



REPUBLIC OF KENYA



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In re Estate of Kiptiony Tangu alias Kiptiony arap Tangu (Succession Cause 18 of 2019) [2025] KEHC 353 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEHC 353 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 18 OF 2019**

RL KORIR, J

JANUARY 23, 2025

**IN THE MATTER OF THE ESTATE OF KIPTIONY
TANGUS ALIAS KIPTIONY ARAP TANGUS (DECEASED)**

BETWEEN

JULIUS KIPYEGON MARITIM PETITIONER

AND

PHILIP KIPYEGON TIONY OBJECTOR

RULING

1. The Petitioner in his capacity as the son of the deceased, petitioned this court for Grant of Letters of Administration Intestate for the estate of Kiptiony Tangu alias Kiptiony arap Tangu (deceased) on 20th June 2019. A Grant was issued by this court (Dulu J.) on 7th November 2019 in the name of the Petitioner.
2. The Petitioner filed Summons for Confirmation of the Grant dated 23rd June 2020. Before this Application was heard, the Objector filed Summons for Revocation of the Grant dated 29th October 2020, which is the subject of this Ruling.
3. In his Application for revocation of the Grant dated 20th October 2020, the Objector relied on the following grounds:-
 - I. Spent.
 - II. That the Honourable Court be pleased to order that an inhibition be placed over Kericho/Chemagel/1731 and Kericho/Chemagel/1585.
 - III. That the Honourable Court be pleased to revoke the Grant of Letters of Administration granted to Julius Kipyegon Maritim on 7th November 2019.



- IV. That the Honourable Court be pleased to appoint Philip Kipyegon Tiony to replace the Petitioner who is a stranger to the deceased estate.
 - V. That the Honourable Court do issue orders restraining the Petitioner or his agents, servants or assigns from interfering with the Applicant or the Applicant's agents, workers, servants or assigns, occupation, use and enjoyment of land parcel number Kericho/Chemagel/1731 and Kericho/Chemagel/1585 pending the hearing and determination of this Summons inter partes.
 - VI. That the Honourable Court do issue orders restraining the Petitioner or his agents, servants or assigns from interfering with the Applicant or the Applicant's agents, workers, servants or assigns, occupation, use and enjoyment of land parcel number Kericho/Chemagel/1731 and Kericho/Chemagel/1585 pending the hearing and determination of this Summons.
 - VII. The OCS Sotik Police Station to ensure compliance of 5 and 6 above.
 - VIII. That the costs of the Application be in the course.
4. The Application was brought under section 76 of the Law of Succession Act and Rule 44 (1) of the Probate and Administration Rules. The Application was based on the grounds on the face of the Application and further by the annexed Supporting Affidavit of Philip Kipyegon Tiony sworn on 29th October 2020.

The Objector's case.

5. The Objector stated that his father Kiptiony Tangus alias Kiptiony arap Tangus died on 27th July 1987 and left the Objector, Joseph Kibii Tiony, Samwel Kipkosgei Tiony and Jane Chepkurgat Langat as his dependants. That the Petitioner who was a stranger to the deceased estate was granted Letters of Administration on 7th November 2019 and had further filed Summons for Confirmation of Grant dated 23rd June 2020. He stated that the Petitioner obtained the Grant fraudulently by using a fake Death Certificate.
6. It was the Objector's case that he obtained the deceased's Death Certificate from the Registrar of Deaths and Births. That the Petitioner's father was called Arap Keter (deceased) and not Kiptiony Tangus alias Kiptiony arap Tangus (deceased).
7. The Objector stated that the Petitioner hired goons to restrain them from accessing their father's land. That the Objector's father was the registered owner of land parcel number Kericho/Chemagel/1731 and Kericho/Chemagel/1585. He further stated that this court should allow his Objection to enable him distribute the deceased's estate to its rightful beneficiaries.

The Response

8. Through his Replying Affidavit dated 26th November 2020, the Petitioner stated that Kiptiony Tangus alias Kiptiony arap Tangus (deceased) was his father and he died on 4th January 2001 and was survived by Ann Taplule Tiony, Raphael Kimutai Sang, John Kiprop Sang, Julius Kipyegon Maritim, Joel Cheruiyot Sang, Geoffrey Mutai, Erick Kipkoech Mutai and Edwin Kipngeno Mutai.
9. It was the Petitioner's case that the deceased's estate comprised of Kericho/Chemagel/1731, Kericho/Chemagel/1585 and Kericho/Chemagel/568. That together with the listed beneficiaries, they had lived on the said lands since their father became the registered owner of the parcels.



10. The Petitioner stated that the Objector was a stranger to their (Petitioner's) family. That the Objector and his listed beneficiaries were not the sons of the deceased and were therefore not beneficiaries of his estate.
11. It was the Petitioner's case that he legally applied for the Grant and he disclosed all the beneficiaries of the estate. That in applying for the Grant, he produced the deceased's original Identity Card and the original Burial Permit. He denied the allegation that he hired goons to prevent the Objector from accessing and utilizing the land in question.
12. The Petitioner stated that the Objector annexed a dubious Death Certificate in his Application. That his father was called Kiptiony Tangus alias Kiptiony arap Tangus (deceased) and not Arap Keter (deceased). The Petitioner further stated that the Objector's Application ought to be dismissed as it was frivolous and vexatious.
13. On 26th November 2020, this court directed that the Objection be canvassed through viva-voce evidence and directed the parties to file witness statements and frame issues for determination by the court.
14. The parties took a lacklustre approach to the filing of witness statements and even when they eventually filed, they did not bother to call them.
15. The court observed that the dispute involved the identity of the deceased and whether or not he owned the parcels of land listed in the schedule of properties up for distribution. This could only be resolved through verification of the identification of the deceased as both the Petitioner and the Objector each claimed that Kiptiony Tangus alias Kiptiony arap Tangus was their father yet each claimed that there was no familial relationship between the Petitioner and the Objector.
16. The court therefore ordered a probe into the National ID and Death Certificates filed respectively by the parties and required the DCI and the Registrar of Births and Deaths to present their respective reports

Witness Number 1

17. No. 236536 CI Geoffrey Omwenda testified as the DCI officer of Bomet County. He stated that the Registrar of Births confirmed and certified the Petitioner's Death Certificate Serial Number 0102944 under the name of Kiptiony arap Tangus (deceased) and the Objector's Death Certificate Serial Number 1090055 in the name of Kiptiony Tangus.
18. It was the witness's testimony that he was given two different identity cards with two different serial numbers in the name of the deceased i.e. the Petitioner gave the Identity Card with serial number 3873677 issued on 11th September 1996 and the Objector gave the Identity Card with serial number 3872491. That upon further investigations, it was established that the Identity Card serial number 3872491 given by the Objector did not exist in the National Registration Bureau data base. That the only identity card that existed in the data base was the one handed over by the Petitioner which had the serial number 3873677.
19. The DCI further told the court that he had visited the respective homes of the Petitioner and the Objector who lived approximately 12 kilometres apart and was shown by each of the families the alleged grave site of the deceased. The DCI produced the following certified documents:-
 - i. Death Certificate Serial Number 920641 as Exhibit Number 1.
 - ii. National ID as Exhibit Number 2.



- iii. Death Certificate Serial Number 1090055 as Exhibit Number 3.
- iv. Land Title, Kericho/Chemagel/1731 as Exhibit Number 4.
- v. Verification of Death Certificate as Exhibit Number 5.
- vi. Letter from Tenwek Hospital as Exhibit Number 6.
- vii. Document from Registrar of Deaths as Exhibit Number 7.

Witness Number 2

20. Monica Boor testified as the Land Registrar, Bomet County. She stated that Kericho/Chemagel/568 (measuring 8.8 acres), Kericho/Chemagel/1585 (measuring 3 acres) and Kericho/Chemagel/1731 (measuring 1.7 acres) were all registered in the name of Kiptiony Tangus (deceased). She produced the Green Card entries of the parcels. The Land Registrar pointed out with respect to Land Parcel Number 1731 that the same was subdivided between Kiptiony Tangus and Taplemet w/o Tigiren Kimutai Kelong who later sold the whole portion to Kiptiony Tangus.

Petitioner's written submissions.

21. The Petitioner submitted that it was clear that Kiptiony Tangus alias Kiptiony arap Tangus (deceased) and Kiptiony Tangus were two distinct people. That one died on 27th July 1987 and the other died on 4th January 2001. The Petitioner further submitted that the two families of the deceased persons were not related.
22. It was the Petitioner's submission that his father, Kiptiony Tangus alias Kiptiony arap Tangus (deceased) was the registered owner of Kericho/Chemagel/568 (measuring 8.8 acres), Kericho/Chemagel/1585 (measuring 3 acres) and Kericho/Chemagel/1731 (measuring 1.7 acres) which now formed the deceased's estate. It was the Petitioner's further submission that Kiptiony Tangus (Objector's father) was the registered owner of Kericho/Chemagel/287.
23. The Petitioner submitted that he was the son of Kiptiony Tangus alias Kiptiony arap Tangus (deceased) and the Objector was the son of Kiptiony Tangus and they had no blood relations. That therefore, the Objector was not a beneficiary of the estate of Kiptiony Tangus alias Kiptiony arap Tangus (deceased).
24. It was the Petitioner's submission that the Objection was frivolous and an abuse of the court process and ought to be dismissed.

Objector's written submissions

25. It was the Objector's submission that the instant Application raised ownership issues which could only be ventilated in an Environment and Land Court. That this court had no jurisdiction and should refer the parties to the Environment and Land Court for determination on the question of ownership of the suit parcel.
26. I have gone through and considered the Summons for Revocation of Grant dated 29th October 2020, the Replying Affidavit dated 26th November 2020, the Petitioner's written submissions dated 19th January 2024 and the Objector's written submission dated 22nd October 2024. The only issue that arose for my determination was whether the Grant dated 7th November 2019 should be revoked.
27. The law on revocation of Grants is provided for in Section 76 of the *Law of Succession Act* which states 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.

28. Njuguna J. in *Matthew Njega Njogu & another vs Rosemary Muthoni Njue* (2021) eKLR held:-

“Revocation of grant is provided for under section 76 of the *Law of Succession Act*. The grounds upon which the grant may be revoked are well provided therein. The said section provides that revocation can either be at the instance of an applicant or can be by the court suo moto. However, it is a prerequisite that the conditions for revocation as set out under section 76 must be proved. In the case of *Jamleck Maina Njoroge –vs- Mary Wanjiru Mwangi* (2015) eKLR the court discussed circumstances when a grant can be revoked. The court observed:

“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.”

The 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 for revocation or annulment of a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice....”

29. The Objector stated that the deceased was his father and was survived by Joseph Kibii Tiony, Samwel Kipkoskei Tiony and Jane Chepkurgat Langat. That the deceased was not survived by the Petitioner, whom he considered a stranger to the deceased’s estate, and the people he listed as the deceased’s dependants i.e. John Kiprop Sang, Joel Cheruiyot Sang, Geoffrey Mutai, Erick Kipkoech Mutai and



- Edwin Kipngeno Mutai. The Objector further stated that the Petitioner's father was called Arap Keter and not Kiptiony Tangus alias arap Tangus (deceased).
30. It was the Objector's case that the Petitioner fraudulently obtained a fake Death Certificate that he used in his Application for the Grant. The Objector attached the Death Certificate he used as "PK-1", Serial Number 109005.
 31. The Petitioner on the other hand stated that his father was called Kiptiony Tangus alias arap Tangus (deceased) and not Arap Keter. That he legally obtained the Death Certificate that he used in his Application for the Grant. He attached the Death Certificate he used as "JK-1", Serial Number 0102944. The Petitioner further stated that the Objector was a stranger to the deceased's estate.
 32. Faced with two ID's and two Death Certificates allegedly in respect of the same deceased person, this court on 31st May 2023 ordered the Directorate of Criminal Investigations (DCI) to investigate the authenticity of the two National ID's and Death Certificates presented by the Petitioner and the Objector and thereafter file a Report.
 33. No. 236536 CI Geoffrey Omwenda testified as the DCI officer of Bomet County. He stated that the Registrar of Births confirmed and certified the Petitioner's Death Certificate Serial Number 0102944 in the name of Kiptiony arap Tangus (deceased) which showed that the deceased died on 4th January 2001 at Tenwek Hospital. He further stated that the Registrar also confirmed and certified the Objector's Death Certificate Serial Number 1090055 in the name of Kiptiony arap Tangus (deceased) which showed that the deceased died on 27th July 1987 at Keronjo.
 34. It was the DCI's testimony that he visited the two families and found that they lived approximately 12 kilometres apart. That the two families (Petitioner's and Objector's) buried two different people. It was his further testimony that the two families gave him two different identity cards with two different serial numbers in the name of the deceased i.e. the Petitioner gave the Identity Card with Serial Number 3873677 issued on 11th September 1996 and the Objector gave the Identity Card with Serial Number 3872491 both bearing the name Kiptiony arap Tangus.
 35. The witness stated that upon further investigations, it was established that the Identity Card Serial Number 3872491 given by the Objector did not exist in the National Registration Bureau data base. That the only identity card that existed in the data base was the one handed over by the Petitioner which had the Serial Number 3873677. He produced the copies on the Identity Cards as Exhibit No. 1, Verification of the Death Certificate as Exhibit No.2, Death Certificate as Exhibit No. 3, Letter from Tenwek Hospital as Exhibit No. 6 and the Death Register as Exhibit No. 7.
 36. I have looked at the exhibits and considered the testimony of No. 236536 CI Geoffrey Omwenda on his investigations into the two Death Certificates and I have noted that both the Petitioner and the Objector registered the death of the deceased. The same was confirmed by the Ministry of Interior and National Administration through their letters dated 11th October 2023. The Death Certificate Serial Number 0102944 produced by the Petitioner was confirmed as genuine by the Ministry of Interior and National Administration through its Verification Report (Exhibit No.2) dated 11th October 2023. The Death Certificate serial number 1090055 registered and issued on 22nd October 2020 produced by the Objector was also authenticated as true according to the register.
 37. No. 236536 CI Geoffrey Omwenda also produced a Letter from Tenwek Hospital dated 12th October 2023 which indicated that the deceased had been treated at the hospital on 3rd January 2001 and died on 4th January 2001. This information corroborated the information contained in the Death Certificate Serial Number 0102944 produced by the Petitioner.



38. I have also looked at the Report on the authenticity of the Identity Cards dated 21st November 2023 and it confirmed the DCI witness testimony that the Identity Card presented by the Petitioner, Serial Number 3873677 in the name of Kiptiony arap Tangus was in the National Registration Bureau database. The Identity Card produced by the Objector Serial Number 3872492 in the name of Kiptiony arap Tangus was not in the database. The witness's testimony remained uncontroverted upon cross examination. Without further evidence however, this court would be hesitant to find the National ID of the deceased produced by the Objector was fake.
39. I have already stated that neither the Objector nor the Petitioner called witnesses to support their respective positions. This court therefore relied on the evidence of the DCI with respect to the proper identification of the deceased as such identification would answer the issue of identification of the estate and the beneficiaries thereof.
40. From the evidence presented by the DCI, there was the possibility that there were two different persons sharing the same name, Kiptiony arap Tangus. CI Omwenda visited the home of the Petitioner where he was shown the grave of one Kiptiony arap Tangus who was the Petitioner's deceased father. He also visited the home of the Objector and was shown the grave of Kiptiony arap Tangus said to be the Objector's deceased father. CI Omwenda clarified to the court that he two homes were about 12 kilometres apart.
41. The standard of proof in this case was similar to that in a civil suit, that of balance of probabilities. It is my finding that the Objector had failed to prove that he was a son to the deceased and a beneficiary to his estate. In the circumstances, I agree with the Petitioner that the Objector was a stranger to the deceased's estate.
42. In regard to the prayer for revocation of the Grant, it is my finding that the Objector did not prove 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 the Grant was obtained by means of untrue allegations. In any event, the Objector was a stranger to the deceased's estate.
43. On the issue of placing an inhibition over Kericho/Chemagel/1731 and Kericho/Chemagel/1585, Monica Boor, the Land Registrar of Bomet County stated that Kericho/Chemagel/1731 (measuring 1.7 acres) and Kericho/Chemagel/1585 (Measuring 3 acres) were registered in the name of Kiptiony Tangus (deceased). She produced the Adjudication records of Kericho/Chemagel/1731 and Kericho/Chemagel/1585 as Exhibits 3 and 2 respectively and the Abstracts of Kericho/Chemagel/1731 and Kericho/Chemagel/1585 as Exhibits 4 and 5 respectively.
44. When the County Land Registrar was cross examined, she stated that Kericho/Chemagel/1731 was subdivided between Kiptiony Tangus and Taplelmat w/o Tigiret Kimutai Kelong who sold the whole portion to Kiptiony Tangus (deceased). In a rejoinder to the Report on parcel number 1731, the Objector stated that it was the same land which his family shared with the Petitioner's father thereby giving a hint that the Objector and the Petitioner were not entirely strangers as they would want the court to believe.
45. From the above, it is my finding that the County Land Registrar's evidence and exhibits were prima facie evidence that Kericho/Chemagel/1731 and Kericho/Chemagel/1585 belonged to the deceased. For a court to issue an inhibition on a parcel of land, it would require to interrogate the ownership of the land and its legality. Unfortunately, this court does not have such jurisdiction. Such jurisdiction is conferred upon the Environment and Land Court. The Objector who is a pro se litigant may take a cue and take his claim to the ELC Court. This was particularly important to establish the true ownership



of Kericho/Chemagel/1731 which both the Objector's and Petitioner's families seemed to have a joint interest prior to it being registered in the Petitioner's father's name.

46. It is the primary duty of the Probate court to distribute the free estate of a deceased. In the case of re Estate of Julius Ndubi Javan (Deceased) (2018) eKLR, Gikonyo J. held:-

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.”

47. In re Estate of Stone Kathuli Muinde (Deceased) (2016) eKLR the court held that:-

“.....It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.

Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the Civil Procedure Act and the Civil Procedure Rules. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it”.

48. In the final analysis, it is my finding that the Applicant/Petitioner failed to prove the requisite grounds for revocation of the Grant as envisioned in section 76 of the Law of Succession Act. The Objector is at liberty to pursue his claim to the various parcels and in particular Kericho/Chemagel/1731 at the Environment and Land Court

49. In the end, the Application dated 29th October 2020 is dismissed with costs to the Petitioner.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 23RD DAY OF JANUARY, 2025.

R. LAGAT-KORIR

JUDGE

Ruling delivered in the absence of Mr. Koech for the Objector and in the presence of Mr. Koske for the Petitioner and Siele (Court Assistant).

