



REPUBLIC OF KENYA



**In re Estate of Kipsaina Tarusalias Kipsana Arap Tarus alias Kipsaina s/o Tarus (Deceased)  
(Probate & Administration E011 of 2022) [2024] KEHC 5367 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5367 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
PROBATE & ADMINISTRATION E011 OF 2022**

**JR KARANJA, J**

**MAY 21, 2024**

**IN THE MATTER OF THE ESTATE OF KIPSAINA TARUSALIAS KIPSANA ARAP  
TARUS ALIAS KIPSAINA S/O TARUS:.....(DECEASED)**

**RULING**

1. The subject grant of Letters of Administration intestate respecting the estate of the late Kipsaina Tarus also known as Kipsaina Arap Tarus also known as Kipsaina S/o Tarus, (Deceased) was issued on the 27<sup>th</sup> October 2022 to the three petitioners in their capacity as the sons of the deceased and on behalf of all the deceased's Defendants from his five (5) houses hereby implying that the deceased had five wives during his lifetime as confirmed by the chief's letter dated 11<sup>th</sup> February 2022. His assets comprised of parcels of land described as Parcels No Nandi/Sigor/8, 23, 50, 51, 54, 123 and 125 all valued at approximately Kshs. 50million.

After necessary gazettment of the Petition vide Gazette Notice 10111 of 26<sup>th</sup> August 2022 and the court being satisfied that the petition met all the required legal thresholds proceeded to issue the impugned grant.

2. Thereafter on the 2<sup>nd</sup> May 2023, the Petitioners filed an application vide the necessary summons for preservation of the estate property particularly Parcel No Nandi/Sigot/50. The application was against the five Respondents who are allegedly not Dependants/ Beneficiaries of the Estate.

The record is silent on what became of the application which therefore may be treated as having withdrawn and/ or abandoned.

Be that as it may, on the 25<sup>th</sup> July 2023, the two beneficiaries in the deceased fifth house filed a summons for revocation of the grant on the basis that it was fraudulently obtained by the Petitioners by concealment of material facts and in proceedings which were defective. The application was presented on their behalf by Kibii & Company Advocates. A similar application dated and filed on 9<sup>th</sup> October, was made by the beneficiaries in the second house of the deceased through Chepseba Langat and Associates Advocates.



Another dissimilar application dated 23<sup>rd</sup> October 2023 and filed herein on 25<sup>th</sup> October 2023 through Glascoterose Advocates, was made by the Applicant, Christina Tarus, for leave to file an objection and for her to be enjoined as the Fourth Petitioner herein and to be appointed as the Administrator representing the third house of the deceased.

3. In view of the three applications, the court directed that the first application for revocation of grant dated 25<sup>th</sup> July 2023 be heard in priority to the other two application whose progress would invariably depend on the outcome of the first application.

In that regard, rather than proceed by way of oral or “viva-voce” evidence as earlier directed the parties favoured a hearing of the application by affidavit evidence and written submissions. The submissions were filed by the parties in the application but in a sudden turn of events a different set of respondents who are apparently strangers to the application purported to file their submission through Miyienda and Company Advocates. In the circumstances, the submission by the strangers may not be proper on record and are hereby struck out as an unnecessary interference in the application or this petition at this juncture.

4. This court’s consideration of the application, the court record and the rival submissions of the Petitioner’s and the Applicants beneficiaries of the fifth house of the deceased confirms that the pre-requisite and procedural requirements for obtaining the grant were largely fulfilled by the Petitioners with the exception of the consent form No 38 for adult children of the deceased. In this case, the omission in that regard was serious. Given that this was a succession cause involving the deceased’s five houses and a large number of beneficiaries inclusive of adult children of the deceased it was absolutely necessary that each one of them gives the necessary consent for the grant and for the Petitioners to be appointed the administrator of the deceased’s entire estate by affixing their signatures to the form.

The lack of consent was the single most important reason for this application and that is why the Applicants contended that the grant was obtained fraudulently by concealment of material facts related to consent.

5. It was not sufficient for the names of all the adult beneficiaries to be included in the form 38, the Petitioners ought to have gone further to ensure that each of these beneficiaries signed the form or an annexure thereto to signify their consent to the making of the grant and the appointment of the Petitioners as the Administrators. The failure to sign the consent form would be indicative of the beneficiaries disapproval of the Petitioners as Administrators of the estate or disapproval to the making of the grant at that particular point in time or lack of notice to them respecting the petition. Ultimately, the lack of consent would mean that the grant was obtained by concealment of material facts and in proceedings which were defective in nature for want of substantial procedural lapses. This would sit well and comfortable with the provision of Section 76(a) and (b) of the *Law of Succession Act*.

6. In sum, the present application is merited and is hereby allowed to the extent that the grant issued by this court on 27<sup>th</sup> October 2022 be and is hereby revoked forthwith with orders that the parties do come up with four names of persons to be appointed as A dministrators of the estate for issuance of a fresh grant of letters of administration intestate within the next four (4) months or less from this date hereof. In that regard, the estate be preserved against any form of intermeddling by any of the beneficiaries and/or any other person that may be interested in the same.

The failure of the parties to nominate four persons amongst them for appointment as Administrators of the estate within the specified time, would translate to their inability to administer the Estate thereby pave way for the public trustee to administer the Estate on behalf of the beneficiaries and in the interest of justice and fairness.



**DELIVERED AND DATED THIS 21<sup>ST</sup> DAY OF MAY, 2024**

**J. R. KARANJAH,**

**JUDGE**

