



In re Estate of Chemiron Arap Sigira (Deceased) (Succession Cause 35 of 2019) [2025] KEHC 10042 (KLR) (14 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10042 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 35 OF 2019
JK NG'ARNG'AR, J
JULY 14, 2025**

IN THE MATTER OF THE ESTATE OF CHEMIRON ARAP SIGIRA (DECEASED)

BETWEEN

CANTONA KIBET MUTAI BENEFICIARY

AND

DAVID MUTAI ADMINISTRATOR

RULING

1. Chemiron Arap Sigira died intestate on the 18th March, 2008, within Toboino area of Bureti, and a grant of letters of administration intestate was made to the Respondent herein, David Mutai of P.O. Box 31- Litein, by this Court on the 21st of October 2023.
2. The Summons for revocation by the beneficiary/ Applicant herein is dated the 4th February, 2025. It seeks to revoke the grant of letters of administration granted to the Respondent herein on the 21st of October 2023; the summons seeks the following orders:
 - a. Spent....
 - b. That the letters of administration issued by this honorable court on 21st February, 2023 to David K. Mutai be revoked and the same be substituted with the names of Cantona Kibet Mutai as the preferred administrator.
 - c. That the costs of this application be in the cause.
3. The Objector/Applicant contend that he is the son of the deceased herein who died intestate on 18th, March, 2008 at Taboin (he annexed a copy of the deceased's death certificate).
4. He also listed the list of beneficiaries including purchasers as enshrined in his affidavit under paragraph 3 thereon.



5. He avers that the Petitioner/Respondent has refused to file an application for confirmation of grant of letters of administration issued on 21st February, 2023 but instead keep changing advocates. He annexed a copy of letters of administration and a notice of change of Advocates.
6. The Applicant/Objector claim that the Respondent/Petitioner has delayed the determination of this succession cause, which was filed in the year 2019, by failing to make an application for summons for confirmation of grant of letters of administration issued by the court on 21.02.2023. He further contends that the Petitioner/Respondent is not agreeable to distribution of the estate land namely Kericho/Cheptalal/700 as per the proposed mode of distribution.
7. He enunciates that all the beneficiaries stated in Paragraph 3 of the Affidavit are residing in the estate land with their families. He therefore urges this court to revoke the grant and fresh grant be issued in the Objector Applicant's name to foster a proper distribution of the estate.
8. On the other hand, the Administrator/Respondent vide a Replying Affidavit sworn on 2nd march, 2025 denies the averments and placed the Objector to strict proof especially as regards to Paragraphs 3 – 10 of the supporting affidavit of 2nd February, 2025.
9. The assert that the application is premised on a false allegation on the reasons for the delay of prosecuting the matter herein of which the Objector purportedly places the blame in the Respondent/Administrator, yet what the Objector is not stating is that Respondent did not represent himself or bring the matter on his behalf, but was done by an Advocate. He states that the advocate was appointed collectively by the family as evidenced by the fact that all the beneficiaries, including the Objector/Applicant herein, signed a consent form at the initial stage of the succession process.
10. He claims that the Applicant is fighting by colluding with the local administrator in the interest of strangers, indicated as purchasers and not in the interest of the legitimate and genuine beneficiaries of the estate. And those indicated as purchasers are strangers/intermeddlers. He therefore beseech the court to strike out the affidavit claiming that it offends the Law of Succession which is designed to cater for the interest of the beneficiaries.
11. The Administrator/Respondent claims the Applicant has not come to court with clean hands by failing to disclose the 2nd household, which act will highly prejudice them, if he is allowed to assume the role of Administrator. He, the respondent, has enumerated in a list under Paragraph 11 of his affidavit of his preferred beneficiaries claiming that those are the true and factual beneficiaries of the estate of the deceased. He further asserts that his deceased father during his lifetime did not dispose of any portion of the estate.
12. The respondent explained vide Paragraph 14 of his affidavit stated that his late father had married one Tabtuiya Sigira who was unable to sire children hence an introduction of Caroline C Sigira who managed to bear children with the deceased. He claims that that chasing her will bring injustice and will offend custom and culture besides rendering them destitute. He further states that the objector's intention of disinheriting the said beneficiaries does not make him fit to be administrator.
13. The Respondent further claims the letter from the area chief Cheptalal is defective for lack of date and want of form, in that it purposes to include strangers referred to as purchaser's in a property that has not been issued with final letters of administration. He also states that the Applicant has usurped power to sub-divide the subject property excluding other households and sisters



14. The circumstances in which a grant may be revoked or annulled are set out in Section 76 of the [Law of Succession Act](#) as follows:

“S. 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.”

15. Section 76 of the [Law of Succession Act](#) 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.

16. Rule 26 of the [Probate and Administration Rules](#) states as follows: -

“26

- (1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
- (2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”



The 1st Applicant testified that he was not asked to consent to the making of the grant to the Respondent herein and he did not renounce this right. The same applies to the 2nd Applicant.

17. The effect of failure to comply with Rule 26 of the Rules was ably discussed by the court in Al-Amin Abdulrehman Hatimy vs. Mohamed Abdulrehman Mohamed & another [2013] eKLR where it was held that:

“the law of succession by virtue of Rule 26 requires that any application for issue of a grant must be accompanied by a consent duly signed by all persons entitled in the share in the same estate. In the Court’s view, the deliberate failure by the Respondent to involve all the beneficiaries at the time of filing the succession cause; or seek their consent or renunciation amounts to concealment of material facts.”

18. In Re Estate of Julius Ndubi Javan (2018) eKLR (Deceased) Gikonyo J. stated;

“...in any judicial proceedings, parties must make full disclosures to the court of all material facts to the case including succession cases.

...non-disclosure of material facts undermines justices and introduces festering waters into pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law.

“29

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

19. It is admitted by the Respondent that the Applicant is a dependant and beneficiary of the deceased, being his son. Similarly, evidence the fact that Caroline C. Sigira was a wife of the deceased is not convoluted by the Objector/Applicant and that there is evidence of marriage of the Applicant to the deceased and no evidence of termination of the said relationship.
20. From the foregoing, it was submitted that the applicant have also proved that Caroline C. Sigira as a wife is also covered under this proviso and is therefore a dependent and a beneficiary of the Deceased.
21. In light of the foregoing, I am not persuaded to allow the summons for revocation of grant.
22. In the end, the court makes the following orders;
- i. That I hereby dismiss the summons for revocation of grant dated 4th February, 2025.
 - ii. Each Party to bear their own costs.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 14TH DAY OF JULY, 2025.

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HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence of the Applicant and the Respondent. Siele/Susan (Court Assistants).

