



**In re Estate of Kipsang Mego (Deceased) (Miscellaneous Succession Cause 11 of 2014) [2023] KEHC 18605 (KLR) (19 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18605 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS SUCCESSION CAUSE 11 OF 2014  
JRA WANANDA, J  
JUNE 19, 2023**

**BETWEEN**

**RUTH JESUGUT CHELULE ..... APPLICANT**

**AND**

**MICHAEL KIPKASI TOO ..... 1<sup>ST</sup> RESPONDENT**

**ERECK KIPTOLO ..... 2<sup>ND</sup> RESPONDENT**

**SUSANA CHEPKOSGEI ..... 3<sup>RD</sup> RESPONDENT**

**WILLY KIPLIMO TOO ..... 4<sup>TH</sup> RESPONDENT**

**JOSEPH KIBIWOTT ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The Application before Court is the Summons for Confirmation of Grant dated November 24, 2021 filed through Messrs Isiaho Sawe & Co Advocates and which seeks the following orders:
  - a. [Spent]
  - b. The Applicant herein: Ruth Jesugut Chelule be appointed as the Administrator of the estate herein.
  - c. Upon the Grant of prayer (b) above, the Grant of Letters of Administration intestate made to the said Ruth Jesugut Chelule be confirmed within such period as this honourable Court may deem just and expedient.
  - d. Costs of this Application be in the Cause.
2. The Application is stated to be brought under 'Sections 47, 66, 71 & 76(e) of the *Law of Succession Act* and Rule 40(1) of *Probate and Administration Rules*



3. The Application is supported by the Applicant's Affidavit. She deponed that she is the sole widow and/or beneficiary of the deceased, she moved this Court vide Summons dated June 23, 2014 seeking revocation of the Grant issued to the Respondents, the subject Grant was subsequently revoked by the Ruling of this Court delivered on July 26, 2021, in light of the above Ruling her late husband's estate is now unadministered, this Court is authorized by Section 76(e) to appoint her as the Administrator in the above circumstances, the deceased was survived by no other dependents, no provision for dependents is pending, being the sole beneficiary she proposes that her late husband's estate do devolve to her.
4. The Application is opposed by the Respondents vide the Replying Affidavit filed on January 20, 2022 and sworn by the 1<sup>st</sup> Respondent. He deponed that the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents are deceased, he is not the Administrator of their estates as they have surviving heirs, he has been informed that the Grant of Letters of Administration made to him and the co-Administrator was revoked, there has been no new Petition for Letters of Administration, no Grant therefore has been made to anybody in respect of the estate, there is therefore no Administrator, there is no Grant to be confirmed, the Application is improper, irregular and does not meet the requirements of the law.
5. Ms Isiaho, Advocate for the Applicant, informed the Court that she had agreed with Mr Choge, Advocate for the Respondents, that they would not file written Submissions in respect of the Application and would simply rely on the Affidavits on record. Since indeed no Submissions have been filed by Mr Choge, I will determine the Application on the basis of the Affidavits on record.

#### **Analysis and Determination**

6. I have considered the Application, response thereto and the record generally and note that the substantive Succession Cause in respect of the Estate herein was instituted in Kapsabet Principal Magistrate's Court Succession Cause No 69 of 2006. A Grant of Letters of Administration was then issued in that Cause. Subsequently, when the Applicant learnt of the issuance of the said Grant, she filed in this High Court the present Miscellaneous Cause solely for the purposes of this High Court determining that Application for Revocation for Grant. By the Ruling delivered by Hon Justice SM Githinji on July 26, 2021, the Grant was accordingly revoked on the ground that it was obtained through defective proceedings and non-disclosure of material facts.

#### **Issues for Determination**

7. In view of the foregoing, I find that the issue that arises for determination to be 'whether this High Court can in this Miscellaneous Cause, proceed to appoint an Administrator and confirm the Grant of Letters of Administration when the substantive Cause is still pending before the Magistrates Court at Kapsabet'.
8. I immediately find that no, this Court cannot usurp the mandate of the substantive Cause that is still alive before the Magistrate's Court at Kapsabet. It is in that Cause in which the issue of appointment of Administrators and confirmation of Grant should be pursued.
9. This Miscellaneous Cause was filed at this High Court simply and solely for the purposes of hearing and determining the Application for revocation of Grant. The Application was filed at the High Court because up to the year 2015, Magistrates Courts had no jurisdiction to hear such Applications and Objectors had no choice but to file the same before the High Court under Miscellaneous Causes. Needless to state, under the *Magistrates' Courts Act*, No 26 of 2015, the law on revocation of grants changed and Magistrates Courts now have jurisdiction revoke grants that they have power to make.



10. In view of the foregoing, I find that this High Court fully and finally concluded its duty and became functus officio the moment Hon Justice SM Githinji delivered his Ruling on July 26, 2021 revoking the Grant.

11. On the issue of functus officio, the Supreme Court of Kenya in Election Petitions Nos 3, 4 & 5 *Raila Odinga & Others vs IEBC & Others [2013] eKLR* cited with approval the holding in the case of *Jersey Evening Post Limited vs Al Thani [2002] JLR 542 at 550* as follows:

' A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality.'

12. In light of the said circumstances, I find that this Court cannot in this Miscellaneous Cause abrogate to itself the non-existent mandate to go beyond the sole purpose for which this Miscellaneous Cause was filed and purport to appoint an Administrator to the estate or issue or confirm the Grant of Letters of Administration. Doing so will to exceed its mandate. The proper forum in which the matters raised in the present Application ought to be canvassed is the substantive Succession Cause pending at the Kapsabet Magistrate's Court.

#### **Final Orders**

13. In the premises, I order as follows:

- i. The Summons dated November 24, 2021 is hereby struck out.
- ii. The Court file for Kapsabet Principal Magistrates Court Succession Cause No 69 of 2006 that had been forwarded to this High Court for purposes of determining the Summons for Revocation of Grant, which Summons has since been determined, is hereby directed to be returned to the Kapsabet Magistrates Court for disposal.
- iii. The parties are at liberty to pursue their pending reliefs in the said Kapsabet Principal Magistrates Court Succession Cause No 69 of 2006.
- iv. This Court file in these proceedings, namely, Eldoret High Court Miscellaneous Court Succession Cause No 11 of 2014, is hereby marked as finalized and is accordingly closed.
- v. This being a family matter, there shall be no order on Costs.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 19<sup>TH</sup> DAY OF JUNE 2023**

.....

**WANANDA J. R. ANURO**

**JUDGE**

**Eldoret High Court Miscellaneous Succession Cause No. 11 of 2014**

