



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kipsang Arap Bos (Deceased) (Succession Cause
36 of 2018) [2025] KEHC 5942 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5942 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 36 OF 2018
JK NG'ARNG'AR, J
MAY 13, 2025**

IN THE MATTER OF THE ESTATE OF KIPSANG ARAP BOS (DECEASED)

BETWEEN

EZEKIEL MOSONIK PETITIONER

AND

JOSEPH KIPRUTO ARAP KOLIBET APPLICANT

AND

NANCY CHEROTICH BUSIENEI OBJECTOR

LINAH CHEPKOECH OBJECTOR

RULING

1. This matter relates to the estate of Kipsang Arap Bos who died intestate on 2nd December, 1977 at Kaptulwa Sub-Location, Bomet.
2. A petition was made by Ezekiel Mosonik and letters of administration intestate were issued by this court on 13TH November, 2018 to the Petitioner herein.
3. Summons for revocation of grant or annulment of grant was filed by the Applicants/Objectors dated 3rd June, 2024 and supported by an affidavit sworn by the Objector sworn on the same date. The Applicants/Objectors approached court in their capacity as daughters.
4. The Applicant herein filed the Application dated 3rd June, 2024 seeking the following orders:-
 1. That the grant of letters of administration and issued on 29th November, 2021 to the petitioner be revoked and annulled.
 2. That the necessary directions be given



3. That costs be provided for.
5. The summons raises grounds that the grant was obtained fraudulently by concealment from court of material facts of the case and that the petitioner failed to disclose the full extent of the beneficiaries of the estate.
6. In the objectors supporting affidavit they contend that they are daughters of the one Cheptirge arap Kolibet where she is a twin sister to the petitioner and equally a beneficiary the estate as the petitioner is.
7. The Objectors aver that the petitioner filed the succession cause and concealed the true facts by failing to include them as daughters of the 1st son of the estate. That the petitioner seeking the grant as a sole beneficiary of the share of the estate belonging to their deceased father, Cheptirge arap Kolibet.
8. It is further averred that the petitioner misrepresented facts to court leading the court to confirm in a manner that the petitioner is inheriting absolute interest in their father's estate's whole share of 10.73 acres.
9. It is further averred the beneficiary herein, Joseph Kolibet, has attempted to intervene in having the petitioner has refused to do so necessitating the current application. They state that the petitioner owns the whole of 10.73 acre alone without an indication that he is holding in the applicant's trust and the Applicants believe that he intends to inherit the entire share to their exclusion.
10. The Objectors further assert that they are not married and have children in the subject estate and have to share one homestead in their father's house. The continue to state that that the petitioner has all along frustrate their peaceful occupation of their father's share where it is claimed that the petitioner till and cultivates all the parcel for his own benefit while the objectors are languishing in poverty despite having children to fend for.
11. In response the Petitioner/Respondent filed replying affidavit sworn on 11th October, 2024. They claim that there is no authority filed by the 1st Objector to swear the supporting affidavit on behalf of 2nd Objector.
12. The respondent claims to have disclosed the bona fide beneficiaries of the estate of the deceased. The Petitioner relied on the chief's letter dated 25th July, 2018 which listed the beneficiaries as follows: -
 - a. Paulo Cheptige Kolibet – son – Deceased
 - b. Wilson Kimolel –son -Deceased
 - c. Lezebeth Chelangat Sigira - Daughter - Deceased
 - d. Chemutai W/O Arap Sang – Daughter – Deceased
 - e. Catherine Chepkoech Mwei- Daughter 97 years
 - f. Joseph Kolibet – son – 68 years
 - g. Rael Kolibet – Daughter- in Law – 73 years
 - h. Ezeiel Mosonik – Grand son – 34 years
13. They contend the Objectors have not annexed the Chiefs' letter to disclose whether they are indeed the daughters of Cheptirge arap Kolibet since the deceased son was called Paulo Cheptirge arap Kolibet and not Cheptirge arap Kolibet.



14. They claim to have concealed the true facts pertaining this cause. The further state that during the confirmation of summons of grant, all the stated bonafide beneficiaries were present in and the said grant was duly confirmed on 29th November, 2021.
15. I have considered the summons for revocation of grant, the affidavits in support and against the summons together with submissions by both parties. The only issue whether the grant should be revoked.
16. 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*?
17. 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.”

18. I find that the Applicants have proved on a balance of probability the grounds for revocation under Section 76 of the *Law of Succession Act* on the ground of being daughters to the deceased’s first son. This



court will proceed to allow parties to approach the court afresh and hear the issue of distribution and ascertain the beneficiaries of the estate.

19. It is trite law that both daughters and sons of the deceased have a right to participate in intestate proceedings unless otherwise established.
20. I note from the reply by the petitioner that the point of contention is the variance in names in reference to the name Paulo Cheptige Kolibet and Cheptige arap Kolibet. It is the observation of this court the variance does not raise an issue as the same is interchangeable.
21. Also in *Arun C. Sharma versus Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 others* [2014] eKLR, it was held: -

“The objector bears the burden of proving that he is entitled to or has legal or equitable interest on the whole or part of the attached property. The key words are; entitled to or to have a legal or equitable interest in the whole or part of the property. Has the objector proved it is entitled to or to have a legal or equitable interest in the whole or part?”

I note that there is no evidence rebutting the claim by the objectors. Parties are at liberty to apply freshly to include all the beneficiaries of the deceased estate.

22. In light of the foregoing, the application succeeds.
23. In the end, the court makes the following orders;
 - i. That I hereby allow application dated 3rd June, 2024 to revoke the grant.
 - ii. Status quo be maintained.
 - iii. Being a family matter each Party to bear their own costs.

RULING DELIVERED, DATED AND SIGNED THIS 13TH DAY OF MAY, 2025.

J.K.NG'ARNG'AR

JUDGE

Ruling delivered in the presence of Koech holding brief for the Petitioner, Chirchir holding brief for Objector and Siele/Susan (Court Assistants).

