



REPUBLIC OF KENYA



**In re Estate of Ezekiel Kiprotich Arap Kirui (Deceased) (Succession Cause 108 of 2002) [2024] KEHC 4907 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4907 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 108 OF 2002**

**JK SERGON, J**

**MAY 9, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE EZEKIEL  
KIPROTICH ARAP KIRUI (DECEASED)**

**BETWEEN**

**ERICK KIPTOO ROTICH ..... 1<sup>ST</sup> PETITIONER**

**DAVID KIPKEMOI ROTICH ..... 2<sup>ND</sup> PETITIONER**

**AND**

**PRISCILLA KIRUI TOO ..... 1<sup>ST</sup> APPLICANT**

**NAOMI MATINGWONY ..... 2<sup>ND</sup> APPLICANT**

**EDDAH KIPRONO ..... 3<sup>RD</sup> APPLICANT**

**ANNA MAINEK ..... 4<sup>TH</sup> APPLICANT**

**ALICE CHERONO KOSKEI ..... 5<sup>TH</sup> APPLICANT**

**KIPYEGON ROTICH ..... 6<sup>TH</sup> APPLICANT**

**WILLY ROTICH ..... 7<sup>TH</sup> APPLICANT**

**KENETH KIPRONO ROTICH ..... 8<sup>TH</sup> APPLICANT**

**RULING**

1. The application coming up for determination is a summons for revocation and/ or annulment of grant dated 28th November, 2003 seeking the following orders;
  - (i) That the grant of letters of administration intestate made on 25th September, 2002 and confirmed on 31st July, 2003 be revoked (or annulled).



2. The application is supported by grounds on the face of it and the affidavit sworn in support of summons for revocation and/or annulment of grant by Holden Kipyegon Rotich and Lucy Chelangat Kirui the son and daughter of the deceased respectively.
3. The applicants aver that Ezekiel Kiprotich Kirui (the deceased) herein died on 7th January, 1998 and a grant of letters of administration intestate of the estate of the deceased was made to their two brothers namely Erick Kiptoo Rotich and David Kipkemoi Rotich who had obtained the grant of letters of administration intestate in a clandestine manner.
4. The applicants aver that they were not privy to succession proceedings that culminated in the confirmation of grant. Contemporaneously, the applicants faulted the petitioners for failing to obtain their consent prior to the confirmation of grant.
5. The applicants aver that the petitioners upon confirmation of grant were in the process of disposing of one of the deceased's estate known as Title No. Nakuru/Njoro/Ngata Bolock 2/28 by way of sale. The applicants were adamant that these actions were calculated to dispossess Lucy Chelangat Kirui (the rightful beneficiary) of the specific asset. Lucy Chelangat Kirui has been residing on the premises since 1986 and that the same was bequeathed to her by the deceased who surrendered a copy of the original title for the property to her.
6. The applicants also faulted the petitioners for intermeddling with the estate of the deceased, they had withdrawn copious amounts of money in fixed deposit savings belonging to the deceased.
7. The applicants were adamant that the administrators were wasting the estate of the deceased and that unless the grant made to them is revoked, they will use it to waste and/or deplete the deceased's estate to the detriment of its lawful beneficiaries.
8. The applicants asserted their suitability to apply for a fresh grant as they were the son and daughter of the deceased and that the same would be in tandem with the wishes of the deceased who prior to his death had entrusted title deeds, share certificates and other documents in the hands of Holden Kipyegon Rotich.
9. The applicants also aver that the deceased had prepared a will prior to his demise, however, he succumbed before executing the will.
10. The petitioners to the estate of the deceased filed a replying affidavit dated 31st January, 2004 opposing the application for revocation and/or (annulment) of grant. The affidavit was sworn by David Kipkemoi Rotich on behalf of his brother Erick Kiptoo Rotich the petitioners herein and subsequently joint administrators of the deceased who was their father.
11. The petitioners aver that the letters of administration were not obtained in a clandestine manner on the contrary all the provisions of the law including the publication of the notice of grant via gazette notice were followed.
12. The petitioners listed the dependents of the estate of the deceased as follows; Eric Kiptoo Rotich, David Kipkemoi Rotich, Lucy Chelangat Kirui, Eng. Kipyegon Holden Rotich, Dr. Kenneth Rotich and Willy Kiplangat Rotich.
13. The petitioners aver that they sought consent of all dependants before applying for the letters of administration, however, the applicants/objectors completely and unreasonably held their consent, Kenneth Rotich never responded to any calls therefore he neither gave nor withheld consent and Willy Kiplangat Rotich who has been residing in the United States of America since 1975 wrote back denouncing his rights as a beneficiary of the deceased's estate.



14. The petitioners were adamant that they had not been irresponsible in administering the estate of the deceased and that it was incumbent upon administrators of the estate to apply for confirmation of grant in the exercise of their duties.
15. The petitioners aver that they were not in the process of disposing of Land Title Number Nakuru/Njoro/Ngata block 2/28 which forms part of the estate of the deceased.
16. The petitioners conceded to withdrawing some of the money in the fixed deposit account to administer the estate.
17. The petitioners aver that Lucy Chelangat Kirui one of the applicants does not reside on Land Title Number Nakuru/Njoro/Ngata block 2/28 which forms part of the estate of the deceased and that she resides in Londiani. They denied that the title to the contentious parcel had been surrendered to her, the land was still registered in the name of the deceased and therefore formed part of the deceased's estate. The petitioners aver that Lucy Chelangat Kirui obtained the said title in an unlawful manner and erroneously withheld the title.
18. The petitioners contended that the will purportedly made by the deceased was invalid for want of execution and in any case had been declared invalid by the Court vide Succession Cause No. 417 of 1999.
19. The petitioners denied that Heldon K. Rotich was entrusted with the title deeds and share certificates in respect to the estate of the deceased rather he obtained them in an irregular fashion and relinquished them to his advocate who has since withheld the said documents for unpaid legal fees he purportedly owes the advocate in respect of personal matters. The petitioners contended that the failure of Heldon K. Rotich to relinquish the said documents frustrated their efforts to effectively and legally administer the estate of the deceased.
20. The applicants filed another summons for revocation and/or annulment of grant dated 20th March, 2019 seeking the following orders;
  - (i) That the application be certified urgent and hear ex parte in the first instance.
  - (ii) That the grant of letters of administration made and issued to Erick Kiptoo Rotich & David Kipkemoi Rotich on 31st July, 2003 be revoked and/or annulled on the grounds; (a) That the proceedings to obtain the grant were defective in substance and (b) That the grant was obtained fraudulently by making of a false statement or by concealment of material facts.
  - (iii) That the costs of this application be provided for.
21. The summons for revocation and/or annulment of grant is supported by grounds on the face of it and the annexed affidavit sworn by Priscilla Kirui Too on behalf of the other applicants.
22. The applicants aver that the said grant was obtained through defective proceedings and that her sisters Naomi Matingwony, Etta Kiprono, Anna Mainek and Alice Cheronon Koskei were not included in the list of beneficiaries and annexed a recent letter from the Chief stating all dependents of the deceased.
23. The applicants reiterated that the petitioners did not obtain their consent prior to filing the instant succession cause and the mode of distribution of the deceased's estate from all the beneficiaries.
24. The applicants were adamant that they are children of the deceased and therefore ought to be included as beneficiaries to the estate of the deceased. It was therefore in the interest of justice to revoke and/or annul the grant.



25. The applicants filed a further affidavit dated 13th October, 2021 in further support of the summons for revocation and/or annulment of grant dated 28th November, 2003 which was sworn by Holden Kipyegon Rotich on behalf of the 2nd, 3rd, 4th, 5th, 7th and 8th Applicants.
26. The applicant aver that the petitioners moved to court and petitioned for grant of letters of administration intestate of the estate of the deceased without their consent. Furthermore, in their petition for grant of letters of administration intestate the petitioners omitted the 1st - 5th applicants who are all daughters of the deceased in the list of beneficiaries. The applicants aver that based on deliberate omission and concealment of material facts, the petitioners were issued with letters of administration intestate of the estate of the deceased and the grant was confirmed on 31st July, 2003.
27. The applicants were adamant that they did not agree on the mode of distribution of the estate or appoint the petitioners to petition on their behalf. The Chief's letter did not list all the dependents of the deceased as is the requirement of the introduction letter and that omission was deliberate in a bid to deny the applicants the opportunity to consent, object or participate in the instant succession proceedings.
28. The applicants aver that the petitioners on the power of the grant had access to funds held in the deceased's bank accounts and had used the funds for their own benefit to the exclusion of the other beneficiaries and failed to render accounts.
29. The applicants aver that the petitioners had attempted to dispose of estate property Title No. Nakuru/Njoro/Ngata Block 2/28 was occupied by Lucy Chelangat Kirui, one of the beneficiaries who took possession during the lifetime of the deceased.
30. The applicants aver that the petitioners had unilaterally sold or purported to sell Land Title Number Kericho/Sosiot/48 and Land Title Number Kericho/Sosiot/677 all forming the estate of the deceased.
31. The applicants aver that the petitioners jointly and severally intermeddled with the estate of the deceased and breached their duty of administering the estate of the deceased according to the law.
32. The matter proceeded via viva voce evidence.
33. Engineer Kipyegon Rotich (Pw.1) testified that he filed the summons for revocation and/or annulment of grant dated 28th November, 2003 and a supporting affidavit and further supporting affidavit in support of the summons for revocation and/or annulment of grant and would rely on the averments in the said affidavits as his evidence-in-chief.
34. On cross examination Pw. 1 confirmed that he did not have any documentary evidence to support his averments that the petitioners pursuant to the power conferred by the grant, had access to fixed deposit accounts of the deceased and had withdrawn copious amounts of money. Pw. 1 relied on the fact that the petitioners had admitted to withdrawing the said money to administer the estate of the deceased. He confirmed that he had a meeting with his sisters and brothers to deliberate on the instant succession proceedings, however, he did not have a copy of minutes of the meeting. He maintained his assertion that the petitioners had intermeddled with the estate of the deceased.
35. Priscillah Kirui (Pw. 2) stated that she was seeking to have the grant revoked and therefore adopted the contents of the supporting affidavit and further supporting affidavit in support of revocation and/or annulment of grant as her evidence-in chief.
36. On cross examination Pw. 2 confirmed that she was not aware that the petitioners had applied for letters of administration in respect to the deceased's estate.



37. Erick Kiptoo Rotich (Dw.1) one of the petitioners herein testified that he executed a witness statement dated 14th October, 2021 and would rely on it as his evidence -in chief. In the said witness statement he contended that the summons for revocation of grant dated 28th November, 2003 was dismissed for want of prosecution and that the applicants had applied for reinstatement. He was against the application for reinstatement.
38. On cross examination (Dw.1), he confirmed that he is a co-administrator of the estate of the deceased, the other administrator was now deceased. Dw. 1 confirmed that his sisters were left out in the distribution of the estate, they were not included as beneficiaries of the deceased as they were already married and the same was in tandem with the wishes of the deceased. He confirmed that the estate of the deceased has never been distributed. He conceded that he did not list all the beneficiaries or obtain the consent of all beneficiaries to the estate of the deceased. Dw.1 was adamant that he was not aware of the purported disposal of land constituting the deceased's estate by his co-administrator.
39. The parties were directed to file written submissions, however, at the time of writing the judgment none of the parties had complied.
40. Upon consideration of the pleadings and evidence of all the parties, the issue that arises for determination is whether the letters of administration intestate made on 25th September, 2002 and confirmed on 31st July, 2003 should be revoked and/or annulled. The answer is in the affirmative.
41. Drawing from the provisions of Section 76 of the *Law of Succession Act*, Cap 160 Laws of Kenya, it is the applicants' submission that the grant should be revoked for the following reasons; firstly, that the petitioners failed to obtain their consent prior to filing the instant succession cause culminating in the confirmation of grant. Secondly, the grant was obtained based on deliberate omission and concealment of material facts. Thirdly, petitioners who were the administrators of the estate of the deceased have not proceeded diligently with the administration of the estate.
42. The law governing revocation or annulment of grant is Section 76 of the *Law of Succession Act*, Cap 160 Laws of Kenya, and Rule 44 of the *Probate and Administration Rules*. Section 76 stipulates 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.

43. The principal reasons for seeking revocation of the grant is that the grant was based on defective proceedings and concealment of material facts. The daughters of the deceased to wit Naomi Matingwony, Etta Kiprono, Anna Mainek and Alice Cherono Koskei did not give their consent prior to filing the instant succession cause culminating in the confirmed grant and were not included in the list of beneficiaries. I find that this was a glaring omission on the part of the petitioners.
44. Dw. 1 on cross examination confirmed that his sisters were left out in the distribution of the estate, they were not included as beneficiaries of the deceased as they were already married and the same was in tandem with the wishes of the deceased. I find that this does not hold water as the deceased died intestate and therefore the failure to include his sisters as beneficiaries was tantamount to discrimination and contrary to the provisions of the *Constitution*. Article 27(3) of the *Constitution* specifically provides that “women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.”
45. In *Re Estate of Solomon Ngatia Kariuki (deceased)* (2008) eKLR Makhandia, J. (as he then was) observed that: “The *Law of Succession Act* does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased’s estate.”
46. Dw. 1 on cross examination, conceded that he did not list all the beneficiaries or obtain the consent of all beneficiaries to the estate of the deceased, prior to filing the instant succession proceedings. It is disconcerting that the daughters of the deceased were not listed in the initial letter from the Chief, however, this Court has taken note of the recent letter from the Chief listing all the dependants of the deceased. In a bid to emphasize the importance of the chief’s input, I wish to highlight the case of *In Re Estate of Ambutu Mbogori* (2018) eKLR where Gikonyo J. observed as follows; “... the Petitioner committed other sins; he initiated these proceedings without a letter of introduction from the chief. This letter serves an important purpose in the ascertainment of the deceased, the dependants as well as properties of the deceased” In light of the foregoing, I therefore find that the proceedings culminating to the confirmation of grant were defective in substance.
47. Consequently, I find that the application for revocation grant is merited and is allowed to the effect that the grant of letters of administration to Erick Kiptoo Rotich and David Kipkemoi Rotich issued on 25th September, 2002 and confirmed on 31st July, 2003 be and is hereby revoked. Costs of this application shall be borne by the 1st petitioner.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 9TH DAY OF MAY, 2024.**

**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

No Appearance

