



REPUBLIC OF KENYA



**In re Estate of James Kimosbey Korir (Deceased) (Probate & Administration
13 of 2023) [2024] KEHC 7278 (KLR) (18 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7278 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 13 OF 2023**

JR KARANJA, J

JUNE 18, 2024

IN THE MATTER OF THE ESTATE OF JAMES KIMOSBEY KORIR:.....DECEASED

RULING

1. Elizabeth Chebet Korir (Petitioner) applied for and was on the 26th November 2009 issued with a grant of Letters of Administration Intestate respecting the Estate of her Late Husband James Kimosbei Korir (Deceased) comprising of a Parcel of Land described as No. Nandi/Ndalat/401.

The affidavit in support of the application filed herein on 6th July 2009 indicated that the deceased was survived by his wife (Petitioner) and three, sons namely, Paul Kiptoo Kutto, Benjamin Chepsiror and Peter Kipkemei Mosbey.

Upon confirmation of the grant on 18th May 2015 and issuance of the certificate of confirmation of grant dated 20th June 2015, the Estate property was devolved to the following: -

1. Paulo Kiptoo Kutto (5.5 Acres)
 2. Gladys Jepleting (1.9 Acres)
 3. Peter Magut (1.2 Acres)
 4. Silvanus Kiprugut Koech (0.8 Acres)
 5. Benjamin Chepsiror (0.6 Acres)
2. Most ironical, no part of the estate was devolved to the Petitioner and her son, Peter Kipkemei Mosbey. Further, persons not listed in the Petition as beneficiaries of the estate ended up being allocated parts of the estate. These are Gladys Jepleting, Peter Magut and Silvanus Kiprugut Koech.

Be as it may, the certificate of confirmation of grant was issued on 25th June, 2019 almost seven (7) years after the issuance of the grant and long past the prescribed period of six (6) months within which a grant ought to be confirmed.



The foregoing notwithstanding, the Petitioner now applies for revocation of the grant vide the summons for revocation of grant dated 2nd September 2022, as amended on 15th May 2023.

3. The grounds for the application are that the grant was fraudulently obtained by the making of false statements of facts and that the estate was distributed and transmitted to strangers. These grounds were canvassed by written submissions which were filed herein by Anassi Momanyi and Company Advocates and Isiaho Sawe and Company Advocates on behalf of the Petitioner/ Applicant and the Respondents respectively.

After due consideration of the grounds together with the court record and the rival submissions. It became clear to this court that the entire process leading to the issuance of the grant and the certificate of confirmation of grant was a fraudulent scheme in which the Petitioner was a willing or an unwilling participant and this explains why the first Respondent (Paul or Paulo Kiptoo Kutto) and the fifth Respondent (Benjamin Chepsiror) were included as the beneficiaries sons of the deceased yet they were not. The two were irregularly and unlawfully given a share of the estate for which they were not entitled to as they were not in any manner beneficiaries of the Estate.

The fraudulent scheme was further manifested by distribution of the estate to the Second Respondent (Gladys Jepleting), the Third Respondent (Peter Magut) and the Fourth Respondent, Silvanus Kipkurgat Koech who were not beneficiaries of the Estate.

4. Sadly and most unfortunate, the true and actual beneficiaries of the Estate, being the Petitioner, as the surviving widow of the deceased and Peter Kipkemei Mosbey, as the actual son of the deceased were disinherited when the grant was confirmed and the certificate of confirmation of grant issued.

The two became the victims of the fraudulent scheme conceived and executed by the Respondents who in effect “stole” their rightful inheritance.

5. It would therefore follow that whether or not the Petitioner participated in the fraudulent scheme, the impugned grant together with the impugned certificate of confirmation of grant were obtained fraudulently by making of false statements, misrepresentations and concealment of material facts. Simply put, the grant was obtained by deceit on the part of the Respondents resulting in the estate being divided and shared among strangers rather than the true and lawful Beneficiaries/Dependents of the deceased. It would also follow that the proceedings to obtain the grant were defective in nature and substance.

For all the foregoing reasons, the impugned grant and the impugned certificate of confirmation of grant be and are hereby revoked forthwith and the transactions undertaken by the Respondent or any other person on the strength of the certificate of confirmation of grant are thus rendered “null and void” “ab-initio.” The ownership of the estate property and registration thereof shall revert to the name of the deceased. Each party shall bear own costs of the application.

6. In exercise of the inherent powers of the court order Rule 73 of the Probate and Administration Rules, it is hereby ordered that a fresh grant be issued forthwith in the name of the Petitioner, Elizabeth Chebet Korir, on condition that she takes out the necessary summons for confirmation of the grant within the next four (4) months from this date hereof.

A mention date shall be set to confirm compliance and/or further orders.

DATED AND DELIVERED THIS 18TH DAY OF JUNE, 2024

J. R. KARANJAH,

JUDGE

