



REPUBLIC OF KENYA



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In re Estate of Samwel Kiprono Soi alias Kiprono Soi (Deceased) (Succession Cause 2 of 2016) [2025] KEHC 4068 (KLR) (2 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4068 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 2 OF 2016
JK NG'ARNG'AR, J
APRIL 2, 2025**

**IN THE MATTER OF THE ESTATE OF SAMWEL
KIPRONO SOI ALIAS KIPRONO SOI (DECEASED)**

BETWEEN

COSMAS KIPKEMOI RONO 1ST PETITIONER

TITUS KIPNGENO RONO 2ND PETITIONER

AND

CHRISTINA CHEPKURUI SOI PROTESTOR

RULING

1. Samwel Kiprono Soi alias Kiprono Soi died intestate on the 10TH October, 2016 within Merigi area in Bomet, and a grant of letters of administration intestate was made to the Petitioners' Respondents herein, Cosmas Kipkemoi Ronoh and Titus Kipngeno Rono by this Court on the 22ND February, 2018.
2. The affidavit of protest by the Applicants herein is dated the 12th October, 2022. It seeks to protest the application for confirmation of grant to the Petitioners/Respondents herein on the 11th October, 2020 on the following grounds;
 - i. That the 1st and 2nd Petitioners failed to disclose the true dependents of the Deceased with an intention to deny the deceased's brother and his heirs who are equally beneficiaries..
 - ii. That the 1st and 2nd Petitioners concealed the true facts and information with intention to deny the beneficiaries of their share.
 - iii. That it is for the interest of justice and fairness that this Honorable court to take note that the protest by the Protestor against the intention of the 1st and 2nd Petitioners of not disclosing the ownership appertaining the land parcel known as Kericho/Merigi/457 before confirmation of



letters of administration and the two be compelled to file the necessary documents pertaining to two assets In court for fair distribution of the entire estate.

3. The applicant contend that he is a beneficiary of the estate of the deceased in respect of whom he is entitled to a portion measuring 0.35 HA from parcel number Kericho/Merigi/457.
4. The applicant claims that the Respondent failed or disregarded to include him as a co-administrator as it had been agreed upon as per a chief's letter.
5. The Applicant lays a claim that the Respondent obtained the letters of administration through fraudulent means and through concealment of material facts. That he failed to disclose that the applicant is a beneficiary of the estate of the deceased. That Applicant/Protestor proceeds to avow that she is the wife to one Kiptanui Ngerechi(deceased) was to inherit his share from the Respondent's inheritance.
6. It is further sworn that Kericho/Merigi/457 Measuring Approximately 0.35 HA was given to the applicant's late husband to ensure that he obtains 2.1 Ha. It is also stated that the matter was deliberated and the Applicant eventually took Vacant possession.
7. The applicant adds that the Petitioners/Respondents in a quest of to disregard the Respondents filled in succession forms seeking orders to have the estate of the deceased shared between the Petitioners.
8. The applicant enunciate that the that Kericho/Merigi/457 occupied in the lifetime of the deceased and that the same should be registered in her name to hold in trust of for his respective heirs.
9. In conclusion, the main thing the Applicant prays 0.35 HA from parcel number Kericho/Merigi/457.
10. The Respondent challenged the revocation for grant through a replying affidavit sworn on 3rd January, 2024 by the 1st Petitioner/Respondent.
11. The respondents claim that they are the sons of the deceased whose estate is the subject to this cause and have authority to administer the estate and distribute.
12. They claim that the Applicant has raised an objection yet she is not a beneficiary of the Estate of the deceased together with her children.
13. They aver that the estate of the deceased comprised of Kericho/Merigi/450 and 457. Which is entitled to his entitled to his children excluding the Protestor/Applicant. They proceeded to state that adjudication in the area was done during the lifetime of the Applicant's her husband and the protestor never raised any objection required in law and allowed the registration of the said land in the name of the deceased (Samuel Kiprono Soi)
14. The Petitioners/ Respondents state that their late mother took out succession proceedings and the protestor did not raise any objection but later came with a bad intent to deny the Petitioners/ Respondents their father's Estate upon realizing that they are in the process of evicting an intermeddler who purchased the land from strangers.
15. They further claim that the Applicant has no capacity to bring the subject claim to delay the distribution of the estate but did so upon realizing that she has sold part of the estate of the deceased despite the fact that the Applicant and her family are not the beneficiaries. They therefore besiege this court to dismiss the application and allow the distribution of the estate.



Determination

16. I have considered the summons for revocation of grant, the affidavits in support and against the summons together with the rival submissions by both parties. The issues for determination are as follows;

- a. Whether the grant of Letters of Administration to the Estate should be revoked as per the protest;

A. Whether the grant Letters of Administration to the Whether the grant of letters of administration should be revoked as per the Protest.

17. Does the Applicant's application meet the threshold for the revocation of a grant within the meaning of Section 76 of the *Law of Succession Act*?

18. Revocation of grant is premised on section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya. The said provision states 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.”

19. The duty is for the Protestor to disclose all material facts in relation to such application. Section 109 of the *Evidence Act* states:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”

20. The court finds that the Applicant has failed to prove any of the grounds for revocation as per the protest under Section 76 of the *Law of Succession Act*. The second issue for determination therefore does not arise. It is noted that a meeting was held during the lifetime of the deceased and the same is on record. This court also notes that the protestor did not lay an Objection during the pendency of the succession process. She only waited until when the application for confirmation of grant was made. This court finds that this is an act of good faith.

21. Section 76 of the *Law of Succession Act* is already reproduced herein above and empowers this Court to revoke the grant as sought by the Applicants. This Section is to be read alongside Section 47 of the Act, which gives this Court the jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decrees and make such orders therein as may be expedient. This is also to be read alongside Rule 73 of the Probate and Administration Rules which gives this Court inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

22. In determining this issue I am guided by the decision in *In Re Estate of Joel Cheruiyot Ronoh* [2016] eKLR where the court pronounced itself

“Perhaps I could exercise inherent power under Rule 73 of the Probate and Administration Rules, where such power is saved to meet the ends of justice or to prevent abuse of the process of court. The applicant has not invoked Rule 73, but the power is inherent, the court can tap on it at anytime when it appears that that may be necessary. I understand the applicant to be inviting me to set aside the confirmation orders that gave rise to the certificate of confirmation of grant dated 29th February 2012, on the ground that he was not granted opportunity to state his case for he was not served with the confirmation application or with notice of its hearing.”

23. This court being invited by the Protestor to determine a land issue in a succession cause. The obvious recourse is to address the same in the correct forum which is the Land and Environmental Court. In *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR Nyarangi JA stated as follows:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

The upshot is that the protest is not competent to be dealt with in this court.



24. The court may exercise its discretion for the interest of justice to set aside letters of administration or annul a certificate of confirmation of grant so that parties can have an opportunity to defend their properties. Black's Law Dictionary (Tenth Edition) defines judicial discretion as:

“The exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right.”

25. It is noteworthy that the applicant/Protestor did not lodge any objection within the period stipulated, and therefore her affidavit of 12th October, 2022 did not pass for an objection or Protest the matter having been gazzeted on 29th March, 2016. She was therefore not an objector under the probate process.

26. In light of the foregoing, I am not persuaded to allow the summons for revocation of grant.

27. In the end, the court makes the following orders;

- i. That I hereby dismiss the notice of Protest against the confirmation of grant dated 12th October, 2022.
- ii. The Petitioners to fix a date at the Registry for confirmation of grant pursuant to the application for dated 11th October, 2022.
- iii. Each Party to bear their own costs.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 2ND DAY OF APRIL, 2025.

.....

HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence of petitioners, In the presence of the Protestor and Siele/Susan (Court Assistants)

