



In re Estate of Samwel Chepkwony Langat (Deceased) (Succession Cause 25 of 2016) [2024] KEHC 1252 (KLR) (8 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1252 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 25 OF 2016
JK SERGON, J
FEBRUARY 8, 2024**

BETWEEN

PAULO KIPNGENO CHEBOCHOK PETITIONER

AND

MARTHA CHEPKURUI LANGAT OBJECTOR

RULING

1. The objector filed a summons for revocation and/or annulment of grant dated 19th September, 2017 seeking the following orders;
 - (i) Spent
 - (ii) That the certificate of confirmation of grant issued herein on 23rd May, 2017 issued to the Respondent be revoked and/or annulled.
 - (iii) That a fresh grant be issued in the name of the objector as the absolute proprietor of L.R No. Kericho/Boiywek/266
 - (iv) That pending the hearing and determination of this application there be a stay of the grant dated 23rd May, 2017.
2. The application is supported by grounds on the face of it and the supporting affidavit of Martha Chepkurui Langat.
3. The objector stated that on 23rd May, 2017 this court confirmed the letters of administration intestate issued to the petitioner herein. The objector contended that the grant was obtained fraudulently by making of false statements and concealment of material facts and as a result the petitioner obtained the grant and transferred the entire estate of her late husband to himself thereby disinheriting her and her six children.



4. The objector stated that since she got married in 1983, she had been residing on the suit property with her children and after the demise of her husband in 1989 continued to occupy the suit property until sometime in 1998 when her late husband's sibling including the petitioner chased them away from the suit property, destroyed their house, crops and fell down their trees forcing her and her then young children to seek refuge at her mother's house, she reported the same to the area chief.
5. The objector stated that on 29th December, 2014 a meeting was held to resolve the dispute and the elders resolved that the objector and her children were the rightful beneficiaries to the estate of her late husband being land parcel L.R No. Kericho/Boiywek/266.
6. The petitioner filed a replying affidavit dated 8th January, 2018 in response to the objectors summons for revocation and/or annulment of grant.
7. The petitioner was totally opposed to the summons for revocation and/or annulment on account of the fact that the deceased herein, his late brother died on 24th January, 1998 without having contracted any marriage in his lifetime and was subsequently buried in the absence of the objector and further that the objector has a husband who lives at Kabarak Area of Nakuru District his name being John A. Sinei alias Kiprugut with whom the objector has sired a total of six children.
8. The petitioner was adamant that there was no reason to annul and/or revoke the confirmed grant, as the objector had not demonstrated whether the alleged marriage was solemnized and whether there was an exchange of dowry to solemnize the union.
9. The objector filed a further affidavit in response to the petitioner's replying affidavit in which she maintained that she was married to the deceased and hence was entitled to the suit property by virtue of her being a wife to the deceased. She further stated that she had been residing on the suit property with her children.
10. The objector conceded that some of the children were not sired by the deceased, however, the deceased had adopted them and took care of them. The objector denied that she was married to John A. Sinei alias Kiprugut and reiterated that she was present during the burial rites of the deceased herein.
11. This court was called upon to determine whether the objector is beneficiary of the deceased's estate, hence ascertain as to whether she is deserving of a share of the deceased's estate, this court directed that the matter proceed by viva voce evidence and consequently the objector and the petitioners availed several witnesses.
12. Martha Chepkurui Langat (O.w 1) adopted her witness statement dated 16th April, 2018 as her evidence in chief, she stated that Paulo Kipngeno Chebochok is her brother -in -law, he is the brother to her deceased husband, the late Samwel Chepkwony Langat and further that he stole her husband's title and transferred the land to himself. She stated that she and her children reside on the land. She was seeking to have the land transferred back to her as she is a beneficiary of the estate of the deceased herein.
13. On cross examination she confirmed that she lost her national identity card a while back, she reported to the police and was given a police abstract. She maintained that she was the only widow to the deceased, she was married in 1977 and not 1983 as she erroneously stated in her affidavit. She stated that she got married under Kipsigis Customary Law, there were several witnesses and that land was exchanged for her dowry. She could not recall when the deceased died, she lived with her late husband for several years, when he died she was with him, she was present at the burial. She stated that she has six (6) children, her children have different fathers, four (4) children were fathered by Arap Sinei and that she and the deceased were blessed with a daughter. After the deceased's death she and her children stayed



on the land owned by the deceased but the petitioners chased her away. She confirmed that the land in dispute was not the one given as her dowry.

14. Alexander Chepkwony Langat (O.w 2) adopted his witness statement as his evidence in chief, he stated that the petitioner and objector were well known to him. He stated that he was aware that the objector was married to the deceased, the objector came into the marriage with two children and that they lived together. He stated that there was a time the objector was chased away from the land by the petitioner as he wanted to take the land, there were several meetings convened by the elders to resolve the issue and it was held that the land belonged to the objector and further that she resides on the land.
15. On cross examination, he confirmed that he was present during the marriage ceremony, there were many people present at the ceremony including the petitioner herein and further that the ceremony was presided by O.w 3 and that dowry was paid in the form of land.
16. Susan Chebochok (O.w 3) stated adopted her witness statement as her evidence in chief. She stated that the objector was well known to her, she is her neighbour. She stated that the petitioner Paulo Kipngeno Chebochok is a brother-in-law to the objector. She stated that she presided over the marriage ceremony between the objector and the deceased, which took place in 1977 and that the couple lived together. She stated that the deceased subsequently passed on at a time she could not recall. She stated that the objector and petitioner had a dispute over the deceased's land. She confirmed that the objector is still in occupation of the said land. She also confirmed that the objector had one child with the deceased.
17. On cross examination she reiterated that she officiated the marriage ceremony and that the couple lived together on the deceased's property.
18. Paulo Kipngeno Chebochok (P.w 1) he adopted his witness statement as evidence in chief. He stated that the objector is well known to him, however, he is not related to the objector. He stated that he was related to the deceased herein, he was his brother who had passed on, the deceased was epileptic. He stated that the deceased died without getting married and without children and furthermore that contrary to O.w 2 assertion, he did not witness the marriage ceremony of his brother. He stated that the objector lives in Kiambogo, she resides on a parcel of land owned by her husband known as Kiprugut Arap Sinei and not the deceased herein. He stated that he does not know what objector wanted as she was not married to his late brother. He stated that the objector was present during the burial of the deceased.
19. On cross examination, he stated that the objector cohabited with his late brother in the seventies. He also stated that she had come back recently and was residing on his late brother's land. He conceded that a while back he had a land dispute with the objector before the then Area District Officer, who put her into occupation of the said parcel of land.
20. Daniel Kiprono Kikwai (Pw. 2) adopted his signed witness statement as evidence in chief. He stated that the petitioner and the deceased were his uncles and that the objector had cohabited with the deceased for a short while and then she left. He stated that he did not witness the marriage ceremony between the objector and the deceased. He stated that the objector is currently settled on the land in dispute. He stated that some time back he met with an old man called John Kiprugut Arap Sinei who told him that he was the husband of the objector. He stated that he was at the District Officer's office when the dispute between his uncle and the objector was being heard.
21. On cross examination, he stated that he was not aware that the objector and the deceased were married. He stated that the objector was residing on the disputed land, she built a house on the disputed land, the house built by the deceased was old and damaged. He maintained that the objector was not chased



- away rather the village elders met and told her to leave because she was not part of their family. On reexamination, he stated that the deceased did not sire any child with the deceased.
22. Symon Kibet Keter (Pw. 3) stated that he recorded his witness statement and adopted his witness statement as his evidence in chief. He stated that the objector, deceased and the petitioner were well known to him. He stated that the deceased was not married rather that he was cohabiting. He stated that he did not know whether the deceased was married to the objector.
 23. The parties were directed to file written submissions, the petitioner/respondent complied and filed written submissions which I have duly considered.
 24. The petitioner maintained that the objector was not married to the deceased, she may have cohabited with the deceased, however, the parties had not solemnized their union and the burden of proving otherwise lay with the objector and he cited section 107 of the *Evidence Act* CAP 80 Laws of Kenya which states as follows; “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.” The petitioner contended the fact that the objector and deceased had borne one child a fact which was not supported by evidence, the objector did not furnish the court with a birth certificate.
 25. The petitioner maintained that he was the rightful beneficiary of the estate of the deceased as he was the only surviving relative of the deceased and further that he had successfully petitioned for the letters of administration intestate and that the grant was subsequently confirmed on 23rd May, 2017 and no one had raised any objection to the grant save for the objector herein, who failed to demonstrate her interest in the suit property. The petitioner therefore urged this court to dismiss the summons for revocation and/or annulment.
 26. The objector filed submissions in which she maintained that she and the deceased had cohabited together and raised children and cited the Court of Appeal case of *Hortensia Wanjiku Yawe v Public Trustee* C.A 13 of 76 where it was held that cohabitation as man and wife gives rise to presumption of marriage and only cogent evidence to the contrary could rebut such a presumption.
 27. The objector contended that she was married under Kipsigis customary law and the petitioner and his witnesses did not dispute this fact but only stated that they did not witness the ceremony nor witness the payment of dowry which was in the form of a parcel of land. She submitted that the meetings held by elders and government officials that resulted in her being put into occupation of the suit property was an indication that she was widely recognized as a wife to the deceased.
 28. The objector contended that as a surviving spouse of the deceased, she had priority in terms of taking out letters of administration and inheriting the estate of the deceased, the petitioner was therefore a mere intermeddler and stranger to the estate of the deceased.
 29. I have considered the pleadings filed by the parties, the viva voce evidence and the submissions filed and the sole issue for this court's determination is whether there are sufficient grounds for revocation and/or annulment of the certificate of confirmation of grant issued on 23rd May, 2017. I find that the objector has not established the grounds for revocation and/or annulment set out in section 76 of the *Law of Succession Act*. Additionally, the objector has not furnished tangible proof that she was married to the deceased and that the said union was solemnized and celebrated under Kipsigis Customary Law. The objector has not proven that she and the deceased had sired a child, she did not furnish this court with a birth certificate further to this there is no proof that the other children were dependent on the deceased prior to his demise. In the circumstances, I find that the objector did not establish that she was a beneficiary to the estate of the deceased and further that there are no grounds warranting this court to revoke and/or annul the certificate of confirmation of grant issued on 23rd May, 2017. Furthermore,



in *Re Estate of Juma Shitseswa Linani (Deceased)* [2021] eKLR the court held that where a person is unhappy with the process of confirmation of grant, such a person ought not to move the court under section 76 for revocation of grant. Instead, the person should file an appeal against the orders made by the court on distribution or apply for review of the said orders. This is because the court confirming a grant largely becomes functus officio so far as confirmation of the grant is concerned, and cannot revisit the matter unless upon review.

30. Accordingly, I hereby find that the summons for revocation and/or annulment of grant dated 19th September, 2017 lacks in merit. The same is dismissed with each party bearing its own 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

Miruka holding brief for Akinyi for Petitioner

Miss Boiywo holding brief for Mutai J. for Objector

