



In re Estate of Kigen Cheboi Kipchorsoi Deceased (Succession Cause 141 of 1991) [2024] KEHC 12290 (KLR) (15 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12290 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 141 OF 1991
RN NYAKUNDI, J
OCTOBER 15, 2024**

IN THE MATTER OF THE ESTATE OF KIGEN CHEBOI KIPCHORSOI DECEASED

BETWEEN

**CHRISTOPHER KIPYEGO A KIGEN 1ST PETITIONER
ALFRED KIMUTAI LAGAT ALIAS MICHAEL KIGEN 2ND PETITIONER
WILLIA KIGEN 3RD PETITIONER**

AND

SANIEKO KIGEN OBJECTOR

RULING

1. Before me for determination are Summons dated 3/6/2024 filed by the 2rd and 3rd petitioners in which they seek the following orders:
 1. Spent.
 2. That thus Honourable court be pleased to issue an order for cancellation and revocation of those titles known as Tembelio/Elgeyo Border Block 5 (Ex- Tooley)/10, Tembelio/Elgeyo Border Block 5 (Ex- Tooley)/216, Tembelio/Elgeyo Border Block 4 (Koiwopturgut)/95 and Moiben/Moiben Block 9 (Manyatta)/15 and reversion of the same to the estate of the deceased for purposes of implementation of the Certificate of Confirmation of Grant dated 12/07/2003.
 3. That the Deputy Registrar of this Honourable court do execute and or sign all the requisite documents to facilitate formal transfer by way of transmission in respect to the estate of the deceased pursuant to the Certificate of Confirmation Grant dated 12/7/2023 and the County Land Registrar, Uasin Gishu do ensure that the transfer is effected.



4. That the Honourable Court be pleased to order the OCS Tembeleo Police Station to provide security to the County Surveyor, Uasin Gishu during the demarcation and sub-division of Tembelio/Elgeyo Border Block 5 (Ex- Tooley)/10, Tembelio/Elgeyo Border Block 5 (Ex-Tooley)/216, Tembelio/Elgeyo Border Block 4 (Koiwopturgut)/95 and Moiben/Moiben Block 9 (Manyatta)/15 and Tembeleo/ Elgeyo Border Block 13 (Kaplogoi)/31 pursuant to the Certificate of Confirmation of Grant dated 12/7/2023.
5. Costs be provided for.
2. The application is premised on the grounds therein and it is further supported by the joint affidavit sworn by Alfred Lagat and William Kigen Kiplagat on the same date.
3. In the Affidavit, the 2nd and 3rd Petitioner deponed that vide the judgment dated 2/5/2023, the Court nullified the Will which formed the subject of the initial distribution of the estate of the deceased, that those titles known as Tembelio/Elgeyo Border Block 5 (Ex- Tooley)/10, Tembelio/Elgeyo Border Block 5 (Ex- Tooley)/216, Tembelio/Elgeyo Border Block 4 (Koiwopturgut)/95 and Moiben/Moiben Block 9 (Manyatta)/15 were obtained and processed on the strength of the nullified and revoked Will, that upon revocation of the said Will the estate of the deceased was distributed afresh pursuant to the Certificate of Confirmation of Grant dated 12/07/2023 and it is impossible to effect registration of the said grant before cancellation of titles issued on the basis of the initial grant which has since been revoked, however one of the administrators, Christopher Kibiego A. Kigen is reluctant to execute the transfer form by transmission.
4. The 2nd and 3rd Petitioner maintain that Court orders are never issued in vain and that it is in the interest of justice that the deputy Registrar of this Court do execute the necessary forms to facilitate formal transfer to enable the beneficiaries to enjoy the fruits of the judgment and the Certificate of Confirmation of Grant.

The Response

5. The Application is opposed vide the Replying Affidavit sworn by the 1st Petitioner/Respondent, Christopher Kibiego A. Kigen on 28/06/2024.
6. In the Affidavit, he deponed that on 18/09/2023, he filed an Application seeking an amendment of the Certificate of the confirmed Grant and mode of distribution dated 12/7/2023 wherein the Court delivered its ruling on 13/5/2024 and that upon the delivery of the ruling of the Honourable Court the Judge ordered that; the consent of 12/7/2023 be the primary instrument in aligning the distribution of the estate, the legal counsels seized of these proceedings together with the administrators to generate a final amended Certificate of Confirmation of Grant and the rectification should not fundamentally alter the intention of the parties more specifically in changing the position of the established homestead.
7. The 1st Petitioner/Respondent maintained that he has been willing and ready to have a seat down with the other Administrators and all beneficiaries to come up with a proposal that can be adopted which would be fair and just, that the Applicants are misleading the Court in this Application for reasons that the conformation of Grant and mode of distribution dated 12/7/2023 was to be used as the primary document in aligning the distribution and the same has never been confirmed or endorsed, that as at the time when the Applicants filed the said Application, they had no Certificate of Grant or mode of distribution in place since the directions of the Court were that the Administrators and both legal Counsels were to have a meeting of minds in order to come up with a schedule/ mode of distribution, that being and Administrator, he has been having engagements with his brothers who are



administrators with the mission of coming up with most favourable, fair and just mode of distribution that it is the interest of justice that orders sought not be granted.

The Submissions

8. The Court on 29/7/2024 directed that the Application be canvassed by way of written submissions. Pursuant to the said directions the Applicants filed their respective submissions while the Respondent did not file any.

The Applicants' Submissions

9. In regard to whether the issues raised by the 1st Petitioner/Respondent are res judicata and whether the prayers sought should be granted, Counsel for the Applicants submitted that the estate of the deceased has been fully distributed as per the Certificate of Confirmation of Grant dated 12/7/2023 and that the issues raised by the Respondent in his Replying Affidavit are res judicata in view of the Court dated 13/5/2024 dismissing the Application dated 18/09/2023 which was seeking to have the Confirmed Grant dated 12/07/2024 rectified. Counsel maintained that the Court conclusively addressed the aforesaid issues in the said ruling and the same cannot be re-opened. Counsel urged that the Court is functus officio in so far as distribution is concerned and the only remaining mandate of the Honourable Court is to ensure that the confirmed grant is implemented.
10. Counsel further submitted that that it is not in issue were transferred on the strength of a grant that was revoked by the Court vide the judgment dated 2/5/2023 and consequently the estate of the deceased was distributed by consent afresh as demonstrated by the Certificate of Confirmation dated 12/07/2024. Counsel urged that there is therefore need to have the aforesaid titles revert to the estate of the deceased for purposes of implementation of grant in favour of the beneficiaries of the deceased, that the aforesaid titles were issued on the basis of a Will which has been invalidated and the Court thus has the discretion to revert the said titles in the names of the deceased for purposes of implementation of the new grant. Counsel cited case of in the Matter of the estate of Leah Wanguii Nding'uri [2020] eKLR.
11. In conclusion, Counsel submitted that the Respondent is adamant to execute the transfer forms or to allow the surveyor demarcate the estate as per the grant hence frustrating the transmission of the estate to the beneficiaries and that it is against this background that the Applicants are seeking for the assistance of the Court and the police to have the grant implemented. Counsel urged the Court to exercise its discretion in favour of the Applicants and grant the orders sought.

Determination

12. I find the only issue of determination to be:
 - a. Whether the Applicants have made out a case to warrant the granting of orders of cancellation of title numbers Tembilio/Elgeyo Border Block 5 (Ex- Tooley)/10, Tembilio/Elgeyo Border Block 5 (Ex- Tooley)/216, Tembilio/Elgeyo Border Block 4 (Koiwopturgut)/95 and Moiben/Moiben Block 9 (Manyatta)/15 so as to revert to the name of the deceased.
13. Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules grants a succession court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process. Such powers include cancellation of title deeds obtained through fraud or where there has been an abuse of the process of the court.



14. The Applicants have sought an order of cancellation of titles that were obtained and processed on the strength of the nullified and revoked Will. The power to do so was discussed in the case of Santuzza Bilioti alias Mei Santuzza (Deceased) vs Giancarlo Falasconi (2014) eKLR where the court held that:-

“...the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession court can order a cancellation of a title deed if a deceased’s property is being fraudulently taken away by non-beneficiaries such as where the property is being sold before a grant is confirmed.”

15. In PLR -Vs- JNR & Anor [2013] eKLR it was aptly stated as follows: -

“Section 2 (1) of the [Law of Succession Act](#) provides that the provisions therein applied to all cases of intestate or testamentary succession to the estates of deceased persons and to the administration of estates of those persons. An estate means the free property of a deceased person that is the property of which that person was legally competent free to dispose during his lifetime, and in respect of which his interest has not been terminated by his death. It is clear that at the time of his death the deceased was free to deal with the suit property as he wished, the same not having been legally transferred to a third party including the 1st Defendant.

In addition, in order to determine the suit, this court would be required to determine questions of validity of the wills and whether the Plaintiff is a beneficiary of the deceased's estate and therefore entitled to his estate. The property and the issues to be determined in the suit fall under the realm of the [Law of Succession Act](#). The Environment and Land Court is a special court established under Article 162 (2) (b) and Section 4 (1) of the [Environment and Land Court Act](#) No. 9 of 2011 and it is meant to deal with matters concerning the environment and the use and occupation of and title to land. However, matters of ownership and entitlement to a deceased person's property, including land are governed by the [Law of Succession Act](#) and are to be determined by the Family Court. Thus by virtue of Section 2 (1) of the said Act, this court lacks jurisdiction to determine the same.”

16. From onset, I take judicial notice that this is a very old matter which seemingly never seems to end. The Petitioners herein in their capacity as sons of the deceased filed a petition for Grant of Probate of written Will on 24/10/1991 and On 28/2/1992 the Petitioners were issued with the Grant of probate of written Will and the said Grant was confirmed on 27/8/1998.
17. However, the Objector, Sanieko Kigen in her capacity as the 3rd wife of the deceased on 19/11/2020 filed Summons for revocation of grant of Letters of Probate of written Will issued to Christopher Kipyego A. Kigen and Alfred Kimutai Lagat alias Michael Kigen on 28th February, 1992. The said application was heard on merits and this Court on 2/5/2023 delivered a ruling rendered the purported Will invalid for all intents and purposes as the last testamentary of the deceased. The deceased was thus declared to have died intestate and his estate is subject to distribution in accordance with the provisions of Section 40 of the [Law of Succession Act](#). Consequently, the 1st, 2nd and 3rd Petitioners herein vide an Application dated 30/6/2023 applied to Court to be appointed administrators of the deceased’s estate and Court on 3/07/2023 issued Christopher Kibiego A .Kigen, Alfred Lagat and William Kiplagat with the Grant of Letters of Administration Intestate which Grant was later confirmed on 12/7/2023 in accordance with the consent of 12/7/2023 signed by all the beneficiaries of the deceased. The 1st Petitioner, then later filed Summons dated 18/9/2023 wherein he sought that the Grant of Letters of



Administration Intestate Confirmed on 12/7/2023 be rectified and this Court it is ruling delivered on 13/5/2024 directed inter-alia that the legal Counsels seized of these proceedings together with the Administrators to generate a final amended Certificate of Confirmation of Grant.

18. While it is indeed true that this Court's directions that were issued on 13/5/2024 are yet to be compiled with, the Applicants herein seek that the Court cancels the subject titles which were generated as a result of the impugned Will. Clearly so, the said titles were as a result of the Will that has since been revoked by the Court and such cannot continue to remain in force the orders issued on 13/5/2024 notwithstanding. The said titles ought to be cancelled so that the same may revert to the estate herein for purposes of distribution. I do not see any reason whatsoever why the said titles should not be cancelled as the same result from contents of a Will that has since been revoked. I say so because even as party's await to generate an amended Certificate of Confirmation as directed there is nothing whatsoever stopping the cancellation of the subject titles. In my view no prejudice will be occasioned to none of the parties if the said titles are cancelled. The parcels of land in question belonged to the deceased and as such it only natural that they revert to the estate for purposes of distribution to the respective beneficiaries.
19. For clarity purposes, I need to remind parties that issues to do with the mode of distribution herein were conclusively heard and determined. The Court's ruling of 13/5/2024 only required parties to come up with a final amended Certificate of Confirmation Grant whose primary basis would be the consent of 12/7/2023. This Court did not order parties to come up with a fresh mode of distribution as insinuated by the 1st Petitioner/respondent herein, the amendment is only meant to include the deceased's instate estate that was omitted in the Certificate of the Confirmed Grant dated 12/7/2023. I need also to remind parties that litigation must always come to an end and sole purpose of Succession proceedings is to ensure that each and every beneficiary enjoys their respective share of the estate without undue delay.
20. The rest of the Applicants' prayers at this juncture in my view are premature and are therefore declined for now.
21. The orders to be issued by this court have been necessitated by the fact that this court nullified the Will in question, rendering the estate intestate which a result demands that any titles that might have been registered on the strength of that will, would naturally call for cancellation in order to have the estate distributed afresh.
22. Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules grants a succession court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process. Such powers include cancellation of title deeds obtained through fraud or where there has been an abuse of the process of the court. Rule 73 of the P&A also provides "Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice to prevent abuse of the process of the court."
23. In *Santuzzabiloti alias Mei Santuza (deceased) vs Giancarlo Felasconi (2014) eKLR* the court said as follows regarding the jurisdiction of the court in succession matters " This cannot be the case as the succession court has powers to order a title deed to revert to the names of deceased person. This in effect amounts to cancellation of the title deed. Further a succession court can order a cancellation of title deed if a deceased property is being fraudulently taken away by non-beneficiaries such as where the property is being sold before a grant is confirmed
24. The court takes judicial notice that the impugned title deeds were a subject of the petition for probate administration which was adjudicated and on grounds objected to in the making of the last testamentary by the testator, it was nullified and the estate reverted to intestate administration. Apparently, some of the titles to the suit land had been registered in the names of other beneficiaries



who are not the current legal representative duly appointed by this court under Section 66 of the [law of Succession Act](#). The law is very clear on this aspect as founded in the decision of Musyoka J in Re Estate of Alice Mumbua Mutau (deceased) 2017 eKLR in which the Judge stated “ The [law of Succession Act](#) and the Rules made thee under, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets among the survivors and the persons beneficially interested. The functions of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

25. For the a foregoing reasons, and by the strength of the provisions of the Succession Act this court exercises jurisdiction to order cancellation of the following Title Deeds so that the land can revert back to the deceased names to enable the administrators to the intestate estate to comply with the certificate of confirmation of grant issued by this court to distribute the shares to the respective beneficiaries as per law established.

1. An order be and is hereby issued directing the County Land Registrar, Uasin Gishu County, to cancel the following titles Tembelio/Elgeyo Border Block 5 (Ex- Tooley)/10, Tembelio/Elgeyo Border Block 5 (Ex- Tooley)/216, Tembelio/Elgeyo Border Block 4 (Koiwopturgut)/95 and Moiben/Moiben Block 9 (Manyatta)/15 are hereby cancelled and shall revert to the names of the deceased Kigen Cheboi Kipchorsoi.

2. That the administrators to the estate under Section 83 of the Act undertake on a priority basis working with the county director of survey and the Land Registrar to move with expediency in transmitting the estate to the duly identified beneficiaries

3. That it is only in the event of default by the Administrators to faithfully administer the estate shall this declaration take effect:

That the Deputy Registrar of this Honourable court do execute and or sign all the requisite documents to facilitate formal transfer by way of transmission in respect to the estate of the deceased pursuant to the certificate of confirmation Grant dated 12/7/2023 and the County Land Registrar, Uasin Gishu do ensure that the transfer is effected

4. That the Deputy Registrar High Court in the circumstances of the grant so issued do monitor compliance on the primary duty of the administrators to distribute the estate of the deceased to the rightful beneficiaries within 60 days from todays date and any application of fulfilling the terms of the statute a brief report be filed for the attention of the judge.

5. Status Conference to monitor compliance be held before the Deputy Registrar on the 16.12.2024.

6. This being a family matter there shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 15TH DAY OF OCTOBER, 2024

R. NYAKUNDI

JUDGE

