



Langat & 5 others v Chepkwony (Miscellaneous Succession Application E026 of 2024) [2025] KEHC 1864 (KLR) (19 February 2025) (Judgment)

Neutral citation: [2025] KEHC 1864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU**

MISCELLANEOUS SUCCESSION APPLICATION E026 OF 2024

RE ABURILI, J

FEBRUARY 19, 2025

(FROM ORIGINAL KISUMU HIGH COURT SUCCESSION CAUSE NO. 704 OF 2000)

BETWEEN

JANE CHEPKETER LANGAT 1ST OBJECTOR
ANN CHEPKURUI 2ND OBJECTOR
LILIAN CHEROP LANG 3RD OBJECTOR
LISA CHEPKEMOI 4TH OBJECTOR
PETER KIPKEMOI KIBET 5TH OBJECTOR
FREDRICK KIBET 6TH OBJECTOR

AND

RAEL CHEPKORIR CHEPKWONY PETITIONER

JUDGMENT

1. Before this Court for determination is a summons for the revocation of the grant issued on the 18th June 2002 and confirmed on 30th October 2003 in favour of the petitioner/ respondent herein Rael Chepkorir Chepkwony brought vide an application dated 13th May 2024. The Summons is anchored on the grounds therein as well as the affidavit of Lisa Chepkemoi sworn on the even date. The deponent introduces herself as a child of the 4th wife of the deceased Lucy Koske and the intestate herein Joseph Chepkwony Koske (deceased).
2. It is the applicants' case that the aforementioned grant was obtained against the background of misrepresentations and concealment of material facts and an incomplete list of beneficiaries.
3. The deponent Lisa Chepkemoi deposes that the following are children and grandchildren of the deceased:



- a. The 1st Objector Jane Chepketer Langat herein is the child to the 2nd wife Sarah Chepkwony and the deceased Joseph Chepkwony Koske.
 - b. The 2nd objector herein Ann Chepkurui is a child to Joseph Chepkwony Koske (Deceased) also born of the 2nd wife Sarah Chepkwony.
 - c. The 3rd Objector herein Lilian Cherop Langat is the child Joseph Chepkwony Koske (deceased) and his 3rd wife Eunice Chepkwony.
 - d. The 5th Objector herein Fredrick Kibet is the grand child of Joseph Chepkwony Koske (Deceased) and son to Grace Koske(Deceased) the child born of the 2nd Wife of the deceased herein.
 - e. The 6th Objector herein Peter Kibet is the grand child of Joseph Chepkwony Koske (deceased) and his 2nd wife Grace Koske.
4. The applicants' case is that the petitioner/respondent unprocedurally allocated to herself the entire estate of the deceased to the detriment of other beneficiaries of land parcel number KISUMU/KORU/1075 whereas she is not the only beneficiary of the estate of the deceased.
 5. Further, that the documents presented by the respondent in this cause were misused as it is clear that the respondent was not the only beneficiary of the estate of the deceased hence the same was fraudulently generated.
 6. According to the applicants, the contents of the Chief's letter dated 23rd February 2005 are an indication that the petitioner/respondent herein should not have been authorized to administer the estate to their exclusion knowing very well that the deceased was polygamous with five (5) households and had many children and grandchildren who were left at home languishing in destitution and poverty.
 7. The applicant further deposes that the petitioner failed to disclose in Kisumu High Court Succession Cause No. 704 of 2000 the deceased's full list of children, spouses and grandchildren to enable the court address succession cognizant of the entitlement of the dependents/beneficiaries. They claim that the cause was filed without their knowledge, consent or application.
 8. The applicants further deposed that the matter came to their attention when the petitioner purported to evict the deceased's grandchildren and children. The petitioner is said to have actualized this threat by filing an eviction suit vide Kisumu High Court ELC No E003 of 2024 Rael Chepkorir Chepkwony vs. Philip Kibii Kitur, Peter Kipkemoi Kibet, Fredrick Kibet and County Land Registrar, Kisumu.
 9. The applicants depone that the fraudulent actions of the respondent have subjected them to untold mental anguish, pain and suffering as they stand to not only lose their family home of over 55 years but also the inheritance of their deceased father's and grandfather's inheritance.
 10. It is the applicant's case that a letter from the area Chief Koru location, dated 10th June 2024, is the one that aptly captures all the dependants of the estate of the deceased Joseph Chepkwony Koske, a clear indication that the deceased was indeed polygamous.
 11. The respondent/petitioner in response to the application filed a replying affidavit and a further replying affidavit sworn on 12th June, 2024.
 12. The respondent conceded that indeed, the deceased was survived by 5 wives namely:
 - a. Sarah Chepkwony who had two children Jane Langat and Grace Koskei (deceased).



- b. Anna Chepkwony who had no child
 - c. Eunice Chepkwony with one child Lilian Chelangat alias Lillian Cherop Langat.
 - d. Rael Chepkwony who has six children Solomon ,Noah, Miriam, Cherotich, Chemutai ,Chelagat.
 - e. Lucy Chepkwony who had two children Liza Chepkemoi and Kipkorir (deceased).
13. It is the respondent's defence and contention that the deceased's estate has only been registered under her name for the management purposes save for the grandchildren of Sarah Chepkwony to wit Peter Kipkemboi Kibet and Fredrick Kibet the 5th and 6th Applicants herein who were allocated a portion thereof by their grandfather through their deceased mother which portion they are utilizing and have given it to one Philip Kibii Kitur who is now inciting them with an intention of benefitting from deceased's estate yet he is not a beneficiary thereof.
 14. The respondent depones that the representatives/legal family members of the deceased and from the 1st,2nd ,3rd and 5th houses were reluctant to petition or participate in the succession process.
 15. It is the respondent's case that she is opposed to Philip Kitur and/or his family members being given and/or added 13 acres of parcel No. Kisumu/Koru/1075, belonging to the deceased.
 16. Further that her late husband Joseph Chepkwony Koske-Deceased, transferred 17 acres of parcel No. Kisumu/Koru/1075 to Philip Kitur's mother, while he was still alive, to which they have a Title Deed.
 17. It is her case that at the time of his death, Joseph Chepkwony Koske instructed her to transfer to Philip Kitur and/or his family members, six and a half acres of parcel No. Kisumu/Koru/1075, as opposed to 13 acres as alleged in the draft consent.
 18. She states that she is agreeable to Philip Kitur and/or his family members being given and/or added six and a half acres of parcel No. Kisumu/Koru/1075 as per the deceased's wish as opposed to 13 acres of the same.
 19. The respondent depones that she is opposed to the children of the late Grace Chepkwony (Deceased), being Peter Kipkemoi Kibet, Fredrick Kibet and Beatrice Chepkemoi, getting equal share of the suit property being parcel No. Kisumu/Koru/1075.
 20. It is her deposition that Peter Kipkemoi Kibet, Fredrick Kibet and Beatrice Chepkemoi are grandchildren of the deceased and as such are only entitled to a portion of parcel No. Kisumu/Koru/1075, that ought to have been bequeathed to their mother, Grace Chepkwony (Deceased).
 21. The above depositions were reiterated in the oral submissions by counsel for the respective parties.
 22. The court on its part tried its best to implore both parties to resolve this dispute which appeared simple and straight forward, amicably, with the guidance of their respective counsel but the attempts failed.

Analysis

23. The dispute before this Court is on the administration of the estate of the deceased Joseph Chepkwony Koske who died intestate. The summons for revocation of grant issued to the petitioner/respondent was filed by members of the deceased's family who claim to have been left out during petition for a grant of letters of administration intestate to administer the deceased's estate as the petitioner/respondent failed to inform or to include them in the list of beneficiaries presented before the court.



24. The applicants argue that the grant obtained by the petitioner was obtained through the misrepresentation and concealment of crucial information and as such it ought to be revoked.
25. The respondent/petitioner in her response contends that the representatives and family members of the estate of the deceased refused to be involved in the succession cause and as such she opted to undertake the same by herself.
26. This Court on 5th June 2024 in the spirit of Article 159 (2) (c) of *the Constitution* directed the parties to seek out a negotiated settlement as there was no evidence of apportionment of the estate property to the beneficiaries of the estate as listed in the P&A5 dated 6th November 2000.
27. The Court also directed that all beneficiaries were to appear in court on 14th June 2024 to report whether there was agreement reached and in the event that there was no agreement, the court would proceed to hear the instant application.
28. On 14th June 2024, counsel in the presence of the beneficiaries requested the court for more time to reach an agreement and this was granted with the court directing that the application be heard on 23rd September 2024 in the event that no agreement on distribution of the estate had been reached.
29. When the matter came before court on the said date, counsel informed the court that they had agreed on distribution of the estate and what remained was subdivision of the land and survey. Counsel for both the applicants, objectors and respondent requested the court for sometime to file a consent.
30. Counsel were granted fifteen (15) days by the court to file the consent on the agreement reached in the matter and parties were also directed to oversee the process of a government surveyor identifying the total acreage of the land subject of these proceedings being Land Parcel No. Kisumu/Koru/1075 and the survey report be filed in court within seven (7) days. The court slated 24th October 2024 for a mention to confirm compliance.
31. On 24th October 2024 when parties appeared before the court, it became apparent that the parties had failed to reach an agreement as there were issues of payment of the surveyors' fees and inaccessibility of estate property due to interference by the respondent among other issues. Seeing as this was the position, the court directed that the application be heard on its own merit orally on 15th November 2024 by way of submissions.
32. On the said date Mr. Nyamiemo advocate for the applicants/ objectors in addition to what was stated in the application submitted that the chief's letter dated 2nd November 2000 was suspicious as it failed to mention all the deceased's spouses, that it had also failed to mention the actual position of the deceased's estate. To support his argument counsel referred to the case of Martin Munguti Mwonga vs. Damaris Mutuku [2016] eKLR.
33. On the issue of including the grandchildren as beneficiaries the case of Geoffrey Robin Mukimbo Succession Cause No.244/2009 was relied on. Counsel urged that even though the deceased's grandchildren were languishing in abject poverty, the respondent was harvesting sugarcane from the said land.
34. In response, counsel for the respondent submitted that there was no evidence that some of the respondent's children were not the biological children of the deceased. Further that the matter before the Environment and Land Court was against Philip and not the beneficiaries of the deceased's estate. It was also argued that the 17 acres was already registered in the name of Philip's mother and as such, he was not entitled to the additional 13 acres.



35. In a rejoinder, Mr. Nyamieno, counsel for the applicants/objectors submitted that the only biological child of the deceased with the respondent was Miriam. Further, that the deceased's grandchildren were taken to a children's home due to hostility from the respondent.

Determination

36. The question for determination is whether the applicants have made out a case for revocation/annulment of the grant of letters of administration intestate issued and confirmed in favour of the petitioner/respondent herein.

37. Revocation of grants is provided for under section 76 of the *Law of Succession Act*. The grounds upon which the grant may be revoked are well spelt out 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. The section provides as follows:

76. Revocation or annulment of grant

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.”

38. The above Section 76 has been interpreted In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR where it was stated that:

“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.”

39. The section outlines the circumstances under which a grant can be revoked. For revocation to occur, there must be evidence that the grant was obtained through fraudulent means, such as providing false information, hiding important facts, or presenting false claims about facts crucial to the case. This can happen either upon request from an interested party or on the court's own initiative.
40. The power to revoke a grant is discretionary and should be exercised carefully, based on sound reasons. It is not a power to be used arbitrarily or without proper justification. There must be evidence of wrongdoing for the court to apply section 76 of the Act and revoke or annul a grant. When exercising this discretion, the court must consider the interests of all beneficiaries entitled to the deceased's estate and ensure that the decision serves the interests of justice. In general, the trial court has the authority to revoke a grant if the conditions outlined in section 76 are met.
41. In the instant case, there is no doubt that the respondent obtained the Grant of Letters of Administration intestate to the estate of the deceased Joseph Chepkwony Koske without involving the applicants or the beneficiaries. Further, as is evident from the depositions by the applicants and beneficiaries herein, the respondent failed to list them as beneficiaries of the deceased's estate as is evident from the P & A 5 Affidavit in support of the petition for grant of letters of administration intestate.
42. Under section 51 of the *Law of Succession Act*,
 - (1) Every application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.
 - (2) An application shall include information as to—
 - a. ...
 - b. ...
 - c. ...
 - d. ...
 - e. ...
 - f. ...



- (g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;

43. It is thus clear that the proceedings to obtain the grant were defective in substance. The names of the deceased's surviving widows were never given and neither were the applicants/ children or grandchildren of the deceased intestate disclosed. Even the chief's letter of 23rd February 2005 introducing the estate beneficiaries to the court as issued to the respondent did not disclose that the applicants herein were children or grandchildren or beneficiaries of the estate of the deceased.
44. An examination of the affidavit supporting the petition for the grant of letters of Administration clearly shows that despite the deceased being polygamous and having children with his other wives, the respondent only listed her six children as the sole heirs of the deceased.
45. There are also serious questions raised as to whether all the respondent's six children are the children of the deceased let alone being dependants of the deceased and if so, were they the only children or dependants beneficially entitled to share the estate of the deceased?
46. Additionally, so much has been said to the effect that the petitioner took out letters of administration because the other beneficiaries were not willing. There is no evidence to prove those allegations. If that were the case, there would be a letter to the other beneficiaries or the chief's letter calling upon the beneficiaries to be involved in the succession process. Succession in this case was done clandestinely, taking advantage of the children of the deceased and the orphaned grandchildren.
47. Suffice to say that the extent to which the grandchildren will benefit from the estate will be determined by the court hearing the proper succession cause, but legally, they are entitled to benefit from the shares that their deceased parents would have been entitled to.
48. In *In re Estate of Imoli Luhitse Paul (Deceased)* [2021] eKLR, Musyoka J had this to say concerning the beneficial entitlement of grandchildren to the estate of a deceased intestate and I concur that:

“3. In the instant case, the applicant, in the summons for revocation of grant, is a child of a dead son of the deceased herein. The applicant is claiming directly by dint of *In re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR (Musyoka J) and *In re Estate of Florence Mukami Kinyua (Deceased)* [2018] eKLR (T. Matheka J), and does not require to take out letters of administration to intervene in the estate of her late grandfather, where her own parents are dead. Secondly, apart from case law, the provisions of the *Law of Succession Act* cover these situations. Section 39 of the *Law of Succession Act* makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Section 41 of the *Law of Succession Act* is the provision that enables grandchildren to step into the shoes, of their own parents, and to step into those shoes they need not take out letters of administration.

4. I believe that there is a misconception. Grandchildren are not in the same footing with the daughters-in-law or children-in-law of the deceased. Grandchildren would be blood relatives of the deceased. They would be entitled automatically, as blood kin of their grandparent, to take the share due to their own parents, the biological children of the deceased, where such biological children are dead.”



49. Indeed, as correctly stated by Matheka J in *In re Estate of Florence Mukami Kinyua (Deceased)* (supra), section 39 of the *Law of Succession Act* makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Section 41 of the *Law of Succession Act* is the provision that enables grandchildren to step into the shoes, of their own parents, and to step into those shoes they need not take out letters of administration. In light of the above, this court is satisfied that the applicants have satisfied the conditions to warrant the annulment and revocation of the Grant of Letters of Administration intestate issued 18th June 2002 and confirmed on 30th October 2003.
50. Consequently, I revoke the said Grant of Letters of Administration intestate issued 18th June 2002 and confirmed on 30th October 2003 in favour of the petitioner/ respondent Rael Chepkorir Chepkwony.
51. I further order that all that Land Reference Parcel No. Kisumu/Koru/1075 which was irregularly transferred to the respondent herein Rael Chepkorir Chepkwony and or to any other persons, and subsequent registration thereon is hereby revoked, cancelled and annulled and the title to the said parcel of land shall now revert back to the deceased's names Joseph Chepkwony Koske until proper succession proceedings are undertaken by the bonafide and eligible beneficiaries before distribution can be undertaken by the administrators. On this, I am fortified by several precedents on jurisdiction to cancel/revoke title to land in Succession matters
52. In *Santuzzabilioti alias Mei Santuzza (deceased) vs Giancarlo Felasconi* (2014) eKLR, the court stated as follows regarding the jurisdiction of the court in succession matters:
- “This cannot be the case as the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession court can order a cancellation of title deed if a deceased's property is being fraudulently taken away by non beneficiaries such as where the property is being sold before a grant is confirmed.”
53. There is a multitude of decisions where courts have held that the High Court has jurisdiction to order cancellation of a title if a matter is a succession cause and the title has been fraudulently or irregularly transferred.
54. Additionally, in view of the allegations that the petitioner/ respondent has been exclusively utilizing the said estate property to the exclusion of the bonafide beneficiaries, by cultivating and harvesting both cash crop being sugar cane and food crop without providing for the children and grandchildren of the deceased, the respondent is hereby directed to render true and accurate accounts of the estate that she has been administering illegally within 90 days of today.
55. The accounts shall be taken by the Court hearing the fresh petition for grant which shall be undertaken by bona fide beneficiaries in that fresh file.
56. I make no orders as to costs of these proceedings, this being a family matter between close family members.
57. This file is closed.

**DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS AT NAIROBI
THIS 19TH DAY OF FEBRUARY, 2025**

R.E. ABURILI

JUDGE

