



REPUBLIC OF KENYA



**In re Estate of the Late Kipchumba Misoy (Deceased) (Succession Cause 41 of 2021) [2025] KEHC 1472 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1472 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
SUCCESSION CAUSE 41 OF 2021  
JR KARANJA, J  
FEBRUARY 13, 2025**

**THE MATTER OF THE ESTATE OF THE LATE KIPCHUMBA MISOY - DECEASED**

**RULING**

1. The late Kipchumba Misoy [deceased] passed on at the age of fifty nine [59] years on the 11<sup>th</sup> June 2002 and after a period of approximately eleven [11] years on the 16<sup>th</sup> September 2013, a petition for letters of administration intestate respecting his estate was made by the surviving widow, Regina Jepkoech Misoi [First Petitioner].
2. On the 18<sup>th</sup> September 2013, the petition was presented in court listing the Petitioner as a beneficiary of the estate alongside her children consisting of six [6] daughters and six [6] sons. The eldest daughter was Rosa Cheptoo, aged forty nine [49] years and the youngest daughter, Julia Chepleting, was aged twenty seven [27] years.  
The eldest son was Philip Chumba, aged fort five [45] years and the youngest son was Sila Chumba, aged nineteen [19] years.  
All the surviving children were adults as at the time the petition was filed in court.
3. The deceased's youngest daughter, Julia or Juliet Jepleting and the fifth eldest daughter, Philister or Phelister Chebitok are the applicants in the present application dated 2<sup>nd</sup> October 2023 and are represented by Katwa & Kemboy Advocates. the deceased's eldest son Philip Kipchririchir is the First Respondent and is represented by Rotich, Lagat & Partners Advocates.  
The Land Registrar, Nandi County is enjoined as the Second Respondent in the application while the widow of the deceased Regina Jepkoech is enjoined as the Petitioner/ Co-administrator.
4. In the petitioner by the widow, the assets listed as the immovable property belonging to the deceased included several parcels of land described as Pioneer/Ngeria Block [Eatec]/2651, 2661, 2650 Ngeria/ Chepyakwai Block 2 [Kapelalach]/227, 210, 228 and Nandi/Kamobo/3047, 3048, 3046, 3043, 3041, 3042, 3044 and 3045.



5. Pursuant to the petition, the grant of Letters of Administration Intestate dated 19<sup>th</sup> December 2013 was issued to the deceased's widow. However, six years or so thereafter an application vide the summons for revocation or annulment of grant dated 17<sup>th</sup> April 2018, was made by the deceased's eldest son, Philip and was granted by the court on 11<sup>th</sup> April 2019 which then ordered that a fresh grant do issue in favour of the applicant and the deceased's widow as joint administrators of the deceased's estate.
6. An amended grant of Letters of Administration intestate was accordingly issued Firstly on the 3<sup>rd</sup> May 2019 and Secondly, on the 11<sup>th</sup> June 2019 as per the court record.  
Thereafter, on the 9<sup>th</sup> August 2019, the deceased's eldest son Philip [Second Petitioner/ First Respondent] made an application for cancellation of titles and Sub-divisions arising from the sale of part of the estate by the deceased's widow prior to confirmation of the initial grant of letters of administration issued to her as the sole administration of the estate.
7. The application was granted by the court in its ruling or judgment delivered on the 12<sup>th</sup> February 2020. This was followed by an application for confirmation of the fresh grant vide the summons for confirmation of grant dated 28<sup>th</sup> August 2020, but filed in court on 21<sup>st</sup> April 2021. The application came up for hearing on several occasions, but all in vain.
8. The first time the application came up for hearing before this court was on the 8<sup>th</sup> May 2023, when the Second Petitioner/ Applicant [Philip] appeared through the Learned Counsel, Mr. Rotich, and prayed for the grant to be confirmed as there was no objection or protest thereto.  
The court however, noted that the matter had only come up for directions and in that regard the application was slated for hearing on 5<sup>th</sup> June 2023 with directions that all beneficiaries be served and anyone of them be at liberty to file a protest before then.
9. On the 5<sup>th</sup> June 2023, the matter was re-scheduled by the Deputy Registrar of this court for hearing on 4<sup>th</sup> July 2023 and on that date save the Second Petitioner/ Applicant none of the other beneficiaries appeared in court. The Applicant informed the court that no objection or protest had been filed by any party and/or beneficiary. Acting on this information from the Applicant, this court allowed the application for confirmation dated 28<sup>th</sup> August 2020 and ordered that the estate property be distributed and/ or shared amongst the beneficiaries in terms of paragraph ten [10] of the affidavit in support of the application.
10. A certificate of confirmation was to issue accordingly and this was indeed issued on 5<sup>th</sup> July 2023.  
The present application is essentially for revocation of the said certificate of confirmation of grant in as much as it distributes the estate property in the manner suggested and/or proposed by the Second Petitioner [Philip] even though the application is styled as an application for review and setting aside of orders of distribution made on 5<sup>th</sup> July 2023.
11. The impugned order was actually made on 4<sup>th</sup> July 2023. The 5<sup>th</sup> July 2023, was the date of issue of the impugned certificate of confirmation of grant. Be that it may, a review and setting aside of the impugned order would invariably entail a revocation of the impugned certificate of confirmation of grant either on its own or together with the actual grant issued to the First Petitioner [Regina] and the Second Petitioner [Philip] on the 3<sup>rd</sup> May 2019 or 11<sup>th</sup> June 2019.
12. It was therefore unnecessary for the Applicants to invoke so many provisions of the law in bringing this application when the anchor provision being Section 76 of the *Law of Succession Act* sufficed even on its own. In a nutshell and to crown it all, what the Applicants are seeking is the revocation and/or



annulment of the certificate of confirmation of grant issued on 5<sup>th</sup> July 2023 with or without revocation of the impugned grant of letter of administration intestate.

13. The affidavits in support of the application and those in opposition thereto together with the written submissions of the Applicants and the First Respondent all allude to this application being one for revocation of grant/ certificate confirmation of grant, rather than for review and setting aside of the impugned order made on 4<sup>th</sup> July 2023.

One Cornelly Serem, purported to file a replying affidavit and written submissions in opposition to the application, yet he is really not a party to this application and would have no “locus-standi” in the application without being formally enjoined as an interested party. Seemingly, his interest in the matter [if any] rides on the back of the First Respondent/ Second Petitioner’s interest in the whole matter. His opposition to the application is therefore of no consequences.

14. Section 76 of the Law of Succession Act provides 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 an 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. ....
- d. ....”

For purposes of this application as deciphered from the supporting grounds and submissions, ground [a] of Section 76 of the Succession Act was the most relevant and important.

Indeed, the major complaint raised by the Applicants herein is that the process of obtaining the impugned certificate of confirmation of grant was marred with procedural defects and irregularities. Such a complaint would very well fit into Section 76[a] of the Succession Act and provide a valid reason for invalidating by revocation the impugned certificate.

15. It was the Applicants contention that the certificate was obtained without adherence to the vital and/ or mandatory requirements of the Law of Succession Act and the procedural rules made thereunder as contained in the Probate & Administration Rules. Whether or not that was the position is a matter that can only be borne out of the court record. However, for the avoidance of doubt, this was an intestate rather than a testate succession. Therefore, the procedure to be followed would be that which relates to intestate succession meaning that the deceased passed on without having made a will or a valid will.
16. Here, we are concerned with the procedure in relation to confirmation of the grant, hence distribution of the estate property. In particular, the confirmation of the grant issued to the first petitioner [Regina] and the Second Petitioner [Philip] by dint of the ruling made by the court on 11<sup>th</sup> April 2019.

Section 71 of the Law of Succession Act, provides for confirmation of grants. The proviso to Section 71 [2] of the Act states that: -

“ .....in cases of intestacy, the grant of letter of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all person beneficially entitled, and when confirmed the grant shall specify all such person and their respective shares.”



17. As per Section 71[3] of the *Act*, the holder of the grant is required to apply to the court for confirmation of the grant after the expiry of six [6] months from the date of issue. It is in the confirmation proceeding that the distribution of the estate amongst the beneficiaries takes effect. In that regard, the provision of Section 35 to Section 41 of the Succession Act have to be adhered to by the administrator or administrators of the estate.
18. Under Rule 26[1] of the *Probate & Administration Rules*, letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the Applicant. And, under Rule 26[2] an application for a grant where the Applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written, consent in form 38 for 39, by all person so entitled in equality or priority, be supported by an affidavit of the Applicant and such other evidence as the court may require. These provisions relate to application for grants, but would apply “mutatis-mutandis” to application for confirmation of grant.
19. The failure to obtain the consent envisaged by Rule 26 of the Rules would be sufficient ground of revocation of a grant and by extension a certificate of confirmation of grant. Therefore a person who has equal or superior entitlement to apply for a grant and its confirmation is required to give consent in writing to a person of equal or inferior entitlement to apply for the grant and confirmation of the grant.
20. In the Applicant’s submission it is indicated that the First Petitioner widow of the deceased filed a proposed mode of distribution of the estate on 30<sup>th</sup> May 2023 and that it was accepted by all the beneficiaries save the Second Petitioner eldest son of the deceased. It is also indicated that the proposal made by the Second Petitioner which was approved by the court was not as a result of an agreement of all the other beneficiaries, neither did they give their respective consents to the proposal.
21. The Applicants submitted that the Second Petitioner [Philip] acted unilaterally in disposing off part of the estate property and made no attempts to involve the First Petitioner [Regina], a co-administrator, in the entire transaction.

In essence, the Applicants contended that the grant was confirmed without the consent and acceptance of all the other beneficiaries and also without notice to them. That, a beneficiary such as Sila Kiplagat was excluded and a non- beneficiary such as Stanley Kipleting Biwott was included in the distribution of the estate.

22. However, it was submitted and contended by the Second Petitioner/ First Respondent that the Applicant’s and indeed all the other beneficiaries were all along aware of this case and attended court on several occasions in respect thereof from the year 2013. That, despite several summons to attend court being issued to them for the purposes of confirmation of the grant they failed to attend court thereby causing the Second Petitioner to diligently distribute the estate to all the beneficiaries including the Applicants.
23. It was further contended by the Second Petitioner that the estate was distributed to all the beneficiaries in a manner which was manifestly fair save for himself having allocated one smaller portion of the estate land to himself. That, he fully complied with all the necessary provisions of the law in relation to confirmation of grants and as such the present application is not merited and ought not be allowed by the court.
24. From all the foregoing, it is clear that the process leading to the confirmation of the grant would be a key element in determining whether or not the present application is merited as it would show whether or not the impugned certificate of confirmation of grant was properly and regularly obtained by the Second Petitioner for the purpose of transmitting the estate to its true beneficiaries.



25. In that regard, the record reveals that the ruling of the court made on 11<sup>th</sup> April 2019, effectively revoked the earlier grant made in favour of the First Petitioner [Regina] and sanctioned the issuance of the present impugned grant in favour of both the First Petitioner and the Second Petitioner [Philip].
- Thereafter, the Second Petitioner acted solely with speed in applying for cancellation of fresh titles and subdivisions arising out of unlawful sale of part of the estate.
26. The application was granted by the court vide the ruling/ judgment delivered on 12<sup>th</sup> February 2020.
- The original titles were thus restored to the original owner i.e. the deceased herein. What followed was the application for confirmation of the new impugned grant vide the summons for confirmation of grant dated 28<sup>th</sup> August 2020, but filed in court on 21<sup>st</sup> April 2021.
27. The application was solely made by the Second Petitioner with the First Petitioner being treated as a respondent thereby implying that she was not in agreement with it or that she did not give her consent in respect thereof.
- The affidavit in support of the summons was sworn by the Second Petitioner on 28<sup>th</sup> August 2020 and a part from a copy of the amended grant it did not contain any other annexures such as written consent of the Co-Administrator and/or the other beneficiaries.
28. Further, the affidavit correctly indicted that the deceased was survived by a widow [first Petitioner] and twelve [12] children, but it incorrectly or falsely indicated that the deceased was also survived by one Stanley Kiplating Biwott and one Geoffrey Kipokosgei Cheruiyot, both described as purchasers.
- On 5<sup>th</sup> July 2021, the matter was mentioned before the Deputy Registrar and fixed for hearing of the summons for confirmation or grant on 27<sup>th</sup> September 2021, but nothing seemed to have happened on that date.
29. The matter again came up for hearing on 21<sup>st</sup> February 2022, but was put off by the Deputy Registrar to the 25<sup>th</sup> April 2022. In all those occasions it was only the Second Petitioner/ Applicant who appeared in court mostly through his legal counsels.
- On 25<sup>th</sup> April 2022, the Second Petitioner again appeared in court through his advocate in the absence of all the other beneficiaries, but the court pushed the matter forward to 27<sup>th</sup> June 2022, when the First and Second Petitioners appeared through their respective advocates.
30. The First Petitioner's Advocate, Mr. Ngigi, indicated that the material summons for confirmation had not been served and applied on behalf of the First Respondent to file an alternative mode of settlement for consideration by the court. The court granted the necessary leave and ordered that the application dated 28<sup>th</sup> August 2020 for confirmation of grant be served upon all parties and beneficiaries. It was further ordered that the matter be fixed for hearing on 24<sup>th</sup> October 2022 and that summons do issue to all beneficiaries to attend court.
31. On 24<sup>th</sup> October 2022, the Court issued directions and fixed the matter for mention on 28<sup>th</sup> November 2022, but it appears that nothing occurred on that day or in between. A few months later on the 8<sup>th</sup> May 2023, the matter was mentioned before this court for the first time. The Second Petitioner was the only person present through his advocate.
- He prayed for confirmation of the grant, but the court declined noting that the matter had been mentioned for directions only and not for the hearing of the summons for confirmation of grant dated 28<sup>th</sup> August 2020.



32. Accordingly, the court directed that the summons be heard on 5<sup>th</sup> June 2023 and that any party/beneficiary was free to file an affidavit of protest before then. Further, it was directed that hearing notices do issue to all the beneficiaries.

However, on 5<sup>th</sup> June 2023, the matter was rescheduled in the registry for hearing of the summons on 4<sup>th</sup> July 2023, on which date the Second Petitioner and his advocate appeared in court and indicated that there was no protest or objection on the application filed by any party or person.

33. Acting on the information, this court allowed the application and confirmed the mode of distribution specified in paragraph ten [10] of the Second Petitioner's supporting affidavit dated 28<sup>th</sup> August 2020.

It was this order which gave rise to the present application and other similar applications which are pending hearing and determination. It is clear from the record that the process leading to the confirmation of the grant in terms of the proposal made by the Second Petitioner was marred by the procedural defects and irregularities which accompanied it. There was no consensus or agreement by all the beneficiaries that the estate be distributed in the manner proposed by the Second Petitioner. In particular, there was no evidence that the First Petitioner/ Co-Administrated consented to the Second Petitioner's action of applying for confirmation of the grant, yet they were co-administrators joined "in the hip like Siamese twins" for purposes of administration and distribution of the estate amongst all the true and valid beneficiaries.

34. There was no evidence or substantial and credible evidence to confirm service of the application and hearing notices upon all the beneficiaries on all occasions that the matter was mentioned in court for hearing and/or directions. The issuance of summons or hearing notices and the service of such summons and notices upon person interested in a matter are two different things.

35. It would appear that the impugned summons for confirmation of grant was a "one man show" by the Second Petitioner to the detriment not only of his Co-Administrator but also all the other beneficiaries inclusive of the Applicants herein.

All this was a clear demonstration that the Second Petitioner did not act in good faith and was in a hurry to nowhere having not discussed and agreed with the rest of the beneficiaries on the ultimate distribution of the estate.

36. To further demonstrate lack of good faith, the Second Petitioner at the hearing of the summons on 4<sup>th</sup> July 2023, misled the court that no protest or objection had been filed by any of the beneficiaries or parties, yet the record shows that on 30<sup>th</sup> May 2023, the First Petitioner/ Co-Administrator [Regina] filed her own affidavit on the mode of distributions which for all intents and purpose amounted to a protest and an objection to the mode of distribution proposed by the Co-Administrator/ 2<sup>nd</sup> Petitioner in the summons for confirmation.

37. For whatever it was worth, the protest ought to have been heard either prior to the impugned summons for confirmation or together with the summons. Direction on the hearing of the protest would have been taken had it been brought to the attention of the court by the Second Petitioner. As it were the First Petitioner was not accorded an opportunity to be heard on her protests neither had all the other beneficiaries on both the protest and the summons. This was clearly facilitated by the Second Petitioner's action of acting unilaterally and without any form of valid notice to the rest of the beneficiaries or even their respective consents.

38. Such action as borne by the record was sufficient and credible proof that the process leading to the issuance of the impugned certificate of grant; hence the distribution of the estate by the Second Petitioner was flawed from the very start. The applicable lawful procedure for such applications was



clearly ignored or treated haphazardly by the Second Petitioner thereby rendering the impugned certificate of confirmation invalid, null and void “abinitio” having been obtained unprocedurally and irregularly.

39. It would therefore follow that whatever was done on the strength of the impugned certificate was also “null and void” “abinitio”. Whatever arises from a flawed process is also flawed and invalid. Any person suffering injury or damages as a result of a flawed process would be entitled to seek remedy from the person responsible for the flaw.
40. In sum, the present application is well merited and is hereby allowed to the extent that the impugned certificate of confirmation of grant issued by this court on 5<sup>th</sup> July 2023 be and is hereby revoked forthwith and any transaction arising from it is hereby declared null and void “abinitio” to the extent that all the titles respecting the estate or part thereof do revert to the name of the deceased until such time that the estate shall be properly and lawfully distributed amongst the true beneficiaries.
41. In order to prevent an acrimonious distribution of the estate and facilitate a smooth and peaceful process of distribution the impugned grant of letters of administration intestate issued to the First and Second Petitioners by dint of the ruling of the court made on 11<sup>th</sup> April 2019, which gave rise to the impugned summons for confirmation of grant dated 28<sup>th</sup> August 2020, must be and is hereby revoked together with the impugned certificate of confirmation of grant.
42. Consequently, a fresh grant of letters of administration intestate be and is hereby issued to the First Petitioner, Regina Jepkoech Misoy, the Second Petitioner, Philip Kipchirchir Chumba, Rosa Cheptoo and Sila Chumba in their capacities as the widow, eldest son, eldest daughter and youngest son of the deceased respectively. The four are hereby directed to engage and come up with a fresh summons for confirmation of grant within a period of six [6] months from this date hereof or any other shorter period that they may deem necessary.
43. The matter may be given a mention date on the way forward with regard to similar applications pending hearing dated the 8<sup>th</sup> November 2023 and 29<sup>th</sup> November 2023.

Ordered accordingly.

**DELIVERED AND DATED THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**J. R. KARANJAH,  
JUDGE**

