



REPUBLIC OF KENYA



**KENYA LAW**

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**In re Estate of Kipkemboi Arap Muge (Deceased) (Succession Cause  
355 of 2012) [2025] KEHC 4302 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4302 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 355 OF 2012**

**JRA WANANDA, J**

**APRIL 4, 2025**

**IN THE MATTER OF THE ESTATE OF KIPKEMBOI ARAP MUGE (DECEASED)**

**BETWEEN**

**DESMOND KEMBOI ..... PETITIONER**

**AND**

**TERESA KEMBOI ..... 1<sup>ST</sup> OBJECTOR**

**ELIZABETH CHEPKOSGEI KEMBOI ..... 2<sup>ND</sup> OBJECTOR**

**TECLA CHELAGAT KABIRIEL ..... 3<sup>RD</sup> OBJECTOR**

**RULING**

1. The genesis of this Ruling is the Objectors' Application brought by way of the Summons for Revocation and/or Annulment of Grant, dated 14/10/2015. The same was filed through Messrs Z. K. Yego Law Offices, and supported by the Affidavit sworn by the 1<sup>st</sup> Objector, Teresa Kemboi. I refer to the Summons in past tense as it subsequently metamorphosized as shall be explained hereinbelow.
2. It is also evident that although this Court gave directions that the Summons be canvassed by way of written Submissions, that direction seems to have been made in error, partly because it was not brought to the Court's attention that the same had technically been overtaken by events.
3. The background of the matter is that upon the death of the deceased herein on 13/03/1998, the Petitioner, on 26/10/2012, as a son of the deceased petitioned for Letters of Administration. In the Petition, the Petitioner listed himself as the sole survivor of the deceased but in the Chief's letter that he relied on, 2 other survivors were also listed, in addition to the Petitioner. Nonetheless, the Grant was issued to the Petitioner on 10/07/2015. In the Petition, the Petitioner also listed the parcel of land described as Nandi/Chepterit/663 as the only asset comprised in the estate.
4. The Summons referred to above sought orders as follows:



- a. That the Letter of Administration given to Desmond Kemboi in the estate of the late Kipkemboi Arap Muge who died on 13/03/1998 the same having been issued on 10/07/2015 be revoked.
  - b. Costs of this application be awarded to the Objectors.
5. In the Supporting Affidavit, the 1<sup>st</sup> Objector deponed that she is the 2<sup>nd</sup> wife to the deceased herein and with whom they were blessed with 9 children. According to her, the Petitioner fraudulently acquired the Grant herein as the Chief's letter used in the Petition excluded all beneficiaries to the estate of the deceased, and that the Grant was obtained on the basis of fraudulent statements which concealed material facts. She deponed that the deceased had 2 wives at the time of his demise, namely, the 1<sup>st</sup> Objector and the late Tabseurei Chepkorir (1<sup>st</sup> wife), that the Petitioner is a son of the 1<sup>st</sup> wife, that as confirmed by the Chief's letter dated 9/09/2015, the deceased was survived by 4 children from the 1<sup>st</sup> house (including the Petitioner) and the Objector and her 8 children constituting the 2<sup>nd</sup> house. She contended that the Petitioner excluded the 2<sup>nd</sup> house and even his own sisters while petitioning for the Grant and that it is also intriguing and curious that the Petitioner had already transferred the assets of the deceased into his sole name, particularly the land parcel number Nandi/Chepterit/662 and Nandi/Chepterit/663 on the basis of the Grant before the distribution of the estate has been done. She also contended that the Petitioner excluded the wives of his deceased brothers.

### **Replying Affidavit**

6. In opposing the Application, the Petitioner swore the Replying Affidavit filed through Messrs R. M Wafula & Co. Advocates on 3/03/2017. He deponed that he obtained the Grant with a clear consent of equal distribution and or allocation of the deceased's estate as stated by the Will, that the deceased had left instructions that the estate should be shared equally between both houses as he had 2 wives, that the Grant should be sustained as he obtained it through the right process and that he did not in any way obtain it by fraud. He contended that the deceased, before his demise, had applied to the Kapsabet Town Council Town Planning, Markets and Housing Committee for consent to sub-divide the said parcel of land Nandi/Cheptiret/160 amongst the 2 houses. He urged that he intended to fairly distribute the property to his sisters in equal portions and that they had also consented to the Petition as evidenced in Form 38 and that his sisters did not have any problem with the process and neither are they complaining. He urged that he was solely interested in one property and inadvertently focused on the transfer of the land parcel Nandi/Cheptiret/663 and reserving the land parcel Nandi/Cheptiret/662 for the 2<sup>nd</sup> house as proposed by his father. He denied having a desire to disinherit his siblings and the Objectors, and deponed that he has no say on how his step-mother and her house will agree to share their land parcel Nandi/Cheptiret/662 amongst themselves. He urged that with the consent of his sisters, he will only share land parcel Nandi/Cheptiret/663 to beneficiaries of the 1<sup>st</sup> house.
7. Regarding one Tecla Chelagat, he deponed that she is the wife of his late brother and by virtue whereof, she is entitled to her late husband's share in land parcel Nandi/Cheptiret/663, and that his other brother, who was alive when the Petitioner applied for the Grant had 2 wives, the 2<sup>nd</sup> Objector and Emily Kemboi, and both are entitled to equal share of their deceased husband's property which he does not object to. He then deponed that he has now been advised by his Advocates that he ought to have included all the properties in these proceedings, namely, Nandi/Cheptiret/662 and Nandi/Cheptiret/663, and distribute the estate at once. He deponed further that according to the proposed schedule of distribution, there is clear evidence of imbalance and that as the Administrator of the estate, he will fairly distribute the properties according to the Will of the deceased.



### **Directions on Hearing of the Application**

8. By the orders made on 17/10/2022, the firm of R.M. Wafula & Co., upon its Application, allowed to cease acting as Advocates for the Petitioner. Thereafter, the Petitioner never took part in further proceedings although there is evidence of service effected upon him.
9. Be that as it may, I then directed that the Application be canvassed by way of written Submissions. Pursuant thereto, the Objectors filed their Submissions on 19/10/2022. The Petitioner did not file any.

### **Clarification on Previous Proceedings**

10. Having now read the record carefully, I note that on 3/02/2020 when the matter came up before Omondi J, by consent the Grant was revoked and a fresh one issued to 4 members of the family, namely, the Petitioner, Tecla Chelagat Kabiriel, Teresa Kemboi and Julius Kipkalya Muge as joint Administrators. Further, the title deed for the property Nandi/Cheptiret/663 in the name of the Petitioner was cancelled and the issue of distribution of the estate referred to Court Annexed Mediation. The Mediation however failed and the parties returned to Court. It is therefore clear that with the Grant having been re-issued, what now remains in this matter is distribution of the estate. Indeed, the above position is confirmed in the Objector's own Submissions.

### **Determination**

11. I have read the Petitioner's Submissions and note that the same is in respect to distribution of the estate amongst the beneficiaries. The Submissions proposes a preferred mode of distribution. However, having found that what was presented to the Court as pending and for determination was the Summons for Revocation of Grant, and which, it turned out, had in fact, already been determined by the consent orders recorded before H. Omondi J on 3/02/2020, the Petitioner's Submissions is filed in a vacuum.
12. Confirmation of Grants is provided for in Section 71 of the *Law of Succession Act*, subsection (1) whereof is premised in the following terms:

“After expiration of a period of six (6) months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”
13. Rule 40(1) of the Probate and Administration Rules then requires that:

“Where the holder of a grant which has not been confirmed seeks confirmation of the grant he shall apply for such confirmation by summons in Form 108 in the cause ...’
14. It does not therefore require belabouring that distribution is conducted by the Courts on the basis of Summons for Confirmation of the Grant of Letters of Administration issued earlier in a Succession Cause. In this case, there is no such Summons before Court for that purpose. There is also no consent presented to the Court, signed by all beneficiaries, approving of any mode of distribution. This is relevant considering that the Court has been informed of the existence of a large number of beneficiaries spread out across the two houses comprising the family of the deceased, yet only the 3 Objectors and the Petitioner could be said to be involved in the proceedings currently before Court. In the circumstances, there is nothing before Court to justify “short-circuiting” of the statutory laid



down procedure. I therefore decline to distribute the estate at this stage as doing so will be pre-mature, if not irregular.

### **Final Orders**

15. In premises, I order and rule as follows:

- i. It is declared that the Objector's Summons for Revocation of Grant, dated 14/10/2015 was fully and conclusively determined by the consent orders recorded in Court on 3/02/2022 whereof, inter alia, the initial Grant issued herein on 10/07/2015 was revoked and a fresh Grant issued to 4 family members, namely, the Petitioner (Desmond Kipkosgei Kemboi), Tecla Chelagat Kabiriero, the 1<sup>st</sup> Objector (Teresa Kemboi), and Julius Kipkalya Muge, as joint Administrators.
- ii. Consequently, the Administrators are now hereby directed, whether jointly or individually, within 45 days, to file and serve upon all beneficiaries a formal Summons for Confirmation of Grant of Letters of Administration for the purposes of the Court distributing the estate.
- iii. Upon being served, any of the beneficiaries shall have the liberty, within 30 days thereafter, to either a consent supporting the Summons for Confirmation of Grant, or if in opposition, to file a Protest thereto.
- iv. This being a family matter each party shall bear his/her own costs.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 4<sup>TH</sup> DAY OF APRIL 2025**

.....

**WANANDA J. R. ANURO**

**JUDGE**

Delivered in the presence of:

N/A for any of the parties

Court Assistant: Brian Kimathi

