



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Daniel Kipkolum Arap Kogo (Deceased) (Probate & Administration
E003 of 2022) [2025] KEHC 2172 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2172 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION E003 OF 2022
JR KARANJA, J
FEBRUARY 13, 2025
IN THE MATTER OF THE ESTATE OF DANIEL
KIPKOLUMB ARAP KOGO DECEASED

RULING

1. The application at hand is made vide the summons for revocation or annulment of grant dated 27th June 2024, but it is brought under Section 45 and 47 of the Law of Succession Act together with Rules 49 and 73 of the Probate and Administration Rules.

Ideally, such an application ought to come under Section 76 of the Succession Act.

2. The main prayer ought to be prayer 4[iv] but it appears to be incomplete and lacking in specificity. The other vital prayers are prayer 3[iii] for a preservative or injunctive order against the Respondent/ Petitioner, Emmy Kogo, who is the administrator of the estate of the late Daniel Kipkolum Kogo also known as Daniel Kipkolum Arap Kogo [deceased] vide the grant of letters of administration intestate issued on 23rd June 2022, and prayer 5[v] for the second Applicant/Objector, Isaac Kolum, to be made a Co-Administrator.

3. The grounds in support of the application are contained in the body of the summons and are fortified by the Applicants/Objectors averments in the supporting affidavit dated 27th June 2024, deponed by the Second Objector. The other two Objectors are Anne Chelimo and Sally Chepchumba [First and Third Applicants/ Objectors respectively] whose affidavits in support were filed.

4. The Petitioner/Respondent opposes the application on the basis of the grounds and averments in her replying affidavit deponed by herself on the 22nd January 2025.

The hearing of the application was by way of written submissions which were duly filed by the applicants through Songok & Company Advocates and by the Respondent through Kipkosgei Choge & Company Advocates.

5. The application and the supporting grounds have been given due consideration by this court in the light of the rival submissions and what emerges as clear points for determination are firstly, whether the application is proper and competent before this court and Secondly, whether the Applicants have



established and proved any of the grounds necessary for revocation and/or annulment of grant as specified in Section 76 of the Law of Succession Act.

6. On the first issue, it is clear that the failure by the Applicants to invoke the most vital and necessary provision of the Law in bringing this application [i.e. Section 76 of the Succession Act] renders the application improper and incompetent before this court. However, this was a technical error for which Article 159[2] [a] of the Constitution would come to the rescue of the Applicants in so far as it provides that: -

“justice shall be administered without undue regard to procedural technicalities.”

7. The main prayer IV[4] is incomplete for failure to state that the grant of letters of administration intestate made on 23rd June 2022 be revoked and/or annulled. This may however, be attributed to a typographical slip or error.

The Applicants invoked Section 45 and 47 of the Succession Act. Whereas Section 45 accords with prayer iii [3] of the application, Section 47 empowers the court to make such orders as may be expedient and is therefore relevant for purpose of prayer v[5] of the application.

8. Ultimately, the grant of the main prayer iv[4] or even the refusal to grant the prayer would determine the direction or fate of prayers iii [3] and v [5].

Basically, Section 76 of the Succession Act sets out the parameters for revocation of grants and from the supporting grounds and submissions it is obvious that the application is anchored on Section 76[a] and [b] of the Act both of which provide for revocation of grant for reasons that: -

- 9.

- (a) The proceedings to obtain the grant were defective in substance;
- (b) 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.”

Whereas Sub-Section [a] of Section 76 of the Act relates to the entire process of obtaining the grant, Sub-Section [b] relates mostly on the manner in which the grant was obtained with reference to possible untoward acts undertaken by a person to obtain the grant. Such acts could range from fraud to concealment of material facts and/or related matters.

10. By and large, the power to revoke a grant is discretionary, but must be exercised judiciously and on sound legal and factual grounds.

Ultimately, the interests of the beneficiaries must be taken into account.

It was submitted by the Objectors thus the Respondent/ Petitioner obtained the impugned grant illegally, unlawfully and unprocedurally for failing to disclose material facts or concealing material facts.

11. The Objectors thus contended that the Respondent failed to disclose and include the late Leah Jeptanui Kogo and her two children as well as the Objectors as her grandchildren as dependants of the deceased and beneficiaries of his estate comprising the land Parcel No. Nandi/Kaboi/204, one among two other parcels being Nandi/Kaboi/422 and Plot No. 25 Kaboi Centre.

12. The Objectors also contended that Parcel No. Nandi/Kaboi/204 was single handedly purchased by the late Leah Jepkorir Kogo during the lifetime of the deceased and that it was held by the deceased on behalf of the Late Leah Jeptanui under a customary trust even though it was registered in the name of the deceased.



13. In her submissions, the Respondent implied that she was the only wife of the deceased and the surviving widow, hence the true beneficiary of the deceased's estate together with the deceased's adult children numbering eleven [11] consisting of seven [7] daughters and four [4] sons. One of the daughters [Jane Kogo] is since deceased. The Respondent also implied that the deceased had two wives including herself and that the Objectors are the children and grandchildren of the deceased from his first house. This meant that the Respondent was the deceased's second wife and head of his second house after his departure.

14. The Respondent contended that the Objectors were included as family members of the deceased, hence beneficiaries of his estate. Therefore, the allegation that she misrepresented facts was not truthful.

The Respondent further contended that the Objectors were all along aware of the succession proceedings and the issuance of the impugned grant which occurred after several meetings had been held with the chief of their area over succession of the deceased's estate.

15. The submissions and contention by both the Applicants and the Respondent notwithstanding, the record shows that the Petition for letters of administration intestate was filed in this court on 28th February 2022 on the strength of the necessary supporting documents including the death certificate, the chief's letter and the search certificate.

The impression created in the petition was that the deceased was not a polygamous intestate, but a monogamous intestate survived by the Respondent as his sole wife and their children. The chief's letter confirmed as much.

16. The search certificates confirmed that the deceased became the sole proprietor of Land Parcel No. Nandi/Keboi/204 in the year 1968 and Land Parcel No. Nandi/Kaboi/442 in the year 1983. There was no document to confirm the deceased ownership of the plot of land described as Plot No. 25 Kaboi Centre.

The consent form 38 was apparently signed by only two beneficiaries.

17. After the gazettment of the Petition on 6th May 2022, the impugned grant was issued on 23rd June 2022 but remains unconfirmed to date thereby implying that the estate remain intact and cannot be dealt with in any manner by the beneficiaries or any other person who may develop an interest in the same until after the grant is confirmed and the estate lawfully distributed amongst the beneficiaries.

18. Section 45 of the Succession Act provides for protection of the property of a deceased person such that any person who intermeddles with such property would be held criminally responsible and expose himself to the risk of being imprisoned.

In essence, the record clearly reveals that the Respondent presented the petitioner for the grant as if she was the only wife of the deceased. She may at the time have been the sole surviving widow, but certainly not the sole wife of the deceased. Further, it is evident that the consent of most of the beneficiaries was not sought or was not properly sought and documented.

19. The omission of some of the beneficiaries of the estate such as the children and/or grandchildren of the deceased through his late first wife was erroneous and could be interpreted as an attempt to snatch from them their lawful inheritance.

The allegations by the Petitioner/ Respondent in her opposition to the present application are clearly contradicted and discredited by the court record which in turn goes ahead to uplift the Objectors contentions in terms of credibility.



20. It would therefore follow that the impugned grant was erroneously obtained by the Respondent in a process marred by irregularities thereby rendering the entire proceedings defective in substance. Further, the grant was obtain by means of false statements, misrepresentation and concealment of material facts.

In sum, the Objectors were able to discharge their obligation to establish and prove the parameters set out in Sub-Sections [a] and [b] of Section 76 of the *Law of Succession Act*.

21. Accordingly, the present application is merited and is hereby allowed to the extent that the impugned grant of letters of administration intestate issued on 23rd June 2022 be and is hereby revoked with orders that a fresh grant do forthwith issue in the name of the Respondent, Emmy Kogo and one beneficiary Isaac Kolum as the Co-Administrators of the estate of the deceased and who are hereby directed to ensure that the fresh grant is confirmed within six [6] months from this date hereof or any other shorter period they may deem necessary.
22. The question of customary trust was rather premature and would appropriately be addressed at the confirmation stage if a dispute arises on the distribution of the material parcels of land.

With all the foregoing, it may safely be stated that prayers iii [3] and v [5] of the summons have been addressed and resolved.

DELIVERED AND DATED THIS 13TH DAY OF FEBRUARY, 2025

**J. R. KARANJAH,
JUDGE**

