



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KERICHO**  
**SUCCESSION CAUSE NO.8 OF 2004**

**IN THE MATTER OF THE ESTATE OF KIPSANG CHEPKWONY.....(DECEASED)**

**JANE CHEPKIRUI CHEPKWONY.....PETITIONER**

**VS**

**EZEKIEL KIPKEMOI SANG.....1ST APPLICANT/OBJECTOR**

**NANCY CHEPKOECH SANG.....2ND APPLICANT/OBJECTOR**

**ELIZABETH CHEPKEMOI SANG.....3RD APPLICANT/OBJECTOR**

**ANNAH CHEPKORIR KIMETO.....4TH APPLICANT/OBJECTOR**

**SELLY CHELANGAT KIMETO.....5TH APPLICANT/OBJECTOR**

**SARA CHERONO SANG.....6TH APPLICANT/OBJECTOR**

**RULING**

[1] The deceased to whose estate these proceedings relate is Kipsang Chepkwony who died on the 14<sup>th</sup> of July 2003 aged 85. The deceased was married to two wives, the first of whom was deceased at the time of the commencement of these proceedings, while the petitioner was his second wife.

[2] The petitioner made an application for grant of letters of administration intestate, which were granted on 29<sup>th</sup> April 2004. On 13<sup>th</sup> May 2014, the grant of letters of administration intestate was confirmed.

[3] In the application dated 24<sup>th</sup> June 2015, the applicants seek the revocation of the grant issued on 13<sup>th</sup> May 2014 to the petitioner. The application, which is supported by an affidavit sworn by the 1<sup>st</sup> objector, Ezekiel Kipkemoi Sang, is based on the grounds that:

***(1) That the grant obtained was fraudulent as the petitioners herein failed to obtain the consent of all the family members while petitioning the court to confirm the grant and while petitioning for the letter of the administration intestate.***

***(2) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, as the objectors herein were not informed of the succession proceedings.***

***(3) That the petitioner herein fraudulently applied for the Grant of Letters of Administration intestate of the deceased in secret and without involving the objectors herein.***

**(4) That the petitioner herein distributed the estate of the deceased herein without the consent of the objectors.**

**(5) That the distribution of the deceased herein made by the petitioner is incomplete as the definite shares of all the beneficiaries have not been identified in the grant.**

**(6) That during the distribution of the estate of the deceased, the petitioner herein was accompanied by police officers from Litein Police Station, an obvious indication that there was no agreement on the said mode of distribution by the beneficiaries.**

**(7) That the distribution is highly skewed and not in tune with the wishes of the deceased herein the late Kipsang Chepkwony.**

**(8) That all the beneficiaries had been allocated portions which each one had settled and made full developments before the demise of the deceased herein.**

**(9) That the respondent/petitioner has dealt with the estate of the deceased in a manner adverse to the interest of the beneficiaries in that the petitioner has misused her powers and thus should step down as the administrator.**

[4] In his affidavit, Mr. Kipkemoi sets out the undisputed facts regarding the demise of the deceased as well as the grant of the letters of administration to the petitioner. He then reiterates the grounds which form the basis of the application set out above, and enumerates the persons he and his co-objectors consider the proper beneficiaries of the estate.

[5] In his submissions, Mr. Kirui for the objectors stated that the estate of the deceased was distributed between two houses, but it is not stated in the grant how the estate is to be distributed between the beneficiaries, and the grant is very skewed as to form.

[6] It was his submission further that while all the beneficiaries have been shown in the application for confirmation, they are missing in the grant itself. Further, that there is no consent obtained by the petitioners signed by all the beneficiaries, and the daughters of all the houses had not signed a consent renouncing their shares in the estate. In his view, the entire application for grant by the petitioners was defective for want of consent from the other beneficiaries, a fact which, in his view, leads to the conclusion that the petitioner intended to disinherit the other beneficiaries.

[7] It was also Mr. Kirui's contention that the petitioner's interest in the estate was a life interest in accordance with the law, and the Lands Office would be unable to distribute the estate. He therefore prayed that the application for revocation of grant be allowed.

[8] In response, Mrs. Bett for the petitioner opposed the application. She relied on an affidavit sworn in reply to the application for revocation of grant by the petitioner, Jane Chepkirui Chepkwony, on 11<sup>th</sup> August 2015.

[9] In her affidavit, Jane Chepkirui Chepkwony denies that she obtained letters of administration fraudulently and without informing the objectors. She states that the 1<sup>st</sup> objector has all along been aware of the grant of letters of administration to her, and had filed an objection with respect thereto. She further states that the 1<sup>st</sup> objector, who had been represented by Counsel in the proceedings to which he had been joined in 2006, had failed to file an affidavit showing his preferred mode of distribution.

[10] In submissions made on behalf of the petitioner, Learned Counsel, Mrs. Bett, submitted that the application before this Court is an abuse of the court process. It was her submission that the applicant, who has all along been party to the proceedings, was guilty of *laches* and was seeking to circumvent the law by seeking to enjoin his siblings in the matter. She submitted further that the 1<sup>st</sup> objector had been given a chance by Kimaru J to file his objection on 26<sup>th</sup> July 2006 but had failed to do so.

[11] According to Mrs. Bett, the grounds for revocation of grant are well laid out in section 76 of the Law of Succession Act, and the 1<sup>st</sup> objector has not demonstrated that he has sufficient grounds for the revocation. He had also not demonstrated that the procedure followed in the issuance of the grant was defective in substance. His allegation was that there was no consent to the application, but according to Mrs. Bett, the objector had declined to sign the consent and had come into the proceedings as an objector and been granted a chance and sufficient time to file an objection.

[12] With respect to the applicant's contention that the process of grant of the letters of administration was defective in substance, Mrs. Bett submitted that the alleged defect must be demonstrated to be of such character as to affect the correctness of previous proceedings. She submitted that the objector does not allege that the petitioner is not a widow of the deceased, nor that the objector's interests were not disclosed to the Court. Neither does he allege that any of the assets of the estate were concealed. In her view therefore, there were no reasons for revocation of the grant.

[13] In relation to the submission by the objectors that the grant was not capable of taking effect as it does not state the shares of beneficiaries, the petitioner's submission was that the shares can be ascertained from Form P&A 5 which details all the beneficiaries of the deceased, and by making application to court. Her submission was that the failure to detail the shares of each beneficiary should not be a basis for revocation of the grant as such a defect can be corrected by way of rectification of grant.

[14] In his submissions in reply, Mr. Kirui reiterated that the grant does not show the shares of each beneficiary and cannot be given effect.

[15] I have read the pleadings of the parties in this matter, and considered their submissions in support of or opposition to the application for revocation of grant dated 24<sup>th</sup> June 2015. I have also perused the Court record on the proceedings in this matter since the application for letters of administration was made by the petitioner on 21<sup>st</sup> January 2004 to the point at which the letters of administration intestate were issued on 29<sup>th</sup> April 2004 and a Certificate of Confirmation of Grant was issued on 13<sup>th</sup> May 2014.

[16] The objectors wish to have the grant to the petitioner revoked. I have set out above, *verbatim*, the grounds on which their application is based. The question is whether their application has a factual or legal basis that would justify the revocation of the grant to the petitioner.

[17] Section 76 of the Law of Succession Act sets out the grounds on which a grant of representation may be revoked or annulled. It states 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) 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]** In her decision in **Succession Cause No. 1817 of 2005 In The Matter Of The Estate Of Peter Mwangi Njoroge**, Achode J summarized the above grounds for revocation of grounds as follows:

*(11) The circumstances that can lead to the revocation of grant have been set out in **Section 76 Law of Suc-cession**. For a grant to be revoked either on the appli-cation of an interested party or on the court's own mo-tion there must be evidence that the proceedings to ob-tain 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.*

*(12) A grant may also be revoked if the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate. See -*

***Matheka and Anor v Matheka [2005] 1 KLR pg 456**. It may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required.*

**[19]** While objectors have cited the above grounds in their application for revocation of the grant issued to the petitioner, they have not established how the grant of the letters of administration to the petitioner fell within the statutory grounds set out in section 76 set out above. Where is the evidence that the proceedings to obtain the grant were defective in substance? Where is the evidence that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case? Which are the untrue allegations of facts essential in point of law that would justify revocation of the grant.

**[20]** I note from the record that the petitioner applied for letters of administration intestate on 21<sup>st</sup> January 2004. She named the beneficiaries of the estate in form P&A5, and among the beneficiaries named are the applicants. A grant of letters of administration intestate was made to her on 29<sup>th</sup> April 2004.

**[21]** By her application dated 26<sup>th</sup> April 2005, the petitioner applied for confirmation of the grant issued to her on 29<sup>th</sup> April 2004. Following this application, the 1<sup>st</sup> applicant, Ezekiel K. Sang, who appears to have had representation in the matter by the firm of Kipkorir & Co. Advocates, appointed the firm of Chelule & Co. Advocates to Act for him. On 26<sup>th</sup> July, 2005, Kimaru J ordered that the objectors file an affidavit indicating their preferred mode of distribution of the deceased's estate within fourteen days and serve the petitioner. This was not done, and on 13<sup>th</sup> of May 2014, after noting that no affidavit of protest to the confirmation of grant had been filed, Sergon J proceeded to confirm the grant issued to the petitioner as prayed.

**[22]** It is noteworthy from the record that since the confirmation of grant, two further applications were filed. One was by the petitioner seeking to have orders for the police to provide security during the subdivision of the land comprising the estate with a view to distribution of the estate. The second was an application seeking to set aside the orders that had been issued pursuant to the petitioner's application for police to provide security. This latter application, dated 17<sup>th</sup> February 2015, was withdrawn on 23<sup>rd</sup> April 2015 by Counsel for the objectors. Thereafter, there was a change of Advocates by the Objectors, and the application now before me for revocation of grant was filed.

**[23]** It appears to me that the present application is unmerited, for two reasons. First, the applicant has not

placed before the Court any material that would rise to the statutory threshold set by section 76 of the Law of Succession Act. He has not shown any defect in the substance in the procedure leading to the issue of the grant, nor has he shown that the grant was obtained fraudulently or through concealment from the Court of something material to the case. Neither has he presented anything that demonstrates that there was an untrue allegation of a fact essential in point of law to justify the grant.

[24] Secondly, the applicants have all along been aware of the issuance of the grant. They were granted time, more than ten years ago on 26<sup>th</sup> July 2006, to file an affidavit of protest but they did not do so. Neither did they do anything when the application for confirmation was filed, or after it was granted, even though they had notice of the said application, and could have protested at that stage.

[25] In the circumstances, the application for revocation of grant dated 24<sup>th</sup> June 2015 must fail, and it is hereby dismissed.

[26] The question, however, is whether this puts an end to the matter. In my view, it does not, for there are several troubling elements of this matter that the Court should address.

[27] The petitioner appears to have filed an application for confirmation of grant on 26<sup>th</sup> April, 2005. There is, however, no affidavit on the Court file in support of this application. She then filed an affidavit titled **“Affidavit on Petitioner’s Preferred Mode of Distribution”** At paragraph 5 thereof, she states as follows with respect to the distribution of the estate of the deceased:

***“THAT in accordance with the norms of Kipsigis Customary Law, the whole of the estate of the deceased, including the tea crop, ought to be divided equally between the two houses of the deceased herein which each house taking half share after which each house can decide on its mode of distribution in regard to their respective children”.***

[28] Herein, in my view, lies the problem which was tacitly conceded by Counsel for the petitioner in her submissions before me. To the applicants’ argument that the Lands Office would have difficulties determining and distributing the shares of the beneficiaries, Mrs. Bett argued that that was a matter that could be addressed by way of an application for rectification of grant, not by revocation. She was correct, up to a point. However, the mode of distribution that the petitioner had applied for, and which was confirmed, was in violation of the law. The deceased having died on 14<sup>th</sup> July 2003, his estate was to be distributed in accordance with the Law of Succession Act, not in accordance with Kipsigis Customary Law.

[29] Faced with this situation, what is the Court to do? Rule 73 of the Probate and Administration Rules ***“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice...”***

[30] To allow the estate of the deceased in this cause to be distributed as proposed by the petitioner would be in violation of statute, and may well result in an injustice.

[31] Consequently, in exercise of the inherent powers of the Court under the Law of Succession Act, and in order to do justice between the parties, I direct all the parties to this cause, meaning the petitioner, the objectors and all the beneficiaries of the estate of the deceased to appear before the Court on a date to be fixed in Court with a view to considering a mode of distribution of the estate that is in accord with the law and justice.

[32] It is so ordered.

**Dated, Delivered and Signed at Kericho this 23<sup>rd</sup> day of September 2016.**

**MUMBI NGUGI**

**JUDGE**