



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Cherop Chesoo aka Kiprop (Deceased) (Probate & Administration  
258 of 2015) [2025] KEHC 930 (KLR) (5 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 930 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PROBATE & ADMINISTRATION 258 OF 2015  
RN NYAKUNDI, J  
FEBRUARY 5, 2025**

**IN THE MATTER OF THE ESTATE OF CHEROP CHESOO A.K.A KIPROP (DECEASED)**

**BETWEEN**

**JOHN CHEROP CHESOO ..... PETITIONER**

**AND**

**JOSEPH KIPKURGAT CHESOO ..... OBJECTOR**

**RULING**

M/s Tarigo & Co. Advocates

M/s Kigen & Ng'etich & Co. Advocates

1. The deceased herein died on 25<sup>th</sup> December, 1975 and four decades later, John Cherop Chesoo petitioned for a grant of letters of administration intestate, which were granted on 19<sup>th</sup> April, 2016 and later confirmed on 27<sup>th</sup> October, 2020.
2. On 11<sup>th</sup> April, 2024 the Objector lodged summons for revocation expressed to be brought within the provisions of section 45, 47, 49 and 76 of the *Law of Succession Act* and Rules and 73 of the Probate and Administration Rules. The Objector sought orders as follows:
  - a. Spent
  - b. Spent.
  - c. Spent.
  - d. Spent.
  - e. Spent.



- f. That the grant of letters of administration made to John Cherop Chesoo made on the 27.10.2020 be revoked and annulled.
  - g. That costs be provided for.
3. The summons is based on grounds enumerated as hereunder:
- a. That the deceased herein namely Cherop Chesoo a.k.a Kiprop Chesoo died on 25<sup>th</sup> December, 1975.
  - b. That the deceased was survived by the following beneficiaries:
    - i. Joseph Cherop Chesoo
    - ii. Martin Kiprop
    - iii. John Cherop Chesoo
    - iv. Thomas Kimaiyo Cherop
  - c. That the grant of letter of administration with respect to the estate of Cherop Chesoo a.k.a Kiprop Chesoo (deceased) was made to the petitioner/respondent herein and a certificate of confirmation of grant issued on 27.10.2020.
  - d. That the said Certificate of Confirmation of grant was defective in substance in the sense that the mode of distribution that was started therein was substantially different from the one that had been unanimously agreed by the parties therein.
  - e. That in particular, the said mode of distribution failed to cater for all the beneficiaries of the deceased, and rather it disproportionately favoured the Petitioner/Respondent by awarding him 45 acres.
  - f. In particular, all the beneficiaries had agreed that the Objector/Applicant herein would be awarded to that parcel of land known as Karuna/Sosiani Block 1 (arababuch) 6.
  - g. That the Petitioner/Respondent fraudulently and maliciously altered the mode of distribution such that he awarded himself a portion of 10 acres from the said parcel of land known as Karuna/Sosiani Block 1 (Arababuch) 6, contrary to the consensus of the beneficiaries of the said beneficiaries and the wishes of the deceased.
  - h. That the Petitioner/Respondent himself, as a beneficiary of the estate of the deceased, was more than adequately catered for in the said mode of distribution having been awarded those parcels of land known as Irong/Sergoit/615 and Tembelion/elgeyo Boarder/block 5 (Ex-tooley), which formed part of the Estate of the deceased.
  - i. That the Petitioner/Respondent using the said fraudulent mode of distribution has caused the County Surveyors Office, Uasin Gishu County to commence the sub-division of that parcel of land known as Karuna/sosiani Block 1 (Arababuch) 6 without involving, informing and getting the consent of the other beneficiaries.
  - j. That on 9<sup>th</sup> April, 2024 surveyors from the County Surveyor's office, Uasin Gishu county descended on the suit parcel of land to the shock, dismay and surprise of the Objector/Applicant.



- k. That the petitioner/Respondent has without any colour of right or legal justification hived off a portion of 10 Acres from the land known as Karuna/sosiani Block 1 (Arababuch) 6 and ploughed the same.
  - l. That the Objector/Applicant, together with members of his family members, have resided on, have been occupying, ploughing, farming and utilizing that parcel of land known as Karuna/Sosiani Block 1 (Arababuch) 6 and have made and undertaken substantial developments on the same for a period of over fifty (50) years.
  - m. That the Objector/Applicant's occupation of the suit land is a well known fact as attested to by a letter from the area chief, Karuna Location dated 4.3.2024.
  - n. That the Petitioner/Respondent herein have commenced the process of subdivision of the estate property and may dispose or otherwise deal with it to the detriment of the applicant herein unless restrained by this court.
  - o. That in the circumstances it is evident the grant obtained fraudulently by making of false statement and by concealment from the court of facts essential in point of law to justify the grant.
  - p. That from the foregoing there is an urgent need for the honourable court to intervene by issuing orders to preserve the estate property to avoid the property being subdivided and new titles being issued or transferred to innocent third parties to the detriment of not only the applicant, but all the other beneficiaries herein.
4. The Application was supported by an affidavit sworn by the Objector/Applicant detailing the basis of his claim to the property and alleging fraudulent conduct in the distribution of the estate. Having considered the grounds advanced by the Objector, the matter proceeded for hearing where the Petitioner filed his response by way of a replying affidavit to address the allegations raised and defend the validity of the confirmed grant.
5. In response to the summons, the Petitioner filed a replying affidavit in which he deposed as follows:
- a. That the summons now before court is based on falsehood which has been carefully coached with the intentions to gain sympathy from the court.
  - b. That the Objector/Applicant herein has given any satisfactory reasons/explanations on why they have filed the present application after inordinate delay, since the confirmation of Grant was done sometimes on 27<sup>th</sup> October, 2020 which is now a period of over 4 years.
  - c. That the estate of our late father was confirmed on 27<sup>th</sup> October, 2020 in court and in the presence of all the parties, and at that particular time the Objector/Applicant consented to the said confirmation.
  - d. That the Objector has brought in the application as an afterthought with the intention of delaying the distribution of the estate of my late father.
  - e. That the Objector/Applicant has been solely utilizing the property known as Karuna/Sosiani Block 1 (Arababuch) 6 measuring approximately 57 acres, and does not want me to take possession of the 12 acres which I was given during the confirmation of the grant.
  - f. That it was until recently when I instructed my current Advocate Mr. Tarigo, that we filed an application dated 5<sup>th</sup> march, 2024, when we were granted orders to survey the said property.



- g. That the application dated 5<sup>th</sup> March, 2024 was duly served upon the Objector/Applicant but he opted not to respond to the same, meaning that he was contended with the mode of distribution, and had no reason to oppose my application then.
  - h. That the present application now before court also seeks to revoke and/or annul the grant which was issued to me, and no tangible evidence has been adduced to support the said prayer, and/or cite valid reasons why the said grant ought to be revoked/annulled, considering the fact that he participated in the succession proceedings all through until when confirmation was done in court in his presence, and never objected to the mode of distribution.
  - i. That the Objector/Applicant cannot purport to come to court and oppose the mode of distribution which was done sometimes in the year 2020 which is a long period of time, if indeed he was serious about it he ought to have moved the court within a reasonable time, the law demands that every litigation must come to an end, and that the law aids the vigilant and not the indolent.
  - j. That it is crystal clear that the Objector has been indolent as he has slept on his rights (if any) for a period of over 4 years and only surfaced with the present application after the court had issued orders of survey of the only property forming the estate of our late father.
  - k. That the parcel of land which has been referred to by the Objector/Applicant herein, in his supporting affidavit as Tembelio/Elgeyo Border Block 5 (Ex-tololey) is not forming part of the estate of my late father as it belonged to my aunt.
  - l. That as a matter of standard procedure, the court cannot issue the certificate of confirmation unless the parties have consented to the mode of distribution of the estate.
  - m. That the issue of timelines does not arise in succession proceedings unlike adverse possession which time is of great concern.
  - n. That if anything my brother occupies the said land with express permission of our late father, and now it is time for me to get my share, after the conclusion of succession proceedings.
  - o. That after the Honourable court giving us the order of 21<sup>st</sup> March, 2024, we organized the surveyors, the police and area chief and went to the said property known as Karuna/sosiani Block (Arababuch)/6 and surveyed and sub-divide the same presence of the Objector/Applicant and his family and they never resisted the implementation of the court order.
  - p. That the property known as Karuna/Sosiani Block (Arababuch)/6 was subdivided into two portions measuring:
    - i. Joseph Kipkurgat Chesoo – 45 acres
    - ii. John Cherop Chesoo – 12 acres
  - q. That after the transfer the survey was done, we placed the poles to mark the boundaries and we later on prepare our portion and planted maize and left another to plant wheat.
6. To provide further clarity on the family structure, property ownership, and distribution history, the Petitioner found it necessary to file an additional affidavit. This supplementary evidence was intended to address specific matters regarding his relationship with his late aunt and the separate property she bequeathed to him, which the Objector had erroneously included in the estate properties under contention. The additional affidavit also served to provide a comprehensive breakdown of how the family properties were distributed among the beneficiaries. He deposed as hereunder:



- a. That I am one of the sons of the deceased herein, the late Cherop Chesoo, while the Objector herein Joseph Kipkurgat Chesoo is my biological brother.
- b. That our late father Cherop Chesoo was married to our late mother Saniako Kiprop and were blessed with the following children:
  - i. Martin Cherop
  - ii. Thomas Cherop Chesoo – deceased
  - iii. Joseph Kipkurgat Cherop
  - iv. John Cherop Chesoo
- c. That our late parents had the following properties registered under their names at the time of their demise namely:
  - i. Karuna/Sosiani Block 1 (Arababuch)/6 measuring approximately 57 acres, registered under the name of our father.
  - ii. Irong/Sergoit/615 measuring approximately 3.4 acres, registered under the name of our mother.
  - iii. Irong/Sergoit/458 measuring approximately 39.6 acres, registered under the name of our mother.

That the said properties were distributed in Eldoret High Court P&A Cause No E258 of 2015 and 260 of 2015.

- d. That when I was about 3 years old my parents gave me to stay with my aunt (sister to my father) the late Sote Chesang whom was not blessed with any children.
- e. That my aunt owned the parcel of land known as Tembilio/Elgeyo boarder Block 5(Ex-Tooley)/66 measuring approximately 7.07 Ha. Which was unregistered at the time.
- f. That when the title deeds were being processed for the land which my aunt owned, she gave out my details so the title deed would be processed for the land which my aunt owned, she gave out my details so the title deed would be processed under my name, and as such and the same was registered to me directly from the government of Kenya.
- g. That the property which belonged to my late aunt does not form part of the estate of my parents i.e. the late cherop chesoo and the late saniako kiprop.
- h. That at the time we were sharing out the properties of our late parents we agreed to share the same among three brothers i.e. Thomas Kimaiyo Cherop, Joseph Kipkurgat Cherop and John Cherop and Martin Cherop our elder brother had his own property, and we agreed among ourselves to share the properties as follows:
  - i. Karuna/Sosioni Block 1 (Arababuch)/6 measuring approximately 57 acres  
Joseph Kipkurgat Cherop – 45 acres  
John Cherop Chesoo – acres
  - ii. Irong/Sergoit/458 measuring approximately 39.6 acres  
Thomas Kimaiyo Cherop – 29.6 acres



- John Cherop Chesoo – 10 acres
- iii. Irong/Sergoit/615 measuring approximately 3.4 acres  
John Cherop Chesoo – whole portion.
- i. That our entire estate of my late parents we got the following shares: -
- i. Joseph Kipkurgat Chesoo – 45 acres
- ii. Thomas Kimaiyo Cherop – 29.6 acres
- iii. John Cherop Chesoo – 25.4 acres
- j. That is apparent that I have been given the least in the estate of my parents while my brothers have more than me.
- k. That I urge this honourable court to maintain the previous prejudice and go by the confirmed certificates of confirmations given by the court.
- l. That I make this affidavit to confirm the true state of affairs in respect to the estate of my parents: - the late Cherop Chesoo and the late Saniako Kiprop.
7. Following the filing of the pleadings and evidence by both parties, the matter proceeded to submissions. The parties were accorded an opportunity to present their respective arguments, with the Petitioner, through his learned counsel Mr. Tarigo, taking the lead in filing written submissions.

#### **Petitioner's submissions**

8. Learned Counsel Mr. Tarigo argued that the confirmation was based on an agreement between the parties where the Petitioner was allocated 12 acres while the Objector received 45 acres of the property known as Karuna/Sosiani Block 1 (Arababuch)/6, measuring approximately 57 acres.
9. Learned counsel posited that despite the confirmation, the Objector, who has been utilizing the entire 57 acres, frustrated the Petitioner's efforts to obtain his rightful share by making unfulfilled promises for about 4 years. This necessitated the Petitioner to file an application dated 5<sup>th</sup> March, 2024. The Objector, despite being personally served, neither attended court nor filed responses for the hearing scheduled for 21<sup>st</sup> March, 2024.
10. Mr. Tarigo submitted that following the court's directions, a survey was conducted on 9<sup>th</sup> May, 2024. He argued that when the Objector was put to the stand regarding the survey, he lacked clarity and proper reasons in his responses. The surveyor's report dated 6<sup>th</sup> June, 2024, and accompanying sketch maps demonstrated that the subdivision did not affect the Objector's homestead or his children's residences.
11. Counsel further addressed the matter of Tembelio/Elgeyo Boarder Block 5 (Ex-Tooley)/66 measuring 7.07 Ha, clarifying through an affidavit sworn on 5th July, 2024, that this property belongs to the Petitioner through direct registration from his late aunt and does not form part of the deceased's estate.
12. In opposing the summons for revocation, learned counsel relied heavily on Section 76 of the *Law of Succession Act*, arguing that the Objector failed to demonstrate any grounds warranting revocation or annulment of the grant. In support of this position, counsel cited the decision in *Albert Imbuga Kisigwa vs Recho Karai Kisigwa (2016) eKLR*, where Hon. C. Mwita J. emphasized that the power to revoke a grant is discretionary and must be exercised judiciously, not whimsically or capriciously.



13. Mr. Tarigo concluded by submitting that the summons for revocation dated 11<sup>th</sup> April, 2024, lacks merit as it fails to meet the threshold set out in Section 76 of the Law of Succession Act. He urged the court to dismiss the application with costs and direct the Objector to comply with the orders issued on 21<sup>st</sup> March, 2024.

### **Analysis and determination**

14. The matter before this court stems from a summons for revocation dated 11<sup>th</sup> April, 2024, seeking to revoke and annul the grant of letters of administration confirmed on 27<sup>th</sup> October, 2020 in respect to the estate of Cherop Chesoo a.k.a Kiprop (deceased). The deceased passed on 25<sup>th</sup> December, 1975, leaving behind four sons as beneficiaries, and it was not until four decades later that succession proceedings were initiated, culminating in the confirmation of grant that is now under challenge.
15. At the heart of this dispute lies the distribution of the property known as Karuna/Sosiani Block 1 (Arababuch) 6, measuring approximately 57 acres. The Objector contends that the confirmed mode of distribution, which allocated him 45 acres and the Petitioner 12 acres of this parcel, represents a substantial departure from what was allegedly agreed upon by the beneficiaries. The Objector further alleges that the Petitioner obtained the grant through fraudulent means and concealment of material facts from the court.
16. The main issue for determination before this court is whether the applicant has presented sufficient evidence to warrant revocation or annulment of the grant under Section 76 of the Law of Succession Act.
17. Section 76 of the Law of Succession Act gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It 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 has ordered or allowed; 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



- iv. The grant has become useless and inoperative through subsequent circumstances.

18. For clarity, Section 76 of the [Law of Succession Act](#) was comprehensively analysed in the case of *In Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR, where the court stated:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

19. Further, in *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000*, the court emphasized:

“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 to revoke or annul 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.”

20. The Objector alleges that the grant was obtained fraudulently through concealment of material facts and that the mode of distribution substantially differed from what had been unanimously agreed upon by the parties. However, the pieces of evidence presented shows that during the confirmation proceedings on 27<sup>th</sup> October 2020, the distribution plan was presented before court with all parties present, and no objection was raised at that time.

21. Additionally, as established in *Re Estate of Joel Cheruiyot Rono* [2016] eKLR, where Justice Musyoka aptly stated:

“A certificate of confirmation of a grant is not a grant representation, but a certificate to the effect that the grant had been confirmed by the court. The discretion given to the court by the provisions in section 76 of the [Law of Succession Act](#) is for revocation of grants of



representation, not certificates that confirm those grants. There is therefore no power in those provisions for the court to revoke a certificate of confirmation of grant. As can be seen from the outset, the said application stands on shaky ground.

The reasons given for the application are that the Applicant had not been notified of the hearing of the confirmation application, hence there was no attendance on his part, and the hearing proceeded to his detriment. He urges that the certificate be revoked.

I am being invited to revoke a certificate of confirmation of grant. The certificate is not an order of the court. A certificate is not a judicial order. It is an extract from a court order made in the confirmation proceedings. The certificate is generated from the court order. It is important for the parties to differentiate between the character of a grant of representation and a certificate of confirmation of the grant. A grant is a court order; it is a judicial pronouncement to the effect that some person has been appointed as administrator and granted the power to act as such. The certificate of confirmation of grant on the other side merely certifies that orders have been made to confirm the grant. The certificate of confirmation of grant is not the order itself.

I wonder whether any purpose would be served by revoking the certificate without touching the orders that gave rise to the certificate. If I revoke the certificate dated 29th February 2012, another certificate can still be generated from the orders of 29th February 2012, for the revocation would leave those orders intact.”

22. The evidence before this court shows that the Objector was aware of the succession proceedings and indeed participated in them up to confirmation. The delay of four years in bringing this application raises questions about the credibility of the claims of fraud and concealment. I am of the view that the delay in challenging confirmed grants such as this one, especially where parties were present during confirmation, serves to document an absolute abuse of the court process.
23. What is particularly compelling in this case is that the grant was confirmed by Hon. Justice Githinji on 27<sup>th</sup> October, 2020, with the Objector not only present but having appended his signature to the consent to confirmation of grant. This signed consent represents an unequivocal agreement to the mode of distribution. The Objector has not alleged any forgery or irregularity in the signing of this consent, which would have presented a different set of legal considerations altogether. Instead, he seeks to challenge a distribution that he explicitly agreed to through his signature.
24. The sanctity of a signed consent cannot be understated in succession matters. When a beneficiary signs a consent to confirmation of grant, they are making a conscious, deliberate choice to agree to the proposed mode of distribution. If indeed there was a family agreement that differed from the confirmed distribution, the Objector had not just the opportunity, but the legal obligation to raise this before signing the consent. The court places significant weight on such signed consents precisely because they represent a beneficiary's considered and voluntary agreement to the distribution scheme. To allow a challenge to a confirmed grant based on pre-existing agreements, when the Objector's signature on the consent form clearly indicates otherwise, would render the entire confirmation process meaningless.
25. As established in *Albert Imbuga Kisigwa vs Recho Kavai Kisigwa* [Supra], the power to revoke a grant must be exercised judiciously and only on sound grounds. Where a party has participated in confirmation proceedings, signed consent forms, and only years later seeks to challenge the grant based on information that was available to them at the time of confirmation, such an application bears the hallmarks of an afterthought rather than a genuine grievance.



26. Having carefully considered the evidence and submissions before me, I find that the Objector has not met the threshold required under Section 76 of the *Law of Succession Act* to warrant the revocation of the grant. The allegations of fraud and concealment are not supported by cogent evidence, and the delay in bringing this application suggests an afterthought rather than a genuine grievance.
27. Several pertinent facts emerge from the evidence before court: The Objector participated in the confirmation proceedings on 27th October 2020, No objection was raised at the time regarding the mode of distribution, The challenge to the grant comes approximately four years after confirmation, The property Karuna/Sosiani Block 1 (Arababuch)/6 was distributed with the Objector receiving 45 acres and the Petitioner 12 acres.
28. The power to revoke a grant under Section 76 of the *Law of Succession Act* is not to be exercised lightly. It requires compelling evidence of either procedural defects, fraud, or material concealment at the time of obtaining the grant. None of these grounds have been established in this case. Instead, what emerges is a clear record of proper procedure, culminating in a signed consent and confirmation of grant by the court.
29. The court must balance the interests of justice with the need for finality in litigation, particularly in succession matters where family relationships and property rights are at stake. To allow a challenge to a confirmed grant years after confirmation, based on information that was available at the time of confirmation, would create uncertainty in succession matters and undermine the very purpose of the confirmation process.
30. Consequently, this court makes the following orders:
  - a. The summons for revocation dated 11<sup>th</sup> April, 2024 is hereby dismissed in its entirety.
  - b. The confirmed mode of distribution of the property known as Karuna/Sosiani Block 1 (Arababuch)/6 remains undisturbed.
  - c. The Objector shall facilitate the implementation of these orders by cooperating with the relevant authorities in carrying out the process of survey to completion if left unfinished.
  - d. Given the family nature of this dispute, each party shall bear their own costs.
31. Orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 5<sup>TH</sup> DAY OF FEBRUARY 2025**

In the Presence of:

Mr. Tarigo for the Respondent

Mr. Kigen for the Applicant

John Cherop Chesoo – Petitioner

Joseph Kipkurgat Chesoo- Objector/Applicant

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R. NYAKUNDI

JUDGE

