



**In re Estate of Thomas Chepkurgat Cheptiony (Deceased) (Probate & Administration 112 of 2015) [2024] KEHC 7152 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7152 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PROBATE & ADMINISTRATION 112 OF 2015  
RN NYAKUNDI, J  
JUNE 13, 2024  
IN THE MATTER OF THE ESTATE OF THOMAS  
CHEPKURGAT CHEPTIONY (DECEASED)**

**BETWEEN**

- DICKSON KIBIWOTT KIPRONO ..... 1<sup>ST</sup> PROTESTOR**
- JACKLINE JEPKEMOI ..... 2<sup>ND</sup> PROTESTOR**
- SILAS KIPKOSGEI KIPKOECH ..... 3<sup>RD</sup> PROTESTOR**
- ALEX TANUI NGETICH ..... 4<sup>TH</sup> PROTESTOR**
- JACKLINE JEBET KIPKOECH ..... 5<sup>TH</sup> PROTESTOR**
- JANET JEPCHIRCHIR ..... 6<sup>TH</sup> PROTESTOR**
- TITUS KIMELI ..... 7<sup>TH</sup> PROTESTOR**
- PHYLIS CHEPKORIR ..... 8<sup>TH</sup> PROTESTOR**

**AND**

- CLETI KURGAT ..... 1<sup>ST</sup> PETITIONER**
- AGNES KURGAT ..... 2<sup>ND</sup> PETITIONER**

**RULING**

1. By Summons dated 16/8/2023, the Applicants seek orders that:
  1. Spent.
  2. Spent.
  3. Spent.



4. The Certificate of Confirmation issued on 14/4/2023 is hereby revoked and or set aside or reviewed.
5. Costs of the Application are granted to the Protesters/Applicants.
2. The application is premised on the affidavit sworn by Dickson Kibiwot Kiprono on 16/8/2023.
3. He deposed that he is the biological son of the late Kipkoech Ambrose Kurgat who is a son to the late Thomas Chepkurgat Cheptiony, that he is a biological son of the late Kipkoech Ambrose Kurgat who is a son to the late Thomas Chepkurgat Cheptiony, that his father, the late Kipkoech Ambrose Kurgat, died on 29/12/2011 after the demise of his grandfather, the deceased herein. He further deposed that his father, the late Kipkoech Ambrose Kurgat, died leaving being the following beneficiaries;

Name	Relationship	Age
Dickson Kibiwott Kiproni	Son	Adult
Jackline Jepkemoi	Daughter	Adult
Silas Kipkosgei Kipkoech	Son	Adult
Alex Tanui Ngetich	Son	Adult
Jackline Jebet Kipkoech	Daughter	Adult
Mercy Jepkemboi	Daughter	Adult
Raymond Kipchumba	Son	Adult
Titus Kimeli	Son	Adult
Janet Jepchirchir	Daughter	Adult
Phylis Chepkorir	Daughter	Adult

4. He contended that, the Petitioners/Respondents herein proceeded to commence the instant succession proceedings without their knowledge hence depriving them of the opportunity to participate, that they were not included in the instant succession proceedings despite having a right to inherit directly a portion of the estate that would have gone to their mother, that the Petitioners/Respondents failed to disclose to this Honourable Court that they exist hence misleading the Court into distributing the instant estate in the matter shown in the Certificate of Confirmation, that they only learnt of the instant succession proceedings from their neighbours on 1<sup>st</sup> August, 2023 or thereabouts and that when they reached out to the Petitioners/Applicants, they told them that their share of the estate has been allocated to one Lucy Jepkoech Kemboi to hold it in trust for them, that the said Lucy Jepkoech Kemboi is a mother to just one of his father's children being, Mercy Jepkemboi, and has no guardianship rights with respect to their inheritance. He maintained that they are all adults, capable of managing their affairs hence there is no rationale for anyone holding our inheritance in trust for us and that they read a sinister motive in allocating all the share to Lucy Jepkoech Kemboi who may convert the same into her own property for her benefit and that of her daughter.



5. Further, the Applicants contend that in fact the Certificate of Confirmation does not disclose that Lucy Jepkoech Kemboi is to hold the properties in trust for anybody hence availing her the opportunity to play some mischief with it. He further deposed that they are reliably informed that the said Lucy Jepkoech Kemboi is planning to sell a portion of the estate allocated to her and this will jeopardize our rights as bona fide beneficiaries, that there is an imminent risk that they shall lose their inheritance unless this Honourable Court intervenes accordingly.
6. In conclusion, he deposed that there is a need to set aside and or revoke the Certificate of Confirmation issued on 14/4/2023 to facilitate a proper distribution of the instant estate. He maintained that they were dependent on their father and the estate of their grandfather for our livelihood hence the deprivation of the right to inheritance will render us destitute.

## **The Response**

### **The 1<sup>st</sup> Petitioner's /Respondent's Case**

7. In opposing the application, the 1<sup>st</sup> Petitioner/Respondent Case filed a Replying Affidavit dated 27/9/2023.
8. He deposed that all the Protesters are persons known to him, that they are sons and daughters of his late brother, one Ambrose Kipkoech Kurgat who died on 29/12/2011, that the Protesters have at one stage been under his care after the death of their father. He admitted that he also knows and recognizes Lucy Jepkoech Kemboi as the widow to Ambrose Kipkoech Kurgat (deceased), that her status as the widow has been affirmed by this Court in its Judgment in Eldoret HCCC No. 7 of 2012 which was endorsed by the Court of Appeal in Eldoret Civil Appeal No. 137 of 2012. He denied the allegations that that the Protesters herein have never been aware of these proceedings. He maintained that he has personally engaged the Protesters over the matters relating to their entitlement herein and has even sworn affidavits in this suit alluding to the Protesters' interest in the property due to their deceased father.
9. He further deposed that the Grant herein was confirmed after intense deliberations within the family where it was resolved inter alia that; beneficiaries to the deceased's estate be limited to the surviving widow and children including Ambrose Kipkemboi Kurgat (deceased) and that all grandchildren, and that would include the Protesters will only be entitled to a share of the deceased's estate through their parents, that following these deliberations and resolutions his co-petitioner and him filed a compromised application to confirm the Grant, the application is dated 8/12/2022 and is supported by their joint affidavit. He maintained that it is abundantly clear from the application which was endorsed and consented to by all concerned that all assets due to Ambrose Kipkoech Kurgat (deceased) were transmitted to Lucy Jepkoech Kemboi on behalf of the estate of Ambrose Kipkoech Kurgat, (deceased) and not on her own behalf. According to the 1<sup>st</sup> Petitioner, the fears expressed by the Protesters are unfounded and that all they need to do is to engage their step mother Lucy Jepkoech Kemboi on how to succeed their deceased father instead of filing the instant application. He added that in any event this Court on 16/2/2023 rendered a judgment on an application of this very nature involving his other nephew. He urged the Court to make similar orders herein.
10. In the end, he contended that the Court is bereft of jurisdiction to revoke a Certificate of Confirmation of Grant, the Applicants do not rank in priority to any person named in the Certificate of Confirmation and lastly that the Applicants lack capacity in their personal capacities to agitate the instant application.



## **The 2<sup>nd</sup> Petitioner's/Respondent's Case**

11. The application is opposed by the 2<sup>nd</sup> Petitioner vide her undated Replying Affidavit, filed on 04/12/2023.
12. She deposed that she was the 2<sup>nd</sup> wife to the deceased. She maintained that the protestors application is frivolous, an afterthought, vexatious and an abuse of the Court process devoid of merit and ought to be dismissed in the first instance, that her late husband blessed with several issues and among them was Ambrose Kipkemboi Kurgat who is now deceased, that upon his demise, his wife Lucy Jepkoech Kemboi was appointed as the Administrator of his estate and when succession proceedings were commenced. Lucy Jepkoech Kemboi was listed as the beneficiary representing the estate of Ambrose Kipkemboi Kurgat.
13. She further deposed that after a long tussle for the distribution of the estate a consensus was reached by the whole family where each beneficiary was provided for, that during the meeting which arrived at the consensus Lucy Jepkoech Kemboi was recognized as the wife and administrator of the estate of Ambrose Kipkemboi Kurgat, that the said Lucy Jepkoech Kemboi lives with her in the same parcel of land being Irong/Sergoit/363. Further, that she is aware that the late Ambrose Kipkemboi Kurgat was blessed with Three children with Lucy Jepkoech Kemboi namely:- Christine Jepchumba Kurgat, Collins Kiprop and Moreen Chepkemoi Koech, that the other children known to me and were sired by Ambrose Kipkemboi Kurgat are:- Raymond Kipchumba Koech, Janet Jepchirchir and Phylis Chepkorir. She maintained that she and her family are strangers to the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Protestors and their alleged relationship to the deceased have no basis, that the protestors have always been aware of the succession proceedings hence they should have filed their claims long ago, that the protestors have come to the wrong forum in trying to trace their entitlement in the estate of their alleged grandfather instead of their father, that the Protestors only claim can be traced to the estate of Ambrose Kipkemboi Kurgat whose estate has already been provided for, that the Protestors should not be allowed to derail the whole estate of Thomas Chepkurgat Cheptiony whose other beneficiaries require to be given their entitlement, that the protestors have therefore not met the threshold required to convince the court to revoke the Grant already issued.

## **The Objector's Case**

14. The application is also opposed by one Lucy Jepkoech Kemboi vide her Replying Affidavit filed on 5/10/2023.
15. She deposed that the Protestors' Application is frivolous, an afterthought, vexatious, and an abuse of the Court process, devoid of merit, incompetent, misconceived, an attempt in futility and ought to be dismissed in the first instance, that during his lifetime, she and her husband were blessed with the following issues; Christine Jepchumba Kurgat, Collins Kiprop and Maureen Chepkemoi Koech. She further deposed that during his lifetime, her late husband had been blessed with the following children sired outside our marriage whom she recognizes as her step-children; Raymond Kipchumba Koech, Janet Jepchirchir (the 6<sup>th</sup> Protestors herein) and Phylis Chepkorir (the 8<sup>th</sup> Protestor herein). She however maintained that she and her entire family are strangers to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> and their alleged relationship with her deceased husband has been the subject of intense attempts at manipulation since the death of my husband and she has always maintained have no relationship with my deceased husband, that being stranger's to the deceased's estate, the consent and or participation of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Protestors in the succession proceedings herein was not necessary and the allegations that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Protestors were left out is made in a vacuum and without any legal justification.



16. She further deposed that her participation in the succession proceedings was only to the extent of receiving my late husband's rightful share in the estate for purposes of preservation and for the benefit of the rightful heirs of my late husband's estate who do not include the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Protestors, that the allegation that the Protestors only learnt of the succession proceedings herein on 1st August 2023 or thereabouts is a blatant lie made on oath given the Protestors have always been aware of the proceedings herein and have at one point been represented by the firm of Omondi & Co. Advocates who must have kept them apprised of her response to their demands and the status of the succession proceedings to which they ought to have filed their protests in time upon filing of the Summons for Confirmation of Grant and prior to confirmation of the grant.
17. She contended that instead of going through the right legal channels to prove their alleged consanguinity, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Protestors acting alongside the 1st Petitioner dragged her and her children through various Government Administration offices including the Assistant County Commissioner and the Chief and she has always maintained her stand that they are strangers to my late husband's estate while advising the them to file appropriate legal proceedings where the issue of their paternity would be determined.
18. She denied that the Protestors were left out at the commencement of the proceedings as they ought to have filed their objections/protests and attended Court to prove their alleged relationship with the deceased and any dependency on his estate.
19. She further deposed that upon the death of my husband, she and Cleti Kurgat (the 1<sup>st</sup> Petitioner) had a protracted dispute with regard to who had the right to bury my husband, a dispute that went all the way to the Court of Appeal and never saw eye to eye in many issues including the alleged relationship between the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Protestors and her late husband. She maintained that the 1st Petitioner was never been appointed as a guardian to my late husband or any of his children and the letter annexed authored by the Acting Chief, Cheboror Location does not reflect the true position of her late husband's estate given that my husband was not a resident of the said location but a resident of Irong Location, that the Certificate of Confirmation of Grant was made after extensive negotiations, consensus and adequate provision for all dependants and the Application before Court is devoid of any merit.
20. She maintained that she does not harbor any intentions of disinheriting and/or disenfranchising any of my late husband's beneficiaries and the allegations that she in the process of selling part of the estate are not true. Further that the protestors have not met the threshold for grant of the orders sought. She humbly prayed that the application be dismissed with costs.

### **The Submissions**

21. The application was canvassed vide written submissions. All parties filed their respective submissions.

### **The Protesters'/Applicants' Submissions**

22. On Whether the Protesters/Applicants are bona fide Beneficiaries; Counsel for the Protesters urged the Court to take cognizance of the fact that they annexed to the Supporting Affidavit a Letter from the Area Chief listing the children left behind by late Ambrose Kipkoech Kurgat and that it is equally important for the Court to take note of the fact that the 1<sup>st</sup> Petitioner in his Replying Affidavit equally recognizes the Protestors as children of his brother, the late Ambrose Kipkoech Kurgat. Counsel maintained that it is not in contest that the late Ambrose Kipkoech Kurgat is a son of the deceased herein and that it is equally not denied that the late Ambrose Kurgat is now deceased. Counsel argued that it is therefore clear that the Protesters/Applicants are the grandchildren of the deceased herein.



He submitted that the Protestors/Applicants are bona fide beneficiaries of this estate, this is because Section 29 of the [Law of Succession Act](#) sets out the meaning of the term 'dependant'. He maintained that the Protestors/Applicants ought to have been allowed to participate in the proceedings directly as they had attained the age of the majority and hence no justifiable reason was given as to why their share was allocated to their step-mother, that the said Lucy Jepkoech Kemboi doesn't recognize the Protestors/Applicants as children of the late Ambrose Kipkoech Kurgat hence cannot purport to protect their interest in the estate. Counsel urged that it is quite interesting that the said Lucy Jepkoech Kemboi was accorded priority over the Protester against the law. Counsel urged that our Courts have on several occasions restated the position with respect to the priority between the grandchildren and daughters-in-law. He cited the case of [re Estate of Imoli Lubatse Paul \(Deceased\)](#) [2021]eKLR, in that regard.

23. He further submitted that by virtue of Section 41 of the [Law of Succession Act](#), the grandchildren who have attained the age of the majority can step into the shoes, of their own parents, and take the share which their parent would have taken had he not predeceased the intestate. Counsel argued that this means that the Protestors/Applicants would be entitled automatically, as blood kin of their grandfather, to take the share due to their own father who was a biological child of the deceased and is deceased as well, that the daughter-in-law Lucy Kemboi has no automatic right or entitlement to a share in the estate of her father-in-law to the detriment of the Protestors.
24. Counsel submitted that they were informed by the Petitioners that the Protester's share of the estate was allocated Lucy Jepkoech Kemboi. According to Counsel, this is ridiculous since she has no guardianship rights with respect to the Protesters' inheritance and there is a high likelihood that she may convert the same into her own property for her benefit and her daughter yet the Protestors are adults who are capable of managing their affairs.
25. In regard whether the Protestors/Applicants can benefit directly from the estate; Counsel submitted that the Protestors herein are the grandchildren of the deceased herein having been born to his son the Late Kipkoech Ambrose Kurgat and by dint of the fact that the Protestors' father died, they became direct beneficiaries from the estate. Counsel argued that Section 39 of the [Law of Succession Act](#) makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Counsel relied on the case of [Cleopa Amutala Namayi v Judith Were](#) Succession Cause 457 of 2005 [2015] eKLR in support of his argument.
26. In regard to whether the Protestors were involved in the instant Proceedings; Counsel submitted that Protestors/Applicants were left at the commencement of the instant proceedings hence depriving them the right to be heard, that they only learnt of the proceedings from their neighbour after confirmation of the estate and issuance of the Certificate of Confirmation. Counsel submitted that the 1<sup>st</sup> Petitioner/ Respondent is alleging that the Protesters had knowledge of the proceedings but has not proffered evidence to prove such knowledge. He maintained that there is no way that the Protesters would have been aware of the proceedings and ignore the same noting their stake in the estate.
27. In regard to whether the Certificate of Confirmation of Grant can Be Revoked and or Reviewed; Counsel submitted that prior to the Confirmation of the Grant, the Petitioners failed to disclose to this Honourable Court that the protestors exist and ascertain their respective shares hence misleading the Court in the distribution schedule. Counsel maintained that Section 71(2) of the [Law of Succession Act](#), as read with Rule 40(4) of the [Probate and Administration Rules](#), is explicit that Court should approach the process of confirmation with some degree of caution, for it has to be satisfied that the administrator applying for confirmation of his grant has properly ascertained the persons who are beneficially entitled to a share in the estate, and has also ascertained their respective shares, that the two provisions create a duty for the administrator to satisfy the Court of such ascertainment. Counsel



maintained that there is a converse duty to the Court satisfy itself, from the material on record, and from the parties, that all those beneficially entitled have been ascertained, and the shares due to them from the estate have been duly assigned to them.

28. Counsel further submitted that the Petitioners concealed material facts by not disclosing that the late Ambrose Kurgat had other children other than the ones belonging to Lucy and hence they were not provided for in the schedule for distribution. Counsel submitted that in fact the Certificate of Confirmation doesn't disclose that Lucy Kemboi is to hold the properties in trust for anybody. Counsel relied on the case of *In the Matter of the Estate of L.A.K. (Deceased)* [2014] eKLR and several other cases with regard to the issue of revocation of grant.
29. In the end, Counsel submitted that the Protesters have demonstrated sufficient reason of the disturbance of the Certificate of Confirmation. Counsel maintained that this instant application is mainly concerned with the portion of the Certificate of Confirmation relating to the properties wrongfully allocated to Lucy Jepkoech Kemboi. Counsel urged the Court to review the Certificate of Confirmation to ensure that the Protesters rights are well taken care of.

### **The 1<sup>st</sup> Petitioner's/Respondent's Submissions**

30. As a jurisdictional issue, Counsel for the 1<sup>st</sup> Petitioner submitted that there is no power donated to this Court by law to revoke, set aside, or review a certificate of Confirmation of Grant. Counsel cited the case of Bungoma HCCA No.29 of 2018: *In The Matter of the Estate of Kiberenge Mukwa (deceased)*, where the Court (Kemei J.) held that a certificate of confirmation being merely a formal expression of the Order made by the Court while confirming the grant is not amenable to revocation. The Court further held that purporting to revoke a certificate of confirmation would be an act in futility because the order giving rise to the certificate itself will remain unaffected. Counsel also cited the Court in (Musyoka J.) Nairobi High Court Succession Cause No. 2326 of 2008: *In The Matter of the Estate of Joel Cheruiyot Ronoh (deceased)* where it was held that a certificate of confirmation cannot be revoked by a Court because it is not an Order of Court as it merely certifies that orders have been made to confirm the grant. The Court further observed that revoking a certificate of confirmation without touching the order that gave rise to the certificate serves no purpose.
31. Counsel argued that learning in the foregoing decisions is that a certificate of confirmation of grant is not amenable to revocation. Revoking or setting aside or reviewing the certificate of confirmation without setting aside the order of Court that confirmed the grant is an exercise in futility. Counsel maintained that what the Applicants ought to have done is to apply for review or setting aside of the order that confirmed the grant under Rule 63 of the *Probate and Administration Rules* as read with Order 45 of the *Civil Procedure Rules*. Counsel argued that on this ground alone the application should fail, that besides the foregoing, the application lacks merit. Counsel submitted that the Applicants whom the 1<sup>st</sup> Petitioner recognizes as his nephews and nieces are already provided for, that the Applicants are sons and daughters of the 1<sup>st</sup> petitioner's brother known as Ambrose Kipkoech Kurgat (deceased), that the said deceased person was recognized in the petition and in the application for confirmation of grant and that his share was given to Lucy Jepkoech Kemboi, the widow to the Applicants' father. Counsel urged that as demonstrated in paragraph 5 of the 1<sup>st</sup> petitioner's replying affidavit, Lucy Jepkoech Kemboi is the recognized widow to the Applicants' father and in the consent for distribution of the estate herein as well as the summons to confirmation of grant dated 8/12/2022 it was made abundantly clear that Lucy Jepkoech Kemboi was receiving her husband's entitlement on behalf of his estate and it follows that once the property is transmitted to her, she will hold it on behalf of the estate of her late husband and the Protesters will get their respective shares from the estate.



32. Counsel further submitted that the Protesters alleged that they were not aware of these proceedings, the 1<sup>st</sup> petitioner has sufficiently demonstrated that at one point or the other he was the guardian to the Protesters and he has also stated that he kept them abreast of these proceedings. Counsel argued that these averments are not denied by way of a further affidavit from the Protesters and the allegation is therefore not proved.
33. Counsel submitted that the assertion by the Protesters that they are adult grandchildren to the deceased herein and ought to receive their inheritance directly is misplaced. In fact, the simple yet powerful repose to that assertion is in this Court's ruling in this very matter rendered on 16/2/2023. The Court on an application by a grandson (same status with the Protesters) and guided by Section 29 of The *Law of Succession Act* Cap 160 Laws of Kenya held that such a grandson is not a primary beneficiary or dependant. And that since his interest was factored in his father's share, he could not be included in the list of beneficiaries.
34. While urging the Court to adopt the reasoning in the said ruling, Counsel reiterated that the mode of distribution of the estate herein was arrived at after intense deliberations within the family by the primary beneficiaries (widow and children), that the said beneficiaries rank in priority to the Applicants, that the Applicants cannot overrule the decisions made. Counsel urged that it must be remembered that in the instant application the Applicants have not contested the size of land bequeathed to their father through his widow.

#### **The 2<sup>nd</sup> Petitioner's/Respondents Submissions**

35. The 2<sup>nd</sup> Petitioner basically echoed and reiterated the averments of the 1<sup>st</sup> Petitioner's Submission in support of her case.

#### **The Objector's Submissions**

36. In regard to whether the Grant ought to be revoked, set aside and/or reviewed, Counsel for the Objector submitted that the Court ought to consider the competence of the Application in respect to the 2<sup>nd</sup> to 8<sup>th</sup> Applicants is fatally incompetent for the reason that the Application despite having been indicted to have been filed for and on behalf of 8<sup>th</sup> Applicants, it is only the 1<sup>st</sup> Applicant who has sworn an Affidavit in support of the case without annexing any proof that he has the authority of the 2<sup>nd</sup> to 8<sup>th</sup> Applicant's to prosecute the Application. Counsel argued that the Court therefore ought to strike out the case said to be made by the 2<sup>nd</sup> to 8<sup>th</sup> Respondents in the first instance.
37. Further, Counsel submitted that in their Application, the Applicants allege that they only learnt of the proceedings on 1/8/2023, a statement that is so much further from the truth the contents of annexure marked IJK-1(a) to the Replying affidavit considered as in this letter dated 10/2/2016, where the firm of Omondi & Co. Advocates wrote to their firm indicating they were acting for the Applicants and seeking information as to whether Lucy Kemboi recognized the Applicants under these succession proceedings and a Reply dated 21/12/2015 was written by the firm of Mburu Maina & Co. Advocates confirming the Children who were recognized as having been sired by Ambrose Kurgat. Counsel argued that having had knowledge that these proceedings have been in Court since they were filed, it is strange that the Applicants opted to stand by the side until the Grant was confirmed only to rush to Court and claim that they have been left out of the estate and that the grant ought to be revoked without satisfying the threshold set in law.
38. Counsel submitted that as discussed in the Ruling you delivered over an earlier Application on 16/2/2023 brought by Hillary Kimtai, a grandson to the deceased herein, any Applicant seeking to be declared as a beneficiary of a deceased estate ought to demonstrate that their claim meets the legal



threshold set under Section 29 (B) of the Law of Succession Act. Counsel maintained that it therefore fell on the Applicants to discharge the burden of inheritance of the deceased's estate beyond the principles of financial provisions as crossing the threshold of consanguinity and affinity alone pursuant to Section 29 (b) of the Act is not enough reason for the Court to make an inheritance order. Counsel relied on the decision In re Estate of Chepkurgat Cheptony (Deceased) (Succession Cause 112 of 2015) [2023]KEHC 1078 (KLR).

39. Pursuant to the holding in the aforementioned case, Counsel argued that the Applicants have not only failed to establish any bloodline relationship with the deceased but also failed to establish dependency under section 29 of the Law of Succession Act. Counsel submitted that their submission in this regard is based on the fact that the depositions in the Applications that the 1<sup>st</sup> to 5<sup>th</sup> & the 7<sup>th</sup> Applicants are the deceased's grandchildren are not supported by any evidence that can convince the Court to make an inheritance order. Counsel submitted that their argument in this regard stems from the fact that no Certificates of Birth have been annexed showing the deceased's son to be the Applicants father and furthermore, the Chief's letter annexed to the Application relates to Cleti Kiprotich Kurgat, the 1<sup>st</sup> Petitioner herein who is indicated to be a resident of Cheboror Location and a guardian to the Late Ambrose Kurgat. Counsel argued that this letter does not indicate that the late Ambrose Kurgat whom the Applicants claim to be their late father was a resident of Cheboror Location to give the Chief who authored it the jurisdiction to make the letter and in contrast, the Objector/Respondent has annexed a letter from the Area Chief, Kiptabus sub-location annexed as Annexure LJK-3, in which letter, the Chief states that the late Ambrose Kurgat was a resident of his area of jurisdiction and also known to him until his death and proceeds to list his known children born in and outside wedlock with the Objector/Respondent and that the 6<sup>th</sup> and 8<sup>th</sup> Protestors are listed among the children and the same is not a contested fact given the contents of paragraph 5 of the Replying Affidavit. Counsel maintained that it is therefore not convincing for the Applicants to seek to avoid obtaining evidence regarding their alleged consanguinity from the local administration of the late Ambrose Kurgat's domicile at death and to seek to rely on a letter authored by a Chief of another jurisdiction in reference to the 1<sup>st</sup> Petitioner who is alive and who has had quite a fight with the Objector in matters relating to her husband including an attempt to deny the Objector the right to bury her late husband.
40. Counsel argued that, even if evidence had been led to prove consanguinity, the test of dependency would still not have been met. Without fulfilling this threshold, Counsel argued that the Applicants cannot by any stretch of any imagination demonstrate the capacity to challenge the grant issued by this honourable Court as they do not have a direct inheritance right to the estate of the deceased. Counsel further relied on the holding in re Estate of Chepkurgat Cheptony (Deceased)(*supra*)
41. Counsel submitted that as for the estate granted to the Objector who is the target of this proceedings, the same was given with the consent of the deceased's direct beneficiaries forming the Deceased's nuclear family recognized under Section 29 (a) of the Law of Succession Act who recognizing, the circumstances existing granted her a share of the deceased's estate in her own capacity and also in her capacity as a representative of the estate of the estate of Ambrose Kipkoech Kurgat.
42. In regard to whether the Grant ought to be reviewed and or set aside, Counsel submitted that as it can be seen from the record, the Summons for confirmation of Grant were consented to by all direct beneficiaries to the deceased's estate and having failed the consanguinity and dependency test thus failing to establish locus standi, no ground can be established to justify review or the setting aside of grant that is not contested by those holding the first degree of consanguinity, that the Applicants who have all along known of these proceedings since the year 2016 have not established that the Grant was obtained by way of the making of a false statement or concealment of a material fact to justify the Court's exercise of its power under Section 76 (b) of the Law of Succession Act. As alleged children



of a child, they are not primary beneficiaries of the deceased's estate and their alleged interests do not supersede those of the deceased's direct beneficiaries who in any event are satisfied with the grant having all consented to the mode of distribution proposed by the administrators.

43. In regard to the power of the Court to rectify a grant, Section 74 of the *Law of Succession Act* is specific as to what may be rectified and distribution of an estate is not one of the issues the Court can exercise the power to rectify a grant. Consequently, he submitted that the application has failed to call upon the Court's discretion on rectification to be exercised in their favor and the application is a perfect candidate for dismissal

### **Analysis and Determination**

44. Having appreciated the parties pleadings on record, I find the only issue for determination is whether the orders sought can be granted.
45. With regard to the Applicant's primary issue of that the Certificate of Confirmation of Grant be revoked and or set aside or reviewed, from onset I must mention that the law does not provide for review of Certificate of Confirmation of grant but rather it provides for the amendment of the grant. The Court in *In Re Estate of Charles Kibe Karanja (Deceased)* [2015] eKLR, held that:

“It goes without saying that the provisions in Section 74 are on alteration of grants of representation, not certificates of confirmation of grant. A certificate of confirmation of grant is not a grant of representation. In probate practice, the term “confirmed grant” has gained currency and it is understood by some to mean the certificate of confirmation of grant. It is a misconception. The certificate issued upon a grant being confirmed does alter the grant of representation made in the matter. It does not replace the grant of representation, and it is not the confirmed grant. It is an instrument to certify that the grant made in the matter has been confirmed. In short it is the evidence of the confirmation of the grant. From the wording of Section 74, it is plain that the same was not tailored to for amendment of such documents as certificates of confirmation of grant, but rather of grants of representation themselves, be they full or limited, confirmed or not. A party wishing to have rectified or altered or amended a certificates of confirmation of grant, need not approach the Court through Section 74 of the *Law of Succession Act*, for the reasons that I have given above; rather they ought to apply for review of the orders made upon the application for confirmation of grant, where the alterations sought are fundamental; or for amendment of the certificate under Rule 73 of the Probate and Administration Rules to address minor errors or mistakes in the body of the certificate.

A certificate of confirmation of grant is by its nature a formal order extracted from the orders made by the Court on the application for confirmation of grant. If a party wishes to have the assets of the estate redistributed or there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be effected without touching the orders made by the Court at the distribution of the estate. Consequently, such changes cannot and should be effected through a mere amendment of the certificate of confirmation of grant.

The proper approach ought to be an application for review of the orders made at the confirmation of the grant. The remedy of review of Court orders is not directly provided for in the *Law of Succession Act* and the Probate and Administration Rules, but it is imported



into probate practice by Rule 63 of Probate and Administration Rules, which has adopted a number of procedures from the Civil Procedure rules. Among the imported procedures is the device of review under the Civil Procedure Rules. In the relevant rules on review under the Civil Procedure Rules, an order of the Court can be revised on the grounds of an error on the face or the record or discovery of new and important evidence that was not available at the time of the making of the order sought to be reviewed or for any other sufficient reason.

Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiaries on the basis that the said assets or heirs were left out by mistake or error. Where assets are discovered after the Court has confirmed the grant or a heir or survivor of the deceased who had previously been previously unheard of materializes after distribution, the Court may review its orders made at the point of confirming the grant on the ground of discovery of new and important evidence that was not available at the time the grant was being confirmed.”

46. In *In Re Estate of John Mwaka Koka (Deceased)* [2019] eKLR, the Court stated that:

“19. ... it is clear from the orders sought in this application that what is sought by the Applicant herein is strictly speaking not an order for rectification but one for review. Section 74 of the *Law of Succession Act* which deals with rectification states as follows:-

“Errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose of in a limited grant, may be rectified by the Court, and the grant of representation, whether before or after confirmation, may be altered or amended accordingly.”

20. The reliefs sought are not restricted to rectification of errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose of, in a limited grant. They are in fact prayers which substantially seek to alter the judgement delivered by this Court on distribution of the estate. They therefore ought to be treated for what they seek, review of the judgement.”

47. Be as it may however, the Protesters herein seek to be given their share of inheritance by virtue of the them being the grandchildren of the deceased herein. The Protesters are specifically interested in the share that was devolved to the estate of the late Ambrose Kipkoech Kurgat whom they maintain was their late father and a son to the deceased herein.

48. It must be remembered that a grandchild is a direct heir to the estate of the grandparent where the parent predeceased the grandparent. The grandchildren get into the shoes of their deceased parents and take the parent’s share in the estate of the grandparents. This was stated in *Re Estate of Wahome Njoki Wakagoto* (2013) eKLR where it was held:-

“Under Part V, grandchildren have not right to inherit their grandparents who die intestate after 1<sup>st</sup> July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and



thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

49. While acknowledging that the estate in question has long been the subject of a legal battle, it is important to note that, as the Certificate of Confirmation of Grant makes it clear, that each of the deceased's immediate beneficiaries received a portion of the estate in question. It's also important to remember that succession matters are governed by the priority sequence specified in Section 29 of the [Law of Section](#).
50. In the instant cause, it not in dispute that the Objector, one Lucy Jepkoech Kemboi is the surviving spouse to the late Ambrose Kipkoech Kurgat. The Protesters herein allege that they are dependants in the estate herein and such they should be allocated their respective share of their late father's estate. Having keenly perused and read the parties pleadings there seems to be conflicting information and to who exactly are the children belonging to the late Ambrose Kipkoech Kurgat born out her his union with the Objector. One hand, the 1<sup>st</sup> Petitioner acknowledges that the Protesters herein and legitimate child of the deceased and thus they ought to inherit from the share allocated to their father's estate. On the other hand, the 2<sup>nd</sup> Petitioner only seems to acknowledge one Raymond Kipchumba Koech, Janet Jepchirchir and Phylis Chepkorir as being the other children belonging to the late Ambrose Kurgat. She although denies knowing the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Protesters in that regard. The Objector equally acknowledges one Raymond Kipchumba Koech, Janet Jepchirchir and Phylis Chepkorir as being the other children belonging to the late Ambrose Kurgat but disputes having knowledge of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Protesters herein.
51. It must be noted that in Succession matters, the only way for one to inherit from a deceased estate, is if he or she is a direct beneficiary within the parameters of Section 29 or if one is able to prove dependency. At this juncture, I do find it prudent to revoke and or set aside the Grant with respect to estate herein as there has been no tangible evidence to in fact prove that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Protesters are children of the late Ambrose Kipkoech Kurgat. To my mind the allegations by the Protesters and the 1<sup>st</sup> Petitioner only amount to what I would term as hearsay as nothing concrete has been brought forth to show that they were indeed beneficiaries and or dependants of the late Ambrose Kipkoech Kurgat.
52. Further, it also worthwhile to state that even in the event that the Protesters prove that they are indeed beneficiaries and or dependants of the late Ambrose Kipkoech Kurgat, then their cause of action would be ultimately against the estate of the said Ambrose Kipkoech Kurgat and not in this instant cause as the share of their father has already been devolved to the said estate.
53. With regard to the 6<sup>th</sup> and 8<sup>th</sup> Protesters herein, I hereby direct that the Objector one Lucy Jepkoech Kemboi ensures that they get their share of the estate of the late Ambrose Kipkoech Kurgat. If that fails, then they ought to be at liberty to pursue the best fitting course of action within the bounds of the law. They haven't demonstrated as of yet that the aforementioned Objector has declined to grant them their share of their father's estate.
54. In an upshot, I find that the application is neither well founded nor properly conceived, and I hereby proceed to dismiss the same, with no orders as to costs.
55. It is so ordered.

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

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**R. NYAKUNDI**  
**JUDGE**

