



REPUBLIC OF KENYA



KENYA LAW

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In re Estate of Kiprotich Arap Soo (Deceased) (Miscellaneous Succession Cause 123 of 2010) [2023] KEHC 18911 (KLR) (16 June 2023) (Judgment)

Neutral citation: [2023] KEHC 18911 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS SUCCESSION CAUSE 123 OF 2010
JRA WANANDA, J
JUNE 16, 2023
IN THE ESTATE OF KIPROTICH ARAP SOO (DECEASED)**

BETWEEN

CHERUIYOT MELLY PETITIONER

AND

KIBET ARAP MELI 1ST OBJECTOR

SAMUEL KEBENEI SOME 2ND OBJECTOR

JUDGMENT

1. Before this Court are two similar Applications brought by way of Summons, both seeking Revocation of Grants of Letters of Administration

1st Application

2. The 1st Application is dated 24/09/2007 and is filed by the 1st Objector, Kibet arap Meli in person. It seeks Revocation of the Grant issued to the Petitioner in Kapsabet Principal Magistrates Court Succession Cause No 58 of 1991 on 27/08/1992 and also Revocation of the subsequent Certificate of Confirmation of Grant issued to the Petitioner on 28/01/1993 in the same Cause
3. Although the Application is stated to have been brought under Section 74 of the *Law of Succession Act*, from the nature thereof, I presume that it is Section 76 that was intended. The Application is premised on the grounds that the Petitioner secretly processed the Succession Cause and that he fraudulently succeeded and transacted the proceedings yet he was not a heir.
4. The 1st Objector also swore a Supporting Affidavit in which he deponed that he, the 1st Objector, has at all material times since 1971 been fully in occupation of the parcel of land known as Nandi/Cheptil/106 measuring 6 acres, he and his wife one Lilian Chebitok Melly (Deceased) purchased the said parcel of land from the deceased sons, Kipsaina Rotich and Kipchumba Melly Kipsoi in the year



1971 at an agreed cost of Kshs 500/= per acre totalling Kshs 3000/=, the 1st Objector took possession of the land in the year 1971 and has since been occupation to date, he later came to discover that his young brother, the Petitioner herein had fraudulently filed a Succession Cause and had applied for a Grant of Letters of Administration which Grant had been confirmed, thereafter the Petitioner proceeded to obtain a title deed without his knowledge, the Petitioner has been totally uncooperative and is not willing to surrender to the 1st Objector the illegally acquired documents, the Petitioner misrepresented himself before the Court and misled the Court by claiming that he was the son of the deceased herein. He urged the Court to revoke the Grant the Petitioner having obtained it through misrepresentation of facts.

The 2nd Application

5. The 2nd Application is dated 8/02/2010 and is filed by the 2nd Objector, Samuel Kebenei Some. The same is filed through Messrs Limo & Co. Advocates. It seeks Revocation of the same Grant issued to the Petitioner in the same Principal Magistrates Court Succession Cause No 58 of 1991 on 28/01/1993.
6. The Application is stated to be brought under Section 45, 47 and 76 of the [Law of Succession Act](#). It is premised on the grounds that the proceedings to obtain the Grant were defective in substance, the Grant was obtained fraudulently by making a false statement and concealment from the Court of material facts, by means of untrue allegations of facts, by a stranger who is not a family member of the deceased and it was obtained bereft of jurisdiction.
7. The 2nd Objector also swore a Supporting Affidavit in which he deponed that he is a grandson to the deceased who passed away in 1964 leaving behind two heirs, that is Kipchumba Kipsoi Rotich (2nd Objector's father) and Kipsaina Rotich, it was mutually agreed within the family members that his father, Kipchumba Kipsoi Rotich was to inherit the parcel of land known as Nandi/Cheptil/106 from the deceased, the said parcel of land was registered in the name of the deceased, the 2nd Objector's father passed away on 26/4/2002 leaving behind one Rosaline Chepkien (now married), Richard Chumba and the 2nd Objector, in the order of consanguinity, they are the ones who are supposed to apply for Letter of Administration in respect to the estate of the deceased, fraudulently the Petitioner filed the Succession proceedings at the Resident Magistrate's Court at Kapsabet being Succession Cause No 58 of 1991 in which he was issued with a Grant in exclusion of the family members, the Petitioner deliberately failed and/or ignored to disclose to the Magistrate at Kapsabet that there existed blood relatives to the estate, the piece of land measures 6 acres with a market value of Kshs 100,000/= and thus the Resident Magistrate Court in Kapsabet did not have the requisite jurisdiction to issue the Letters of Administration in respect to it, he the 2nd Objector has always been in occupation of the parcel of land and has since learnt that title thereto was issued to Petitioner.

Replying Affidavit

8. The Petitioner opposed the two Applications and swore the Replying Affidavit filed on 9/03/2010. He was now represented by Messrs Murgor & Co. Advocates. He deponed that he is the registered owner of the parcel of land known as Nandi/Cheptil/106, was registered pursuant to Kapsabet Principal Magistrate Court Succession Cause No 58 of 1991 on 24/09/1992, he has been in occupation of the parcel of land since the year 1988, the property was purchased by his brother Kibet Arap Melly from one Kipsaina Rotich and Kipchumba Rotich Kipsoi, it is not true that the 2nd Objector has been in occupation and use of the property, the suit is a duplicity as there is another protracted case to wit Eldoret High Court Miscellaneous Succession Cause No 24 of 1994 between Kipchumba Rotich Kipsoo -vs- Cheruiyot Melly, he has been residing on the parcel of land because he agreed with his brother Kibet Melly in 1971 and also their late father Kibet Melly that his brother was to take their



father's land at Jekata Farm in Kitale measuring 4 acres, he is no longer in good terms with his brother and that his brother has indirectly instituted several suits both criminal and civil in nature in order to dispossess him of the property, his brother has filed this suit and yet his brother and the Applicant are aware that the Petitioner had a case with the 2nd Objector's father, the 2nd Objector ought to have substituted himself in Eldoret Miscellaneous Succession Cause No 24 of 1994 instead of filing this instant Application. He then reiterated that the value to the parcel of land was about Kshs.100,000/= and therefore the subordinate Court had jurisdiction.

Hearing of the Applications

9. The Applications were canvassed by way of written Submissions. The 1st Objector's new Advocates, Messrs Isiaho Sawe & Co., filed their Submissions on 11/04/2023 while the 2nd Objector's Advocates, Messrs Limo R.K. & Co. filed theirs on 10/05/2023.
10. On its part, the Petitioner's Advocates, Messrs Kipkosgei Choge & Co filed Submissions on 9/05/2023. However, a perusal thereof reveals that the Submissions filed by the firm relate to a totally different Application, namely, Application dated 10/12/2019. Clearly, Counsel missed out on the directions given by the Court on which Applications were to be determined. I will therefore instead rely on the Petitioner's Replying Affidavit referred to earlier.

1st Objector's Submissions

11. In his Submissions, Counsel for the 1st Objector submitted that the Petitioner approached the Court as a purchaser, no citation proceedings were ever instituted by him against the beneficiaries of the deceased before he moved the Court to be issued with the grant, this action is prohibited by Section 52 of the *Law of Succession Act*, the Petitioner and the 1st Objector are brothers hence not heirs to the estate, the Petitioner proceeded secretly in the full knowledge that he was not a heir and caused himself to be registered over LR. No Nandi/Cheptii/106, the 1st Objector's claim in the estate is that LR. No Nandi/Cheptii/106 was purchased by his wife, he has been in occupation and use of the same, he discovered that his younger brother, the Petitioner, had fraudulently moved the Court and applied for Grant of Letters of Administration with respect to the estate which Grant was subsequently confirmed in his favour, the Petitioner thereafter secretly obtained the title deed to the property in his favour albeit knowing that the same belonged to his brother's wife, on discovering the fraudulent actions of his brother, he attempted to have the property transferred to him in vain hence prompting him to file the Summons under consideration, the Petitioner misled the Court by purporting to be related to the deceased, the Petitioner was subsequently awarded the sole asset of the estate and the property.
12. Counsel added that in his Replying Affidavit, the Petitioner confirms ownership of LR No 356/2006 by the 1st Objector, the other matters on what was allegedly agreed by the family on ownership is not a matter to be determined by the Succession Court, the Petitioner was at liberty to move the appropriate Court on the issue of ownership, he had no locus standi to move the Succession Court since he is not related to the deceased, the High Court has jurisdiction over probate and administration matters but it has no jurisdiction over land disputes, the jurisdiction lied with the Environment and Land Court, it should be before that Court that the Petitioner ought to have had his grievance over ownership of the land in question resolved and not through causing himself to be secretly registered over the subject parcel of land like he did. He submitted that Section 76 of the *Law of Succession Act* gives this Court the powers to revoke a Grant and cited the cases of *Estate of Prisca Ongayo Nande (Deceased)* [2020] eKLR,



2nd Objector's Submissions

13. In his Submissions, Counsel for the 2nd Objector submitted that the Petitioner despite not being a legitimate beneficiary of the deceased or a purchaser proceeded and applied for Grant of Letters of Administration without the involvement of the legitimate beneficiaries of the estate, in Form 38, the Petitioner purported to disclose that there were no beneficiaries or children left behind when he is well aware that the deceased left behind two sons and several dependents including grandchildren, upon being issued with the Grant, the Petitioner forcefully and illegally encroached into the deceased's estate and evicted the 2nd Objector in 2016, the Petitioner intends to grab and continue to intermeddle with the deceased's estate using the impugned Grant and the title obtained illegally to the detriment of the legal beneficiaries who shall be rendered destitute.
14. Counsel added that the deceased had two sons, had one asset, the said LR No Nandi/Cheptil/106, before his death the deceased had given each of the two sons 3 acres of that parcel of land, the two sold their said shares to the 2nd Objector's wife, Section 76 of the [Law of Succession Act](#) lays out the grounds for revocation of a Grant. He too cited the case of [Estate of Prisca On'gayo Nande \(supra\)](#) and stated that the Petitioner is not a legitimate beneficiary of the deceased neither is he a purchaser of the deceased's property, he obtained the confirmed Grant by way of concealment of a material fact that he was a beneficiary having purchased the property and that the deceased was not survived by any children, he obtained the Grant without availing a Chief's letter. He then cited the cases of [Estate of Shem Kitanga](#), [Estate of Ambutu Mbogori](#) (2018) eKLR, Migori Succession Cause No 41 of 2016 - Re Estate of Magangi Obuki (Deceased) [2020] eKLR, [Estate of Moses Wachira Kimotho \(Deceased\)](#) - Succession Cause No 122 of 2002 [2009] eKLR and Kajiado Succession Cause No 36 of 2017 [Ibrahim v Hassan & Charles Kimenyi Macharia, Interested Party](#) [2019] eKLR.
15. He prayed that this Court orders that the parcel of land belongs to the 1st Objector, his wife Lilian Meli (deceased) having acquired the entire parcel from the deceased's sons, the objectors are all in agreement that the same be transferred to the 1st Objector who is the Administrator of the estate of his wife Lilian Meli.
16. On award of costs, he cited Section 27 of the [Civil Procedure Act](#) and urged that costs be awarded to the Objectors.

Analysis & Determination

17. From the onset, I must mention that this is a perfect example of an unnecessarily protracted probate dispute wherein the parties seem keener on elongating the proceedings rather than assisting to bring it to finalization. It is regrettable that although the matter was brought before this Court in the year 2010, 13 years ago, as a simple Application for revocation of a Grant, it is only various interlocutory Applications that have kept on being filed with the parties showing almost no interest in prosecuting the substantive dispute and bring the matter to an end.
18. Be that as it may, on the issue of the High Court being asked to revoke a Grant issued by a Magistrates Court, I cite the following statement made by Hon. Justice W. Musyoka [in Re Estate of Charles Boi \(Deceased\)](#) [2020] eKLR

“2. Let me start by stating that this cause ought not to have been initiated or brought at the High Court. I say so because the law on revocation of grants, made by a magistrate's court, changed in 2015, to give jurisdiction to magistrates' courts to revoke grants that they have power to make. I am talking



about the Magistrates' Courts Act, No 26 of 2015, which commenced on 2nd January 2016. The said statute amended the provisions of the Law of Succession Act, Cap 160, Laws of Kenya, which provide for jurisdiction of magistrates' courts in probate matters, that is to say sections 48 and 49. The changes were effected through sections 23 and 24 of the Magistrates Courts Act.

3. The amendments stated as follows –

“23. The Law of Succession Act is amended, by repealing section 48(1) and substituting therefor the following new subsection –

“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 Magistrates Courts Act, 2015.”

24. Section 49 of the Law of Succession Act is amended –

- a) by deleting the words “Resident Magistrate” and substituting therefor the words “Magistrate’s Court”; and
- b) by deleting the words “one hundred thousand shillings” and substituting therefor the words “the pecuniary limits set out in section 7(1) of the Magistrates Courts Act, 2015.”

4. To place the amendments in proper perspective, it would be necessary to cite the provision in the old section 48(1) of the Law of Succession Act, that was amended by Act No 26 of 2015. The old section 48(1) read as follows:

“ 48

- (1). Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a resident magistrate shall have jurisdiction to entertain any application other than an application under section 76 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 one hundred thousand shillings:



Provided that for the purpose of this section in any place where both the High Court and a resident magistrate's court are available, the High Court shall have exclusive jurisdiction to make all grants of representation and determine all disputes under this Act ...”

5. The first effect, of the amendments, was that the pecuniary jurisdiction of the magistrate's court was enhanced from Kshs. 100,000.00 to a maximum of Kshs. 20,000,000.00. Secondly, where the High Court and the magistrate's court are situated within the same station, the High Court shall no longer enjoy exclusive jurisdiction, for it shall share jurisdiction in succession causes with the magistrate's court, subject, of course, to the pecuniary ceilings and gazettelement by the Chief Justice. Finally, the exclusive jurisdiction of the High Court to determine revocation applications, under section 76, was taken away, and the same was extended to the magistrate's court, with respect to grants of representation that such magistrate's court would have power to make.
6. This ruling is concerned with jurisdiction to revoke grants made by the magistrate's court. Under Act No 26 of 2015, by virtue of the amendment of section 48(1) of the *Law of Succession Act*, a magistrate's court now has power to revoke a grant of representation that it has power to make. There is now no need, for a person who wishes to have a grant made by a magistrate's court revoked, to move the High Court. All what that person needs to do is to file a summons for revocation of grant within the cause in which the grant was made by the magistrate's court.
7. Act No 26 of 2015 commenced on 2nd January 2016, and, therefore, the amendment of section 48(1) of the *Law of Succession Act*, became effective from that date. The summons for revocation of grant herein, dated 3rd September 2018, was filed in this cause on 4th September 2018, that is after Act No 26 of 2015 had commenced and the amendment of section 48(1) of the *Law of Succession Act* had become effective. There was no need for the applicant, in the circumstances, to have initiated a fresh cause, for revocation of the grant made in Hamisi SRMCSC No 29 of 2016, at the High Court. She should have simply filed the summons for revocation of grant in Hamisi SRMCSC No 29 of 2016, since the magistrate's court had, by then, been conferred with jurisdiction to revoke the grant made in Hamisi SRMCSC No 29 of 2016.
8. The taking away of jurisdiction from the High Court, with respect to revocation of grants, made by the magistrate's court, would mean that the High Court no longer has original jurisdiction to address that issue, and that its jurisdiction, over the issue, would be as an appellate court, from a ruling of the magistrate's court, on a summons for revocation of the grant issued by that court. I have no jurisdiction, therefore, sitting as a High Court, to entertain a summons for revocation of grant, where the applicant has not filed such application at the magistrate's court in the first instance, since the *Law of Succession Act*, as currently framed, does not vest me with such jurisdiction.



Secondly, the issue of revocation of the grant made by the magistrate's court has not been placed before me in invocation of my appellate jurisdiction."

19. I fully associate myself with the said holding save that in this instant case, the two Objection Applications were filed in the year 2007 and 2010 respectively, long before the said amendments on jurisdiction subsequently came into force in the year 2016. The Applications were therefore properly brought before this High Court considering the dates that they were filed. Although one may raise the issue of whether the amendments on jurisdiction operated retrospectively, I believe that since the Magistrate Courts now possess the jurisdiction to hear and determine the Applications, I have powers to return the file to the Kapsabet Magistrates Court to deal with the Applications.
20. However, considering that the Applications have been pending for determination for unnecessarily too long, since the year 2007 and 2010 respectively, I will not immediately return the file to the subordinate Court. Doing so will only serve to further delay the resolution of the dispute. I therefore in the interest of justice accept the invitation to determine the two Applications after which I will give directions on the fate of the pending substantive matters including appointment of an Administrator and confirmation of Grant.

Issues for Determination

21. I have considered both Applications and the Response thereto. I have also keenly perused Counsels' respective Submissions. In my view the issue that arises for determination is "whether the Grant of Letters of Administration issued to the Petitioner, Cheruiyot Melly, by the Magistrate Court at Kapsabet and the subsequent Certificate of Confirmation of Grant issued by the same Court should be revoked".
22. On the issue of Revocation of Grants, Section 76 of the [Law of Succession Act](#) provides as follows;

“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.

23. *In the Matter of the Estate of L A K – (Deceased)* [2014] eKLR, the Court held that;

“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.

24. In order for the orders sought to be granted, the Objectors must therefore prove that the recognized grounds for revocation have been satisfied.

25. In the present case there is evidence that the deceased was survived by his two sons, one Kipchumba Rotich Kipsoi and Kipsaina Rotich who are also now deceased. The only asset left behind by the deceased is said to be the property known as Nandi/Cheptil/106 which forms the subject matter of the dispute herein. The Objectors pray that the grant issued to the Petitioner be revoked on grounds that same was obtained fraudulently by concealment of material facts. Therefore, to satisfy the Court to revoke the grant, the Objectors must set out the fraud perpetrated by the Petitioner and/or what facts were concealed by him.

26. By the Petition filed on 28/10/1991 in Kapsabet Resident Magistrate’s Court Succession Cause No 58 of 1991, the Petitioner sought for the Grant of Letters of Administration intestate. He moved the Court in the capacity of a “purchaser”. The Grant was then issued to the Petitioner on 27/08/1992. The same was subsequently confirmed on 28/01/1993. With the Certificate of Confirmation in hand, the Petitioner successfully caused himself to be registered as owner of the property and obtained a title deed thereof.

27. It is not disputed that the 1st Objector is a brother to the Petitioner. The 1st Objector alleges that the said parcel of land belongs to him by virtue of his late wife, one Lilian Chebitok having purchased the same from the deceased’s then surviving two children and that he has been in occupation of the same ever since. The 1st Objector’s case is that the Petitioner fraudulently transferred the parcel of land to himself in the guise of being related to the deceased at the time of Confirmation.

28. The 2nd Objector on the other hand states that he is a grandson of the deceased by virtue of being the son of Kipchumba Kipsoi Rotich (Deceased) who was himself a son of the deceased. The 2nd Objector’s position is that he ranks higher in priority to the Petitioner. From his Counsel’s Submissions, the 2nd Objector appears to support the 1st Objector’s position that the parcel of land now belongs to the 1st Objector by virtue of his late wife, one Lilian Chebitok having purchased the same from the deceased’s then surviving two children. It is therefore evident that the bone of contention is mainly between the 1st Objector and the Petitioner who are brothers and not even immediate beneficiaries of the estate.

29. The Petitioner has been faulted for failure to disclose material facts before obtaining the Grant. It is a requirement for a person petitioning for a grant to fully disclose the deceased person’s assets, liabilities and beneficiaries. Upon my perusal of the Petitioner’s Affidavit filed in support of the Petition for Letters of Administration, it is clear that indeed he did not disclose that being a person claiming a purchaser’s interest, the deceased had other surviving beneficiaries who ranked higher than him. What I find strange is that by the Petitioner’s own admission, he concedes that the said parcel of land belonged to the 1st Objector by virtue of the 1st Objector and/or the 1st Objector’s wife having purchased it from



the sons of the deceased. In spite of this, the Petitioner still proceeded to apply for the grant in the capacity of a “purchaser”.

30. Section 51(2)(g) of the Law of Succession Act requires an Applicant for a Grant of Letters of Administration to include and/or supply information as follows:

(g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;

31. The Act also lists the persons who are entitled to petition for Letters of Administration. As a general rule, the order of priority is the one provided for under Section 66 thereof as follows.

“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:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

32. Rule 26 of the Probate and Administration Rules then provides as follows:

“26.

- (1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to 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 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.”

33. In light of the foregoing provisions, it clear that the Petitioner was not a “beneficiary” of the estate of the deceased. He also was not a “creditor” of the estate as the parcel of land had not as yet been transferred to him by the time that he filed the Petition. There was also encumbrance registered by the Petitioner in respect to the land. In Alexander Mbaka –vs- Royford Muriuki Rauni & 7 Others [2016] eKLR, the Court held that: -

“It is only where one has an established claim against the estate that has already crystallized that he can litigate it before a family court. The claim is to be considered as a liability to the estate. This Court, in my view, cannot be called upon to ascertain whether or not one has



a right to an estate of the deceased where such right has not yet crystallized. The right must be shown to have crystallized before the family court can entertain it.”

34. As such, the Petitioner’s claim having not crystallized, he had no authority to petition for the grant. It is therefore my finding that the Petitioner fraudulently obtained the Grant by claiming a purchaser’s interest whereas in fact he was not one.

35. The Petitioner further concealed material facts when he petitioned for the grant without disclosing that the deceased was survived by persons who ranked higher in priority than him. It has not been disputed that the 2nd Objector is a son to the late Kipchumba Kipsoi Rotich who was himself a son to the deceased. The 2nd Objector was therefore a grandchild of the deceased. In that case, the 2nd Objector clearly ranks higher in priority than the Petitioner. It is not in dispute that a grandchild becomes a direct heir to the estate of the grandparent where the parent pre-deceases the grandparent. The grandchildren therefore step into the shoes of their deceased parents and take the parent’s share in the estate of the grandparents. This position was reiterated by Hon. Justice W. Musyoka *in Re Estate of Wabome Njoki Wakagoto* (2013) eKLR where he held as follows:

“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

36. What is even more baffling in the Petitioner’s conduct is the fact he obtained the Grant in the year 1993 and in 1994 he was in Court litigating against the son of the deceased, the said Kipchumba Kipsoi Rotich (Deceased) in Eldoret High Court Miscellaneous Succession Cause No 24 of 1994, over occupation of the same property, meaning that he was at all material times fully aware of the existence of the genuine surviving beneficiaries of the estate.

37. I may also mention that matters relating to the ownership, use and occupation of land are under Article 162(2)(b) of *the Constitution* of Kenya, 2010 mandated to be determined by a specialized Court being the Environment and Land Court. Therefore, the correct and proper forum before which the Petitioner and the 1st Objector ought to ventilate their claims to the property is the Environment and Land Court. In *Re Estate of Stone Kathubi Muinde (Deceased)* [2016] eKLR, again Hon Justice W. Musyoka held as follows:

“Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the Civil Procedure Rules. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.”

38. In light of the above, I invoke the powers possessed by this Court under Section 76 of the *Law of Succession Act* and revoke the Letters of Administration issued to the Petitioner as well as the subsequent



Confirmation as they were both obtained fraudulently by the making of false statement and/or by the concealment from Court of matters material to the case.

39. Having revoked the Grants, the Estate remains without an Administrator. None of the parties addressed the Court on what should happen upon revocation. As aforesaid, the estate is comprised of only one property, the said Nandi/Cheptil/106. Considering the protracted litigation over the property and the lengthy period of time that has been wasted since the dispute arose, I do not deem it safe to leave the estate unadministered. The estate needs to have an interim Administrator who will then have the mandate to move the matter to conclusion. For this reason, I invoke the Court's inherent powers and proceed to appoint an interim Administrator pending hearing and determination of other pending matters including Confirmation of the Grant and final distribution of the estate. Such inherent powers are donated to this Court by Section 47 of the *Law of Succession Act* and Rule 73 of the *Probate and Administration Rules*.

40. Section 47 of the *Law of Succession Act* provides as follows:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.

.....”

41. On its part, Rule 73 of the *Probate and Administration Rules* provides as follows:

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

42. Who therefore should be appointed the interim Administrator in the circumstances of this matter? Before the Court are three parties. The Petitioner and the 1st Objector do not belong to the family of the deceased and are therefore clearly not heirs of the estate. There is therefore no justification for them to be appointed as Administrators when family members of the deceased are in existence. The 2nd Objector is a grandson of the deceased and is therefore the only the family member before Court. In the circumstances, I proceed to appoint the 2nd Objector to be the interim Administrators.

Final Orders

43. Accordingly, I hereby order as follows:

- i. The Summons dated 24/09/2007 and the Summons dated 8/02/2010 are both hereby allowed on the terms and to the extent stated hereinbelow.
- ii. The Certificate of Confirmation of Grant issued to the Petitioner, Cheruiyot Melly on 28/01/1993 in Kapsabet Resident Magistrate Court Succession Cause No 58 of 1991 is hereby revoked and set aside.
- iii. Similarly, the Grant of Letters of Administration intestate issued to the Petitioner, Cheruiyot Melly on 27/08/1992 in Kapsabet Resident Magistrate Court Succession Cause No 58 of 1991 is also hereby revoked and set aside.
- iv. Accordingly, the title deed issued to the Petitioner, Cheruiyot Melly, in respect of the parcel of land Nandi/Cheptil/106 and/or registration of the said Cheruiyot Melly as owner of the said parcel of land and which registration was effected pursuant to issuance of the Grant and



Certificate revoked in (ii) and (iii) above is hereby cancelled and the title and ownership is directed to revert to the name of the deceased, the late Kiprotich Arap Soo, pending further Orders.

- v. The Land Registrar in charge of the Nandi Lands Registry or any other officer in charge of any other relevant Lands Registry under which the said parcel of land falls is directed to forthwith effect the orders made in (iv) above.
- vi. The 2nd Objector, Samuel Kebenei Some is hereby appointed the interim Administrator of the estate of Kiprotich Arap Soo (Deceased), the estate the subject of the proceedings
- vii. 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 returned to the Kapsabet Magistrates Court for disposal.
- viii. The parties are at liberty to pursue their pending reliefs in the said Kapsabet Principal Magistrates Court Succession Cause No 69 of 2006.
- ix. Considering the age of this matter, the Magistrate in charge of the Kapsabet Magistrates Court is hereby directed to give the matter priority and expedite its disposal.
- x. The Petitioner, Cheruiyot Melly shall bear the costs of the two Summons referred to above.
- xi. The Court file in these proceedings, namely, Eldoret High Court Miscellaneous Court Succession Cause No 123 of 2010, is hereby marked as finalized and is accordingly closed.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 16TH DAY OF JUNE 2023

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WANANDA J.R. ANURO

JUDGE

