



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of the Late Kipteling Arap Sang (Deceased) (Probate & Administration 40 of 2021) [2025] KEHC 7329 (KLR) (20 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7329 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 40 OF 2021**

JR KARANJA, J

MAY 20, 2025

BETWEEN

KIBIRECH SITIENEI 1ST PETITIONER

JANET CHEBET SANG 2ND PETITIONER

MARY JEMUTAI SANG 3RD PETITIONER

BENARD K SANG 4TH PETITIONER

AND

GEOFFREY LELGO SAINA INTERESTED PARTY

RULING

1. A fresh grant for letters of administration intestate respecting the estate of the late Kipteling Arap Sang [deceased] was issued by this court on 22nd April 2024 to the four Administrators/ Petitioners viz: -

1. Kibirech Sitienei
2. Janet Chebet Sang
3. Mary Jemutai Sang
4. Benard K. Sang

The four faithfully undertook to administer the estate according to the law and to render a just and true account whenever required by law to do so.

2. Later, the Administrators through the First Administrator, Kibirech Sitienei, filed an application for confirmation of the grant vide the summons for confirmation of grant dated 6th September 2024. All the administrators and other beneficiaries including John Kipketer Kosgei, Samuel Keino Kipruto,



Aggrey Kipkemboi Sang and Jafet Asuza Rakwel consented to the application and affixed their signatures on the consent document form 37.

3. However, Geoffrey Lelgo Saina, described herein as the interested party opposed the application on the basis of the averments contained in his affidavit of protest dated 17th December 2024, in which he essentially lays a claim on a portion of the estate property being Land Parcel No. Nandi/Chebilat/470 on account of an alleged sale agreement made between the deceased and his late father Wilson Kipkemboi Tanui.
4. The interested party/ protestor contends that his late father purchased four [4] acres of the estate property and being the administrator of his estate vide the grant of letters of administration issued in his favour on 13th September 200, he is entitled to claim a portion of the estate property on behalf of his father's estate. He therefore prays for the settlement of his claim to wit 1.6 hectares of the estate property and that he be included as a beneficiary of the estate prior to the confirmation of the grant.
5. In a further supporting affidavit deponed by the first Administrator/ Petitioner dated 2nd April 2025, the allegations by the interested party are disputed with a contention that the protest lacks merit for want of proof and bearing in these succession proceedings.

The Petitioners therefore pray for the dismissal of the protest and for confirmation of the grant in the manner proposed in the material summons for confirmation of grant.

6. The protest was canvassed by written submissions which were filed herein by both parties and this court having considered the protest on the basis of the grounds in support and in opposition thereto as well as the rival summons held the view that the basic issue for determination is whether the protest is proper and merited as to be capable of having the interested party included as a beneficiary of the estate on the basis of his father's interest in the property.
7. The protest presupposes that since the interested party's late father purchased part of the estate property from the deceased, then the purchased portion became the property of his father and was not available for distribution in this cause and if it was included as part of the estate property belonging to the deceased then he [interested party] ought to have been included as a beneficiary of the estate.
8. In the affidavit of protest, dated 17th December 2024 the interested party averred that his late father and the deceased entered into a land sale agreement for the sale of four [4] acres of the estate property by the deceased to the father of the interested party.
9. That, both Vendor and Purchaser attended a land board meeting held on 29th January 1981 for necessary consent to facilitate the transfer of part of the estate property to the father of the Interested Party. That, after the necessary approval by the board a letter of consent was issued.
10. The Interested Party averred that his father's purchaser's interest in the estate property was validated by the court in Kapsabet Magistrate's Court Succession Cause No. 102 of 2006 in which he filed an objection in relation his father's alleged interest in the estate property and judgment was entered in his favour.

That, the first Petitioner/ Administrator appealed the judgment at the High Court in Eldoret but the appeal was dismissed, thereby upholding the Interested Party's share of the estate property measuring 1.6 acres.

11. The Interested Party contended that his interest in the estate property was a debt or liability against the estate of the deceased and ought to have been included as such in the grant and in the subject summons for confirmation of grant.



That, since the actual measurement of the estate property was 15.5 hectares, then it meant that 13.9 hectares of the land ought to be reserved for the actual beneficiaries of the estate, while the remainder 1.6 Hectares be reserved for him [Interested Party].

12. The prayer by the Interested Party is for his alleged share of the estate property being included as a liability over the estate and be accorded priority in the distribution of the estate. However, the Petitioners/ Administrators in their affidavit dated 6th September 2024 in support of their summons for confirmation of grant identified the whole of Parcel No. Nandi/Chebilat/470 to be the sole property belonging to the deceased available for distribution to the beneficiaries listed in paragraph [5] of the affidavit.
13. The list does not include the late father of the Interested Party nor his estate as beneficiaries and/or creditors of the deceased's estate, thereof implying that the estate had no liability which could be factored in the distribution of the estate.

And in a further affidavit by the Petitioner's dated 2nd April 2025, the alleged sale agreement between the deceased and the father of the interested party is disputed with the contention that it is invalid in showing that the deceased sold and transferred four acres of the estate property to the late father of the Interested Party.

14. The rival averments foregoing clearly indicate that the protest in question is anchored on alleged ownership of part of the estate property by the late father of the Protestor extended to the Protestor by dint of grant of letters of administration intestate issued to the protestor and the others on 13th September 2005, respecting the estate of the Protestor's late father.
15. Being a claim based on the ownership of land this court would have no jurisdiction to deal with the protest. The power to deal with such claim lies with the Environment and Land Court by dint of Article 162 [2] [b] of *the Constitution* of Kenya 2010, and Section 13[2] of the *Environment and Land Court Act*, that is the window open to the Protestor to prove his claim against the estate of the deceased on the basis of the agreement for sale of land.
16. Any questions with regard to the validity of the alleged sale agreement and/or lawful transfer of part of the estate property by the deceased to the late father of the Interested Party/ Protestor would best and effectively answered in the right forum which is the Environment and Land Court rather than this forum.

Most importantly, it is instructive to note that in the founding petition for grant of letters of administration intestate respecting the estate of the deceased dated 13th April 2006 and made by the First Petitioner/ Administrator, the estate of the late father of the interested party was not included as a liability for purposes of the grant and the distribution of the estate property measuring 15.5 Hectares or 38.30 Acres and valued at Kshs. 14,600,000/- as per the valuation report dated 2nd August 2010, filed herein on 29th June 2015.

17. Thus, the Interested Party/ Protestors attempt to litigate the alleged claim of ownership of part of the estate property by his late father by way of the present protest is a clear abuse of the court process, notwithstanding that the claim was considered and dealt with in previous proceedings of this cause which in any event, were invalidated by the consent dated 17th April 2023, with the result that the previous grant issued and seemingly confirmed in favour of the First Petitioner/ Administrator was effectively revoked and the fresh grant dated 22nd April 2024 issued in favour of the four Petitioners/ Administrators.



18. The fresh grant is what the Petitioners seek to confirm vide the summons for confirmation of grant dated 6th September 2024, for which the Interested Party filed the present protest which for all the reason foregoing must and is hereby dismissed with costs to the Petitioners/Administrators who may proceed with the distribution of the estate property in the manner suggested in paragraph [5] of the supporting affidavit respecting the summons for confirmation of grant dated 6th September 2024, subject to the hearing and determination of the separate protest dated 4th December 2024 particularly by a beneficiary of the estate, Jafet or Japhet Rakwel Asuza or Asuza Rakwel.

Ordered accordingly.

DATED AND DELIVERED THIS 20TH MAY OF 2025

HON. J. R. KARANJAH,

JUDGE

