



**In re Estate of Kiptoo Cheboi (Deceased) (Succession Cause E015 of 1985)  
[2024] KEHC 12150 (KLR) (11 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12150 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E015 OF 1985  
RN NYAKUNDI, J  
OCTOBER 11, 2024  
IN THE MATTER OF THE ESTATE OF KIPTOO CHEBOI (DECEASED)**

**BETWEEN**

**KEEME LOITAREM ..... PETITIONER**

**AND**

**ANNE LOITAREM ..... 1<sup>ST</sup> OBJECTOR**

**SIMION KIRUI CHEBOI ..... 2<sup>ND</sup> OBJECTOR**

**JUDGMENT**

1. The cause herein relates to the estate of Kiptoo Cheboi who died on 20<sup>th</sup> June, 1985 domiciled in Karas Village W/pokot. On 16<sup>th</sup> September, 1985, Keeme Loitarem petitioned for grant of letters of Administration Intestate in his capacity as the eldest son of the deceased. According to the Affidavit in support of the Petition for letters of Administration intestate, the Petitioner deposed that when his father died, he left behind some properties which had not been fully transferred to into his name but he left no liabilities. He further on oath stated that on 20<sup>th</sup> August, 1985, the whole family of the late KIPTOO CHEBOI sat and resolved that he should take over the responsibility of pursuing the matter. That the said properties may be in danger of getting into the wrong hands and therefore there was need for him to wear the shoes of his father.
2. The Petitioner equally through form P&A 4 made a declaration that he would faithfully administer the estate and effects of the deceased by paying his just debts and distributing the residue of the estate according to law, and that he would exhibit a true and perfect inventory of all and singular effects. That he would also render a just and true account thereof whenever required to by law so to do. There being no objection to the said making of grant, the same was issued on 17<sup>th</sup> January, 1986 to Keeme Loitarem.



3. It took 28 years for the Administrator to get back to this court with an application for confirmation of the grant issued to him on 17<sup>th</sup> January, 1986. He filed summons for confirmation of grant dated 23<sup>rd</sup> June, 2014. In the affidavit in support of the summons, Keeme Loitarem deposed as hereunder:
- a. The deceased was survived by the following children: -
    - i. Keeme Loitarem – Son (Adult)
    - ii. Simon Kirui Cheboi – Son (Adult)
    - iii. Kwambai Loitarem – Daughter (deceased)
  - b. That the deceased was also survived by the following other dependants;
    - i. Eileen Cheboi – Widow (deceased)
    - ii. Samuel Losem – Buyer (2.975+1.011 Ha)
    - iii. Francis Akudungole Kiyapyap – Buyer (2.023 Ha)
    - iv. Loktari John Makumbi – Buyer (0.405 Ha)
    - v. Johnstone Pkopus Chochoi – Buyer (0.355 Ha)
    - vi. Nicholas Kasiwotoi Kupar – Buyer (0.405 Ha)
    - vii. Joseph Rotich Lodengo – Buyer (0.202 Ha)
  - c. That no application for provision of estate duty is pending.
  - d. That the identification and shares of all persons beneficially entitled to the said estate have been ascertained and determined as follows:
    - i. Keeme Loitarem – (1.66 Ha)
    - ii. Simon Kirui Cheboi – (3.618 Ha)
    - iii. Samuel Losem – (2.975 Ha)
    - iv. Francis Akudungole Kiyapyap (2.023 Ha)
    - v. Loktari John Makumbi (0.405 Ha)
    - vi. Johnstone Pkopus Chochoi – (0.355 Ha)
    - vii. Nicholas Kasiwotoi Kupar – (0.405 Ha)
    - viii. Joseph Rotich Lodengo (0.202 Ha)
    - ix. Samuel Losem – (1.011 Ha)
    - x. Keeme Loitarem – (1.011 Ha)
4. The grant was later to be confirmed on 16<sup>th</sup> February, 2015 and issued on 19<sup>th</sup> February, 2015 with the only identified asset being WEST Pokot/Siyoi/104 distributed as hereunder:



| Name                 | Description Of Property | Shares Of Heirs |
|----------------------|-------------------------|-----------------|
| Keeme Loitarem       | West Pokot/Siyoi/104    | 9.4 Acres       |
| Simon Kirui          | West Pokot/Siyoi/104    | 9.4 Acres       |
| Samuel Losem         | West Pokot/Siyoi/104    | 9.7 Acres       |
| Francis Kiyapyap     | West Pokot/Siyoi/104    | 5 Acres         |
| Nicholas Kupar       | West Pokot/Siyoi/104    | 1 Acre          |
| Loktari Mukambi      | West Pokot/Siyoi/104    | 1 Acre          |
| Johnstone P. Chochoi | West Pokot/Siyoi/104    | 1 Acre          |
| Joseph Lodengo       | West Pokot/Siyoi/104    | ½ Acre          |

5. On 25<sup>th</sup> May, 2015, the Objectors filed summons for revocation or annulment of grant together with a Petition by way of cross application for grant and summons for preservation and protection of the estate. The Objectors sought for nullification of the impugned grant for grounds that:
  - a. The proceedings to obtain the grant were defective in substance.
  - b. The grant was obtained by the making of a false statement and or concealment from the court of facts material to the case.
  - c. The grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.
6. In the affidavit in support of the summons, Anne Loitarem Osilingi deposed that the proceedings were defective in substance because the consent accompanying the application under form 38 was not signed by all the beneficiaries and that the proceedings leading to a grant were commenced without consent and involvement of all the beneficiaries and dependants of the deceased.
7. According to the Objectors, the persons who were listed as the beneficiaries are not their siblings nor are they dependants to the deceased. That the deceased left behind the following beneficiaries/dependants who were not included as beneficiaries
  - a. Abigail Loitarem – Daughter
  - b. Grace Kigen Loitarem (deceased) left one issue (a girl).
  - c. Keeme Loitarem AKA Reuben Kimaiyo – Son.
  - d. Anne Loitarem Osilingi – Daughter
  - e. Joyce Kwambai Cheboi – (deceased) left two issues
  - f. Simion Kirui Cheboi.
8. In the cross petition filed on the same date, the Objectors stated that they have equal rights to a grant of representation and that there was no consensus as to the appointment of the administrators. They



were apprehensive that the administrator might not faithfully administer the estate of the deceased and therefore he should be removed as an administrator.

9. In response, the Petitioner/Respondent filed a replying affidavit sworn on 3<sup>rd</sup> September, 2015 in which he vehemently opposed the summons for revocation. According to the Petitioner, prior to the issuance of the Letters of administration with respect to the estate of the deceased, a notice was published in the Kenya Gazette on the 27<sup>th</sup> September, 1985 giving a thirty days' notice for any objection after which none was filed. That all the children of the deceased were notified of the proceedings personally and by way of notice through the Kenya Gazette.
10. The Petitioner further deposed that the grant of letters of administration after 30 years, on 16<sup>th</sup> February, 2015 and no application was ever made for annulment, revocation or alteration of the same from the time of the application for letters for administration was made to the time of confirmation. That it was until the 25<sup>th</sup> May, 2015 that the Objector/Applicant has made the application for revocation and the inordinate delay is not explained.
11. In the meantime, the Objector filed an application dated 25<sup>th</sup> May, 2015 seeking orders of preservation of the estate and a temporary injunction restraining the Petitioner/Respondent from dealing with the subject parcel in a way detrimental to the interests of the objectors. Subsequently, orders were issued to that effect on 5<sup>th</sup> June, 2015. Later on, through an application dated 8<sup>th</sup> March, 2018 the Objectors cited the Petitioner/Respondent for contempt. The Petitioner responded to the application urging the court to dismiss the application. This court considered the said application and delivered a ruling dated 13<sup>th</sup> March, 2019 and dismissed the application for reasons that the applicant failed to demonstrate that the orders in question was served.
12. On 4<sup>th</sup> February, 2022, the Objector filed an application dated 31<sup>st</sup> January, 2022 seeking injunctive reliefs restraining the Petitioner/Respondent from interfering with the estate of the deceased. The applicant as well sought an order that the Respondent should render a full and accurate account of all dealings of the Estate of the deceased from the date of appointment to date. This court looked into the application and delivered a ruling dated 19<sup>th</sup> May, 2022. In the said ruling, I pronounced myself as follow:

“ In the premises, I find that the only suitable orders at this juncture are that the administrator render a full account of the inventory and dealings of the estate of the deceased from the time of appointment to date. It is so ordered.”
13. 2 years later, the Petitioner has not acted on the said orders. It resulted to an application by the Objector dated 6<sup>th</sup> July, 2022 citing the Petitioner for contempt of court for the second instance besides the earlier application mentioned elsewhere in this application.
14. Fast forward, the 1<sup>st</sup> Objector in his own capacity filed summons for confirmation of the grant issued to KEEME LOITAREM on 17<sup>th</sup> January, 1985, despite the fact that the same had already been confirmed on 19<sup>th</sup> February, 2015. On the same breadth, it is worth mentioning that the said certificate of confirmation captured individuals who had an interest in land known as WEST POKOT/Siyoi/104 as purchasers. At one point this court presided by the session Judge Hon. Githua J considered this issue and stated as follows on 4<sup>th</sup> April, 2016:

“ It has come to my attention that there are persons said to be buyers who were allocated shares in the deceased's Estate in the Certificate of Confirmation of grant issued on 19<sup>th</sup> February, 2015. The said Persons have not been enjoined in the said proceedings. In the premises I think it would be prudent to ascertain whether the distribution ordered by the court in



the aforesaid Certificate of Confirmation of grant has been effected by the relevant Land Registry because if it has, the said persons have acquired some proprietary interest in the land comprising the Estate and it would not be fair to proceed in this matter without their involvement.”

15. As a result of the said sentiments, 23 interested parties came on record and replying affidavits were filed challenging the summons for revocation of Grant dated 25<sup>th</sup> July, 2015. They all essentially gave a nexus of how they acquired their share from the estate and attached the resultant sale agreements between themselves and two beneficiaries i.e. Simon Kirui Cheboi and Keeme Loitarem. Some of the buyers have equally sold their parcels to third parties. So that then, the delayed confirmation and prolonged litigation in this matter has seen rapid developments in the estate, some unknown to this court.

### **Determination.**

16. Let me start by pointing the importance and duties of an administrator in any succession proceedings. It should be noted that some of the developing issues in this estate would have been easily resolved if the administrator, Keeme Loitarem stayed true to his course. While filing the Petition, the Petitioner decreed to faithfully administer the estate and effects of the deceased by paying his just debts and distributing the residue according to law and that he would exhibit a true and perfect inventory of all and singular whenever required to do so. Despite this court directing him to do so in its ruling dated 19<sup>th</sup> May, 2022, nothing has been presented before this court to exhibit a true and perfect inventory of the estate. We are in this mess because of the Petitioner’s indolence.
17. The *Law of Succession Act* places a duty on personal representatives to complete the administration of the estate. Section 83(i) of the *Law of Succession Act* provides;

“To complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate.....”
18. There are two instances in which an administrator is required to render accounts and this was discussed by this court in *Re Estate of Julius Mimano (Deceased)* [2019] eKLR where Musyoka J observed that;

“..... section 83 of the Act has imposed a positive duty on personal representatives to specifically render accounts at two stages. The first instance is in the first six months of the administration. It is at this stage that they ought to account as to whether they spent any funds from the estate for the purpose of disposing the remains of the deceased and, if so, how much. State whether they got in or gathered or collected or brought together all the assets that make up the estate. The getting in of the estate is critical, it should precede settlement of debts and liabilities and distribution of the assets. Indeed, these duties can only be discharged if there are assets sufficient to settle debts leaving a surplus for distribution. It would also be from the assets collected that the estate would have a pool of resources for administration expenses. Section 83(e) commands the personal representatives to produce in court a full and accurate inventory of the assets and liabilities, no doubt generated from the exercise of getting in the assets and ascertaining the debts of the estate. There is also an obligation to render an account of all their dealings with the assets and liabilities up to the point of the account. The second occasion for rendering accounts is at the completion of administration. The duty is stated in section 83(g) of the Act. The object of the second and final account is to give opportunity to the personal representative to demonstrate that they have complied with the duty in section 83(f) of distribution of the estate to the beneficiaries.”



19. Upon the death of a deceased, his/her property is vested on the estate. In turn, any personal representative or administrator appointed to administer the estate takes the mantle and the property is vested in him/her pursuant to Section 79 of the *Law of Succession Act*.
20. In reading section 79 together with Section 80 of the Act, it gives a picture of when grants of representation become operational. In establishing the acts of an executor, a grant is applied retrospective considering the period between the death of the deceased and the making of the grant. Once the assets of the deceased have been vested in the administrator, the administrator is then entitled to exercise the powers conferred upon him/her pursuant to section 82, and he/she is subject to the duties that have been imposed by section 83. The powers included powers to enter into contracts with respect to assets of the estate, to sue and be sued with regard to estate assets, among others. Entering into contracts over estate assets includes converting estate assets by way of sale. However, section 82(b)(ii) of the Act outlaws the sale of immovable assets of an estate before the grant is confirmed. It then means that any such sale is unlawful and unenforceable unless it happened with the leave of the court.
21. In the instant case, the sale of various portions of the subject land was not done during the lifetime of the deceased. That would then mean, by dint of section 79 of the *Law of Succession Act*, that the assets of the estate had not yet vested in the deceased's son. He, therefore, did not have power pursuant to section 82 of the *Law of Succession Act*, to sell the property. He could not enter into any binding contract with anybody over any of the assets that made up the estate of the deceased.
22. According to the record, the grant was confirmed on 19<sup>th</sup> February, 2015, on an application dated 23<sup>rd</sup> June, 2014. Again, all the sale transactions of the interested parties as presented on record, happened before the grant was confirmed, and the sales, therefore, fell afoul of section 82(b)(ii) of the *Law of Succession Act*. A perusal of the record has not revealed any direction or order from this court granting the Petitioner/respondent permission to sell the property before the grant was confirmed. Therefore, the various sales happened in contravention of the law, section 82(b)(ii), and as such the same is unlawful and unenforceable. The purported buyers acquired no rights whatsoever under their contracts of sale. It bears emphasis that under section 55 and 82 of the *Law of Succession Act*, no immovable property of the deceased shall be sold before confirmation of grant. For clarity, the relevant parts of Section 55 and 82 thereto are reproduced below:
  55. No distribution of capital before confirmation of grant
    - (1) No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by section 71.
    - (2) The restriction on distribution under subsection (1) does not apply to the distribution or application before the grant of representation is confirmed of any income arising from the estate and received after the date of death whether the income arises in respect of a period wholly or partly before or after the date of death.
  82. Powers of personal representatives' Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers
    - (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate;



- (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that

- (i) the purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and
- (ii) no immovable property shall be sold before confirmation of the grant;

23. Ideally, the only salvation for the buyers with regards to the attendant transactions is to pursue the Petitioner/respondent who purported to sell the property to them. The interested parties who have equally appeared in the Certificate of Confirmation are not in any way survivors of the deceased, for they claimed, not as surviving spouses or children or grandchildren of the deceased for they did not fall within the category of creditors or liabilities. In my opinion, they have no role nor place in the succession cause, to warrant them being joined to the cause as interested parties, or in any other capacity for that matter. Their remedy lies in suing the Petitioner or the estate to either recover the land that he sold to them or for a refund of the purchase money that he received from them. Such disputes as to ownership are not within the purview of this court's duty.
24. The limitation provided by law that no immovable property shall be sold or distributed before confirmation of grant is not a mere directive or for cosmetic purposes. It is a statutory command with dire consequences on any transaction undertaken in contravention of the said law. Accordingly, acquisition of immovable property of the estate in contravention of the *Law of Succession Act* is unlawful acquisition; thus, property so acquired does not enjoy the protection of property rights under article 40(6) of *the Constitution*. See the claw-back provision of *the Constitution* that: -

“ 40

- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”

25. The doctrine of innocent purchaser would in effect not apply in this case for the Petitioner had not acquired a valid title to the property under the *Law of Succession Act*. Although the purchasers claim legality of the entire process of registration of the title, which purportedly transmitted certain rights to the suit property, there is clear evidence from the record that the process of the making of the grant of representation from the deceased the late Kiptoo Cheboi to the Petitioner was done in total contravention of Section 76 of the *Law of Succession Act*. The Petitioner claiming rights over the suit property of the deceased was a mere beneficiary entitled to some portion or share and not exclusive ownership in contravention of rights of other beneficiaries recognizable under Section 29 of the *Law of Succession Act*. I concur that the Petitioner applied and obtained Certificate of Confirmation of Grant but the prescribed procedure under the Succession Act leading to the making of the Certificate of Confirmation of Grant was abrogated and derogated from by the Petitioner leading to a breach and violation of the fundamental rights to property to the other equal beneficiaries who stood at the same footing with the Petitioner on inheritance rights. What did the petitioner do to the process of the making of Certificate of confirmation of Grant? there was clear misrepresentation, non-disclosure, acts of fraud rendering the entire process fatally defective. If the session judge had been presented with evidence on the root title with the processes and procedures which brought the title into the hands of the Petitioner, a break in the chain could have been established



that there was no good title acquired by the Petitioner to transmit any rights to the purchasers. It was the duty of the purchasers to undertake due diligence on the title deed to establish whether the Petitioner had rights over the suit land capable by disposing it by way of sale.

26. The good foundation of an intestate estate is for the purchasers to have investigated whether the title in possession of the Petitioner had been passed properly from the deceased to the current holder herein the Petitioner for them to acquire proprietary rights which accrue from that title. Needless to say that ignorance of the law is no defence and a search certificate from the Lands Registry is just one of the basic tools to establish the authenticity of the title but it is not the ultimate to demonstrate that the holder has a good title. In a succession matter, there are two competing interests and rights as the case may be. The direct descendants of the deceased and in any event, existence of creditors claiming third party rights to the estate. This burden of investigating the authenticity, legality and genuineness of registration of title and proprietorship is generally vested with the purchasers who are desirous of purchasing certain rights arising out of that title. I note from the Affidavit of Anne Loitarem dated 12<sup>th</sup> February, 2024, avers that the purchasers acquired certain rights to the suit land by virtue of sale agreements between the Petitioner and various purchasers ranging from the year 2009 and 2021 with some having acquired registrable interest to those proprietary rights. However, notwithstanding that position, flowing from the root title of the deceased, the objectors have demonstrated by way of evidence, existence of misrepresentation and non-disclosure that the certificate of title so acquired by the Petitioner was done so illegally and unprocedurally through a scheme to deprive the other beneficiaries of their rights to property under Art. 40 of *the Constitution* as read with section 35, 36, 37, 38 of the *Law of Succession Act*. If the title held by the Petitioner was obtained by fraud or misrepresentation, then it brings the case within the justiciable issues under Section 76 of the *Law of Succession Act*. Whether those titles and claim of rights over the intestate suit property are impeachable as having been obtained illegally, unprocedurally or through some conspiracy scheme by the Petitioner to have them annulled and rendered voidable is a matter for another constitutional forum by the framers of our constitution.
27. The purpose and jurisdiction of this court is to establish whether the objectors have established vitiating factors for the Certificate of confirmation of Grant to be annulled. It is instructive to take judicial notice that all efforts by this court to have the Petitioner render accounts under Section 83 (g) of the *Law of Succession Act* have proved futile and no manner of summons would be able to answer to the fundamental questions being raised by this succession as the objection proceedings demonstrate that the acquisition of registrable rights to the suit land by the Petitioner was tainted with some fraud, mistake and misrepresentation. In the case of *Dina Management Limited versus County Government of Mombasa and five others (2023) eKLR*, the supreme court pronounced itself inter alia:
- “That the protection offered a purchaser of value without not notice does not apply where the title to the property was obtained irregularly or illegally.”
28. The implication of all these in circumstances surrounding the intestate succession proceedings filed in 16<sup>th</sup> September, 1985 though belatedly so by this court must be struck out for being a violation for the provisions of Section 76 of the *Law of Succession Act*.
- a. As a consequence, the summons for revocation of grant dated 25<sup>th</sup> March, 2015 is allowed.
  - b. In the second limb, an order is hereby made that all conveyances made in immovable or movable property to the purchasers by the Petitioner on whom probate letters had been granted notwithstanding this subsequent revocation be subjected to the Environment and Land Court jurisdiction.



- c. That this revocation of Grant among other things has been undertaken by this court for a good cause given the fact of the objection proceedings by Ann Loitarem and the failure by the Petitioner to comply with court orders to satisfy the criteria of section 83(g) of the Law of Succession Act.
- d. A declaration be and is hereby made that the Petitioner and his other three siblings are beneficiaries in the intestate estate of the late Kiptoo Cheboi under Section 38 of the Law of Succession Act.
- e. The costs of the application shall be in the cause.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 11<sup>TH</sup> DAY OF OCTOBER 2024**

.....

**R. NYAKUNDI**

**JUDGE**

In the Presence of:

Ann Loitarem

