



**In re Estate of Tiony Kibore Tolos alias Kibore Kiptiony (Deceased) (Succession Cause 146 of 2014) [2024] KEHC 4533 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4533 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 146 OF 2014  
RN NYAKUNDI, J  
APRIL 11, 2024**

**IN THE MATTER OF THE ESTATE OF TIONY KIBORE  
TOLOS ALIAS KIBORE KIPTIONY (DECEASED)**

**BETWEEN**

**JOHN KIPYEGO BORE ..... PETITIONER**

**AND**

**JOYCE JEPKETER SANG ..... OBJECTOR**

**RULING**

1. By a Notice of Motion dated 12/5/2023, the Objector/Applicant seeks for the following orders;
  1. Spent.
  2. The Certificate of Confirmation of Grant made in favour of the Petitioner and other beneficiaries of Tiony Kibore Tolos Alias Kibore Kiptiony (Deceased) be revoked and/or annulled.
  3. Intermeddling orders granted to the Petitioner against the Objector herein be lifted.
  4. The Objector be allocated 5 acres of the estate as per the deceased's wishes and be allowed to complete her house and move into it.
  5. Mental health assessment be done to the Petitioner herein.
  6. Costs of the application be in the cause.
2. The application is premised on the grounds therein and is further supported by the affidavit sworn on 12/5/2023, by Joyce Jepketer Sang, the Objector.



## The Objector's Case

3. The Objector deposed that she is one of the beneficiaries to the estate of the late Tiony Kibore Tolos Alias Kibore Kiptiony by the virtue of being the 1<sup>st</sup> wife to the deceased herein. The Objector further deposed the Petitioner John Kipyego Bore is married to 3 wives as follows:
  - a. Joyce Jepketer Sang- 1<sup>st</sup> wife
  - b. Jane Chelimo Bore – 2<sup>nd</sup> wife
  - c. Cecilia Bore - 3<sup>rd</sup> wife
4. The Objector averred that her marriage with the Petitioner bore two children who she listed as follows;
  - a. Sharon Jepkemboi Bore
  - b. Kipkorir Bore (Deceased)
5. The Objector maintained that she had a home on Land Parcel No. Tapsagoi Settlement Scheme/236 but the Petitioner herein torched the grass thatched house in an act of arson in 2018. The Objector deposed that the deceased is her father-in-law and he had given her 5 acres of land because she sued to take care of him. She stated that her father in law had showed her where to build her house and that the said portion was meant to be hers after distribution. The Objector deposed that after the Petitioner herein torched her house, she moved to live with her co-wife Cecilia Bore the Petitioner's 3<sup>rd</sup> wife and that in December, 2022 the Petitioner herein asked her to build my own house and stop living with his 3<sup>rd</sup> wife. The Objector claims that the Petitioner on 1/4/2023, assaulted her and chased her with bows and poisoned arrows and threatened to kill her if she dare pass near his farm again. The Objector reported the matter at Turbo Police Station and it was booked as OB Number 13. The Objector claims that she is now homeless and currently depend on well-wishers to survive, that the Petitioner herein is abusing the Court process by continuing with acts of domestic violence by illegally distributing her father in law's 33 acres parcel of land to his step brother whereas he retains only 2 acres. The Objector contends that the Petitioner herein obtained restraining orders against her, barring her from accessing her in the deceased's estate by falsely accusing her of intermeddling. According to the Objector, the Petitioner as deliberately distributed 33 acres of the estate to his step brother so as to keep her out of the estate and that the hatred he has towards his family has made him totally irrational in his thinking.
6. The Objector contends that the Petitioner has leased out 5 acres of the portion of land she used to farm. The Objector wants the intermeddling orders he obtained against her be lifted and she be allocated her 5 acres as per the deceased wishes and be allowed to complete my house and move into it and that the Petitioner be restrained from further assaulting me. She deposed that it has come to her knowledge that the Petitioner herein secretly and fraudulently applied and obtained Certificate of confirmation to the estate of the late Tiony Kibore Tolos Alias Kibore Kiptiony and totally excluded her. The Objector maintains that the Confirmation of Grant is improper since the same was done without her knowledge or any of his family members and that she did not appear in Court during the day of Confirmation of Grant.
7. According to the Objector, there is need to carry out a mental health assessment on the Petitioner to confirm whether he is of sound mind as his actions point to the contrary. The Objector contends that the Petitioner did not comply with Rule 26 of the Probate and Administration Rules and the consent which was purportedly executed is null and void on account of the same having been made without her consent.



8. According to the Objector, it is imperative in the circumstances that the prayers sought for in this application be granted so as to nullify the mode of distribution for the sake of justice and fairness.

### **The Petitioner's /respondent's Case**

9. The application is opposed by the Petitioner vide his Replying affidavit filed on 12/7/2023. The Petitioner deposed that this instant application is full of falsehoods, material concealment and is vexatious, frivolous, fatally incurable and amounts to abuse of Court process. The Petitioner maintained that the Objector herein is a stranger to him, the deceased and his co-petitioner. Further that the Objector is an imposter and dishonest litigant who is neither a creditor nor a beneficiary to the deceased. According to the Petitioner, the Objector is merely an intermeddler who has been engaging in criminal acts and that it only to the intervention of the Court to bring sanity and order in the estate herein. The Petitioner maintained that he is at a great loss, how the Objector can claim to his wife and at the same time be a wife to the deceased herein. The Objector maintains that he has never lived with the Objector and neither has he been married to her nor sired any children with her. The Petitioner contended that the contents of paragraph 21 of the Objector's Supporting Affidavit are made in bad faith and are calculated to demean and injure his personality. The Petitioner is ready and willing to avail himself in Court for purposes of independent inquiry by the Court as to the veracity of the serious wild allegations against him. The Petitioner maintains that the Petitioner who remains to be a mystery in the estate of the deceased and himself is deliberately attempting to inherit from him during his lifetime by deliberately misleading the Court, that she is a wife both to the deceased and himself. Further the Petitioner contends that the Objector herein is merely taking advantage of an administrative mistake by the Court when it interchanged the shares of the beneficiaries of the deceased, which issue was long corrected.

### **The Submissions**

10. The application was canvassed vide written submissions. The Objector filed her submissions on 16/11/2023 while the Petitioner filed his on 4/12/2023. I have carefully read and understood the submissions herein and I need not reproduce the same here.

### **Analysis And Determination**

11. Having carefully evaluated the application, the rival affidavit and the submissions by Counsels, I find that only issue for determination is whether the orders sought can be issued.
12. With regard to revocation of the Certificate of Grant made in favour of the Petitioner. Section 76 of the [Law of Succession Act](#), Cap 160, Laws of Kenya 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.”

13. Section 76 was clearly expounded on by the court *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.

14. Under Section 76, a Court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party.



15. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons.
16. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.
17. In the present case, the Objector claims that she is a daughter-in-law to the deceased having been married to the Petitioner herein and thus entitled to inherit from the deceased's estate. The issue to be decided is who as between the Petitioner and Objector has priority to administer the deceased's estate. The answer to this question is to be found in Section 66 of the *Law of Succession Act* which provides a general guide as to those who will be preferred to administer the estate of a deceased as follows-

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- (a) a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) c) the Public Trustee; and
- (d) d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

18. The ranking of beneficiaries of an intestate is provided under Part V of the Act, and Section 36 of this part specifically provides that where an intestate has left a surviving child or children but no spouse as in this application, the net intestate estate shall be equally divided among the surviving children. It is only where an intestate has left no surviving spouse or children, that the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority under Section 39 of the Act-
- a. father; or if dead
  - b. mother; or if dead



- c. brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
  - d. half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
  - e. the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.
19. Therefore, while relatives by marriage can inherit and be administrators of a deceased's intestate, they are the last in line in priority in both respects, and only in the event that the deceased intestate has no surviving spouse and children, and even then, only to the sixth degree of consanguinity. Applying the above cited provisions of the law, the Objector herein alleges to be related to the deceased by marriage by virtue of being married to the Petitioner. Without going to the legitimacy or otherwise of the said marriage, the Objector cannot rank in priority to the Petitioner who is a surviving child of the deceased as an administrator of the deceased's estate. Her share if any, is tied to her husband's share in the estate.
20. In view of the other prayers being sought, I need not say much as I have determined that the Objector in this case does not rank higher than the Petitioner in any case.
21. In the end, the prayers sought by the Objector in the Notice of Motion dated 12/5/2023 dated are accordingly denied. There shall be no orders as to costs.
22. Interim stay for 15 days is granted
23. It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 11<sup>TH</sup> DAY OF APRIL 2024**

**R. NYAKUNDI**

**JUDGE**

In the Presence of

Mr. Kibii for the plaintiff

Mr. Chemwok for the Objector

