



**In re Estate of Kipkoske Arap Kiptungeny alias Kipkosge Kiptungeny (Deceased)
(Succession Cause 68 of 2013) [2024] KEHC 1251 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1251 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 68 OF 2013
JK SERGON, J
FEBRUARY 8, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE KIPKOSKE ARAP
KIPTUNGENY ALIAS KIPKOSGE KIPTUNGENY (DECEASED)**

BETWEEN

SAMWEL KOSKEI NGETICH 1ST APPLICANT

ISAIAH KIPKURUI KOSKE 2ND APPLICANT

AND

MARTHA CHEPKOECH 1ST PETITIONER

BERNARD KIPROTICH MUTAI 2ND PETITIONER

RULING

1. The application that is coming up for this court's determination is the notice of motion dated 29th March, 2023 whereof the applicants are seeking for the following orders;
 - (i) Spent
 - (ii) That pending the hearing and determination of this application there be a stay of execution of all the consequential orders arising from the certificate of confirmation of grant issued on 1st December, 2016.
 - (iv) That pending the hearing and determination of these revocation proceedings, there be a stay of proceedings and all consequential orders issued in Kericho CMC Civil No. E071 of 2022 in which the 2nd Petitioner/Respondent obtained ex parte orders against the 2nd Objector/Applicant on the strength of the impugned and procedurally obtained certificate of confirmation of grant.



- (iv) That the certificate of grant of letters of administration made to Samwel Koskei Ngetich and Martha Chepkoech on 1st December, 2016 be revoked on the following grounds;
 - (a). That the grant was obtained fraudulently by making of false statement or by concealment from the court of some material facts.
 - (b). That the grant was obtained by means of untrue allegation of facts essential in point of law to justify the grant particularly that the petitioner failed to disclose or seek consent to apply for the grant from other survivors who had priority or equal right to apply as well and
 - (c). That the petitioner deliberately omitted or overlooked the rights of the 1st Applicant a beneficiary of the estate herein in the schedule of assets presented before this honourable court
 - (v) That in the alternative to prayer (iv) above the court be pleased to review and/or vary the orders issued herein on 1st December, 2016 and allow for the inclusion of the applicant to share equally with the other beneficiaries in the estate property herein.
 - (vi) That the Petitioner/Respondent be ordered to pay costs.
2. The application is supported by grounds on the face of it and the facts deponed in the affidavit of Samwel Koskei Ngetich.
 3. The applicant stated that the deceased was survived by seven (7) children, which fact was never disclosed to the court and further that without notice and/or reference to the surviving children of the Lucy Chepkemai Rono (deceased) a daughter to the deceased herein, the petitioners/respondents obtained letters of administration and subsequently applied for confirmation of grant of letter of administration which application was allowed on 1st December, 2016.
 4. The applicant maintained that the grant was obtained and subsequently confirmed by means of untrue allegations, deliberate omissions and concealment of material facts by the petitioners and therefore ought to be revoked and further that the 2nd petitioner/respondent has since made concerted efforts to effect distribution of the estate in line with the impugned certificate of confirmation of grant and having obtained orders in Kericho CMC Civil Case No. E071 of 2022 was seeking to have boundaries between land parcel no Kericho/Kapsuser/7620 & 7623 with the intention to disinherit some of the beneficiaries of the estate.
 5. Martha Chepkoech the petitioner/respondent filed a replying affidavit and stated that she was the registered owner of two parcels of land comprising L.R. No Kericho/Kapsuser/7622 & 7623 which land parcels are resultant transmission and partition of L.R No. Kericho/Kapsuser/38 upon completion of succession proceedings in the instant succession cause.
 6. The petitioner/respondent stated that pursuant to the certificate of confirmation issued by this court on 1st December, 2016, the property comprising the estate of Kipkoske Kitungeny namely L.R. No. Kericho/Kapsuser/38 was surveyed and subdivided in the presence of all beneficiaries after which they took possession of their designated parcels of land.
 7. The petitioner/respondent stated that despite having been allocated her portion, her brother Isaiah Kipkurui Koske fought hard to deny her rightful entitlement and forcefully took possession of L.R. No. Kericho/Kapsuser/7623 for about two years thereby denying her proprietary rights and interests which precipitated the filing of Kericho CMC ELC Case No. E071 of 2022 seeking a permanent injunction to restrain them from remaining on L.R. No Kericho/Kapsuser/7623 and/or interfering



- with peaceful and quiet occupation of the said land and she was subsequently issued with the decree and order on 2nd March, 2023 which she served upon the defendants therein.
8. The petitioner/respondent stated that she learnt from her advocate of record the summons for revocation of grant was supported by an affidavit sworn by Samwel Koske Ngetich who was her co-petitioner in the instant succession cause, upon further inquiry he stated that he had not given any instructions to the firm of M/s Koech Chepkirui & Co. Advocates to file summons for revocation of grant.
 9. The petitioner/respondent stated that the summons for revocation was untenable as the deponent was not one of the sons of Lucy Chepkemai Rono alias Ruth Chepkemai (now deceased), who died long after confirmation of grant and as a married daughter she voluntarily renounced her rights to the estate of the deceased.
 10. The petitioners/respondents filed a notice of preliminary objection on the grounds that the application dated 29th March, 2023 is fundamentally and fatally defective as it is premised on an affidavit that was sworn by a stranger and therefore the said application ought to be struck out with costs.
 11. The court directed the parties to file their submissions and the parties complied and filed their written submissions which I have considered.
 12. The petitioners/respondents argued that the summons for revocation of grant did not meet the threshold required for revocation of grant as required in Section 76 of the Law of Succession on renovation or annulment of grant.
 13. The petitioners/respondent submitted that the application was full of glaring inconsistencies including the fact that the deponent therein was the co-petitioner in the instant succession cause, the deponent was not a son to the Lucy Chepkemai Rono alias Ruth Chepkemai (deceased) and in any event prior to her demise, she had participated in the instant succession cause and actually consented to confirmation of grant. The said Lucy Chepkemai Rono, a married daughter to the deceased voluntarily renounced her rights in the estate of the deceased.
 14. The petitioner/respondent submitted that the applicants had not proven the proceedings to obtain the grant were defective in substance, grant was obtained fraudulently by making of a false statement or by concealment of material facts or untrue allegations of fact essential in a point of law and therefore urged this court to strike out with costs the summons for revocation and/or annulment of grant dated 29th March, 2023 and/or uphold the preliminary objection dated 1st October, 2023.
 15. I have considered the pleadings and the submissions that have been filed by the parties and I find that the issue for determination is whether to revoke and/or annul the certificate of confirmation of grant issued on 1st December, 2016. The answer is in the negative. The applicants have not established any of the grounds set out in section 76 of the Law of Succession Act on revocation and/or annulment of grant.
 16. In the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No.158 OF 2000, Mwita J. noted that : “Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”
 17. The application for revocation and/or annulment was filed by the applicants who stated that some beneficiaries were left out and further that the instant succession proceedings were instituted without



notice and/or reference to the surviving children of the Lucy Chepkemoi Rono alias Ruth Chepkemoi (now deceased) who died long after confirmation of grant and as a married daughter she voluntarily renounced her rights to the estate of the deceased.

18. I have carefully studied the contents of the file and take cognizance of the fact that the married daughters did not sign a renunciation form ceding their inheritance rights. However, I find that there is a consent to confirmation of grant of letters of administration of the deceased' estate dated 30th June, 2015 on record which the married daughters signed and conceded to the mode of distribution and the beneficiaries therein, which mode of distribution was subsequently upheld by this court.
19. I find that the certificate of confirmation of grant was issued on 1st December, 2016 after the succession proceedings were completed and the estate property constituting L.R No. Kericho/Kapsuser/38 comprising 12.6 hectares was surveyed and subdivided and the beneficiaries put into possession of designated parcels.
20. In the circumstances, I find the summons for revocation and/or annulment of grant dated 29th March, 2023 are untenable and without merit.
21. With regard to the preliminary objection, I have considered the averments in the replying affidavit of the petitioner/respondent herein where she deponed that she was surprised to learn of the application which on the face of it. The Respondent further averred that upon inquiry, she said that Samuel Koske who is a Co-Petitioner stated that he had not instructed the law firm of M/S Koech Chepkirui & Company Advocates to file the summons for revocation. The petitioner/respondent urged this court to uphold the preliminary objection on the grounds that the application dated 29th March, 2023 is fundamentally and fatally defective as it is premised on an affidavit that was sworn by a 'stranger'. It is clear to this Court that the preliminary objection is not based pure points of law and hence it does not meet the threshold set out in *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] EA 696, therefore the same cannot be entertained.
22. In the end, I find the summons for Revocation and or annulment of grant dated 29th March, 2023 to be without merit. The same is dismissed with costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 8TH DAY OF FEBRUARY 2024.

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J.K. SERGON

JUDGE

In the Presence of:

C/Assistant – Rutoh

No Appearance for the Parties

