



**In re Chebochok Sang (Deceased) (Probate & Administration  
31 of 2021) [2024] KEHC 11447 (KLR) (1 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11447 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
PROBATE & ADMINISTRATION 31 OF 2021**

**JR KARANJA, J**

**OCTOBER 1, 2024**

**IN THE MATTER OF CHEBOCHOK SANG (DECEASED)**

**RULING**

1. This matter is traceable to Kapsabet Succession Cause No. 45 of 2013 which initially started as Eldoret Miscellaneous Probate and Administration Cause No. 27 of 2013 and in which a petition was apparently filed respecting the Estate of the Late Chebochok Arap Sang (Deceased). The Petitioners therein were Mary Sang and Christopher Chebochok but on the 22<sup>nd</sup> May 2014 the matter was stood over generally following the demise of the first Petitioner, Mary Sang, who in accordance to the petition filed in court on 20<sup>th</sup> May 2013, was, the surviving widow of the deceased while the Second Petitioner, Christopher Kiplating Chebochok was listed as the surviving son of the deceased along with one Philip Koskei. The only asset listed as the estate property was Land Parcel No. Nandi/Kilibwoni/ 1373 valued at Kshs. 100,000/- at the material time.
2. It later turned out that Eldoret Miscellaneous Probate and Administration Cause No. 27 of 2013 was not related to the estate of the deceased herein and that it was wrongly transferred to Kapsabet Court and re-opened as Kapsabet Succession Cause No. 45 of 2013, which was returned to the High Court at Eldoret vide its original number being Eldoret High Court Miscellaneous Probate & Administration Cause No. 27 of 2013. The necessary order was issued on 31<sup>st</sup> October 2014 by the High Court at Eldoret, but it related to the estate of one Kiptanui Arap Lamai in which the disputants were one Salina Chebichi and one Mark Joseph Maritim over Estate property described as Nandi/Kamobo/ 29. However, later in 2018, when the apparent error was realized, the Kapsabet Succession Cause No. 45 of 2013 was returned to the Kapsabet Court and left “hanging” as it were. In the meantime, the surviving Petitioner, Christopher Kiplating Chebochok, did on the 3<sup>rd</sup> March 2017 file a separate petition for grant of letters of administration intestate respecting the estate of the deceased herein, the late Chebochok Sang. This was done vide PMCC Kapsabet Succession Cause No. 38 of 2017 in which the Petitioner who is the Respondent in the present case, being High Court Probate & Administration Case No. 31 of 2021 at Kapsabet, was the sole Petitioner and was listed as the surviving son of the deceased together with a surviving daughter of the deceased called Elizaba Cherotich Kutto. The sole estate property was said to be the parcel land described as Nandi/Kilobwoni/1373 valued at



the time at Kshs. 6million, but encumbered with liabilities to one Simon Kipkemboi Biego and Renny Kipchumba Kogo.

3. The necessary grant of letters of Administration intestate was issued to the Petitioner/ Respondent on 12<sup>th</sup> June 2017 by the Magistrate's Court at Kapsabet and was confirmed on 23<sup>rd</sup> January 2018 with the estate property No. Nandi/Kilibwoni/1373 being wholly distributed to the Petitioner together with an additional property described as Nandi/Kilibwoni/1374 which was not listed in the Petition as being available for distribution.

The confirmation of the grant marked the "closure" of Kapsabet Succession Cause No. 38 of 2017 which together with Kapsabet Succession Cause No. 45 of 2013 were called for by this court for perusal and it was upon such perusal that all the foregoing factual information was yielded.

It is intriguing that the Petitioner/ Respondent was the sole beneficiary of the confirmation of the grant as reflected in the certificate of confirmation of grant dated 23<sup>rd</sup> January 2018, yet in the petition dated 3<sup>rd</sup> March 2017 the deceased was said to have been survived by the Petitioner as the only son and a daughter, Elizeba Cherotich and that the Estate was indebted or liable to Simion Kipkemboi Biego and Renny Kipchumba Kogo.

4. Further, in Kapsabet Succession Cause No. 45 of 2013 which stalled the petition indicated that the deceased was survived by a widow Mary Sang (deceased) and two sons i.e. the Petitioner/ Respondent and one Philip Kosgei. The accompanying, chiefs letter dated 12<sup>th</sup> March 2013, indicated that there were two parcels of land viz Nandi/Kilibwoni/1033 and Nandi/Kilibwoni/1034 and five (5) beneficiaries of the estate, being the surviving widow, two sons, one daughter and a purchaser of Parcels No. Nandi/Kilibwoni/1034 i.e. one John Kiprugut Kurgat.

The letter also indicated that the deceased was a polygamist with two wives including the surviving widow. The name of the departed wife was not mentioned.

5. The present cause which started before the High Court at Eldoret as Miscellaneous Succession Cause NO. 9 of 2018 and anchored on Kapsabet Succession Cause No. 38 of 2017 as may be deciphered from all the foregoing had its genesis in Kapsabet Succession Cause No. 45 of 2013 and is a byproduct of the activities or processes in both Kapsabet Succession Cause No. 45 of 2013 and Kapsabet Succession Cause No. 38 of 2017 which were all before the Magistrate's Court. Thus, Kapsabet Cause No. 45 of 2013 gave rise to Kapsabet Case No. 38 of 2017 which in turn gave rise to this Kapsabet High Court Succession Cause No. 31 of 2021 through Eldoret Miscellaneous Cause No. 9 of 2018, a suit filed by the Objector/Applicant Sarah Jepkinyor Kosgei against the Respondent/Petitioner herein on the 19<sup>th</sup> March 2018 for revocation and/or annulment of the grant of letters of administration intestate issued on 12<sup>th</sup> June, 2017 and the accruing certificate of confirmation of grant issued on 23<sup>rd</sup> January 2018 and not 23<sup>rd</sup> February 2018 as erroneously indicated in the appropriate summons for revocation of grant dated 19<sup>th</sup> March 2018.

6. This is the summons subject of this ruling after an inter-parties hearing thereof by way of affidavit evidence and written submissions.

At the hearing, the Applicant/Objector was represented by the Learned Counsel, Mr. Rotich while the Respondent/Petitioner or administrator represented himself through Zenah Jeptoo, vide a duly executed power of attorney dated 23<sup>rd</sup> July 2024.

Having considered the application on the basis of the supporting grounds and those in opposition thereto as canvassed in the rival written submissions with brief oral highlights from the parties, this court identified two issues for determination, Firstly, whether the application is competent and proper before this court and Secondly, whether the Applicant has demonstrated sufficient grounds for



revocation and/ or annulment of the grant and the certificate of confirmation of grant issued to the Respondent/ Administrator in terms of Section 76 of the Law of Succession Act.

7. With regard to the first issue, it must be pointed out that the necessity to open this file at this court did not arise as there was already in existence Succession Cause No. 38 of 2017 at the Kapsabet Magistrate Court in which the impugned grant was issued and confirmed. The Applicant ought to have sought revocation of the grant within that cause instead of filing the present application in this court in a new file away from the jurisdiction of the magistrate court. Accordingly, the application would not be proper and competent before this court for the major reason that this court lacks the necessary jurisdiction to in the first instance revoke and/ or annul a grant issued and confirmed by the Magistrate court by dint of the amendment of the Law of Succession Act on the 2<sup>nd</sup> January 2016 which brought into force the Magistrate's Courts Act No. 26 of 2015.
8. This Act No. 26 of 2015, amended and repeated Section 48 (1) of the Law of Succession Act by providing under Section 23 that:
  - “(i) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of Section 49 a magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under Section 7(1) of the Magistrate's Courts Act 2015”
9. Previously, Section 48 (1) of the Law of Succession Act had granted exclusive jurisdiction to the High Court to revoke grants made by the Magistrate Court. The jurisdiction was extended to the Magistrate's Court by the aforementioned amendment in the year 2016. The subject grant was issued in the year 2017 and confirmed in the year 2018, when the High Court had already lost its original and exclusive jurisdiction to revoke grants made and issued by the Magistrate's Courts. Thus, in the year 2016, the Magistrate Courts were clothed with jurisdiction to revoke grants made by themselves. Such jurisdiction could only be exercised by the High Court in its appellate jurisdiction which is not the case herein.
10. Ultimately, this court must and hereby divests itself of the jurisdiction to deal with this matter and must now down its tools at his stage and order that the present application dated 19<sup>th</sup> March 2018 be struck out and dismissed for being incompetent and improper before this court. This is without prejudice to the Applicant refiling or filing a fresh application for revocation of the impugned grant in the magistrate's court at Kapsabet within Succession Cause No. 38 of 2017.

Having arrived at that conclusion which regard to the first issue for determination, the determination of the second issue is no longer necessary as this court does not have jurisdiction to deal with the matter and would resist any temptation to deal or delve in matters which are not proper before itself.

In sum this application is dismissed. The parties shall bear own costs of the application.

**DELIVERED AND DATED THIS 1<sup>ST</sup> DAY OF OCTOBER, 2024**

**J. R. KARANJAH,**

**JUDGE**

