



REPUBLIC OF KENYA



**In re Estate of Kipkeny Arap Kogo (Deceased) (Probate & Administration
05 of 2021) [2025] KEHC 6864 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 05 OF 2021**

JR KARANJA, J

MAY 20, 2025

IN THE MATTER OF THE ESTATE OF KIPKENY ARAP KOGO (DECEASED)

BETWEEN

JULIUS SEUREY PETITIONER

AND

JAMES K. KIBII 1ST OBJECTOR

BARNABAS K. LAGAT' 2ND OBJECTOR

DAVID K. KENY 3RD OBJECTOR

TAPSIGIRA K. KOGO 4TH OBJECTOR

RULING

1. This is a matter whose genesis is the grant for letters of Administration issued on 24th November 2009 to the Petitioner, Julius Seurey Cheruiyot, respecting the estate of the late Kipkering Arap Kogo [deceased] and which was confirmed on the 8th December 2009, prior to the expiry of the prescribed six months [6] period in terms of Section 71[1] of the *Law of Succession Act* [Cap 160].
2. As per the certificate of confirmation of grant dated 8th December 2009, the estate property being Land Parcel No. South Nandi/Mosombor/286, was wholly transmitted to the Petitioner. The entire parcel measured 8.5acres.

A subsequent application for the revocation of grant dated 20th January 2010, was made by James Kibii Keny [Objector] alleging a purchaser's interest in the estate property on the basis of a sale agreement dated 27th September 1995, in which the deceased sold to him one[1] acre of the estate property for the sum of Kshs. 70,000/-.



3. The hearing of the objection was by way of oral or “viva-voce” evidence and it took a protracted period of time upto the 12th May 2025, by which date both parties had already filed written submissions. This court received the written submissions and was obliged to render a ruling on the objection even though it did not have the benefit of hearing and seeing the witnesses.
4. Be that as it may, the previous proceedings before this court differently constituted were typed to facilitate further hearing of the objection from where it stopped, hence the presentation of the final submissions before this court.
5. Having considered the application on the basis of the supporting grounds and those in opposition thereto as against the evidence led herein by both parties, this court would find that the basic issue for determination was whether the impugned grant together with the certificate of confirmation of grant were property and lawfully issued to the Petitioner/ Respondent.
6. In that regard, the applicable provision of the Law is Section 76 of the Succession Act although the objector also invoked Sections 45 and 47 of the Act and Rule 73 of the Probate and Administration Rules.

Under Section 76, a grant may at any time be revoked and/or annulled on the basis of any of the grounds set out in Sub-Sections [a] to [e] of the provision to wit: -

- a] That the proceedings to obtain the grant were defective in substance.
- b] That the grant was obtained fraudulently by 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 is 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 presented, any such inventory or account of administration as is required by the provisions of paragraphs [e] and [g] of the 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.”
8. The grounds for the objection and the supporting affidavit clearly allude to Sub-Sections [a] and [b] of Section 76 of the Succession Act as being the main grounds for which the Objector seeks exercise of the courts discretion in his favour in revoking and/or annulling the impugned grant together with the certificate of confirmation of the grant.
9. The most effective way of exercising the discretion, whether or not in favour of the Objector, would be to carefully examine, the court record for any signs of procedural irregularities which on a balance of probabilities would establish and prove the Objector’s allegations of impropriety and/or fraud against the Petitioner.



10. Accordingly, it is evident from the record that the impugned grand made on 24th November 2009 was actually issued to three [3] Petitioners viz: - Julius Seurey Cheruiyot, David Kiprotich and Eunice Jepchirchir; but was confirmed only in the name of Julius Seurey Cheruiyot [herein Petitioner/ Respondent] on 8th December 2009, pursuant to his application vide the summons for confirmation of grant dated 30th November 2009.
11. The Gazette Notice No. 9563 of 9th October 2008 showed that the petition for grant of letters of administration intestate was made by the aforementioned three Petitioners who were deemed to be the beneficiaries of the estate of the deceased in accordance with the Chief's letter dated 10th December 2007. The three were recognized as the survivors of the deceased, hence entitled to inherit his estate comprising a single parcel of land [i.e. South Nandi/Mosombor/286].
12. Documents contained in the record include a so-called Exchange of land Agreement made on the 19th August 2009 between the three Petitioners and one Tapsirgak Jepkosgei Koko respecting the sole estate property Nandi/Mosombor/286 to the extent that the property would be retained by Julius [Petitioner] while the other three beneficiaries move to a parcel, of land at Kesses belonging to the Petitioner [Julius].
13. The agreement showed that in actual sense the Petitioner Julius was not an heir to the deceased, but rather a purchaser of part of the estate property. This explained why he was included as a beneficiary of the estate alongside his two Co-Petitioners who were the actual heir and true beneficiaries of the estate.
14. Ironically, rather than apply for confirmation of the grant in the names of the three Petitioners, the Petitioner Julius, made a solo move in that regard with the result that the estate property was transmitted to him wholly thereby disinheriting the actual heirs of the deceased. It would therefore follow that the Petitioner Julius, obtained the impugned grant and the accruing certificate of confirmation of grant in a manner which was fraudulent by making false statements and conceding material facts. As such, the proceedings to obtain the grant and the certificate of confirmation were all defective in substance.
15. The record shows that the beneficiaries of the estate and in particular David Kiprotich Keny intermeddled and transacted in the estate property prior to the impugned grant and certificate of confirmation of grant being issued. The sale transactions carried out by the said Kiprotich Keny in favour of the various purchasers including the Petitioner Julius were fraudulent and could not confer any benefit to the purchasers' vis-a-vis the estate property. In the circumstances, the remedy for the purchasers lay in Civil Suits for damages against the culprit true beneficiaries of the estate.
16. In any event, the purchasers could not in any circumstances claim a purchaser's interest in the estate property in terms of Section 93 of the Law of Succession Act as the contested grant had not been issued and confirmed at the material time of the sale/purchase transaction. The vendor did not at the time have the "locus-standi" to sell the property most importantly, the transactions were not carried out by the deceased during this life. All of those transaction were made long after the death of the deceased on 9th February 2001 as per the death certificate dated 5th June 2001. Ironically, the chief's letter dated 10th December 2007 indicates that the deceased died in the year 1992.
17. All the foregoing factors clearly points towards defective proceedings in the manner the impugned grant was obtained laced with incidences of fraud, misrepresentations and concealment of material facts. Not only could this be deciphered from the record but also the evidence adduced by both sides at the "viva-voce" hearing of the application.



18. The Applicant/ Objector James Kibii Keny [PW2] in both his affidavit and oral evidence indicated that he purchased part of the estate property from the deceased in 1995. He produced a hand written agreement to confirm as much. However, the authenticity of that agreement was not proved considering that the date of the alleged agreement is not readable or is not indicated and that the deceased according to the chief's letter which initiated this cause indicated that the deceased died in 1992 rather than 2001.

19. The search certificate dated 3rd October 2007 showed that as at the time of the death of the deceased whether in 1992 or 2001, the estate property was registered in the name of the deceased and was at no time transferred to any other person wholly or partially.

The evidence by Barnabas Lagat [PW3], merely served to confirm that he was one of those who purchased part of the estate property not from the deceased, but other persons who may not have been related to the deceased.

20. The evidence by David Kiprotich Keny [PW1], one of the true beneficiaries of the estate confirmed that part of the estate property was sold to the Respondent/ Petitioner [DW1] and others by himself prior to the issuance and confirmation of the impugned grant.

The evidence by Matayo Kipkoech Arap Bett [PW4], was only to confirm that the Petitioner [DW1] was not related to the deceased.

21. The evidence by the Petitioner Julius Cheruiyot [DW1] confirmed that he never had blood relation with the deceased but was a purchaser of part of the estate property.

In essence, the evidence in it totality established and proved that the impugned grant issued to the Petitioner/ Respondent [DW1] and confirmed in his name was obtained fraudulently by making of false statements and concealment of material facts in proceedings which were defective "obnatio".

22. It is for the reasons foregoing that the present application is allowed in as much as it revealed how the process of obtaining the impugned grant and having it confirmed in favour of the Respondent/ Petitioner was marred in fraud and procedural irregularities. Consequently, it is hereby ordered that the impugned grant of letters of administration together with the impugned certificate of confirmation of grant stand revoked forthwith.

23. Further, all the transactions undertaken on the strength of the revoked grant and certificate of confirmation of grant are hereby declared invalid, null and void "obnatio" with the ownership of the entire estate property being Land Parcel No. South Nandi/Mosoriot/286 reverting to and in the name of the deceased.

The true and actual beneficiaries of the estate be at liberty to petition for grant of letters of administration, intestate afresh.

Ordered accordingly.

DATED AND DELIVERED THIS 20TH DAY OF MAY 2025

HON. J. R. KARANJAH,

JUDGE

