



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**SUCCESSION CAUSE NO 13 OF 2016**

**IN THE MATTER OF THE ESTATE OF KIPKORIR ARAP MAINA (DECEASED)**

**FRANCIS KIPTERER KORIR....APPLICANT/PROTESTOR**

**VS**

**RAEL CHEPTOO MAINA.....RESPONDENT/PETITIONER**

**RULING**

1. In the application dated 15<sup>th</sup> December 2017, the applicant, Francis Kipterer Korir, seeks revocation of the grant that was confirmed in this matter on 31<sup>st</sup> October 2017. The application, which is premised on section 76(a)(b) and (c) of the Law of Succession Act, is based on the grounds that the proceedings to obtain the grant were conducted without notice to the applicant; that the grant was obtained fraudulently by making false statements and concealment of material information and facts necessary to the case; and that the proceedings were defective in substance.

2. The applicant avers in his affidavit in support of the application that the petitioner had left out the other beneficiaries of the estate, namely:

- 1. Martha Langat**
- 2. Grace Chepkoech**
- 3. Annah Cheronono**
- 4. Alice Chebii**
- 5. Francis Kipterer Korir**
- 6. Chepkoros w/o Kirwa (deceased)**

3. He asserts that failure to list all the beneficiaries amounts to concealment of material facts from the court. It is his contention further that the petitioner did not involve the applicant and the members of the 1<sup>st</sup> house of the deceased while making the application for the grant, and that the children of the 1<sup>st</sup> house did not participate in the filing of the petition, nor did his sisters participate though they are beneficiaries and should be informed and participate in the cause. He further contends that they did not consent to the distribution before the grant was confirmed. He alleges that he is in occupation of Kericho/Kapsuser/3675 which the petitioner is entitled to inherit as set out in the schedule of assets set out in the certificate of confirmation of grant.

4. In her affidavit in response sworn on 16<sup>th</sup> March 2018, the petitioner, Rael Cheptoo Maina, denies that the process of obtaining the grant in this cause was conducted without notice to the applicant and his siblings, or that any material was concealed from the court. She avers that the applicant had adamantly refused to take part in the proceedings despite service. He had personally failed to attend court and incited other beneficiaries to boycott the proceedings, and had also refused service of court proceedings. She avers that she had included the applicant and his siblings in all the proceedings and indeed, some of the applicant's siblings have signed the consent to the confirmation of grant. Among those who signed are Anna Cheronono and Alice Chebii, the applicant's sisters.

5. The petitioner further avers that the estate of the deceased was distributed fairly and that the applicant got 2.96 ha more out of the estate of the deceased. She had thereafter proceeded to effect transfers of the estate to the beneficiaries and titles to the parcels issued. She avers that if the applicant is not satisfied with the distribution of the estate in the manner she has proposed as set out in the certificate of confirmation of

grant, then it should be distributed equally between the two houses of the deceased.

6. The applicant filed a further affidavit sworn on 27<sup>th</sup> September 2018. He deposes in this affidavit that the deceased had, in 2002, subdivided his land Kericho/Kapsuser/1043 into two, Kericho/Kapsuser/3674 and Kericho/Kapsuser/3675. The deceased had then, according to the applicant, proceeded to allocate or distribute the two parcels of land to the applicant's two wives, Roda Korir and Ann Korir, and they had taken possession and made extensive developments thereon.

7. He alleges that the reason for this was that the land, Kericho/Kapsuser/1043, was purchased with money from the dowry paid to the deceased after the daughters of the 1<sup>st</sup> house were married. The applicant annexes to his affidavit what he terms as minutes of a clan meeting held on 1<sup>st</sup> March 2018 to support his contention. He accuses the petitioner of having failed to disclose to the court that the deceased had, in his lifetime, distributed his estate among his beneficiaries as the applicant had averred, that is, to his two wives.

8. According to the applicant, the Kipsigis (customary) law and practice was that as the land was purchased from proceeds from the dowry paid for a daughter of the 1<sup>st</sup> house, it belonged to the 1<sup>st</sup> house. He alleges that the deceased had acquired the land Kericho/Kapsuser/1043 in 1970 and that by the time the deceased married the petitioner, the applicant's two wives were already living on the land. He alleges that unless the court grants the orders he seeks, one of his wives who was living on land parcels number KerichoKapsuser/3675 will suffer loss and prejudice, and he urges the court to allow his prayer for revocation of the grant.

9. The parties filed written submissions dated 8<sup>th</sup> November 2018 and 28<sup>th</sup> January 2019 respectively which I have read and considered.

10. The deceased to whose estate this matter relates, Kipkorir arap Maina, died on 30<sup>th</sup> May 2004, apparently at the age of 124 years. This is indicated in the death certificate filed with the petition for grant of letters of administration intestate. The petitioner indicates that the deceased left her as a beneficiary, though there is an affidavit of service dated 15<sup>th</sup> January 2016 indicating that the applicant and one Bernard Kiplangat had been invited to go and sign documents in the office of the petitioner's advocates, Moturi Mbeche and Associates, but had declined to do so.

11. The petitioner indicated that the estate of the deceased comprised the following assets:

- 1. Kericho/Kapsuser 3674, measuring 9.38 ha or 23.177 acres;**
- 2. Kericho/Kapsuser/3675 measuring 2.02 ha or 4.99 acres;**
- 3. Kericho/Kapsuser/1195 measuring 4.4 ha or 10.87 acres.**

12. The application was duly gazetted on 29<sup>th</sup> March 2016. No objection was filed to the application and letters of administration intestate were issued to the petitioner on 10<sup>th</sup> May 2016.

13. By an application dated 6<sup>th</sup> February 2017, the petitioner sought confirmation of the grant. She sets out in the affidavit in support of the application for confirmation of grant the following as the beneficiaries of the estate:

**1<sup>st</sup> House**

- 1. Francis Korir**
- 2. Martha Langat**
- 3. Grace Chepkoech**
- 4. Annah Cherono**
- 5. Elsie Chebii**

**2<sup>nd</sup> House**

- 1. Rael Cheptoo Maina**
- 2. Rose Chelangat**
- 3. Edinah Cherono**
- 4. Evalyne Chepkinui**
- 5. Bernard Kiplangat**
- 6. Gladys Chepkoech**

14. She proposes at paragraph c of the affidavit that the estate of the deceased be distributed as follows:

**1<sup>st</sup> House**

**Kericho Kapsuser/3674- 9.38 ha (23.177 acres)-Francis Kipkorir Maina**

**2<sup>nd</sup> House**

**Kericho Kapsuser/3675- 2.02 ha**

**Kericho Kapsuser/1195 – 4.4 ha**

**To be held in trust of the petitioner, Rael Cheptoo Maina, on behalf of all the beneficiaries of the 2<sup>nd</sup> house.**

15. A consent in support of the proposed mode of distribution is annexed to her application. It is signed by Annah Cherono, Elsie Chebii, Rose Chelangat, Edinah Cherono, Evlaine Chepkirui and Gladys Chepkoech. An affidavit of service sworn on 6<sup>th</sup> February 2017 indicates that the applicant and the other beneficiaries declined to sign the consent.

16. The issue before me in the present application is whether the application dated 15<sup>th</sup> December 2017 has any merit. Section 76 of the Law of Succession Act 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;**

17. I have perused the record of the court in respect to this matter. I note that when the application for confirmation of grant came up for hearing on 19<sup>th</sup> April 2018, the applicant and his siblings, as well as a son of the petitioner, Bernard Kiplangat, were absent, even though an affidavit of service sworn on 13<sup>th</sup> April 2018 indicated that they had been served. Nonetheless, I directed that they be served again. They did not appear on 31<sup>st</sup> October 2017 when the matter was scheduled for confirmation of grant. An affidavit of service indicated that they had been duly served. Accordingly, I proceeded to confirm the grant as prayed in the application dated 6<sup>th</sup> February 2017.

18. In view of the above matters, I am inclined to the view that the averments by the applicant in support of his application for revocation are not truthful, nor do they meet the standard for revocation of grant under section 76 of the Law of Succession Act set out above. A cursory perusal of the record indicates that from the beginning of the succession process, the petitioner filed affidavits of service indicating that she sought the consent of the applicant and her own son, Bernard Kiplangat, to no avail. She may have failed to include all the beneficiaries of the estate in the petition for the grant, but I note she included them all in the affidavit in support of the application for confirmation, albeit with errors in the names of the applicant, which is indicated as ‘Kipkorir’ instead of ‘Kipterer’ Maina, and ‘Elsie’ instead of ‘Alice’ Chebii. I would however be inclined to view these as errors more likely to have been on the part of the petitioner’s counsel, and not on her part. In any event, these are errors in respect of which rectification can be sought.

19. It would appear that the motivation for the present application is a desire on the part of the applicant to inherit, between him and his two wives, the bulk of the deceased’s estate. This emerges from his further affidavit in which he claims that the deceased had subdivided his land and allocated it to the applicant’s two wives. It is instructive that this contention comes in a further affidavit, not in the affidavit seeking revocation of grant.

20. I have noted a court judgment annexed to the submissions of the petitioner. It emanated from a suit filed by the applicant and his mother, Rebecca Maina, one of the wives of the deceased, against the deceased and his second wife, the present petitioner. This is **Kericho High Court Civil Suit No 58 of 1998- Rebecca Maina & Francis Korir vs Kipkorir Maina & Rael Maina**. The dispute had been referred to arbitration by the High Court. In their plaint, the applicant and his mother were claiming that the land, Kericho/Kapsuser/1043, which was registered in the name of the deceased, was held in trust for them. The deceased had apparently wished to sell a portion of the land to offset medical bills. In his ruling which the applicant and his mother did not challenge, the arbitrator found that the deceased was not holding the land in trust for them.

21. It seems to me that the present application is an extension of the attempt by the applicant to have sole ownership of the land, Kericho/Kapsuser/1043. He alleges that the deceased had subdivided it and allocated it to the applicant’s two wives. Why it is the two wives of the applicant that the deceased should allocate the land to and not, say, his daughter from the 1<sup>st</sup> house from whose dowry the land was allegedly purchased is not clear.

22. On the facts placed before me, I find that the applicant has not met the threshold that would justify the revocation of the grant issued in favour of the petitioner.

23. I find no merit whatsoever in the application dated 15<sup>th</sup> December 2017, and it is hereby dismissed with costs to the petitioner.

**Dated and Signed this 31<sup>st</sup> day of May 2019**

**MUMBI NGUGI**

**JUDGE**

**Dated Delivered and Signed at Kericho this 19<sup>th</sup> day of June, 2019**

**GEORGE DULU**

**JUDGE**