



**In re Estate of John Kiptoo Keino (Deceased) (Probate & Administration
65 of 2021) [2024] KEHC 9148 (KLR) (17 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9148 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 65 OF 2021**

JR KARANJA, J

JULY 17, 2024

IN THE MATTER OF THE JOHN KIPTOO KEINO (DECEASED)

RULING

1. The Objector/ Applicant David Kipkinei Sanga vide the application dated 24th August 2023, seeks an order for revocation and/or nullification of the certificate of confirmation of grant issued on 27th September 2021 to the Petitioners, Annah Jelimo Keino and Everlyne Jepchirchir respecting the estate of the late John Kiptoo Keino (deceased).

As per the certificate, the estate parcel of land described as Nandi/Eisero/262 was divided and distributed to the First Petitioner (Annah) and one Karen Jerop. However, the First Petitioner was to hold the property in trust for her own benefit and other beneficiaries including the Second Petitioner (Everlyne), Sophie Jelagat, Viola Jerobon, Gladys Jerono, Manasse Kipkemboi and Faith Jemutai.

2. The grounds in support of the application are that the grant was obtained fraudulently by concealment of material facts or by means of misrepresentation and that other beneficiaries were omitted in the proceedings to obtain the grant. All these were fortified by the Applicant's averments and annexures contained in the supporting affidavit dated 24th August 2023. The Respondents opposed the application on the basis of the averments and annexure in their replying affidavit dated 13th May 2024.
3. The parties opted to canvass the application by written submissions. In that regard, both parties filed respective submissions through their respective advocates which have been given due consideration by this court.

Under Section 76 of the *Law of Succession Act*, a grant may be revoked or nullified if their proceedings to obtain the grant were defective in substance, or if the grant was obtained fraudulently by the making of a false statement or by the concealment of material facts among other factors.

In such circumstances, the grant may be revoked wholly together with the certificate of confirmation of grant if it had already been confirmed. However, the certificate of confirmation of grant may be revoked and/or nullified without necessarily revoking the grant.



4. The present application is targeted at the certificate of confirmation of grant dated 27th September 2021 whose effect was to pave the way for the distribution of the estate among the beneficiaries including both Petitioners.

The grant was in itself issued on 14th August 2019, but was confirmed rather belatedly on the 27th September 2021 when the impugned certificate of confirmation of grant was issued.

In the summons for the confirmation of grant dated 12th April 2021, the first Petitioner, as the surviving widow of the deceased was listed as a beneficiary together with her children including the Second Petitioner, her eldest child/ daughter. It was indicated in the summons that the deceased's children comprised of one son (Manasses Kipkemboi) and five daughters. An additional beneficiary was one Karen Jerop who was said to have been entitled to an acre of the estate property.

5. The Objector contends herein that the certificate of confirmation of grant was obtained fraudulently by concealment of material facts and exclusion of other beneficiaries such as himself. He averred in his supporting affidavit that the deceased was his brother and that their late mother Tagiput was the person who was initially the owner of the estate property measuring approximately 15.5 acres, but it was initially registered in the name of the deceased who passed away on 12th November 1989 leaving behind two widows i.e. Salome Keino and the First Petitioner, who was the Second Wife. That, the First Wife Salome passed away having not sired any child with the deceased, while the First Petitioner had six children with the deceased.

6. The Objector further averred and implied that the deceased with the knowledge that he (Objector) was entitled to 7.75 acres of the estate property, went ahead to register the entire estate property in his name even though he had already sold 0.5 acres of the land to the local community for purposes of putting of a cattle dip and which portion was to be hived off from the deceased's half share of the Estate Property.

That, after the demise of the deceased, his Second Wife the First Petitioner obtained the grant of letters of administration intestate and later, the impugned certificate of confirmation of grant which indicated that she was entitled to 14 acres of the estate property and an additional one acre was reserved for Karen Jerop who purchased the same from her (the First Petitioner).

7. The Objector contended that the First Petitioner failed to disclose to the court that 0.5 acres of the estate property was sold by the deceased to the local community and that being family land he (Objector) was entitled to 7.75 acres of the property less the 0.5 acres sold by the deceased for the community's cattle dip, a fact which was also not disclosed by the Petitioners at the time of the confirmation of the grant.

8. The Petitioners denied all the allegations made by the Objector, it was therefore incumbent upon him to establish and prove by necessary evidence that the proceedings to obtain the grant were defective in substance or that the grant together with the impugned certificate of confirmation of grant were obtained fraudulently by concealment of material facts.

Other than mere and unproven allegations made by the Objector against the Petitioner, he has failed to demonstrate in any manner that the certificate of confirmation of grant was obtained fraudulently. He did not avail cogent or sufficient evidence to show that the estate property was family land rather than the sole property of the deceased and that it was supposed to have been jointly and equally owned between himself and his deceased brother.

The Objector did not also provide any evidence to demonstrate that the deceased fraudulently registered the property in his own name instead of both their names.



9. In sum, the Objector has failed to prove that he is a beneficiary of the estate and that he was entitled to half share of the estate property as such beneficiary. The present application is therefore wanting on merit and is hereby dismissed with each party meeting their respective costs of the application.

Any claim of ownership arising after the confirmation of the grant would not fall within the jurisdiction of this succession court, but the Environment and Land Court.

DELIVERED AND DATED THIS 17TH DAY OF JULY 2024

**J. R. KARANJAH,
JUDGE**

