



REPUBLIC OF KENYA



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In re Estate of Kipkoech Arap Chepkwony (Deceased) (Succession Cause 5 of 2017) [2023] KEHC 1656 (KLR) (13 March 2023) (Ruling)

Neutral citation: [2023] KEHC 1656 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 5 OF 2017**

RL KORIR, J

MARCH 13, 2023

BETWEEN

SAMUEL KOECH PETITIONER

AND

JOSEPH KIPROTICH BOR OBJECTOR

RULING

1. This Ruling is in respect of the Objector's Application before the Court which is by way of Summons seeking Revocation or Annulment of Grant dated 7th April 2021 and filed on 8th April 2021 together with the Petitioner's Preliminary Objection dated 17th May 2021 and filed on 18th May 2021. The Application for Revocation of Grant is premised on sections 47 and 76 (d) of the *Law of Succession Act* cap 160, rule 44 (1) and (2) of the *Probate and Administration Rules*. The prayers are: -
 - (a) (Spent)
 - (b) That pending the hearing and determination of this Application, there be a stay of execution of the Grant in respect to land parcel Number Kericho/Kapkimolwa/1629 and the title be inhibited from any further dealings.
 - (c) That the Certificate of Confirmed Grant dated 14th December 2017 be revoked and/or annulled.
2. This Application is premised on the following grounds:-
 - (1) That the proceedings to obtain Grant were defective in substance.
 - (2) That the Grant was obtained fraudulently by making of false statements and concealment from court of material facts.



- (3) That part of the property comprised in the Estate of the late Kipkoech Arap Chepkwony (deceased), more particularly in LR No Kericho/Kapkimolwa/1629 belongs to the Objector herein who has been in occupation of the land since 1971 without interference whatsoever.
 - (4) That the proceedings herein were instituted secretly and in a clandestine manner so that the Objector would not get to know of the proceedings.
3. The Application is supported by the sworn Affidavit of Joseph Bor, the Objector/Applicant herein dated and filed on the even date.
 4. The Respondent/Petitioner filed a Replying Affidavit dated 12th May 2021 on 18th May 2021. He averred that the Objector was neither a relative, a beneficiary nor an interested party in the Estate of the deceased. Further, that the Estate had already been distributed to the rightful persons and that the claim herein was *res judicata*.
 5. The Petitioner/Respondent in this matter then brought a Notice of Preliminary Objection dated 17th May 2021 and filed on 18th May 2021. The grounds for the said objection were: -
 - a) That the present Application was *res judicata* by virtue of the provisions of section 7 and section 34 of the *Civil Procedure Act*, cap 21 Laws of Kenya.
 - b) That the issue of the Objector's interests in Kericho/Kapkimolwa/1629 was determined in Bomet Principal Magistrate's Court (ELC) Civil Case No 7 of 2019 vide Judgement dated 21st September 2020.
 - c) That the instant Application amounts to sub judice in contravention of section 6 of the *Civil Procedure Act*, cap 21 Laws of Kenya.
 - d) That the Objector's Application is based on incurable illegality and ought to be struck out.
 - e) That the entire Application and all proceedings taken against the Petitioner are nullity ab initio.
 - f) That the Objector's Application is herein incurably defective, bad in law and ought to be struck out.
 6. By this Court's directions dated 21st July 2022, the parties were directed to canvass both the Summons and the Preliminary Objection through written submissions.

Applicant's Submissions

7. The Applicant's submissions in respect of the Application for revocation of Grant are dated 14th September 2022 and filed on 11th October 2022 by E.M. Orina and Company Advocates. Counsel for the Objector/Applicant submitted that the Grant dated 14th December 2017 was obtained fraudulently by making false statements and concealing the material fact that the Objector had been in occupation of part of the land since 1971 and was therefore the legal owner of the said portion Kericho/Kapkimolwa/1629. That the Objector was never included in the list of the beneficiaries or liabilities of the Estate and was unaware of the succession proceedings until he was summoned to enter appearance in Bomet PMCC No. 7 of 2019 where one Tabutany Chepkoech Chebusit proceeded to court to have him evicted.
8. Counsel identified and submitted on twin issues being: whether the Court should annul the certificate of confirmation of grant dated 14 December 2017; and, whether the court should grant a stay of execution pending the hearing and the determination of the Application and appeal.



9. Firstly, they submitted that the Objector had been in occupation since 1971 and had even built his matrimonial home on the said parcel. They cited section 76 of the *Law of Succession Act*, the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* (2015) eKLR, *Albert Imbuga Kisigwa v Recho Kavai Kisigwa*, Succession Cause No. 158 of 2000 and *Re Estate of Julius Ndubi Javan* [2018] eKLR in support of this submission. They submitted that the Petitioner proceeded to court to obtain a grant without an introduction letter from the chief which ought to have ascertained all the beneficiaries of the Estate, and that failure to do so meant that the subsequent Grant was defective. They cited the case of *Re Estate of Shem Kitanga (deceased)* 2018 eKLR and *Re Estate of Ambutu Mbogori* [2018] eKLR.
10. On the second issue, Counsel submitted that the matter of ownership of the land was pending before the Court of Appeal in Nakuru and therefore this Court was duty bound to protect the subject matter and order a stay of execution of the grant, otherwise the appeal would be rendered nugatory. They cited order 42, rule 6 (1) and (2) of the *Civil Procedure Rules* and the case of *Butt v Rent Restriction Tribunal* [1979] eKLR and *Tabro Transporters Ltd v Absalom Dova Lubasi* [2012] eKLR.
11. Counsel submitted that stay ought to be granted because the Objector would be in a worse off position since execution of the grant would lead to the demolition of his matrimonial home where he had stayed since 1971. In addition, that the court had discretion in this matter because if the orders sought were never granted, the ensuing state of affairs would irreparably affect the Objector and his subsequent appeal. They cited the cases of *Florence Hare Mkaba v Pwani Tawakal Mini Coach & Another* (2014) eKLR, *Silverstein v Chesoni* (22) 1 KLR 867 and *Century Oil Trading Company Limited v Kenya Shell Limited* Nairobi (Milimani) HCMCA No. 1561 of 2007.
12. Counsel for the Objector further submitted that the intended appeal was arguable. They cited the case of *Silverstein v Chesoni* (*supra*), *Kenya Airports Authority v Mitu Bell Welfare Society & Another* [2014] eKLR, *Damji Pragji Mandavia v Sara Lee Household & Body Care (K) Ltd*, Civil Application No 345 of 2005 and *Global Tours & Travel Limited v Five Continents Travel Limited* [2015] eKLR.
13. Lastly, Counsel submitted that their Appeal would be rendered nugatory if the Court did not grant their prayers. They cited the case of *Githunguri v Jimba Credit Corp Limited Nor* (1988) KLR 838. They submitted that the Objector was willing to furnish security as required by orders 42, rule 6.

Respondent's Submissions

i. Application for Annulment/Revocation of Grant

14. The Respondent's submissions in respect of the Application are dated 7th April 2021 and filed on 11th October 2022. Counsel for the Respondent submitted on two issues being: whether the Applicant was entitled to the Estate of the deceased and who should bear the costs of the Application. Firstly, he outlined the list of dependants under section 29 of the *Law of Succession Act* and stated that the Objector did not fall under any of those categories. That the Objector never produced any sale agreement or evidence to prove his claim of purchasing the suit parcel and that the title he was in possession of was canceled in Bomet PMCC (ELC) Civil Appeal No. E001 of 2020. Counsel cited the case of Kisii High Court Succession Cause No. 127 of 2011, *In the Matter of the Estate of the deceased Francis K Mushere & another v Antonina Kiare Ekesa & another*.
15. Secondly, counsel submitted that there was no mistake on Record and the Court made its determination based on the evidence before it. On this, he cited the case of *Nyamongo & Nyamongo v Kogo* [2001] EA, 170 and *Attorney General & O'rs v Boniface Byayima*, HCMA No. 1789 of 2000. It was his conclusion that the Application did not meet the scope for review under order 45 rule 1 of the *Civil Procedure Rules* and that the Applicant's interest and rights had not been adversely affected by



the Court's decree. He cited the Court of Appeal case of *Kamau James Gitutho & 3 Others v Multiple ICD (K) Limited & Another* [2019] eKLR in which the court referred to *Daniel Lago Okomo v Safari Park Hotel Limited & Another* [2018] eKLR.

16. On the issue of costs, Counsel submitted that the Court should be guided by the provisions of section 27 of the *Civil Procedure Act* which required costs to follow the event. He also cited the case of High Court of Kenya at Eldoret, Judicial Review Application No. 6 of 2017, *Republic v Kisii University ex-parte Mary Jebet Mutai* where Sewe J relied on *Republic v Rosemary Wairimu Munene ex-parter Applicant v Ihururu Dairy Farmers Cooperative Society Limited*. He urged the Court to dismiss the Application and award costs to the Petitioner.

ii. Preliminary Objection

17. The Petitioner's submissions regarding the Preliminary Objection are dated 11th October 2022 and filed on the same date. Counsel submitted on two main issues being: whether the Application was Res Judicata and who should bear the costs of the Application.
18. Firstly, he defined the doctrine of Res Judicata under section 7 of the *Civil Procedure Act* and submitted that an Application such as the present one also constitutes a suit under section 2 of the same Act. He submitted that the main issue in the present Application dated 7th July 2021 originated from a matter that was in contention and was determined in Bomet PMCC (ELC) No. 7 of 2019. That the said title which gave the Objector ownership was canceled in the Environment and Land Court (PMCC 7 OF 2019) suit on grounds of fraud and that this decision was upheld on appeal in the Environment and Land Court in Kericho Civil Appeal No. E001 of 2020. In support of this position, counsel cited the cases of Mombasa High Court Civil Suit No. 18 of 2017, *Qayrat Foods Limited v Safiya Ahmed Mohamed and 6 Others*, Mombasa Court of Appeal Civil Appeal No. 50 of 1989, *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* and Nairobi Court of Appeal Civil Appeal No. 244 of 2010, *Phoenix of EA Assurance Company Limited v S.M. Thiga T/A Newspaper Service*. He urged the Court to dismiss the said Application for revocation of Grant as the issues therein were moot and the Application was res judicata.
19. On costs, Counsel submitted that they were pegged on the Court's discretion in line with the provisions of section 27 (1) of the *Civil Procedure Act* and that they followed the event. He prayed that the Court would award the costs to the Petitioner.

Issues for Determination

20. From my perusal of the proceedings, the grounds raised in the two Applications, the rival Affidavits and the submissions of the parties, I discern the following issues for determination: -
 - i) Whether the Application dated 7th April 2021 is *res judicata*.
 - ii) Whether the Application dated 7th April 2021 is merited.

(i) Whether the Application is Res Judicata.

21. A court of law is required to make a determination on a Notice of Preliminary Objection before any other Application that is present before it. Ringera J (as he then was) in the case of *Garden Square Ltd v Kogo & Another* [2003] eKLR explained that a preliminary objection is a pure point of law which if successfully taken would have the effect of disposing off the suit or application.



22. Similarly, Sir Charles Newbold, president of the Court of Appeal for East Africa in the case of *Mukisa Biscuit Manufacturing Ltd v West End Distributors Ltd* (1969) EA 696 stated: -

“A preliminary objection is in the nature of what used to be demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.....”

23. It is therefore incumbent on this Court to dispense with the Preliminary Objection before delving into any other substantive issues raised in the Application.

24. The doctrine of res judicata is premised on section 7 of the *Civil Procedure Act* as follows: -

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

25. This principle was aptly enunciated by the Court of Appeal of Eastern Africa in the case of *Gurbachau v Yowani Ekoru* [1958] E.A. 450, where the court cited at page 453 a passage from the judgment of the Vice Chancellor in the English case of *Henderson v Henderson* [1843-60] ALL E.R.378, (1) 67 ER 313 at page 319 wherein it was stated that: -

“In trying this question I believe I state the rule of the court correctly when I say that where a given matter becomes the subject of litigation in, and adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not, except under special circumstances, permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties exercising reasonable diligence, might have brought forward at the time.”

26. It is therefore imperative for a party who wishes to have their matter adjudicated upon by the court to bring all the issues in contention before the court for determination. Such a party will be precluded from instituting new issues under a different suit or title. The objective of this principle is to ensure that litigation comes to an end, otherwise courts will be subjected to listening and determining endless suits.

27. The Court of Appeal outlined the principles for testing whether a matter is res judicata in the case of *The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, [2017] eKLR), as follows: -

“[F]or the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;

a) The suit or issue was directly and substantially in issue in the former suit.



- b) That former suit was between the same parties or parties under whom they or any of them claim.
- c) Those parties were litigating under the same title.
- d) The issue was heard and finally determined in the former suit.
- e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.

.....The rule or doctrine of *res judicata* serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and commonsensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of *res judicata* thus rest in the public interest for swift, sure and certain justice.”

28. I have considered the present Application. It is evident that the main reason for which the Applicant/ Objector seeks an annulment of the Grant is his claim that the parcel No. Kericho/Kapkimolwa/1629 which was subdivided from Kericho/Kapkimolwa/9 belonged to him. However, as clearly submitted by the Petitioner’s counsel, this issue was already substantively determined in the trial and appellate Environment and Land Courts in Bomet and Kericho respectively. Further, both courts had proper jurisdiction to determine the said issue of land ownership. Thus, the parameters under (a), (d) and (e) have been met.
29. With respect to the parties, I observed that the parties litigating under Bomet PMCC No. 7 of 2019 were Tabutany Chebusit and Joseph Bor, the Applicant/Objector herein. On the other hand, the parties in the present Application are Joseph Bor (the Objector) and Samwel Koech (the Petitioner). Thus, the parameters under (b) and (c) have not been met.
30. In the premise, though the issue of land ownership was already decided in Bomet PMCC No. 7 of 2019, these objection proceedings relate to the issuance of Grant and its revocation. The Objector has set out the grounds for revocation which include the ownership of the land. For the Court to effectively determine the Application, it must test it against the provisions of the *Law of Succession Act*. It is my finding therefore that the Application dated 7th April 2021 is not *res judicata* as argued by the Petitioner/Respondent’s counsel.

(ii) Whether the Grant was obtained fraudulently to merit its Revocation.

31. Having established the above, I will now delve into the crux of the Application dated 7th April 2021. The law on revocation of Grant is premised on section 76 of the *Law of Succession Act*, Cap 160 Laws of Kenya. It states as follows: -

76. Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;



- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.”

32. The Applicant’s main contention is that the Grant was obtained in a fraudulent manner by concealing material facts from the Court and that he was never listed as a beneficiary or as a liability, yet he had occupied part of the Estate in land parcel No. Kericho/Kapkimolwa/9 (now land parcel No. Kericho/Kapkimolwa/1629) since 1971. He further contended that the said parcel was illegally transferred to one Tabutany Chebusit and that he was not knowledgeable about the succession proceedings instituted by the Petitioner/Respondent. He also stated that the absence of an introduction letter from the chief listing all dependants and beneficiaries of the Estate of the deceased was fatal to the subsequent Grant that was issued.

33. Courts are replete with decisions regarding the principles governing revocation of Grants. *In the Matter of the Estate of L.A.K. (Deceased)* [2014] eKLR, it was stated thus:-

“Revocation of grants is governed by section 76 of the *Law of Succession Act*. The relevant portions of section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”

34. *In Re Estate of Prisca Ong’ayo Nande (Deceased)* [2020] eKLR, the court stated that: -

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The



second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.” (Emphasis mine.)

35. The above authorities show that a Grant will only be revoked where there was some illegality or misstep in the process of obtaining it or where the administrator fails to undertake the necessary steps after its confirmation within the stipulated time or in situations where it becomes inoperative.
36. I will now consider the manner in which the Petitioner applied for the Grant. From the Record, on 23rd January 2017 the Petitioner filed Consent to obtain Grant of Letters of Representation signed by the children of the first and second household. Annexed to the consent is a schedule of the list of dependants, beneficiaries and liabilities. The Objector argued that the Application for Grant should have been accompanied by a letter of introduction from the chief.
37. In the case of *Re Estate of Shem Kitanga (Deceased)* [2018] eKLR, Njagi J. ruled that:-
- “A succession cause starts with an introduction letter from the chief of the area where the intended Petitioner hails from. Though it is not a legal requirement, it is presumed the chief is well familiar with the family of the deceased person and can inform the court of the beneficiaries left behind by the deceased.”
38. My understanding of the above is that, though this letter from the chief is necessary in providing the relevant information on the deceased person and his or her beneficiaries, it is not a legal requirement and therefore cannot be said to be mandatory. Such a letter only serves to indicate the names of the beneficiaries of a deceased person’s Estate as known to the chief. In this present case therefore, the absence of the chief’s letter is not sufficient to lead this Court to conclude that the process of obtaining Grant was defective or fraudulent.
39. The Objector’s second contention was that he was left out of the succession proceedings. The *Law of Succession Act* under section 66 lists the persons who are entitled to take out letters of administration in order of priority. It states thus: -
- “When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-
- a. surviving spouse or spouses, with or without association of other beneficiaries;
 - b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interest as provided by Part v;
 - c. the Public Trustee; and
 - d. Creditors:



Provided that, where there is [a trial]

intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

40. In the same manner, Part VII Rule 26 (1) and 2 of the Probate and Administration Rules provides as follows:-

Rule 26

- (1) Letters of Administration shall not be granted to any applicant without notice to any other person entitled in the same degree as or in priority of the applicant.
- 2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of communication, or written consent in Form 38 or 39, by all persons so entitled in equality or priority be supported by an affidavit of the applicant and such other evidence as the court may require.”

41. The specific ground stated by the Applicant in seeking revocation of the Grant issued to the Petitioner under Ground 3 is that part of the property comprised in the Estate of the late Arap Kipkoech Chepkwony (deceased) more particularly in L.R. No. Kericho/Kapkimolwa/1629 belongs to him (the Objector) because he has been in occupation of the land since 1971 without interference whatsoever.
42. The Objector’s case is that he purchased part of the land forming the Estate of the deceased and had been enjoying quiet possession thereof since 1971. This in some instances would make a good ground as it would amount to concealment of a material fact in the form a 3rd party beneficial interest, credit or liability to the Estate.
43. It was the Petitioner’s contention that the Objector had not demonstrated that he was a beneficiary of the Estate or a bonafide purchaser for value.
44. I have considered the contention whether or not the Objector was a purchaser for value. The Objector argued that he held the title to parcel No. Kericho/Kapkimolwa/1629. The Petitioner on the other hand submitted that the issue of the ownership of land parcel No. Kericho/Kapkimolwa/1629 had been determined in Bomet PMCC ELC No. 7 of 2019 in which the court canceled the title on the parcel said to have been allegedly purchased by the Objector. THAT the ELC court in Kericho upheld the decision of the trial court. It was common ground that the matter was now pending appeal in the Court of Appeal.
45. I have perused the judgment annexure SK4 and a copy of the title deed that was cancelled by the court and marked SK3 supplied to this Court by Samwel Koech the Petitioner. It is clear that the title relied on by the Objector stands cancelled to date. Any arguments on ownership cannot therefore be made before this Court as two courts with competent jurisdiction to determine ownership of land have already spoken. The complaint that the Petitioner did not disclose the Objector’s interest in the said parcel is therefore moot and must be dismissed.
46. I have considered the Objector’s contention that he was left out of the Succession proceedings. The Objector did not demonstrate to this Court how he was related to the deceased. He also failed to provide the necessary documentation to prove that he had purchased the land from the deceased so that he could be listed as a liability or a creditor. Thus, the Petitioner herein was under no obligation to notify him of the said succession proceedings because he was neither a beneficiary under Section 66 nor a bonafide purchaser for value of the said parcel as already found by the Environment and Land Courts.



47. Further, it is my finding that the Objector failed to establish before this Court that there was evidence of fraud or material non-disclosure on the part of the Petitioner when he applied for and obtained Grant of letters of Administration Intestate.

48. In the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No. 158 of 2000, Mwita J stated:-

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to

invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

49. I have considered the Objector’s prayer seeking a stay of execution. However, I have already found no reason to revoke the Grant. Secondly, it appears to this Court that the Grant has already been executed. I also noted from the Record that, having obtained Grant on 14th December 2017, the Petitioner proceeded to divide and distribute the Estate and that is how the contestant for the disputed parcel Chebusit Tabutany, obtained her title from part of the deceased’s Estate. It would therefore be an exercise in futility and against the interests of justice for this Court to grant the said prayers and stop the execution of an already executed Grant.

50. In the upshot, I find that the Application dated 7th April 2021 seeking revocation of Grant lacks merit and is hereby disallowed. As costs follow the event, the Objector will bear the costs of this Application dated 7th April 2021. I award no costs on the Objection.

51. Orders accordingly.

Ruling delivered, dated and signed at Bomet this 13th day of March, 2023.

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence Ms. Kosgei holding brief for Mr. Mugumya for the Petitioner, N/A for Mr. Kiprono for Objector and Susan (Court Assistant).

