



REPUBLIC OF KENYA



**In re Estate of Jeptoo Kobot Kipkoech (deceased) (Probate & Administration  
49 of 2021) [2024] KEHC 14402 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14402 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
PROBATE & ADMINISTRATION 49 OF 2021  
JR KARANJA, J  
NOVEMBER 20, 2024**

**IN THE MATTER OF THE ESTATE OF JEPTOO KOBOT KIPKOECH:DECEASED**

**RULING**

1. The summons for revocation of grant dated 20<sup>th</sup> November 2015 was taken out by John Kipkemboi Keino and Daniel Cheruiyot Mosbei [Applicant/ Objectors] on grounds that the grant of letters of administration intestate made to the Petitioners/ Respondents respecting the estate of the late Jeptoo Kobot Kipkoech [deceased] was fraudulently obtained by concealment of material facts such that the Objectors were excluded as beneficiaries of the estate.
2. The Chief's letter dated 9<sup>th</sup> February 2007 was relied upon by the Petitioners to petition for the grant which was eventually issued on 23<sup>rd</sup> May 2008. It was indicated in the letter that the deceased was survived by five sons, but the first petitioner [Kipkoech Tuwei] was the only one alive at the time of the petition. The second, third and fourth petitioners i.e. Samson, Limo and Paul, were thus appointed as the nominees of the departed sons of the deceased.
3. The grant was thus issued to the four Petitioners as the son and grandsons of the deceased, hence beneficiaries of the estate along with a daughter in law of the deceased, Tapsianga Tuwei, as per the Chief's letter. The estate property identified as the only asset of the deceased available for distribution was a  $\frac{3}{4}$  share of Land Parcel No. Nandi/Kombe/406.
4. However, the grant remains unconfirmed to date despite attempts made in the year 2009 and 2014. Apparently, the delay in having the grant confirmed was occasioned by the present application for which on the 15<sup>th</sup> October 2018, the court directed that the application be heard by "viva-voce" evidence with the Objectors becoming the Plaintiffs and the Petitioners, the Defendants.
5. The hearing of the application was also delayed for one reason or the other. Eventually, on the 8<sup>th</sup> May 2023 the hearing commenced before this court.

The Plaintiff/Objectors testimony was received through the second Plaintiff, Daniel Cheruiyot Mosbei [PW1] and two witnesses, Cheptanui Keino [PW2] and Joseph Korir Keino [PW3].



6. The second Defendant/ Petitioner, Limo Kangani [DW1] testified for the Defendant together with a witness, Peter Kimutai Koech [PW2].

At the end of the trial, both parties filed their final submissions through Gicheru & Company Advocates and Lagat Joshua & Company Advocates, respectively.

7. Having considered the evidence and the rival submissions it became obvious to this court that the main issue arising for determination was whether the subject grant was fraudulently obtained by concealment of material facts on the part of the Petitioners.

Under Section 76 of the *Law of Succession Act*, a grant obtained fraudulently by making of false statement or by concealment from the court of something material to the case would turn towards revocation of the grant, but subject to proof of the fact by the Applicant.

8. It was thus incumbent upon the Objectors/Plaintiff to establish and prove by necessary evidence that the Petitioners/ Defendants obtained the subject grant without disclosure of the fact that the Objectors were also beneficiaries of the Estate of the deceased, hence entitled to the  $\frac{3}{4}$  share of the estate property.

9. It is instructive to note that the first Petitioner Kipkoech Tuwei, who was the sole surviving son of the deceased is since deceased. The remaining three petitioners are the grandsons of the deceased. The Chief's letter aforementioned did not include the two Objectors as the beneficiaries of the estate and were thus not included as such in the petition for letter of administration Intestate dated 26<sup>th</sup> April 2007, more than thirty [30] years after the death of the deceased on 10<sup>th</sup> December 1974.

10. There was no explanation as to why it took an inordinate long period of time for the Petitioners to apply for the grant.

Be that as it may, the non-inclusion of the Objectors as beneficiaries of the estate meant that they were not related to the deceased and if they were, then they did not rank above the Petitioners in applying for the grant or being included as direct beneficiaries of the estate as opposed to indirect beneficiaries.

11. Generally, where the grant was obtained by fraud, misrepresentation and concealment of material facts such as failure to disclose the true and actual beneficiaries or survivors of the deceased or that some of the beneficiaries have deliberately been omitted as such, the grant would be considered as being invalid, null and void "obnatio" and any act done on its strength upon confirmation would also be null and void.

12. Under Section 66 of the Succession Act it is provided that:-

“where a deceased 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 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 or 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”



13. Section 38 of the Act provides that: -

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall subject to the provisions of Section 41 and 42 devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children”

In this case, for the avoidance of doubt, the subject estate is  $\frac{3}{4}$  of the parcel of land described as Nandi/Kombe/406 in its original form.

14. The certificate of official search dated 5<sup>th</sup> February 2007 presented in court together with the petition for letters of administration shows that the estate property was registered on the 21<sup>st</sup> June 1971 and that its proprietors were Kipkeino Arap Tuwei and Jeptoo Kobot Kipkoech [deceased]. Whereas, Kipkoech Tuwei owned  $\frac{1}{4}$  share of the land, the deceased owned  $\frac{3}{4}$  share.

15. It was the  $\frac{3}{4}$  share of the property belonging to the deceased which was availed for distribution amongst her surviving five [5] sons as direct beneficiaries. But, because all but one of the sons passed away the surviving son [First Petitioner] together with three grandsons [Second, Third and Fourth Petitioners] of the deceased, children of three of the departed sons, as well as a widow [Tapsianga Tuwei] of one of the departed sons became direct beneficiaries of the estate. indeed, all of them were listed as the true and actual beneficiaries of the estate a fact not disputed in evidence by the Objectors.

16. In their evidence, both Objectors confirmed that the deceased's son Kipkeino Tuwei was their father. That being the position, the two would be indirect beneficiaries of the deceased's estate through their parents and would rank lower than Petitioners in applying for the grant and in the distribution of the estate. However, their parents would be direct beneficiaries of the estate and their [Objectors] interest in the property would be through their parents.

17. The Objectors' mother [Tapsianga Tuwei] was listed as a beneficiary of the estate for and on behalf of her departed husband, Kipkeino Tuwei, son of the deceased, father of the Objectors.

Therefore, the Objectors interest in the estate property was through their mother who was clearly listed as a beneficiary of their grandmother's estate. Their mother's direct interest in the estate property would devolve directly to the Objectors only if she was dead.

18. The Objectors cannot therefore be heard to say that the grant was obtained by the Petitioners fraudulently by the making of false statements and/or concealment of material facts.

Their mother, as the widow of a departed son of the deceased was included as a direct beneficiary and was entitled to be so included in priority to the Objectors.

19. The lesser portion of the estate property [ $\frac{1}{4}$ ] did not belong to the deceased but to her son, father of the Objectors and was therefore not included as available for distribution in the present case.

It would therefore follow that the present application is lacking in merit and is hereby dismissed with orders that the Petitioners do take out necessary summons for confirmation of the grant in the next four [4] months from this date hereof to pave way for distribution of the estate property amongst the beneficiaries.

The matter be scheduled for mention at a later stage to confirm compliance and/or further orders.

**DELIVERED AND DATED THIS 20<sup>TH</sup> DAY OF NOVEMBER 2024**

**J. R. KARANJAH,**  
**JUDGE**

