



**In re Estate of Pina Khan Ruto - Deceased (Succession Cause  
1 of 1996) [2024] KEHC 7199 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7199 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 1 OF 1996  
RN NYAKUNDI, J  
JUNE 13, 2024**

**IN THE MATTER OF THE ESTATE OF PINA KHAN RUTO - DECEASED**

**BETWEEN**

**LABAN KIPYEGO RUTO ..... PETITIONER**

**AND**

**FARIDA CHEPCHUMBA RUTO ..... 1<sup>ST</sup> APPLICANT**

**JENNIFER CHEROTICH RUTO ..... 2<sup>ND</sup> APPLICANT**

**ELVIS KIPKEMBOI RUTO ..... 3<sup>RD</sup> APPLICANT**

**RULING**

1. Before me for determination are summons for revocation of grant dated 15<sup>th</sup> November, 2023. The applicant seeks the following reliefs:
  - a. That the grant of letters of administration intestate issued on 9<sup>th</sup> October, 1997 to Laban Kipyego Ruto and confirmed to Laban Kipyego Ruto and Farida Chepchumba Ruto on the 22<sup>nd</sup> day of July, 1998 be revoked on the grounds that the grant has become useless and inoperative through subsequent circumstances, that is, all beneficiaries are of age.
  - b. That upon revocation of grant of letters of administration intestate issues on 9<sup>th</sup> October, 1997 to Laban Kipyego Ruto and confirmed to Laban Kipyego Ruto and Farida Chepchumba Ruto on the 22<sup>nd</sup> day of July, 1998; the same be confirmed to Farida Chepchumba Ruto, Jennifer Cherotich Ruto and Elvis Kipkemboi Ruto and Certificate of Confirmation of grant be issued to enable transfer and joint registration of all that parcel of land known as Kitale Municipality Block 15 (Koitogos)141 as ordered by Justice R. Nambuye on 22/7/1998
2. The application is grounded by an affidavit in support sworn by Farida Chepchumba Ruto, Jennifer Cherotich Ruto and Elvis Kipkemboi Ruto, the applicants herein where they have deponed as follows:



- a. That we are among the 3 surviving heirs (2 sisters and a brother) of the Estate Of Pina Khan Ruto – Deceased who died on the 4<sup>th</sup> day of August, 1994.
  - b. That the above-named Pina Khan Ruto-deceased died on 4<sup>th</sup> day of August, 1994 and a grant of letters of administration intestate was issued to Laban Kipyego Ruto and confirmed to Laban Kipyego Ruto and Farida Chepchumba Ruto on the 22<sup>nd</sup> day of July, 1998.
  - c. That grant issued on 9<sup>th</sup> October, 1997 to Laban Kipyego Ruto and confirmed Laban Kipyego Ruto and Farida Chepchumba Ruto on the 22<sup>nd</sup> day of July, 1998 has become useless and inoperative through subsequent circumstances, that is, all beneficiaries are of age.
  - d. That the grant of letters of administration and proceedings therein be revoked.
  - e. That it is in the interest of justice that the application herein be allowed and the grant be revoked.
3. In response to the application, Laban K, Ruto the administrator placed reliance in the affidavits dated 9<sup>th</sup> April, 2024 and the 2<sup>nd</sup> affidavit dated 22<sup>nd</sup> April, 2024. The administrator dwelt mainly on the support he has given to the applicants during the pendency of their time growing up, going to school, maintenance and making financial provisions for their basic rights. This included: the upkeep, payment of school fees and other needs of necessity for their welfare and best interest till the age of majority. That he created a trust account from which he was able draw financial resources to meet the basic survival rights. That if any sale was undertaken of the asset of the deceased it was for purpose of supporting his children at various levels of their lifetime before attaining the age of majority.
4. In addition, the applicants filed a supplementary affidavit in response to the affidavit by the Respondent in which they detailed as follows:
- a. That the court in its wisdom foresaw the Respondent's actions and in securing our interest saw it fit to create a trust which the Respondent could not have transferred the property without first adhering to the said orders explaining why the said property is still in the name of our late mother, Pina Khan Ruto.
  - b. That the contents of the Replying affidavit by the petitioner/Respondent on 9<sup>th</sup> April, 2024 have been explained to us by our Advocate and having understood its full import, we wish to respond thereto as hereunder:
  - c. That in answer to the Replying affidavit we wish to reiterate the contents in our supporting affidavit. Further the contents of above stated paragraphs of the Replying Affidavit are falsehood and are neither here nor there. The truth of the matter is that the Defendant/ Respondent unlawfully and illegally sold the subject matter of this estate contrary to the directions of the court and deprived the beneficiaries of the estate their rightful inheritance in pretence of doing it in their interest.
  - d. That in response to paragraph 1 and 2, we reiterate our position as in the affidavit in support of the application.
  - e. That in response to paragraphs 3 to 9, it is true we lived shortly with the respondent, but our fees, allowances and maintenance were paid by Kenya Commercial Bank Staff Pension Fund and trustee and Investment Services which was overseen and managed entirely by the Respondent and several correspondences.



- f. That in further response to paragraph 3 to 9, our late father used to work at Kenya Commercial Bank and as a Branch Manager whose last work station was Kitale, Trans Nzoia County, wherein the death in service benefits were used to pay our fees, maintenance and other basic needs as seen disbursed by the bank and the Respondent was a beneficiary to it.
- g. That in response to paragraph 10,11& 15, there is no evidence of the Respondent being our legal custodian with rights over our inheritance and powers to sell the same to fund our living.
- h. That furthermore, the Respondent sold the property for his own interest and in fact without the consent of the Co-administrator, the 1<sup>st</sup> Applicant.
- i. That in further response to paragraph 10 and 15, said sale of the property was not available to the Respondent to exercise as the grant as per the court orders was that ....
 

“..... the grant to be held in trust for the beneficiaries of the deceased and the same to be registered in their names as they are of age”
- j. That in response to paragraph 12, we were not aware of th succession having been done and in fact the 1<sup>st</sup> Applicant was only instructed to sign and appear in court in a process an 18 year old was not explained the purpose of the court visit and was never explained her role as the co-administrator herein; they only found out the instant succession when they attempted to file intestate succession for their mother’s estate and to their shcok they found these proceedings opened and closed by the respondent years ago.
- k. That furthermore, we would not have moved this court when we were not aware of the succession and would not have acted upon attaining age of majority on issues not known to us.
- l. That in 2003, the 3<sup>rd</sup> Applicant placed a caution on the said property as he was leaving the country for USA and was not aware of the said succession to which if he knew , he would have surely applied for the same to be revoked or apply for the trust had crystallized.
- m. That part of the reasons for delay were probably as a result of the Respondent being incarcerated for four (4) years in Priorsn (between 2004 and 2007) which still wouldn’t explain on his part the delay of over Twenty years to distribute the estate to beneficiaries as the property is still in the name of our late mother.
- n. That in response to paragraph 13, the Respondent has not administered the estate as required by law as the same is still in the name of the deceased herein and as selling property belonging to beneficiaries for own benefit is not administering an estate which in fact had a caveat if age attainment by the beneficiaries.
- o. That in further response to paragraph 13, the 2<sup>nd</sup> applicant has not been and was not an administrator hence could not administer the estate with the respondent as she was a minor.
- p. That in response to paragraph 14, it is the first time we are laying eyes on the alleged agreement for sale of the property belonging to us, the co-administrator and 1<sup>st</sup> Applicant was not involved and there is no evidence of our involvement in the said administration or consent to have the Respondent administer the estate in such manner.
- q. That in response to paragraph 14, the financial debts and constraints, if any are his own to carry but not a debt incurred by the estate of Pina Khan Ruto deceased as her beneficiaries were taken care of by the Pension Fund proceeds which were paid to the school directly to the school bank and other monies received by the respondent for the well-being of the beneficiaries.



- r. That furthermore, the Respondent was a recipient of our late father, peter Cheruiyot's shares at KCB Bank Kenya Ltd which he sought transfer vide a letter dated 15<sup>th</sup> June, 1999 strengthening the point that assets left by our parents were sufficient to sustain us until we were adults.
5. In addition to the affidavit evidence, both parties filed submissions to buttress their position, which I have found useful in developing a logic and determination of this cause. I

#### Determination

Having considered the summons for revocation, the evidence and submissions, one singular issue for determination is whether the certificate of confirmation of grant dated 22<sup>nd</sup> July, 1998 issued to Laban Kipyego Ruto and Farida Chepchumba Ruto should be annulled or revoked. The operative provision in this discussion is Section 76 of the *Law of Succession Act* which states as follows: -

“76. Revocation or annulment of grant

- (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;

6. In construing and interpreting the applicability of the provisions of section 76, the court in *Re Estate of Prisca Ong'ayo Nande (deceased)*(2020) eKLR 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.

7. In the same vein, the court in *Re estate of Juma Shitseswa Linani (deceased) (2021) eKLR* buttressed the position of the law in this respect by making the following observations:

“That where a person is unhappy with the process of confirmation of grant, such a person ought not move the court under Section 76 for revocation of grant. Instead, the person should file an appeal against the orders made by the court on distribution to apply for review of the said orders. This is because the court confirming a grant largely becomes functus so far as confirmation of the grant is concerned, and cannot revisit the matter unless upon review.”

8. In the instant summons by the applicant, the major grievances are in two fronts; first and foremost, the personal representative Mr. Laban Kipyego Ruto has failed after due notice and without reasonable cause to comply with paragraph 7 of his Affidavit sworn on 27<sup>th</sup> March, 1998 in which he deposed as follows:

9. That I need the confirmation of letter of grants in my name and all the properties of the deceased shall be registered in my name for the first instant and shall remain so until I decide to distribute the same to their heirs. Secondly, that the personal representative Laban Ruto has failed to proceed diligently with the administration of the estate in having it revert to the applicants namely:

- a. Farida Chepchumba Ruto
- b. Jennifer Cherotich Ruto
- c. Elvis Kipkemboi

10. It is not in dispute that the certificate of confirmation of grant was issued by the court in the names of Laban Kipyego Ruto and Farida Chepchumba Ruto to administer the estate of the deceased Pina Khan Ruto referenced as Kitale Municipality Block 15 (Koitogos) 141. It is acknowledged in the affidavit by the applicants that as at the time of confirmation of grant each one of them was below the age of 18 years and hence the necessity to have their uncle be appointed as an administrator as a senior ranking member of their family. Essentially, the certificate of confirmation of grant issued on 22<sup>nd</sup> July, 1998 generally speaking created a continuing trust under Section 82 of the [Law of Succession Act](#). The Respondent Laban Kipyego Ruto under the dictates of Section 82 was to hold such property in trust for the eventual distribution to the children of the deceased. This was for the very purpose to safeguard and protect the welfare and the best interest of the minors or beneficiaries of the deceased as named in the Summons for revocation. Section 41 of the [Law of Succession Act](#) provides that the interests of such minors was to be held in trust during their minority age bracket until they attained the age of majority when such intestate estate should be conveyed, transmitted or transferred to each one of them individually or severally. The letter and spirit of the Certificate of Confirmation issued to Laban Kipyego Ruto and his co-administrator Farida Kipchumba Ruto was to sustain the estate without it being intermeddled or interfere with during the existence of the continued trust during their minority before they attain maturity to voluntarily receive, acknowledge, appropriate shares of the assets entitled to them for use and management.

11. The term “continuing trust” was used expressly in Section 74A, 83(g) (i) and 84 of the [Law of Succession Act](#), but it was the provisions in section 84 which clearly brought out what “continuing trust” meant in



the context of the *Law of Succession Act*, there was to stay the life interest enjoyed by a surviving spouse and the trust held on behalf of a minor.”

(15)

“Trust as used in the *Law of Succession Act*, particularly in Part VII, was limited to continuing trusts and other trusts in favour of beneficiaries or creditors. It was not used in the context that the applicants were using it in their application. The applicants had not established any trust, and the administrator their could not be deemed to be a trustee on their behalf. They had to establish that trust against him, in proceedings commenced elsewhere, but not in those succession proceedings. The court did not have jurisdiction in the probate proceedings to entertain a suit or application relating to declaration of trust.” (See *In re Estate of Atibu Oronje Asioma (Deceased) (Succession Cause 312 of 2008) [2022] KEHC 11046 (KLR)*)

12. Here in this application, I see recognition of the ownership of property as a fundamental right in article 40 of *the Constitution*. The concepts of liberty, equality, dignity, right to life are all well known but to that one has to add the concept of property rights. The term property in its pristine meaning embraces both movable and immovable assets. According to Noyes from the institute of property 1936 Pg. 436, he defines property as any protected right or bundle of rights, interests or thing with direct or indirect regard to any external object i.e. other than the person himself, which is material or quasi material i.e. a protected process and which the then person or organization of society or community permits it to be either private or public, which is connoted by the legal concepts of occupying, possession or using. These are the rights in which the applicants are complaining have been interfered with by the respondent through a series of intermeddling in which each of them is likely to suffer substantial loss.
13. As to what substantial loss is, it was observed in *James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR*, that:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
14. The court is satisfied that if the Respondent is allowed to continue to hold the position as a co-administrator without distributing or transferring the estate to the applicants, they will suffer substantial loss not remedied in damages. It is crystal clear that the respondent was holding forth as a trustee in the continuing trust on behalf of the minor children of the deceased who have now come of age by dint of Section 41 and 82 of the *Law of Succession Act*.
15. This certificate of confirmation of grant as challenged by the applicants is also determinable not only under Section 76 of the *Law of Succession Act* for having become inoperative for reason of the Respondent not leaving to his covenant to transmit the shares of the estate to the heirs who have now attained the age of maturity but also is reviewable to vary the position of the first Respondent as an administrator who was at the time was just a trustee under Section 41 and 82 of the Act. In terms of Order 45 Rule 1 of the *Civil Procedure Act*, and Rule 73(1) of the Probate and Administration



Rules, there are sufficient reasons which exists to review the Certificate of Confirmation of grant by revoking the appointment of Laban Kipyego Ruto as the Administrator to the estate of the deceased to pave way for Farida Chepchumba, Jennifer Cherotich and Elvis Kipkemboi Ruto to be substituted as joint administrators under Section 66 of the Succession Act. The applicants herein shall exercise their functions and duties of administration of the estate as provided for under Section 83 of the Act without any reference to the Respondent. These facts which have emerged on the fact of the order passed on certificate of confirmation fully satisfies the criteria in exercising review jurisdiction with respect the administration of the estate survived of the deceased. It has also been noted that the 1<sup>st</sup> Respondent has never rendered accounts of the estate as provided for under Section 83(g) of the Act. This is absolutely necessary as captured in the minute details of his affidavit. The maintainability of his position as the administrator to the estate of the deceased was to give due regard to the welfare and best interest of the applicant. While considering these summons and adjudicating it based on the grounds advanced by the applicants and the material made available referencing the initial decision and the happening of the subsequent events or developments, I take note that the initial decision of having the 1<sup>st</sup> Respondent as a co-administrator is prejudicial to the applicants who are now above 18 years and have the capacity and the competency to govern the estate with due diligence to guarantee and protect their fundamental rights to property. My attention was drawn to the aspect of intermeddling by the 1<sup>st</sup> Respondents under the purported exercising of power of administration to dispose off by sale of the estate property without the participation and knowledge of the applicants. This means that evidence of sale or transfer to a purchaser to raise financial resources to support the applicants' needs like school fees, Medicare, food, clothing etc is analogous to discover of new matters or evidence which was not within their knowledge and could not be produced at the time the certificate of confirmation of grant was passed or made subject matter of this application.

16. Bearing in mind the circumstances of this case, the obvious findings on the primary facts by an administrator is to have him impeached and have his role reversed to a level of being functus officio for having failed to take into account that he was to distribute the estate within a reasonable time with the applicants upon attaining the age of majority. By failing to give effect to the described terms of the Certificate of Confirmation of grant, it is impermissible under Section 83 of the act to retain him as a co-administrator.
17. For those reasons, the certificate of confirmation of grant dated 22<sup>nd</sup> July, 1998 be amended by deleting the name of Laban Kipyego Ruto and in his place the applicants namely Farida Chepchumba, Jennifer Cherotich Ruto and Elvis Kipkemboi Ruto. The Deputy Registrar shall forthwith cause an amended certificate of confirmation of grant be issued in compliance with this order within 7 days from today's date. i.e. 13<sup>th</sup> June, 2024. The nature and importance of this amendment is for the applicants to draw general guidance from Section 35,36,37 and 38 of the Law of Succession Act on the distribution model and entitlement to each beneficiary of the intestate estate. The costs of these summons be in the cause.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 13<sup>TH</sup> DAY OF JUNE 2024.**

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**R. NYAKUNDI**

**JUDGE**

bulbulchambers@gmail.com

