



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**SUCCESSION CAUSE NO 230 OF 2014**

**IN THE MATTER OF THE ESTATE OF KIPKORIR ARAP BIRIR, DECEASED**

**DANIEL KIPKORIR KIRUI.....PETITIONER/RESPONDENT**

**VERSUS**

**WILSON KIPKEMOI KORIR.....1<sup>ST</sup> OBJECTOR**

**SIMEON KIBII KORIR.....2<sup>ND</sup> OBJECTOR/APPLICANT**

**RULING**

1. This matter relates to the estate of Kipkorir Arap Birir (Deceased) who died intestate on 9<sup>th</sup> March 2009. Letters of administration intestate were issued to Daniel Kipkorir Kirui on 13<sup>th</sup> March 2015. The grant was confirmed on 22<sup>nd</sup> June 2016.

2. Thereafter, by an application dated 10<sup>th</sup> July 2017, the applicant, Simon Kibii Korir, sought revocation of the grant. The basis of the application was that the grant was obtained fraudulently by the making of false statements or by the concealment of some material facts from the court. The second ground is that the grant was obtained by means of untrue allegations of facts essential in point of law to justify the grant, particularly that the petitioner failed to disclose or seek consent to apply for grant from other survivors who had priority or equal right to apply. In the third ground the applicant alleged that the petitioner overlooked or omitted the consent of all the beneficiaries of the estate of the deceased.

3. In the affidavit in support of the application, Simon Kibii Korir avers that the petitioner is his younger brother from the deceased's second house. He sets out the beneficiaries of the deceased as follows:

**1<sup>ST</sup> HOUSE**

- (a) Tabletgoi Chepkoech Birir (Deceased Widow)
- (b) Wilson Kipkemo Korir - Son
- (c) Henry Kipkurgat Korir -Son
- (d) David Kipkurui Korir - Son
- (e) Simion Kibii Korir - Son
- (f) Elizabeth Chelangat Milgo - Daughter
- (g) Esther Chebet Korir - Daughter
- (h) Rebecca Kosgei - Daughter
- (i) Caroline Chepngetich Ngeno - Daughter
- (j) Alice C. Mosonik - Daughter

- (a) Nicholas Cheruiyot Ngeno -Son
- (b) Daniel Kipkorir Kirui - Son
- (c) Philip Kipsang Korir - Son
- (d) Joel Kipkoech Korir - Son
- (e) David Cheruiyot Mutai - Son
- (f) Janet Chepkoech Birir - Daughter
- (g) Delca Cheronno Birir - Daughter
- (h) Mercy Chepkurui Birir - Daughter

4. He repeats the assertions in the application that the grant was obtained fraudulently and that this had led one of their brothers, Wilson Kipkemoi Korir, to make an application for revocation. The application was, however, withdrawn on 6<sup>th</sup> March 2016 on the basis that all the parties had agreed to have a reconciliatory meeting at home. He contends that no meeting took place, but instead they learnt on 22<sup>nd</sup> June 2017 that the petitioner had applied for confirmation of the grant, and that it had been confirmed without their consent. He avers that their consent was never sought and that only a handful of the beneficiaries were present. Further, that the petitioner had also omitted some of the beneficiaries of the estate and had not sought their written consent to omit them.

5. In his affidavit in reply sworn on 17<sup>th</sup> July 2017, the petitioner avers that the application for revocation of grant and the affidavit in support are full of falsehoods and are intended to mislead the court into sanctioning the ulterior motives of the applicant. It is his averment further that prior to the commencement of the succession proceedings, there had been no consensus amongst the beneficiaries on who would take out the letters of administration. Accordingly, he was forced to issue a citation upon the rest of the beneficiaries of the estate of the deceased, including the applicant, and he relies in support on a copy of the citation issued.

6. The petitioner states that upon being served with the citation, the applicant had instructed the firm of M/S E.K Korir & Company Advocates, to act for 'them'. The Advocates indicated that the applicant had no objection to the petitioner being issued with the letters of administration, subject to the applicant being included as a co-administrator. When the citation came up before the court on 30<sup>th</sup> June 2014, the court directed that any of the beneficiaries of the estate of the deceased could take out the grant of letters of administration. The petitioner proceeded to make the application as none of the other beneficiaries, including the applicant, took any steps in that regard. It is his averment that the grant was thereafter issued to him on 13<sup>th</sup> March 2015. None of the beneficiaries had filed an objection to his application after it had been duly gazetted.

7. The petitioner asserts that an application had thereafter been filed by Wilson Kipkemoi Korir, a brother of the present applicant, whom he asserts was representing the interests of the applicant also, but when the application was listed for hearing on 2<sup>nd</sup> March 2016, it was withdrawn at the instance of the applicant. It is his contention that the present applicant and all the beneficiaries of the estate of the deceased were duly informed or were aware of the succession proceedings. In his view, the applicant was seeking to mislead the court when he alleges that the succession cause was instituted without the knowledge of all the beneficiaries of the estate of deceased.

8. The petitioner further avers that the deceased's assets comprise LR No Kericho/Segemik/679 and LR No Kericho/Segemik/707 only. While the applicant alleged that a property belonging to the deceased had been left out, he had not disclosed the details and/or description of any property that has allegedly been left out. He also denied that any beneficiaries of the estate had been left out.

9. In a further affidavit sworn on 5<sup>th</sup> January 2018 the applicant reiterates that the petitioner left out all the female beneficiaries of the deceased, specifically those of the 1<sup>st</sup> house, who did not consent to being left out or renounced their interest in the estate. He maintains that neither he nor any member of the first house was served with any documents relating to the application for letters of administration intestate. He contends that members of the 2<sup>nd</sup> house have received a bigger share of the estate of the deceased than the beneficiaries from the 1<sup>st</sup> house.

10. The parties hereto filed written submissions dated 4<sup>th</sup> October 2018 and 22<sup>nd</sup> October 2018 respectively which I have read and duly considered.

11. The application is brought pursuant to the provisions of section 76(a), (b) and (c) of the Law of Succession Act, which 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;*

*(d) ...*

12. A party who seeks revocation of a grant on these grounds must show that any of the conditions set out above exists to justify the revocation of the grant. In the present case, I note that the essence of the complaint by the applicant is that the petitioner obtained the letters of administration intestate without seeking the consent of the other beneficiaries. The record, however, indicates that the petitioner had issued a citation against the applicants from the 1<sup>st</sup> house of the deceased in Succession Cause No 37 of 2013. The citees were the present applicant and his brothers, Wilson Kipkemoi Korir, David Kipkemoi Korir and Henry Kipkurgat Korir. The citees had appointed an Advocate to act for them and indicated that they had no objection to the petitioner applying for the grant provided they were also included as co-petitioner(s). It would appear, however, that none of the citees took any steps to file the requisite application, which led to the petitioner filing the application for grant.

13. I further note that an application for revocation of grant dated 30<sup>th</sup> March 2015 was subsequently filed by Wilson Kipkemoi Korir, a brother of the present applicant and, like the present applicant, a son of the deceased from the 1<sup>st</sup> house. The application was subsequently withdrawn by consent on 2<sup>nd</sup> March 2016.

14. The present applicant has not been able to place before me any material on the basis of which I could conclude that the conditions set out in section 76 for the revocation of grant have been met. The application for revocation dated 30<sup>th</sup> March 2015, which was filed by a brother of the present applicant and subsequently withdrawn by consent, is a clear indication that there was no fraud or concealment of material facts by the petitioner in applying for the grant. Had there been, this would have emerged at that stage, and there would have been no consent for the withdrawal of the application. Further, the fact that the petitioner had commenced the process by first issuing a citation to his step-brothers to apply for grant, and it is only upon their failure to do so that he made the application, indicates that there was no such concealment as alleged.

15. I note that the applicant cites the exclusion of the daughters of the deceased as a basis for revoking the grant. I note, however, that there is no affidavit filed by any of the daughters of the deceased seeking revocation of the grant and indicating that they were interested in the estate of the deceased but were omitted. It seems to me that the applicant uses the exclusion of the daughters more for purposes of achieving his ends than for the purpose of ensuring that they benefit from the estate of the deceased. I take this view on the basis that the applicant does not propose a mode of distribution that would include them. Rather, he submits that the deceased had settled all his beneficiaries in their respective parcels where they currently reside. Had the intention been to seek revocation in order to ensure that the daughters of the deceased benefit from his estate, they would doubtless have been co-applicants, and an indication made of the mode of distribution that would result in their obtaining a share of the estate of the deceased.

16. The applicant has also alleged that a property of the deceased was left out. He refers to it as 'a property in Trans Mara known as "Kimulet Bii farm"'. There is, however, no document such as a title document or certificate of official search placed before the court to show that the deceased was the registered owner of such a property, if indeed such a property is in existence.

17. In the circumstances, I am unable to find any merit in the application for revocation of grant. It is hereby dismissed but with no order as to costs in view of the fact that this is a family matter.

**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**