



**In re Estate of Martha Taprandich Misoi (Deceased) (Succession Cause
240 of 2012) [2025] KEHC 4928 (KLR) (23 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4928 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 240 OF 2012
PN GICHOHI & PN GICHOHI, JJ
APRIL 23, 2025**

BETWEEN

KENNETH KIPTOON CHESIYNA APPLICANT

AND

KENNETH KIPTOON CHESIYNA INTERESTED PARTY

AND

RUTH CHELAGAT TOGOM RESPONDENT

AND

RUTH CHELAGAT TOGOM ADMINISTRATOR

AND

GRACE CHEMUTAI KOECH RESPONDENT

AND

GRACE CHEMUTAI KOECH ADMINISTRATOR

RULING

1. The subject of this ruling is the Intended Interested Party/Applicant's Amended Summons for Revocation or Alteration of Grant dated 8th May, 2023, filed pursuant to Sections 47 and 76 of the Law of Succession Act, Rules 44, 49 & 73 of the Probate & Administration Rules and Articles 40 & 159 of The Constitution of Kenya 2010, seeking Orders that:-
 1. Spent.
 2. Spent.



3. Spent.
4. Kenneth Kiptoon Chesinya, the Applicant herein, be formally enjoined as an interested Party herein.
5. The Grant of Letters of Administration Intestate dated 21st September, 2012, issued to Ruth Chelagat Togom and Grace Chemutai Koech, the Certificate of Confirmation of Grant dated 24th April 2021, the Rectified Certificate of Confirmation of Grant dated 7th June 2021, the Further Rectified Certificate of Confirmation of Grant dated 16th December 2021 and/or any other Certificate of Confirmation of Grant issued to Ruth Chelagat Togom and Grace Chemutai Koech herein, be and is hereby Revoked.

OR ALTERNATIVELY

The said Grant of Letters of Administration Intestate dated 21st September, 2012 issued to Ruth Chelagat Togom and Grace Chemutai Koech, the Certificate of Confirmation of Grant dated 24th April, 2021, the Rectified Certificate of Confirmation of Grant dated 7th June 2021, the Further Rectified Certificate of Confirmation of Grant dated 16th December 2021 and/or any other Certificate of Confirmation of Grant issued to Ruth Chelagat Togom and Grace Chemutai Koech herein, be Amended and Rectified to include the Applicant Kenneth Kiptoon Chesinya's proprietary interest in the disputed land herein, being all that 2.5 acre portion of land Title No. Njoro/Ngata Block 2/2X2 which was sold to and is in the possession and occupation of the said Applicant Kenneth Kiptoon Chesinya.

6. A Declaration do issue asserting that the Applicant, Kenneth Kiptoon Chesinya, is the lawful owner of the disputed parcel of land being all that 2.5 acre portion of land Title No. Njoro/Ngata Block 2/2X2 which was sold to and is in the possession and occupation of the said Applicant.
 7. An Order requiring the Administrators, Ruth Chelagat Togom and Grace Chemutai Koech, or any other Administrator appointed by the Court herein, to transfer to the Applicant, Kenneth Kiptoon Chesinya, the aforesaid 2.5 acre portion of land Title No. Njoro/Ngata Block 2 /2X2 within fourteen (14) days of this Court's Orders, and in default the Deputy Registrar of the Court to Execute all and any Transfer documents necessary to effect the transfer of the said land to the Applicant.
 8. The Administrators herein Ruth Chelagat Togom and Grace Chemutai Koech, by themselves, their children, heirs, agents, servants, successors, personal representatives, assignees, or anyone acting or claiming through or under them, be and are Hereby Inhibited and Restrained by Order of Permanent Injunction from entering, remaining on, cultivating, utilizing, damaging, wasting, alienating, selling, transferring, or in any other way whatsoever interfering with the disputed parcel of land herein, being all that 2.5 acre portion of land Title No. Njoro/Ngata – Block 2/2X2 sold to and in the possession and occupation of Kenneth Kiptoon Chesinya the Applicant/Interested Party herein, or in any way whatsoever interfering with the said Applicant's quiet possession and occupation of the said parcel of land.
 9. Costs of this application be borne by the Administrators/Respondents.
2. The grounds are on the face of the application and supported by the Applicant's Affidavit sworn on 28th April, 2023. His case is that in the year 2012, he purchased 2.5 acre of land to be excised from the deceased property being Njoro/ Ngata Block 2 /2X2, vide two separate sale agreement of 8/8/2012



and 5/10/2012 between him and the Administrators of the Estate of the deceased (Ruth Chelagat Togom and Grace Chemutai Koech) for consideration of Kshs. 6,250,000/=.

3. He states that he paid the sum of Kshs 4,958,500/= to the said Administrators through their Advocate M/S Cherutich and Co Advocates through Direct Bank Transfer (RTGS) and that a further sum of Kshs. 208,500/= was paid to Mary Cherutich, in cash with consent of both vendors (Administrators) and his Advocate.
4. It is his case that as per Clause 1(c) of the sale agreement dated 8/8/2012, the balance of the purchase price of Kshs. 1,291,500/= was to be paid upon confirmation of Grant in this succession cause. The Administrators herein showed him the court documents indicating that they were Administrators of the Estate of the deceased herein and his name included as a beneficiary of the 2.5 acres of land as per the Supporting Affidavit sworn on 14th /8/2014 to the Summons for Confirmation of Grant dated 14 /8/2014.
5. Pursuant to the assurance by the said Administrators and following the consent of the other beneficiaries of the Estate of the deceased, the Applicant took possession of the 2.5 acres and erected residential house and continued farming the said land awaiting confirmation of Grant of letter of Administration and subsequent transfer of the portion to his name.
6. However, sometimes in February, 2023, some people claimed to have bought the same land from the Administrators and upon inquiring from the Administrators, they refuted the claims and assured him that the Succession Cause was on course and he would receive his portion once Succession proceedings are completed.
7. He states that to his utter shock, the Administrators changed tune on 24/4/2023 and brought goons to eject him from the said land by destroying his chain link fence. He reported the matter to Ngata Police Station but by the time they came to the site, the entire fence and the toilet block had been destroyed. The goons were taken to the Police Station for purposes of recording statements. Thereafter, the matter was referred to Salgaa DCI and it is still pending investigations.
8. Following the attempted ejection from the said property, he inquired on this succession matter and found out that the Administrators rectified the Grant and removed his name then confirmed the Grant of letter of Administration without his name as Beneficiary.
9. He contends that in removing his name as a beneficiary, when they had received the purchase price, amounts to pure deceit and fraud on the part of the Administrators/Respondents.
10. In the circumstances, he urges this Court to either rectify the Grant issued to the Administrators to reflect his interest therein as a beneficiary/purchaser of the 2.5 acres of land or revoke the Grant all together.
11. The Administrators/Respondents oppose that application vide the Replying Affidavit sworn by Ruth Chelangat Togom on 5th June, 2023. Citing the grounds under which a Grant can be revoked under Section 76 of the Law of Succession, she claims that due process was followed in obtaining the Confirmation of Grant and that the Applicant has not demonstrated any of the grounds for revocation of the Grant.
12. She states that she is a stranger to the Applicant and has never interacted with him, let alone entering into any land sale agreement regarding the Estate property Njoro/Ngata Block 2/2X2. It is her position that the Applicant herein lacks standing to bring this application seeking revocation of the Grant issued to them.



13. She therefore terms the Applicant a trespasser and avaricious busy body seeking to reap where he did not sow and therefore, his attempt to revoke Grant without any locus standi is tantamount to intermeddling with the Estate of the Deceased and in violation of Section 45 of the Law of Succession Act.
14. She depones that she made the rectification of Grant to capture the guarantee agreement entered between herself and Top hill Hospital towards satisfying a hospital debt in favour of her sister (Selly Misoi). She adds that the Applicant herein has attempted to evict her sickly sister Selly Chepngeno Arap Misoi from her rightful share and she is baffled that the Applicant has the audacity to seek this Court's protection from his egregious ingress.
15. She maintains that the rightful beneficiaries of the Estate have all been given their rightful shares and a surveyor has prepared Mutation Form for the proposed division of the land which informed the rectification of Grant done by Prof. Joel Ngugi, J (as he then was).
16. It is her position that the sale agreements were not signed by the Administrators and have not been sanctioned by the Court and therefore, they are products of criminals, forgery and underworld tactics aimed at disinheriting the beneficiaries. She therefore urges the Court to dismiss the application herein with costs to them.
17. By a Further Affidavit sworn on 14th July 2023, Mary Jelagat Cherutich (deponent) states that she is a business lady and a farmer in Rongai area within Nakuru County and knows both the Applicant herein and the Administrators/ Respondents.
18. She recalls that sometime in 2012, she met the Administrators, Ruth Chelagat Togom and Grace Chemtai Koech, together with their brother William Kipyegon Soi at the office of his brother Joshua Cherutich Advocate of Cherutich and Co Advocates, where they exchanged pleasantries and became acquaintances.
19. She explains that around August, 2012, the Administrators herein informed her that they were selling some prime family land located in Ngata Area and asked her if she was interested. She informed them that she was not in financial position to buy the property at that point but asked if she could refer a friend.
20. Pursuant to that, she approached Kenneth Kiptoo Chesiyna (the Applicant herein) who was by then working in the Property Department at KFA Ltd. She introduced him to the Administrators and they showed him the title deed and took him to the land for viewing.
21. She states that upon viewing the property, the parties agreed to first dispose of 2 acres of land at Kshs. 2.5 Million per Acre totalling to Kshs. 5 Million. Consequently, a sale agreement was drawn and executed by both parties on 8/8/2012 through the firm of Cherutich and Co Advocates. The Applicant took possession of the said portion of land.
22. About two months down the line, the Administrators approached her once again asking her to request the Applicant herein to buy an additional half (½) acre land as they were in need of more money to purchase some other parcels of land in Kericho. Following that request, she once again approached the Applicant who agreed to buy the ½ acre. Another sale agreement was entered into between the same parties on 5/10/2012 and in the same Advocates' office, Kshs. 208,500/= was paid to them in cash through her.
23. She explains that she continued to interact with the Administrators and they informed her that they still wanted to sell more land but she was not able to get them another buyer. However, they later told her that they had been able to sell some more land to some other persons.



24. She maintains that the Applicant bought the subject parcel of land measuring 2.5 acres from the Respondents and they gave him vacant possession of the land. She therefore terms the Administrators allegation that the Applicant herein evicted their sister as absolutely untrue as no one was living there.
25. Joshua Chepkieng Cherutich Advocate also swore a Further Affidavit on 14th July, 2023. He confirms that he was the Advocate acting for the Administrators herein for a period of close to 10 years and that he was the one who drew and executed the two land sale agreements of 8/8/2012 and 5/10/2012. He confirms that he received the purchase price through his office Account for transmission to the Respondents herein.
26. Further, he states that he also presided over the sale of another portion of land from the subject property to one Hellen Okoyo Akanga and another to one Cherono Chumo through sale agreements of 31/1/2012 and 15/4/2012. He therefore states that he is puzzled that Hellen Okoyo Akanga is recognized as a purchaser in the Confirmation of Grant while the Applicant has been removed.
27. He states that the proceeds of sale received from the Applicant herein were used by the Administrators herein to purchase themselves a 9- acre parcel of land situated in Kericho being Title No. Kericho Chepsir S. S /272 from Ruth Chelangat's son namely Robert Kipkemboi Tirop. He therefore terms it immoral and dishonest for the Respondents to now dispute the sale when they received and utilized the purchase price received through his law firm.
28. He maintains that the property herein was vacant and therefore, the allegation that the Applicant evicted their sickly sister is not true. He adds that he was the one on record for the Respondents and the one who instituted these succession proceedings. That all beneficiaries signed consenting to the said parcel of land being sold to the Applicant.
29. He also states that sometimes in 2016, he was instructed by the Respondents herein to amend the Confirmation of Grant to remove all purchasers from the list of beneficiaries to avoid confusion and that as soon as the Grant was confirmed, they would ensure the purchasers receive their respective parcels.
30. He depones that he acted on those instructions in good faith, however, in 2020/2021, the Administrators approached him and informed him that they no longer wished to proceed with the sale of the subject parcels of land because the said properties had appreciated in value and they would benefit a lot if they sold them afresh to new purchasers, and if need be, refund the purchase price to the original purchasers. He advised them against such a move as it was fraudulent, immoral and wrong.
31. He states that when he failed to support the Respondents' plans, the Respondents moved from his law firm and instructed their current firm of Advocates Gordon Ogola, Kipkoech and Co Advocates to take over the conduct of this matter.
32. He reiterates that the Applicant had purchased 2.5 acres of the subject parcel of land and has always been in possession and occupation of the said land.
33. In response to the two Affidavits, Ruth Chelangat Togom, filed a further Affidavit sworn on 25th July, 2023 and reiterates her Replying Affidavit. She terms the allegations by the sales Agent and the Advocates as fictitious and nothing but lies.
34. She maintains that she is a stranger to the Applicant herein. She however admitted that Joshua Chepkieng Cherutich was her Advocate for some time but she denied that he ever presided over the alleged sale of land. She accuses the Advocate of failing in his fiduciary duty by being party to a dubious scheme thus causing her exodus from his firm.



35. She denies signing the purported land sale agreements or receiving any money through the said Advocate's Accounts and reiterates that the attached evidence are products of forgery for which she invites this Court to subject to forensic handwriting examination.
36. In conclusion, she argues that the application herein is brought in bad faith, is frivolous, scandalous and is calculated to waste this Court time in litigating an egregious agreement which is a product of intermeddling by the Applicant and his ilk.

Applicant's Submissions.

37. These were filed on 18th March 2024. Maintaining his position as stated in the application and the Affidavits in support, he submits that his application is based on grounds of deceit, dishonesty, fraud and concealment of material fact by the Administrators. He argues that evidence has been tendered before this Court and supported by three Affidavits sworn by himself, the Advocate that presided over the sale and the sales Agent, who all confirmed to the transaction taking place.
38. He reiterates that when this Succession Cause was first filed, his name and that of Hellen Okoyo Akanga's (also a purchaser) were included as beneficiaries/ purchasers but while Hellen's name remained in the rectified Grant, his name was removed from therein without any reason. He submits that no explanation has been tendered by the Administrators in the inclusion of his name in the earlier Affidavit and the removal thereof.
39. Maintaining that the Administrators' actions in reneging the sale agreement at this stage is immoral, unconscionable and a clear demonstration of sheer greed, dishonesty, fraud and deceit and they should not be allowed to benefit from such acts, he urges this Court to be enjoined to dispense substantive justice as opposed to technical justice, uphold the conscience of the whole community and disallow the court process to be used to perpetuate dishonest and fraud.
40. In support of that argument, the Applicant cited the case of *Macharia Mwangi Maina And Others V Davidson Mwangi Kagiri* [2014] eKLR where the Court of Appeal held:-

“We take note that the judicial decisions cited by the Respondent were all made prior to the promulgation of the 2010 Constitution of Kenya and before the Overriding Objective principles were enacted into the Appellate Jurisdiction Act, Chapter 8, Laws of Kenya. This Court is enjoined to dispense substantive justice. What is justice” Justice is conscience, not a personal conscience but the conscience of the whole humanity, (See *Alexander Solhenitsya*). Would the conscience of humanity allow an individual to receive purchase price and later plead that the agreement is void”. The conscience of humanity dictates that constructive trust and proprietary estoppel shall apply in such cases. Lord Denning in *Hussey v Palmer* (1972) 3 All ER 744 held that a constructive trust is a trust imposed by law whenever justice and good conscience require it. It is an equitable remedy by which the Court can enable an aggrieved party to obtain restitution.”
41. Flowing from the above, he submits that the Administrators herein voluntarily sold the subject land and delivered vacant possession to the Applicant. That they happily benefited from the purchase price which they used to acquire larger portions of land in Kericho and in that case, they created constructive trust in favour of the Applicant and consequently, they are barred by the principle of



Propriety Estoppel from reneging on the sale. In support of that position, reliance is placed on the case of *Macharia Mwangi Maina (Supra)* where the Court had this to say:-

“In *Yaxley v Gotts & another*, (2000) Ch 162, it was held that an oral agreement for sale of property created an interest in the property even though void and unenforceable as a contract; but the oral agreement was still enforceable on the basis of a constructive trust or proprietary estoppel. In the instant case, it was the Respondent who put the Appellants in possession of the suit property not as licensees but with the intention that he was to transfer individual plots purchased by them. The Respondent went ahead and received the purchase price. We are of the considered view that the doctrines of proprietary estoppel and constructive trust are applicable and the Respondent cannot renege. As Lord Bridge observed in *Llyods Bank Plc v Rosset*, (1991) 1 AC 107,132, a constructive trust is based on “common intention” which is an agreement, arrangement or understanding actually reached between the parties and relied on and acted on by the Claimant. In the instant case, there was a common intention between the Appellants and the Respondent in relation to the suit property... The Respondent all along acted on the basis and represented that the Appellants were to obtain proprietary interest in the suit property. Constructive trust is an equitable concept which acts on the conscience of the legal owner to prevent him from acting in an unconscionable manner by defeating the common intention. As was stated by Lord Reid in *Steadman v Steadman* (1976) AC 536, 540, “If one party to an agreement stands by and lets the other party incur expense or prejudice his position on the faith of the agreement being valid he will not then be allowed to turn around and assert that the agreement is unenforceable”

42. The Applicant therefore urges this Court to refrain the Administrators herein from repossessing land they sold to him 12 years ago otherwise, allowing them to repossess the subject land will be legitimizing the Administrators’ fraud against the Applicant. He supports that argument by citing the case of *Investment and Mortgages Bank Ltd v Commissioner of Police, Director of CID, DPP & Others* [2013] eKLR, where D.S.Majanja J (as he then was) held that:- “it is the duty of the Court to ensure that its processes are not abused or otherwise used to perpetuate injustice or improper motives...”
43. On his locus, the Applicant submits that he is a purchaser for value of the Estate property, hence an interested party in this case. In support of this case, the Applicant relied on the case of *Musa Nyaribari Gekone & 2 Others v Peter Miyiinda & Anor* [2015] eKLR, where the Court of Appeal defined an interested party as follows; -

“The expression “any interested party” as used in that provision, in its plain and ordinary meaning, is in our view wide enough to accommodate any person with a right or expectancy in the estate. We are not persuaded, as Mr. Oguttu urged, that that expression is limited by or should be construed against the provisions of sections 66 and 39 of the Law of Succession Act. Section 66 provides a general guide to the court of the order of preference of the person (s) to whom a grant of letters of administration should be made where the deceased has died intestate. Section 39 provides for the order of priority of persons to whom the net intestate estate shall devolve where the deceased left no surviving spouse or children. Those provisions do not in our view have a bearing on the question of who may be an ‘interested party’ for purposes of an application for revocation or annulment of grant of letters of administration under section 76 of the Law of Succession Act. There is therefore no merit in the complaint that the learned judge paid undue premium or undue regard to section 76 of the Law of Succession Act when he held that the 1st respondent has the locus standi to



present the application for revocation of the grant. We agree with the learned Judge that the 1st respondent's interest as a purchaser of the property of the deceased qualifies him as an 'interested party' with standing to challenge the grant."

44. On whether the Application has met the threshold for revocation, it was submitted that Section 76 of the Law of Succession Act sets out the grounds for revocation to include; Fraud, false allegations of fact, and non-disclosure of material facts. He therefore submits that he has demonstrated misconduct by the Administrators as a ground warranting revocation of the Grant in this case. In support, reliance was placed in the case of *In Re Estate of Mary Chesiroyebei (Deceased)* [2019] eKLR where Olga Sewe J held that: -

"...a good case has been made out by the Applicant for the revocation of the Grant of Letters of Administration Intestate, that was issued herein on 17th July 2012 in respect of the Estate of the Deceased, in that the Respondent concealed to the Court the interests of the Applicant. It is for that reason that I find merit in the application dated 17th February 2004 and would allow the same."

45. Regarding the alternative prayer for rectification of Grant, it was submitted that this Court is empowered under Article 159 of the Constitution as read with Rule 73 of the Probate and Administration Rules to make such order as the Court may deem fit in the interest of justice. He thus prayed that the Grant to be rectified to include his claim of 2.5 acres he bought from the Administrators.

Respondents' Submissions.

46. The Respondents submitted on two issues:- Whether the Applicant has locus standi to file and prosecute the said Summons for Revocation of a grant and whether the Applicant is guilty of intermeddling with the Estate of Martha Taprandich Misoi (Deceased).

47. On locus standi, the Respondent argued that the Applicant does not have locus standi because he has not demonstrated any nexus between him and the Estate of the deceased, therefore that the Application should be dismissed in limine and in support, reliance was placed in the case of *Rajesh Pranjivan Chudasama vs Sailesh Pranjivan Chudasama* [2014] EKLR where the Court of Appeal held that:-

"...in our view the position in law as regards locus standi in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession."

48. It was submitted that in this case, the subject sale agreements were purportedly done after the demise of the deceased herein and without any Orders from this Court sanctioning such sale and therefore, the proceedings instituted without locus standi are invalid. In support, the Respondent cited the case of *Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased)* [2016] eKLR where A. C. Mrima J held that:-

"...the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings. It is also worth-noting that the issue of locus standi becomes such a serious



one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties.”

49. On whether the Applicant is intermeddling with the Estate, the Respondent cited In Veronica Njoki Wakagoto (Deceased) [2013] eKLR where W. M. Musyoka, J had this to say in regard to Section 45 of the Law of Succession Act:-

“The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

50. On that note, the Respondents submits that the Applicant has for the longest time dealt with the deceased property without any legal rights and therefore, he fits squarely and perfectly in the statutory definition of who an intermeddler is and he should be stopped by this Court.

51. Flowing from above, it is submitted that since the Applicant is an Intermeddler in the Estate of the Deceased herein, his Application for revocation should be dismissed for being frivolous, vexatious and a waste of this Court time and process.

Analysis and determination.

52. Having considered the Court Record, the application, Affidavits and submissions herein, the issues for determination are :-

1. Whether the applicant has locus standi to file the current Application.
2. Whether the Applicant is intermeddling with the Estate of the Deceased.
3. Whether the application for revocation of Grant is merited in the circumstances.
4. Who should pay costs of this application.

53. On locus standi, the Applicant is not a beneficiary of the Estate of the deceased herein. He has moved this Court in his capacity as an interested party, having allegedly purchased a property forming part of the said Estate.

54. He has exhibited two sale agreements of 8/8/2012 and 5/10/2012 duly executed by him as the buyer and the Respondents as the vendors. The sale agreements were drawn by an advocate who endorsed the sale.

55. The Applicant also exhibited copies of RTGS forms showing payments made to the Respondents, through the Advocate's offices and an Affidavit sworn by Ruth Chelangat Togom and Grace Chemutai Koech (the Administrators of the Estate) in support of confirmation of Grant, listing the Applicant as a beneficiary of 2.5 acres of the subject Estate property.

56. Though the Respondents disputed the said sale by claiming that they did not sign the sale agreements, they tendered no evidence to dispute the said signatures. Instead, the Respondents boldly invites this Court to subject the land sale agreements to forensic handwriting examination.

57. Moreover, Joshua Cherutich Advocate and the sales Agent Ms. Mary Cherutich, confirmed authenticity of the subject sale. Further, the inclusion of the Applicant's name in the Supporting



Affidavit for Confirmation of Grant filed on 4/9/2014, without any explanation by the Respondents is a prima facie confirmation that the subject parcel of land was indeed sold to the Applicant.

58. In the circumstances, the Respondents' denial of the said sale is an afterthought, deceitful, immoral and unconscionable. However, the question is, did the Applicant acquire a good title to the subject parcel of land from the Respondents herein so as to obtain from this Court, protection of his interest?

59. The answer to that question is found in the law of Succession Act. Section 82 (b) (ii) of the Act provides that:-

“Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

a. ...

b. to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that—

i. ...

ii. no immovable property shall be sold before confirmation of the grant.”

60. It is evident that the first sale agreement was entered into on 8/8/2012, before the Respondents were appointed Administrators of the Estate of the deceased herein on 21/9/2012 and therefore, the property in question had not yet vested in the Respondents by virtue of Section 79 of the Law of Succession Act, and therefore they could not exercise the powers of sale over that property by virtue of Section 82 of the Act.

61. The Respondents had no title to the property and had no power to sell it. That transaction was unlawful and amounted to intermeddling with the Estate of the deceased in violation of Section 45 of the Law of Succession Act. Similarly, the second sale was carried out on 5/10/2012, after the Respondents have been appointed as Administrators but before confirmation of the said Grant on 24/4/2021. As at the date of this second transaction, the asset that formed subject of sale vested in the Administrators by virtue of section 79 of the Act.

62. The Respondents could, by virtue of Section 82 of the Law of Succession Act, exercise the power of sale over it but limited to Section 82 (b) (ii) thereof but since the property sold was an immovable property, the sale could not be done before confirmation of the grant unless the Administrators had obtained prior leave or permission from the court to sell it.

63. A perusal of the court record does not contain evidence of such leave or permission having been granted to the Respondents herein to sell any land before Confirmation of Grant and therefore, the Respondents had no authority to sell it and effectively, they had no title to pass to the Applicant. The Applicant acquired no rights to the said property. Both sales were done in contravention of the law.

64. The circumstances would have been different if the Applicant had bought the subject parcel of land from the Deceased as his claim could have been considered as a liability of the Estate of the Deceased.

65. As to whether the Applicant intermeddled with the deceased Estate, Section 45 of the Law of Succession Act provides that:-

“(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose,



take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.

- (2) Any person who contravenes the provisions of this section shall –
- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or both fine and imprisonment ...”

66. As stated herein, it is clear that both Sale Agreements were entered into by persons who had no title to the subject land as such, their act of selling and buying amounted to intermeddling with the deceased’s property. In short, both the Applicant and Respondents intermeddled with the Estate which act is a criminal offence under Section 45 (2) (a) of the Law of Succession Act.
67. From the foregoing, the Applicant lacks interest or locus to seek revocation of grant herein. He has no claim against the deceased so as to claim from her Estate.
68. The only remedy available to the Applicant at this stage is to pursue the Respondents personally as the persons who sold the land but not through this application.
69. In conclusion therefore:-
1. The application for Revocation and/ or Rectification of Grant is without merit and is therefore dismissed.
 2. Considering the nature of this matter, each party is ordered to bear their own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 23RD DAY OF APRIL, 2025.

PATRICIA GICHOHI

JUDGE

Mr Waiganjo for Ms. Gatu Magana for Kenneth Kiptoon Chesiyana-

Interested Party /Applicant

Ms Kirui for Mr. Kipkoech for Administrators/Respondents

Ruto, Court Assistant

