



REPUBLIC OF KENYA



**In re Estate of Chepkemei Chumo (Deceased) (Succession Cause
76 of 2001) [2023] KEHC 1587 (KLR) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1587 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 76 OF 2001
OA SEWE, J
MARCH 10, 2023
IN THE MATTER OF THE ESTATE OF CHEPKEMEI CHUMO
(DECEASED)
IN THE MATTER OF AN APPLICATION FOR REVOCATION OF
A GRANT**

BETWEEN

HELLEN JEPKORIR CHUMO APPLICANT

AND

KIPTEIKONG ARAP CHUMO PETITIONER

RULING

1. Chepkemei Chumo, the deceased, in respect of whose estate this petition relates, died on 1st August 2003 at Muita, Cheptigit in Uasin Gishu County. She left behind a piece of land, namely Land parcel number 293. Accordingly, Kipteikong Arap Chuma, filed this petition seeking to be appointed as the administrator of the deceased's estate. In the Affidavit in Support of Petition for Letters of Administration Intestate (Form P&A.5), the petitioner described himself as the deceased's son and the only surviving heir to her estate.
2. A perusal of the court record reveals that the petitioner complied with the procedural requirements of the law and was consequently issued with a Grant of Letters of Administration Intestate on 24th January 2011. He thereafter applied for confirmation of grant on 4th August 2011 and the Certificate of Confirmation of Grant was issued on 17th October 2011. An application for revocation or annulment of Grant was thereafter filed by the Hellen Jepkorir Chumo (hereinafter, "the applicant") on 14th March 2014, on the grounds that the proceedings to obtain Grant of Letters of Administration Intestate were defective in substance and were premised on false statements.



3. The applicant further alleged, *inter alia*, that the petitioner concealed the fact that deceased was married to her in accordance with Nandi customary law and that she had 8 children in the name of the deceased. It was therefore her assertion that she has the right, as opposed to the petitioner to petition for grant in respect of the estate of the deceased; granted that the petitioner is but a nephew to the deceased. The applicant also explained that the proceedings were instituted by the petitioner without material disclosure and without any reference to her; hence her application for revocation of Grant.
4. In his Replying Affidavit filed on 30th July 2018, the petitioner asserted that the applicant is a stranger to the estate of the deceased; and that she had in fact applied for Grant together with one James K. Chepkemei *vide* Eldoret High Court Succession Cause no 158 of 2004, but the same was later revoked. He urged the Court to disregard the applicant's assertion that she was married to the deceased under Nandi customary law. He averred that he is the only surviving brother and relative to the deceased. He added that, in any case, the petitioner is married and lives with her husband in Trans Nzoia.
5. Directions were then taken that the application be canvassed by way of *viva voce* evidence. To that end, the parties filed their respective witness statements as well as the documentation in support thereof. Their evidence was taken between 16th September 2019 and 19th July 2021. In support of the application, the applicant testified on 16th September 2019 and adopted her witness statement dated 4th June 2018. She told the Court that she got married to the deceased in 1984 in accordance with Nandi customary law, which recognizes woman to woman marriages. She added that she thereafter had 8 children on account of the deceased before her demise in August 2003.
6. The applicant further testified that the deceased left behind a piece of land, measuring 5 acres, more particularly known as LR no 293 in Mvita Settlement Scheme; and that the deceased had sold one acre thereof to David Koech before her death. She further stated that she later sold a further one acre and a half to David Koech. She added that the petitioner is the nephew of the deceased and has his own home and a piece of land measuring 10 acres in Cheptigit in Kaptagat; and that he has no right at all to the deceased's estate. She also mentioned that she had sold the remaining portion to Philemon Kiplagat.
7. The applicant conceded that she had filed Eldoret High Court Succession Petition no 158 of 2004; that Grant of Letters of Administration Intestate was issued to her jointly with son in respect of the estate of the deceased; and that she was waiting for confirmation when the petitioner herein emerged from nowhere to seek revocation. She reiterated her stance that the petitioner is not entitled to the estate of the deceased; and that he is only out to grab the deceased's asset. In cross-examination she stated that she was not aware that the Grant issued to them in Succession Petition no 158 of 2004 had already been revoked.
8. In support of her application, the applicant called 5 other witnesses. The first of them was David Koech (PW2). He likewise adopted his witness statement dated 4th June 2019. His evidence was essentially that he knew the deceased, Chepkemei Chumo; and that she sold to him one acre of her land no 293. He likewise confirmed that the applicant thereafter sold an additional piece of the deceased of land to him after her demise. He produced the Sale Agreements as the applicant's Exhibit no 1 and 2.
9. Mr. Philemon Kiplagat (PW3) also confirmed that, jointly with his brother, Leonard Kemboi Kigen, they bought two and a half acres of the subject property comprising the estate of the deceased from the applicant. He stated that they have lived on the land since the year 2006 and made improvements thereon. He added that he did not know the deceased or the petitioner. He explained that, at the time of the sale transaction, he did not know that the property belonged to a deceased person. Leonard Kemboi Kigen (PW4) testified along similar lines as PW3. He likewise adopted his witness statement dated 4th June 2019.



10. The applicant also called Kipkemei Arap Koech (PW5), a village elder who recalled that the deceased, Chepkemei Chumo, went to him in his capacity as the area village elder and asked him to look after his wife, the applicant, as well as his children in the event of her demise. PW5 adopted his witness statement dated 10th July 2019 and testified that he was aware that the deceased, who had no children of her own, had married the applicant under Nandi customary law; and that they were staying together on Chepkemei Chumo's land. He further told the Court that the applicant had 7 children whom she bore for Chepkemei; and that upon her death, the deceased left the applicant on the subject property. PW5 also pointed out that he knew the petitioner well as a nephew to the deceased, being the son of her only brother Kimagut Arap Chumo. Thus, he concluded his evidence by stating that the property of the deceased should rightly be given to the applicant as the petitioner also has his own portion of the family land measuring 10 acres.
11. The applicant's last witness was Stephen Ndhiwa Kemei (PW6), a neighbor to the deceased. He likewise testified that the deceased was married to the applicant according to Kalenjin customary law which allows woman to woman marriages in situations where a woman was barren. His evidence was that he was present and witnessed the marriage ceremony between the deceased and the applicant. He further testified that the petitioner, Kipteikong Arap Chumo, is in fact a nephew to the deceased as his father was a brother to the deceased. He was therefore of the assertion that the property of the deceased should go to the applicant and her children.
12. On his part, the petitioner testified as DW1 and adopted his witness statement dated 28th May 2019. His evidence was that the deceased was his sister and that they were only two offspring of the family. He confirmed that the deceased fell sick and died on the Mvita property in 2003. He obtained a Certificate of Death which he produced as his Exhibit 1. He further stated that afterwards, they sat down as a family to agree on how to share the deceased's property. He then filed the instant petition for Grant of Letters of Administration and has been collecting rents from the property since then.
13. The petitioner conceded that he knows the applicant, but denied that there was any woman to woman marriage between her and the deceased. According to him, the applicant was in search of accommodation for herself and her 3 children as she looked for menial jobs to sustain her family; and that the deceased agreed to her request and gave her a place of abode in return for nursing services, as she was sickly. He testified that the applicant is married and lives with her husband, a person known as Masai, in Trans Nzoia. He produced a letter from the chief of Kwana, Trans Nzoia, to confirm his assertions.
14. The petitioner called two witnesses to buttress his case. The first one, Luka Cheruiyot (DW2), testified that the petitioner is indeed a brother to the deceased; and that the deceased had no children of her own. It was also his evidence that the deceased cohabited with the applicant, Hellen, and that the applicant gave birth to 3 children in the arrangement known as woman to woman marriage which he stated is still being practiced among the Kalenjin community. The second witness, Kiplagat Chelimo (DW3) on the other hand, denied that there was any marriage between the applicant and the deceased; and that the applicant was only invited by the deceased to take care of her during her ailment.
15. In his closing submissions, counsel for the applicant, Mr. Chepkwony, proposed the following issues for determination on the basis of the evidence presented herein:
 - (a) Whether the Grant of Letters of Administration should be revoked and the Certificate of Confirmation annulled;
 - (b) Who should pay the costs of the application.



16. Counsel relied on Sections 66 and 76 of the [Law of Succession Act](#) and urged the Court to find that the applicant, as the surviving “widow” of the deceased, ranked in priority over the petitioner, a nephew; and therefore is entitled to administer the subject estate on behalf and for the benefit of the deceased’s children. He also relied on Rule 26 of the [Probate and Administration Rules](#) for the submission that, if anything, the applicant ought to have been notified of this petition as well as the application for Confirmation of Grant by the petitioner. Counsel relied on [Re Estate of L A K \(Deceased\)](#) [2014] eKLR; [Re Estate of Moses Wachira Kimotho \(Deceased\)](#) [2019] eKLR and [Re Estate of Magandi Obuki](#) [2020] eKLR, to buttress his arguments and urged the Court to find that the applicant has made out a good case for revocation of grant. He therefore prayed that her application be allowed with costs.
17. On behalf of the petitioner, Ms. Tum filed written submissions on 2nd September 2021. She proposed the following issues for determination:
- (a) Whether there was a valid woman-to-woman marriage between the applicant and the late Chepkemei Chumo;
 - (b) Whether the application dated 5th March 2014 is *res judicata*;
 - (b) Whether the applicant is entitled to the orders sought.
18. According to Ms. Tum, the applicant cannot claim to have been married to the deceased in a woman to woman marriage in the absence of proof that the traditional rites were performed to validate such a union. She submitted that no Nandi elders were called to guide the Court on the applicable customary laws or to prove that the requisite rites, such as payment of dowry, were performed. She relied on Section 51 of the [Evidence Act](#), Chapter 80 of the Laws of Kenya, which provides that:
- “When the court has to form an opinion as to the existence of any general custom or right, the opinion as to the existence of such custom or right of persons who could be likely to know of its existence are admissible for purposes of subsection (1)...”
19. Counsel also relied on Rule 64 of the [Probate and Administration Rules](#) as well as Eugene Cotran’s Restatement of African Law: The Law of Marriage and Divorce, vol. 1 (London, Sweet & Maxwell, 1968) at page 117, to buttress her argument that it was imperative for the applicant to demonstrate the existence of the custom as well as the alleged fact that such a marriage took place. In her view, the applicant merely mentioned that there was a woman to woman marriage between her and the deceased. She did not state when the marriage was celebrated or whether any dowry was paid. Counsel relied on [Eliud Maina Mwangi v Margaret Wanjiru Chachangi](#) [2013] eKLR in urging the Court to find that no such marriage ever took place.
20. It was further the submission of Ms. Tum that the instant application is *res judicata*, granted that the applicant was one of the two petitioners in Eldoret High Court Succession Cause no 158 of 2004 in which the Grant issued to them was revoked by the Court at the instance of the petitioner. She added that the two matters relate to the same estate and therefore the applicant ought not to be allowed to re-litigate the same issue by way of the instant application. Ms. Tum relied on [Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others](#) [2017] eKLR and [Re Estate of M N J \(Deceased\)](#) [2018] eKLR in urging the Court to dismiss the instant application. She pointed out that the Grant of Letters of Administration Intestate issued to the petitioner herein has already been confirmed.
21. On whether the applicant is entitled to the orders sought, Ms. Tum submitted that, having failed to prove that the formalities of a woman to woman marriage took place between her and the deceased, the applicant is not a dependant for purposes of Section 29(a) of the [Law of Succession Act](#). She therefore



- took the view that there was no concealment of any sort as the applicant is a total stranger to the deceased's estate. Counsel accordingly posited that the applicant is not entitled to the orders sought.
22. Having carefully considered the application for revocation of grant dated 5th March 2014 and the evidence adduced herein by the parties in respect thereof, there appears to be no dispute that the deceased, Chepkemei Chumo, died intestate on 1st August 2003. The evidence further shows that the deceased was single and childless as at the time of death; and that she resided at Mvita Settlement Scheme, on the 5-acre parcel of land more particularly known as LR no 293. Although no document of title was exhibited herein, there is no dispute that the property belonged to the deceased. Indeed, the petitioner availed copies of receipts to demonstrate that payments in respect of the property to the Settlement Fund Trustees continued to be made in the name of the deceased long after her demise.
 23. The proceedings herein show that, after the death of the deceased, the petitioner applied for and obtained Grant of Letters of Administration Intestate to the estate of the deceased; and that the same was later confirmed on 17th October 2011; whereupon the petitioner was given the authority to have the property transmitted to himself as the sole beneficiary of the estate of the deceased. As at 19th July 2021 when he testified before the Court, the petitioner stated that the transfer had already been done, though the land was, *de facto*, in the hands of the purchasers.
 24. It is also common ground that before her demise, the deceased took in the applicant and lived with her up to until her death. The parties are in agreement that, as that the deceased was ailing and needed nursing services as well as assistance in terms of her daily household chores, the applicant offered to render those services to her. In addition, it was the assertion of the applicant that she was taken in by the deceased, not as a servant, but as a wife under the woman to woman marriage arrangement, as practiced by the Nandi community. This was however vehemently denied by the petitioner; whose position was that the applicant was a mere servant to the deceased.
 25. In the premises, the issues for my determination in this matter can be summarized as follows:
 - (a) Whether the instant application is indeed *res judicata* as submitted by counsel for the respondent; and if not,
 - (b) Whether the applicant qualifies as a dependant of the deceased; and therefore entitled to administer and inherit the deceased's estate; and,
 - (c) Whether the applicant has made out a good case for revocation of the Grant of Letters of Administration Intestate issued on 24th January 2011.

Whether the Application Dated 5th March 2014 is Res Judicata:

26. Section 7 of the [Civil Procedure Act](#), Chapter 21 of the Laws of Kenya, is explicit that:

"No Court shall try any suit or issue in which the matter 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...and has been heard and finally decided by such Court."
27. Needless to mention that the doctrine of *res judicata* is applicable to applications as it is to substantive suits. The Court of Appeal made this clear in [Uburu Highway Development Ltd v Central Bank of Kenya & 2 Others](#), Civil Appeal no 36 of 1996, thus:

"There is not one case cited to show that an application in a suit once decided by courts of competent jurisdiction can be filed once again for rehearing. This shows only one intention



on the part of the legislature in India and our Civil Procedure Act. That is to say, there must be an end to applications of a similar nature; that is to say further, wider principles of *res judicata* apply to applications within the suit. If that was not the intention, we can imagine that the courts could and would be inundated by new applications filed after the original one was dismissed. There must be an end to interlocutory applications as much as there ought to be an end to litigation..."

28. Accordingly, the Court must ascertain whether the elements of *res judicata* exist in connection with the application dated 5th March 2014. In Bernard Mugo Ndegwa v James Nderitu Githae and 2 Others [2010] eKLR the elements were aptly set out as follows:
- a. The matter in issue must be identical in both suits.
 - b. The parties in the suit must be substantially the same.
 - c. There is concurrence of jurisdiction of the Court.
 - d. That the subject matter is the same and finally,
 - e. That there is a final determination as far as the previous decision is concerned.
29. There is a clear demonstration herein by the petitioner that, before this petition was filed, the applicant filed Eldoret Succession Cause no 158 of 2004 jointly with one of her sons, James Kipchirchir Chepkemei. There is no dispute that that cause was also in respect of the estate of Chepkemei Chumo. At the instance of counsel for the petitioner, an order was made on 17th June 2019 for the case file for Eldoret Succession Cause no 158 of 2004 to be availed for the Court's perusal. Having perused it, there can be no dispute that cause was filed in connection with the only asset left by the deceased, namely, Land no Uasin Gishu/Mvita/293. That is the same property that is the subject of this petition. The said record further shows that, in addition to the chief's letter, the applicant filed a letter from the District Land Adjudication Office dated 30th April 2004 confirming that Plot no 293, Mvita Settlement Scheme is registered in the name of Chepkemei Chumo; and that the title deed for the plot had not been issued because SFT loan had not been cleared by the deceased.
30. The petition was duly processed and a Grant of Letters of Administration Intestate was issued to the applicant herein jointly with her son on 30th November 2006. The record further confirms that, in the first petition, the petitioner herein filed an application for revocation of grant, which application was allowed on 11th May 2009. Hence there is sufficient proof that the two causes are in respect of the same subject matter; that the parties in the suit are substantially the same; and that there is concurrence of jurisdiction of the Court. The only remaining question is whether there was a final determination on the merits in the prior matter.
31. I have perused the proceedings of the court in Eldoret Succession Cause no 158 of 2004 and note that, when the application came up for hearing on 11th May 2009, Mr. Chepkwony was not ready and his application for adjournment did not find favour with the Court. It was accordingly dismissed and the consequence was that the application for revocation was deemed unopposed; and was therefore allowed on that technicality. The order of the Court (hon. Ibrahim, J., as he then was) reads:

"I have considered the application for adjournment. Mr. Chepkwony told this Court that he needed time to obtain instructions on 3.11.08. The matter was S.O.G. On 23.02.09, his client was granted leave to file a Replying affidavit within 21 days. The Petitioner has not filed such an affidavit."



It is clear that the Respondent is delaying the disposal of this matter. They either have an answer to the application or not. I do hereby reject the application for adjournment.

32. The Court then proceeded to allow the summons for revocation of grant dated 21st August 2008 because it was essentially unopposed. It is plain then that the order was not a final determination on the merits for purposes of Section 7 of the Civil Procedure Act. Thus, in Kenya Commercial Bank Limited v Muiri Cofee Estate Limited & another [2016] eKLR, the Supreme Court held that:

“(52) *res judicata* is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights.”

33. Relying on the same authority, hon. Mativo, J. (as he then was) took the position, which I entirely agree with, that:

“ 16. From the jurisprudence discussed earlier, it is clear that the previous suit must have been determined conclusively and a final Judgment rendered on the merits. Even in Njue Ngai v Ephantus Njiru Ngai & Another, the court in the above underlined sentence, the court cited authorities/decisions stating that there must be a determination on the main questions. Turning to this case, the question is whether a dismissal for want of prosecution can be termed as a final determination on merits. In Cosmas Mrombo Moka v Co-operative Bank of Kenya Limited & another¹⁴ the High Court dismissed a similar objection as raised in this Petition declining to buy the arguments raised in this Petition. Also, in Moses Mbatia v Joseph Wamburu Kihara¹⁵ the court held that dismissal of a suit for nonattendance or want of prosecution is not synonymous with a suit that has been heard and determined. On this ground alone, the Respondent’s argument that dismissal of a suit for want of prosecution constitutes *res judicata* collapses¹⁴{2018} eKLR¹⁵{2021} eKLR

15. In any event, courts have over the time expressed the view that the doctrine of *res judicata* should not be applied rigidly because there are limited exceptions which allow a party to attack the validity of the original judgment, even outside of appeals. These exceptions—usually called collateral attacks—are typically based on procedural or jurisdictional issues, based not on the wisdom of the earlier court’s decision but its authority or on the competence of the earlier court to issue that decision. In addition, in matters involving due process, cases that appear to be *res judicata* may be re-litigated. Examples are establishment of a right to counsel or where a citizen’s liberty is taken away.”

34. Accordingly, the petitioner’s contention that the application dated 5th March 2014 is *res judicata* is untenable and is accordingly rejected.

Whether the Applicant Qualifies as a Dependant of the Deceased, and Therefore Entitled to Administer and Inherit the Deceased’s Estate;

35. For purposes of determining who is qualified as an administrator of the estate of an intestate, Section 66 of the Law of Succession Act provides as follows in terms of the order of preference:

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 interests as provided by Part V;
- c. The Public Trustee; and
- d. Creditors

36. The applicant herein contends that she qualifies and ranks in priority over the petitioner because she is a surviving spouse of the deceased. Her contention was that she got married to the deceased under an arrangement known as woman to woman marriage, as practiced by the Nandi community. Regarding this arrangement, Eugene Cotran in his book, *Restatement of African Law, Volume 1, The Law of Marriage and Divorce*, proffered the following opinion:

“A woman past the age of child-bearing and who has no sons, may enter into a form of marriage with another woman. This may be done during the lifetime of her husband, but is more usual after his death. Marriage consideration is paid, as in regular marriage, and a man from the woman’s husband’s clan has sexual intercourse with the girl in respect of whom marriage consideration has been paid. Any children born to the girl are regarded as the children of the woman who paid marriage consideration and her husband.”

37. The validity of such an arrangement was acknowledged in *Monica Jesang Katam v Jackson Chepkwony & Another (supra)* by hon. Ojwang, J. (as he then was) thus:

“I have concluded that the consistency in the testimonies of the petitioner’s witnesses shows the evidence to be truthful. The research-material referred to shows this to have been the typical condition in which a woman-to-woman marriage takes place; and the testimonies show such a marriage to have taken place on 16th October, 2006. It is therefore, not true as the objectors say, that the petitioner was only a servant; on the contrary, she was a “wife”, and, by the operative customary law, she and her sons belonged to the household of the deceased, and were entitled to inheritance rights, prior to anyone else. This custom, I hold, is to be read into the scheme of s. 29 of the *Law of Succession Act* (Cap 160), placing the petitioner and her children in the first line of inheritance; the petitioner herself being “wife of the deceased”, and her children for being the children of the deceased. The conclusion to be drawn is that the petitioner is entitled to the grant of letters of representation.”

38. Accordingly, I find no merit in Ms. Tum’s argument that elders of the Nandi community ought to have been called to shed light on the validity of such a union, as the legal position is fairly settled. In the same vein although Ms. Tum robustly argued that no shred of evidence was availed to prove that such a marriage took place between the applicant and the deceased; and that no proof of dowry payment was availed, it is noteworthy that credible and uncontroverted evidence was adduced herein by close neighbours of the deceased, such as David Koech (PW2), Kipkemei Arap Koech (PW5) who was also a village elder at the time, and Stephen Ndiwa Kemei (PW6) that such a marriage took place as a matter of fact. In particular, PW6 stated that he was present and witnessed the ceremony, which was held in Trans Nzoia.



39. It is also significant that, one of the petitioner’s witnesses, Luka Cheruiyot (DW2) did concede in cross-examination that:

“...When Chepkemei Chumo died she was living with Hellen. She started living with Chepkemei in 1987. They lived together as women. I also know Chepkemei had no children of her own and that Hellen is the one who gave birth. They were 3 children. I am a Kalenjin aged 52 years. I know that woman to woman marriages are still practiced among the Kalenjin.”

40. Moreover, the letter of the area chief, filed by the applicant in support of her petition in Succession Cause no 158 of 2004 indicates thus in respect of the applicant:

“...The above named person hails from this locality. She was married to a Deceased Chepkemei Chumo by means of Nandi Traditional customary law...She is the right wife of the deceased. She was born in 1968 and has 8 children under her care...”

41. The general presumption has been that the area chief is best placed to provide independent evidence as to the identities of the dependants of a deceased person. Hence, in *Re Estate of Shem Kitanga (Deceased)* [2018] eKLR, hon. Njagi, J. took the view, with which I concur 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 that chief is well familiar with the family of the deceased person and can inform the court of the beneficiaries left behind by the deceased.”

42. Accordingly, and having considered and weight the merits of each party’s evidence, I am convinced that indeed the applicant was married to the deceased in accordance with Nandi customary law arrangement of woman to woman marriage; and that she had children for and on behalf of the deceased. In the premises, it is my finding that, as at the time that this petition was filed, she was a surviving spouse for purposes of Section 66 of the *Law of Succession Act*.

43. There is conflicting evidence as to whether the petitioner is a brother to the deceased or her nephew. It is curious that, whereas the petitioner was categorical in his evidence that their relationship is that of brother and sister, in his Affidavit in Support of his petition, he described himself as a son to the deceased. Be that as it may, it is plain from the evidence on record that the applicant is a dependant of the deceased for purposes of Section 29(a) of the *Law of Succession Act* and therefore ranks first in the order of priority set out in Section 66 of the Act. That being the case, she has the right not only to petition for grant in respect of the estate of the deceased but also to inherit the same jointly with her children.

Whether the Applicant has Made out a Good Case for Revocation of the Grant of Letters of Administration Intestate issued on 24th January 2011:

44. The summons for revocation of grant was filed under Section 76 of the *Law of Succession Act*. That provision states:

“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.

45. It is discernible from the grounds set out by the applicant and her evidence in proof thereof that she relied on subsections (a), (b) and (c) of Section 76 in so far as the petitioner failed to disclose the fact of her marriage to the deceased and her right to the estate. Having found that the marriage existed, it was imperative for the petitioner to acknowledge the same and comply with the law in so far as the applicant's rights were concerned. For instance, Rule 7(7) of the *Probate and Administration Rules*, provides that:

“Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has—

- a. renounced his right generally to apply for a grant; or
- b. consented in writing to the making of the grant to the applicant;
- c. been issued with a citation calling upon him either to renounce or to apply for a grant.

46. Moreover, Rule 26(2) of the *Probate and Administration Rules* provides that:

“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 renunciation, 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.”



47. As it is not within the purview of the instant application to delve into the validity or otherwise of the sale agreements that featured prominently in the evidence presented, I find it unnecessary to engage in a discussion of the same.
48. In the result, I find merit in the application dated 5th March 2014 and grant orders in respect thereof as follows:
- (a) That the Grant of Letters of Administration Intestate in respect of the estate of Chepkemei Chumo issued herein on 24th January 2011 be and is hereby revoked.
 - (b) Fresh Grant in the name of the applicant, Hellen Jepkoech Chumo, be issued forthwith.
 - (c) If any registration has been effected in the name of the petitioner by the Registrar of Lands, the same be and is hereby cancelled and the title revoked.
 - (d) Each party to bear own costs of the application.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIA EMAIL AT MOMBASA THIS 10TH DAY OF MARCH
2023**

OLGA SEWE

JUDGE

