



REPUBLIC OF KENYA



In re Estate of Richard Kipchumba Boit (Deceased) (Succession Cause E026 of 2022) [2024] KEHC 1177 (KLR) (13 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1177 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E026 OF 2022
RN NYAKUNDI, J
FEBRUARY 13, 2024
IN THE MATTER OF THE ESTATE OF THE LATE
RICHARD KIPCHUMBA BOIT (DECEASED)**

BETWEEN

PAMELA BOIT PETITIONER

AND

GEOFFREY KIRWA BOIT 1ST OBJECTOR

EDNA CHEPTOO BOIT 2ND OBJECTOR

SUSAN CHEBET BOIT 3RD OBJECTOR

JOY CHEROTICH BOIT 4TH OBJECTOR

RULING

1. Before for me are Summons dated 20/7/2023, in which the Applicants seek primarily the revocation of the Letters of Administration issued to Pamela Boit, the Petitioner herein on 10/6/2022 and confirmed on 14/6/2023.
2. The application is premised on the grounds therein and is further supported by the affidavit by Geoffrey Kirwa Boit, on 19/7/2023.

The Objectors'/Applicants' Case

3. The Applicants' case is that the Petitioner herein filed the proceedings in respect of the estate of the deceased herein without disclosing that the deceased had other siblings who were listed as follows;

Geoffrey Kirwa Boit– Brother

Edna Cheptoo Boit– Sister



Susan Chebet Boit– Sister

Joy Cherotich Boit– Sister

4. The Applicants further deposed that the deceased herein died intestate and was not married and had no estate. The Applicants contend that the property confirmed by this Court in this Cause and known as Choronok Farm (sergoit) LR No. 9128 has never formed part of the estate of the deceased. The Applicants maintain that the grant herein was therefore obtained fraudulently and without disclosing material facts to this Court.
5. The Applicants further contend that they have never been informed of these proceedings and have not been served with any documents relating to this Cause. According to the Applicants the Petitioner is using the Grant obtained from this Court to interfere with their possession of the land yet they were not a party to these proceedings. The Applicants maintain that unless the Grant herein is revoked and or annulled, then they stand to suffer irreparable loss.

The Petitioner’s Case

6. The Summons are opposed by the Petitioner vide her Replying Affidavit dated 2/8/2023. The Petitioner admits that it true that the Objectors/Applicants herein are siblings to the late Richard Kipchumba Boit but only as step-brother and sister respectively. The Petitioner deposed that she, Margaret Chepchirchir and James Raymond Kipngetch Boit are the immediate siblings of the deceased herein. the Petitioner maintains that they rank in priority over the Objectors in the estate herein.
7. The Petitioner maintains that while it is true that the deceased herein died intestate, it is plainly false to allege that he had no estate since the deceased was a beneficiary in equal shares with the 1st Objector herein in Choronok Farm (sergoit) LR No. 9128. The Petitioner contends that it is more curious for the Applicants herein to allege that the deceased had no estate yet at the same time claim that they were left out in the instant cause.
8. The Petitioner contends that Choronok Farm (sergoit) LR No. 9128 formed part of the estate of the deceased herein. This is per the Will of their late father, Geoffrey Sila Kibet Boit which was never contested by anyone and subsequently confirmed by the Court in Eldoret Succession Cause No. 156 of 1992, which the Petitioner seeks to rely on the entire record of the said cause in support of her opposition to the summons for revocation herein.
9. The Petitioner denies the allegations of fraud by the Applicants, she however maintains that there was full material disclosure and that she followed the correct procedure in petitioning for the Letters of Administration and subsequently confirmation of Grant in respect of her late brother, Richard Kipchumba Boit. The Petitioner further denies using the Grant herein to interfere with the Applicants’ possession of their land. She however maintains that it is the Applicants and more specifically the 1st Applicant who seeks to unjustly enrich himself by denying the beneficiaries of the estate of the deceased their rightful share. This is in total breach of the resulting/constructive trust imposed on him as the Administrator of their late father’s estate and a co-beneficiary with the deceased herein in land parcel that Choronok Farm (sergoit) LR No. 9128.
10. In a rejoinder, the Applicants filed a further Affidavit dated 13/10/2023 sworn by Geoffrey Kirwa Boit in which they acknowledged that Margret Chepchirchir Boit and James Raymond Kipngetch Boit as a step sister and step-brother to the deceased herein whereas Pamela Boit is sister to the deceased. The Applicants maintained that Raymond Kipngetch is neither their brother nor step brother.



11. According to the Applicants in the instant Cause, they all have equal rights in administration of the estate herein in terms of lineal ranking.
12. The Applicants deposed that when the Grant of Administration of their late father, Sila Kibet Boit was confirmed in Eldoret High Court Succession Cause No. 156 of 1992, there was nothing that was given to the late Richard Kipchumba Boit. The Applicants contend that the farm that is listed as part of the estate herein is a limited liability Company, which was later dissolved, assets were divided and that the deceased herein had no shares at all.
13. The Applicants contend that the Petitioner herein has in a discriminatory manner ranked them low in priority as they are step siblings to the deceased but in the same breath lists Margaret Chepchirchir Boit and James Raymond Kipngetich Boit as beneficiaries of the estate herein, who are both also step siblings to the deceased. According to the Applicants they rank in the same priority as Pamela and Margret Chepchirchir Boit with regard to the estate of the deceased. The Applicants maintain that the Petitioner ought to have listed them as beneficiaries of the estate of the deceased. The Applicants further contend that the Petitioner chose to list and rank without any authority to do so.
14. The Applicant further deposed that if there does exist an estate of the deceased outside of their late father's estate then they must be listed as beneficiaries.
15. According to the Applicants the Grant of Letters of Administration herein were therefore obtained fraudulently and without full disclosure of material facts to this Court.

Hearing of the Application

16. The Application was canvassed vide written submissions. The Applicants filed their submissions on 5/12/2023 while the Petitioner filed hers on 13/12/2023. The Petitioner also filed further submissions.

The Objectors'/Applicants' Submissions

17. On whether the grant herein was obtained fraudulently and without disclosure of all material facts. Counsel for the Applicants submitted that in the application for letters of administration, the Petitioner only disclosed that the deceased died intestate and left behind the Petitioner, Margret Chepchirchir Boit and James Raymond Kipngetich Boit as survivors. This is not true. The Administrator admits that the Objectors are siblings of the deceased but says that they are step brothers and sisters which is also not true. Counsel added that Objectors have clearly clarified this issue in the further affidavit filed herein in court. Counsel argued that the Petitioner/Administrator failed to disclose a material fact and left out the Objectors and it is on this account that the Objectors plead that the letters of administration were obtained fraudulently and without disclosure of material facts.
18. On whether Choronok Farm (sergoit) LR No.9128 formed part of the Estate of the deceased Richard Kipchumba Boit. Counsel submitted that the Administrator alleges that the said parcel of land formed part of the estate of the deceased as per the will of their late father Geoffrey Sila Kibet Boit which was confirmed in Eldoret Succession Cause number 156 of 1992. Counsel contended that it is pertinent to note that the confirmation of grant in Eldoret Succession Cause Number 156 of 1992 was done intestate and not based on the Will of the deceased.
19. Counsel further argued that in the confirmed grant, no asset was distributed to the deceased herein Richard Kipchumba Boit. Counsel added that the Administrator herein has never challenged the validity of the Certificate of Confirmation of Grant issued in Eldoret Succession Cause Number 156 of 1992 and the process that led to the confirmation.



20. Counsel maintained that the Objectors have clearly clarified that the farm listed as part of the estate of the late Richard Kipchumba Boitwas a limited liability company which was later dissolved, assets divided and the deceased herein had no shares at all. Counsel contended that the Administrator has not demonstrated otherwise. Counsel argued that the farm listed as forming part of the estate of the deceased herein does not belong to him and therefore is not available for distribution.
21. On whether this Honourable Court should revoke/annul the grant issued to the Administrator herein. Counsel submitted that the Objectors have set out enough grounds to enable this Honourable court to revoke and or annul the letters of administration issued to the Administrator herein. Counsel urged the Court to be guided by the case of the *Estate of Prisca Ong'ayo Nande (Deceased)* 2020 eKLR, on the provision of Section 76 of the *Law of Succession Act*. Counsel also cited the case of the *Estate of LAK (Deceased)* (2014) eKLR.
22. Counsel argued that a grant may be revoked where the proceedings leading up to its making were defective or were attended by fraud and concealment of important matter or was obtained by an untrue allegation of a fact essential to the point. Counsel argued in this case the Objectors have satisfied the conditions contained in the provision of Section 76 of the *Law of Succession Act*.

The Petitioner's/Respondent's Submission

23. On whether the Applicants have met the threshold for revocation and or annulment of Grant. Counsel submitted that the Applicants' summons for revocation/ nullification of grant seems to be predicated on Section 76(b) and (c) respectively, to wit, that the grant was obtained fraudulently and that there was concealment of material facts from the court, when the petition for grant of letters of Administration intestate was made. Counsel further submitted that first, the Objectors /Applicants have alleged that the Petitioner did not disclose to Court that there existed other beneficiaries of the estate of the deceased Richard Kipchumba BoiT, the alleged beneficiaries are the objectors herein.
24. Counsel argued that the Petitioner on her part has responded to the allegation that the Objectors are "siblings" to the late Richard Kipchumba Boitbut only as a stepbrother and step- sisters respectively, while the Petitioner and her co-beneficiaries are the siblings to the late Richard Kipchumba Boit. Counsel added that according to the petitioner, her two co- beneficiaries and herself rank in priority *re the Estate of the late Richard Kipchumba Boit* pursuant to Section 39 (1) (c) as read together with section 66 of the *Law of Succession Act*. Counsel cited the case of *Estate of Lucy Njeri Ng'ang' (Deceased)* [2013] eKLR and the case of *In re Estate of Owade Nyangao (Deceased)* [2019] eKLR in support of his submissions.
25. Counsel maintained that the Petitioner being a sibling to the deceased, ranked in priority to the objectors, who are a step brother and step sisters to the deceased Richard Kipchumba Boit. According Counsel, therefore the Applicants' application for revocation must fail.
26. On whether there was sufficient Notice to the parties. Counsel submitted that having found that the Petitioner ranks in priority to the Objectors, it might not be necessary to address this issue. However, since it is a requirement in law to give an opportunity to any party who wishes to object to the grant of letters of administration intestate to do so, we shall deal with the issue here.
27. The Objectors/applicants have contended that no notice was given to them by the petitioner of the proceedings-see ground (e) in support of the summons for revocation and ground 8 of the affidavit in support thereof. Counsel argued that following the filing of this cause on 17/2/2022, the matter was published in the Kenya Gazette on 22nd April, 2022, Vol. CXXIV-No. 73 at page 2220, essentially notifying any interested persons of the existence of the matter. Counsel maintained that, that is all that



the petitioner was expected to do. Counsel cited Mumbi Ngugi J (as she then was) in [John Kipkorir Ronoh vs. Mary Chepkemoi Rugut](#) [2017] eKLR.

28. With regard to the contention that Choronok Farm (sergoit) LR No. 9128 forms part of the estate of the late Richard Kipchumba Boit. Counsel submitted that the Objectors have contended that the Petitioner misled the court to confirm the property, to wit, Choronok Farm (sergoit) LR No.9128 while knowing fully well that the said property never formed part of the estate of the late Richard Kipchumba Boit. Counsel argued that the contention by the objectors cannot be entertained at this point in time by this Honourable Court since the court is functus officio re the estate of the late Richard Kipchumba Boit. Counsel argued that the issue being raised by the objector's touch on ownership of land which is not within the jurisdictional competence of a Succession Court. According to Counsel the jurisdiction of the Succession Court is limited to facilitating collection and preservation of the estate, identification of survivors and beneficiaries and distribution of the assets. Counsel cited the following cases; [In Re Estate of Mbai Wainaina \(Deceased\)](#) [2015] eKLR, [Re Estate of Alice Mumbue Mutua \(Deceased\)](#) [2017] eKLR and [Re Estate of Teriki Tapkigen Rokocho \(Deceased\)](#) [2022] KEHC 12372 (KLR) in support of his submissions.
29. In the supplementary submissions, on whether Choronok Farm (sergoit) LR No. 9128 formed part of the estate of the deceased Richard Kipchumba Boit. Counsel argued that if anything, paragraph 3 of the further affidavit is an admission that the petitioner is a sister to the late Richard Kipchumba Boit and as such, she is entitled to a grant of the late Richard Kipchumba Boit, without any involvement or concurrence of the Applicants.
30. Counsel submitted that the late Richard Kipchumba Boit was the son to the late Geoffrey Sila Kibet Boit alongside other children including the Petitioner and the Objectors herein. Counsel further submitted that the late Geoffrey Sila Kibet Boit died on 14th October, 1980 and a succession cause was lodged before this honourable court in the year 1992. The cause number is Eldoret High Court Succession Cause No. 156 of 1992. Counsel added that the affidavit in support of the petition in Succession Cause No. 156 of 1992 was sworn by Geoffrey Kirwa Boit, the 1st Objector herein. Counsel further submitted that at paragraph 2A of the affidavit in support of the petition, Geoffrey Kirwa Boit deponed a follows:
 12. Paragraph 5 of the will reads thus:
 5. I give to the following free of all duties absolutely:
 - (a) ...
 - (b)
 - (c)
 - (d)
 - (a) To my sons Richard Kipchumba Boit and Geoffrey Kirwa equally my share of Choronok Farm the improvements and the machinery and cattle thereon so that Richard shall have the wooden house and the portion to the east thereof and Geoffrey shall have the permanent house and the portion to the west thereof.
31. Counsel submitted that in the certificate of confirmation of grant dated 16/3/1994, Choronok Farm (sergoit) LR no. 9128- 463.5 acres appears as first property/ asset of the late Geoffrey Sila Kibet Boit, but with no name(s) of heirs listed in the schedule of heirs. Counsel argued that the confirmation of



the grant as outlined in the certificate of confirmation dated 16/3/1994 was in accordance with the Will for the following reasons:

- i. There was no schedule of distribution proposed by the beneficiaries of the estate other than the wishes of the late Geoffrey Sila Kibet Boitas expressed in the will annexed to the affidavit of Geoffrey Kirwa Boit and marked “6.K.B1”.
 - ii. There was no consent to any proposed mode of distribution signed by all the beneficiaries or otherwise an order of the court distributing the estate of the late Geoffrey Sila Kibet Boit in any manner than as was expressed in the will of the deceased marked as “6.K.B1”.
32. Counsel contended that allegation made regarding Chonorok Farm (sergoit) LR No.9128 by the Applicants is that the land parcel belonged to or was a limited liability company(sic) does not hold for the following reasons:
- i. There was no objection by the surviving directors/ shareholders of the company to the listing of the land parcel by the late Geoffrey Sila Kibet Boit in his will before or after the confirmation of the grant.
 - ii. Assuming (for purposes of arguments only) that the farm was a limited company (sic) and the late Geoffrey Sila Kibet Boit was a shareholder as admitted by the first objector herein, then his estate was entitled to his shareholding of the company.
 - iii. Geoffrey Kirwa Boit (the 1st objector herein) were entitled to his share of the limited liability company on dissolution.
 - iv. Confirmation of the grant in Succession Cause No. 156 of 1992, it follows that the Flowing from (iii) above, since Richard Kipchumba Boit passed on before the administrator of the estate who also happened to be a co-beneficiary of Choronokfarm (sergoit) LR No. 9128-463.5 Acres pursuant to the will took control of the whole share and was under obligation to account to the beneficiaries of the late Richard Kipchumba Boit over his share.
33. Counsel argued that the late Geoffrey Sila Kibet Boit died testate and Choronok Farm (sergoit) LR No.9128- 463.5 Acres formed part of his estate. Counsel added that the late Geoffrey Sila Kibet Boit had willed Choronok Farm (sergoit) LR No. 9128 to the late Richard Kipchumba Boit and Geoffrey Kirwa Boit (the 1st Objector herein) in equal shares.
34. Counsel maintained that the late Richard Kipchumba Boit having passed on before the confirmation of grant in succession cause no. 152 of 1992, his share remained with his co-beneficiary Geoffrey Kirwa Boit, the 1st objector, who was under obligation to account to the late Richard Kipchumba Boit's beneficiaries.
35. With regard to costs. Counsel submitted that despite being a succession cause, we urge your Lordship to find that the objection/ summons for revocation/ nullification was not necessary in view of the clear will of the late Geoffrey Sila Kibet Boit and that the application was only actuated by malice and greed on the part of the objectors to vex the petitioner herein. They should thus be condemned to pay costs.

Analysis and Determination

36. Having appreciated parties pleadings on record, it is clear that the only issue for determination in the instant Cause is; whether the Grant of Letters of Administration issued to Pamela Boit on 18/6/2023 and confirmed on 14/6/2023 should be revoked.



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 has ordered or allowed; 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.”

36. The Objectors/Applicants want the Court to revoke the Grant herein on grounds that the said Grant was obtained through fraud and by concealment of material facts important to this case. The Objectors allege that the Petitioner failed to disclose to this Court that there are beneficiaries in the estate herein and that parcel of land known as Choronok Farm (sergoit) LR No. 9128 does not form part of the estate herein. The Objectors maintain that the deceased herein died intestate, was not married and did not have any estate. The Objectors also argued that the deceased herein is their sibling and as such they rank in equal priority with Petitioner herein on matters administration of the deceased's estate.

37. The Petitioner on the other hand has refuted the allegations by the Objectors by stating that the Objectors do not rank in priority with her as they are only step siblings with regard to the deceased herein. The Petitioner has also maintained that parcel of land known as Choronok Farm (sergoit) LR No. 9128 forms part of the estate herein. The Petitioner argued that the subject land belonged to their late father and was distributed in Eldoret High Court Succession Cause No. 156 of 1992, in accordance with their late father's Will. The Petitioner also maintained that when it comes to the distribution of the subject land both the deceased and the 1st Objector herein have equal shares.

38. At this juncture, I must point out that the Court cannot conclusively determine the issues raised by both parties as it would require calling of witnesses and additional evidence to substantiate the



weighty issues that have been raised by parties. With that said, the Court can only determine the issues aforementioned if parties were to tender *viva voce* evidence.

39. Having considered the tapestry of the dispute and interlocking issues as canvassed by the parties substantially there is need to reopen the proceedings to inquire into certain facts on the matter. Probably because of this immense impact of the decision in promoting standards of fundamental rights of the heirs and guarding the value of finality of judgements. It is widely recognised that in exceptional circumstances the court has an obligation of reopening proceedings as a measure to guarantee fair trial rights under Art. 50 of *the constitution*.
40. In light of all the above, I do make the following final orders on the application before me: -
- i. The Summons for Revocation of grant dated 20/7/2023 and filed in Court on 21/7/2023, to be canvassed *viva voce* evidence.
 - ii. Hearing dated on 19th March, 2024.
 - iii. There shall be no orders as to costs.
41. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 13TH DAY OF FEBRUARY, 2024.

.....

R. NYAKUNDI
JUDGE

In the presence of;
Mr. Akang'o present

