kipnetich Chepkwony
 - b) Shadrack Koros(Deceased)
 - c) Mary Kalya
 - d) Sally Kurgat
 - e) Eunice Koskei
44. I accordingly annul the grant and set it aside.
45. I direct that a fresh grant be issued to the 1st objector on behalf of his father's estate and the petitioner.
46. The two administrators to be issued with a fresh grant as follows;
 - (i) Charles Kipngeno
 - (ii) Henry Kipnetich Chepkwony
47. On the issue as to how the property should be shared, I direct that the same be shared equally the petitioner and the estate of Shadrack Koros.
48. The two administrators are directed to file a summons for confirmation within 30 days of this date,
49. Each party to bear its own costs of the case for reasons that the parties are family members.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 16TH DAY OF DECEMBER, 2022

A. N. ONGERI

JUDGE

