



REPUBLIC OF KENYA



In re Estate of he Late Chepkwony Arap Boit (Deceased) (Succession Cause 106 of 2001) [2024] KEHC 5923 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5923 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 106 OF 2001**

JK SERGON, J

MAY 23, 2024

BETWEEN

STEPHEN KIPCHUMBA CHELOGOI PETITIONER

AND

ESTHER CHEPKOECH LANGAT 1ST OBJECTOR

RICHARD KIPNGETICH KEMEI 2ND OBJECTOR

RULING

1. The petitioner filed summons dated 6th March, 2018 seeking the following orders;
 - (i) That the grant of letters of administration intestate made to the said Stephen Kipchumba Chelogoi on 28th February, 2002 be now confirmed
 - (i) That costs be in the cause.
2. The application is supported by grounds on the face of it and the supporting affidavit of Stephen Kipchumba Chelogoi, the petitioner /respondent herein.
3. The petitioner/respondent avers that he is the administrator of the estate of the deceased who died intestate on 15th July, 1987 and that letters of the administration of the said estate were made to him on 28th February, 2002. The petitioner listed the dependents and liabilities of the deceased.
4. The petitioner/respondent avers that the deceased had the following asset (s); Kericho/Kipsitet/274 measuring approximately 10.8 ha which is to be given Esther Rutto who is a liability to the estate.
5. The objectors/applicants filed summons for revocation and/or annulment of grant dated 20th July, 2023 seeking the following orders;
 - (i) Spent



- (ii) That the grant of letter of administration intestate made to Stephen Kimutai Chelogoi Ngetich on 28th February, 2002 be revoked and/or annulled on the following grounds; (a) That the proceedings to obtain the grant were defective in substance in light of the fact that the petitioner misrepresented a material fact to the court. (b) That the grant was obtained fraudulently by making 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 untrue allegation of facts essential in a point of law to justify the grant particularly that the petitioner failed to disclose or seek consent to apply for grant from the objectors who had priority or equal right to apply as well.
 - (iii) That upon grant of prayer (ii) above, the court be pleased to issue a fresh grant of letters of administration intestate to the objector/applicants.
 - (iv) That the petitioner/respondent be ordered to pay costs.
6. The application is based on the grounds on the face of it and the supporting affidavit sworn by Esther Chepkoech Langat, the 1st objector/applicant on behalf of the 2nd objector/applicant.
 7. The 1st objector/applicant avers that vide a petition dated 12th July, 2001 presented in this Court, the petitioner/respondent obtained grant of letters of administration intestate dated 28th February, 2002 in respect to the estate of the deceased.
 8. The 1st objector/applicant avers that pending the hearing and determination of the instant succession cause vide the chamber summons dated 6th March, 2018 the petitioner/respondent is seeking to have the grant confirmed with a view to disinherit the objectors/applicants who are the deceased's only identifiable heirs entitled to inheritance while making reference to the introductory letter dated 18th October, 2022 by the Area Chief, Soin Location.
 9. The 1st objector/applicant avers that on the face of the record, the persons listed are the deceased's clansmen and not sons of the deceased as deposed by the petitioner in paragraph 4 of the P&A 5 Form, the Affidavit in Support of Petition for Letters of Administration Intestate and the Chief's Introductory Letter.
 10. The 1st objector/applicant avers that the petitioner deliberately failed and/or omitted to list her name and that of her co objector as beneficiaries of the estate and listed himself and the clansmen as the deceased's surviving sons, a fact he knew to be untrue.
 11. The 1st objector/applicant avers that, she and the co-objector with persons listed in the chief's introductory letter dated 18th October, 2022 are the deceased's identifiable beneficiaries with prior preference to the petitioner to petition for grant of letters of administration in the estate of the deceased.
 12. The 1st objector/applicant avers that at the time of the demise of the deceased, the deceased was not married and had no children of his own, he was not survived by parents, brothers, sisters contrary to the averment presented in the petition dated 12th July, 2001 presented to this Court by the petitioner that he and the named clansmen are the deceased's surviving sons.
 13. The 1st objector/applicant avers that the petitioner and clansmen have no blood relationship whatsoever to the deceased to fall between the acceptable degree of affinity and consanguinity and/or rank in priority and/or equal right with the objectors who are related to the deceased by virtue of being a niece and half nephew respectively.



14. The 1st objector/applicant avers that Joel Kibiegong Sang is the only liability entitled to a portion measuring 0.8 HA in the estate property, however, he was unable to complete the process of transfer and registration.
15. The 1st objector/applicant avers that the petitioner, a clansman to the deceased, operating in total disregard of the objectors' priority to petition for grant of letters of administration, obtained grant without the consent, involvement and/or consent from the objectors contrary to rule 7 (7) of the Probate and Administration Rules and as a consequence thereof the proceedings leading to the issuance of grant are defective in substance.
16. The 1st objector/applicant avers that the petitioner deliberately concealed material information as to the identity of the legitimate heirs of the estate and consequently misled the Court to issue grant of letters of administration intestate by misrepresenting himself as a son of the deceased.
17. The 1st objector/applicant avers that it is in the interest of justice that this Court be pleased to review and/or revoke the grant of letters of administration intestate issued on 28th February, 2002 to the petitioner.
18. The 1st objector/applicant avers that she and her co-objector have never renounced their right to petition for grants of letters of administration intestate and therefore sought that a fresh grant be issued jointly to the objectors.
19. The court directed that the summons for revocation and/or annulment of grant be canvassed through viva voce evidence. The objectors availed four (4) witnesses in support of their case.
20. Esther Chepkoech Langat (Pw.1), testified that she was the first objector in this cause. The late Chepkwony Arap Boit, the deceased herein, was her uncle who had two sisters namely; Tabutany and Tapsabei. Pw. 1 stated that Tabutany was her mother and further that Richard Kemei the second objector is a son to her brother called Musa and therefore her nephew. Pw.1 reiterated that she did not know Stephen Kipchumba Chelogoi.
21. Pw. 1 stated that she swore the affidavit in support of summons for revocation and/or annulment of grant and in the said affidavit she attached an introductory letter from the local area chief which she wished to produce as Exh. 1 and an application to the Land Control Board at Belgut for consent to subdivide and transfer 0.8 HA a portion of the estate land to Joel Kibiegong Sang the liability to the estate and wished to produce the same as Exh. 3 (a) and (b). Pw. 1 stated that the petitioner did not cite her in the instant succession cause. In light of the foregoing, she urged this Court to revoke the grant of administration intestate issued to Stephen Chelogoi and issue a fresh grant of administration intestate. On cross examination Pw. 1 she reiterated that the deceased herein was her uncle.
22. Richard Kipngetch Kemei (Pw.2) stated that he executed a witness statement dated 28th October, 2023 and wished to adopt it as his evidence-in-chief. Pw. 2 further testified that the deceased was an uncle to his father and that Esther Chepkoech Langat the co-objector was his aunt. Pw. 2 reiterated that people not related to the late Chepkwony Arap Boit, the deceased herein, had taken out letters in respect of the estate of the deceased. Pw. 2 reiterated that Stephen Chelogoi was not related to the deceased and therefore letters of administration intestate issued to him should be revoked. On cross examination, Pw. 2 confirmed that he was a son to Musa Rono, who was a nephew to the late Chepkwony Arap Boit and that Musa Rono had been utilizing the land since the demise of the deceased.
23. Kipngetch Edimon (Pw. 3) stated that he recorded a witness statement dated 28th October, 2023 and wished to adopt it as his evidence-in-chief. He stated that Joel Kibiegong Sang was his father who was a



- liability to the estate entitled to 0.8 ha of the estate property and listed in the chief's introductory letter as such. Pw. 3 further stated that during the lifetime of his father Joel Kibiegon Sang, his father took occupation of the subject portion and after his demise, Pw. 3 and his brother Solomon Kiprono Byegon continued to cultivate the subject portion until sometime in 2008 when they were denied access to the said portion by Esther Chelangat Ruto. On cross examination, Pw. 3 confirmed that he was the son to Joel Kipyegon Sang and that they tilled the subject portion of land for a long time until sometime in 2008.
24. Kibet Rogo (Pw. 4) stated that he executed a witness statement dated 28th October, 2023 and wished to adopt it as his evidence in chief. He stated that he was aware that Joel Kibiegon Sang was a liability to the estate of the deceased, who took occupation of the subject portion. That his sons Solomon Kiprono Byegon and Kipngetich Byegon Edimon cultivated the land after his demise until they were denied access to the subject portion sometime in 2008 or thereabouts by Esther Chelangat Ruto. On cross examination, Pw. 4 stated that Musa Kipkemoi Rono the co-objector is a son to the sister of Arap Boit, he occupied the estate property in the lifetime of the deceased and continued to use a portion estate land until he was denied access to the estate sometime in 2016 by Esther Chelangat Ruto.
 25. At the close of the objectors case, the petitioner availed four (4) witnesses in support of his case.
 26. Stephen Kipchumba Chelogoi (Dw.1) stated that the deceased was his uncle, he was a brother to his father. He stated that the deceased had three sisters. He further stated he did not know the objectors. The petitioner stated that he executed a witness statement dated 3rd November, 2023 and adopted it as his evidence in chief.
 27. On cross examination, Dw. 1 confirmed that he was issued with the letter of administration intestate and that he was not a son to the deceased. He confirmed that the deceased was not married and did not have children at the time of his demise, however, he had two sisters who had passed on and these sisters had children to wit Musa K. Rono and Kipsigei Arap Malel. Dw. 1 stated that he did not list the children in the petition for letters of administration. Dw. 1 stated he was not aware that Richard Kipngetich Kemei was the son of Musa Rono. Dw. 1 stated that the deceased sold part of the land to Joel Arap Sang 0.8 Ha and was in the process of transferring the land to Joel Arap Sang who subsequently sold the land to Jeremiah. Dw. 1 conceded that as he was petitioning for letters of administration of the estate he did not put the name of Joel Arap Sang in the petition. Dw. 1 conceded that he was aware that the area chief of Soin had written an introductory letter listing all beneficiaries and that the estate of the deceased was located in Soin whereas the letter in the petition was written by the chief Poiywek Location. On reexamination Dw. 1 stated that Joel Arap Sang and Jeremiah were brothers, Jeremiah died and the land is presently occupied by Esther Rutto.
 28. Esther Chelangat Rutto (Dw. 2) stated that the late Chekwony Arap Boit sold land to her husband called Jeremiah Kipkirui Rutto (deceased) and that her husband died before the transfer was concluded. She stated that she was aware that Chelogoi was the administrator of the estate of the deceased. She stated that she executed a witness statement dated 3rd November, 2023 which contained the contents she wished to adopt as her evidence in chief.
 29. On cross examination, Dw.2 confirmed that the deceased had no children and that she was aware that the deceased had sold a portion of land to Joel Kipyegon Sang but she was not aware if the said portion was transferred to him. She stated that she was aware in the summons for confirmation of grant, the estate is to be wholly transferred to her. She further stated that Joel Arap Sang sold the land to Jeremiah Kipkirui Rutto who was her husband and that they have been in occupation of the land for over 22 years.



30. Johana Agui Arap Maiywa (Dw.3) stated that Joel Kipyegon Sang was his neighbour and that he had executed a witness statement dated 3rd November, 2023 and wished to adopt it as his evidence in chief. On cross examination Dw. 3 stated that he is neither related to the late Chepkwony Arap Boit deceased nor the petitioner herein. He further stated that he knows that the petitioner and the deceased Chepkwony Arap Boit were from the same clan.
31. Moses Kiplangat Bett (Dw.4) stated that he did not know the first objector but knew the second objector as their grandmothers are sisters. He stated that he executed a witness statement dated 3rd November, 2023 and wished to adopt it as his evidence in chief. On cross examination, Dw. 4 stated that his family had acquired an acre of land from the estate of the deceased to benefit the family of the late Tapsabei Chepngeno w/o Ngeno, a sister of the deceased herein and that the family agreed to sell the portion and divide proceeds amongst themselves. The land was sold to Jeremiah K. Ruto, the husband of Esther Rutto. Dw. 4 confirmed that the petitioner comes from the same clan with the late Chepkwony Arap Boit. On re-examination Dw.4 reiterated that after the death of Chepkwony Arap Boit (the deceased) , his two sisters were given land and that the children of those sisters sold land to Jeremiah Rutto.
32. At the close of the petitioner's case, parties were directed to file written submissions, the parties did not comply, thereafter the matter was set down for judgment. I have considered the pleadings and viva voce evidence by the parties and the sole issue for determination is whether to revoke and/or annul the grant of letter of administration intestate issued to Stephen Cheloge, the petitioner/respondent herein. The issue for determination is whether the objector/applicant's application for revocation and/or annulment meets the threshold for the revocation of a grant within the meaning of Section 76 of the [Law of Succession Act](#). For avoidance of doubt, Section 76 of the [Law of Succession Act](#) states as follows:

“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.”

33. 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.”

34. I find that there was material non disclosure and/ or concealment of material facts on the part of the petitioner with regards to the beneficiaries and liabilities of the estate. The petitioner concealed material information as to the identity of the legitimate heirs of the estate in the petition for letters of grant of administration intestate. The objectors have furnished this court with an introductory letter dated 18th October, 2022 by the Area Chief, Soin Location as PExh. 1 with a list of the deceased’s identifiable beneficiaries with prior preference to the petitioner to petition for grant of letters of administration in the estate of the deceased. The petitioner did not disclose the fact that Joel Kibiegion Sang was a liability to the estate of the deceased entitled to a portion measuring 0.8 HA in the estate property. Joel Kibiegion Sang purchased the portion in the lifetime of the deceased, however, he was unable to complete the process of transfer and registration a fact which is supported by a copy of the application to the Land Control Board at Belgut for consent to subdivide and transfer 0.8 HA a portion of the estate land to Joel Kibiegion Sang which was produced as PExh. 3 (a) and (b). The petitioner/respondent Dw. 1 conceded that as he was petitioning for letters of administration of the estate he did not put the name of Joel Arap Sang in the petition for letters of administration intestate. The fact that Joel Arap Sang was a liability to the estate of the deceased was attested to by several witnesses, who stated that he took possession of the said parcel in the lifetime of the deceased.

35. I also find that the proceedings culminating in the confirmation of grant were defective in substance as the petitioner did not involve and/or obtain consent of the objectors who had priority or equal right to apply for a grant of representation in the instant succession proceedings. The objectors were adamant that they did not renounce their right to petition for grants of letters of administration intestate as prescribed in Rule 7 (7) of the Probate and Administration Rules. This court has perused the



affidavit in support of petition for letters of administration intestate and the objectors are not listed as beneficiaries. This court cannot ascertain whether this error/omission was inadvertent or intentional. Under Rule 26 of the *Probate & Administration Rules*, it is provided;

- 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.”

This court has also perused the consent to the making of a grant of administration (Form 38) and clearly, the objectors’ names were not included meaning that their consent was neither sought nor obtained. In the circumstances, the summons for confirmation dated 6th March, 2018 is not merited.

36. The upshot being that the summons for revocation and/or annulment of grant dated 20th July, 2023 is hereby allowed giving rise to issuance of the following orders;
- (i) The grant of letters of administration intestate made to Stephen Kimutai Chelogoi Ngetich on 28th February, 2002 be revoked and/or annulled.
 - (ii) The objectors/applicants to apply for a fresh grant of letters of administration intestate in respect of the estate of the deceased.
 - (iii) The petitioner/respondent is hereby condemned to costs of this application.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 23RD DAY OF MAY 2024.

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J.K. SERGON

JUDGE

In the presence of:-

C/Assistant – Rutoh

Motanya for the Petitioner

No Appearance for the Objector

