



**In re Estate of Tarkok Chemitei Chepchoge (Succession Cause
108 of 2014) [2024] KEHC 14163 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14163 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 108 OF 2014
JRA WANANDA, J
NOVEMBER 15, 2024
IN THE MATTER OF THE ESTATE OF TARKOK CHEMITEI CHEPCHOGE**

BETWEEN

IRENE JEPKEMOI CHESEREM PETITIONER

AND

JANE JEMUTAI CHEMITEI OBJECTOR

RULING

1. The deceased, Tarkok Chemitei Chepchoge, died on 22/07/1995. On 1/04/2014, her two daughters, Irene Jepkemoi Cheserem, (Respondent herein), and Anna Cheptoch Chepkorir, as joint Petitioners, filed an Application for Letters of Administration. In the Petition, apart from the 2 Petitioners, 3 other siblings, including the Applicant herein, were also listed as survivors of the deceased. The only estate property mentioned was Irong/Mutei/384 measuring approximately 3.2 hectares (approx. 7.91 acres).
2. The Grant was then given to the 2 Petitioners by the Court on 23/07/2015 and the same was subsequently confirmed on 26/09/2016 distributing the property in the following manner:



Irene Jepkemoi Cheserem (Respondent herein)	2 acres
Anna Chepkorir Cheptoch	1 acre
John Kiprotich Changwony	2 acres
Jane Jemutai Chemitei (Applicant herein)	Nil
Kwambai Changwony	2 acres
Chelingwa Secondary School c/o Luka Chepkonga	1 acre

3. The Application now before the Court for determination is the Notice of Motion dated 21/02/2023 and filed by the Applicant, through Messrs J.K. Kiplagat & Co. Advocates. It is titled “Application for Rectification and/or Annulment of Grant” and seeks orders as follows:
- i. [.....] spent
 - ii. THAT the Certificate of confirmation of Grant of Letters of Administration intestate issued on 18/10/2016 to Irene Jepkembai Cheserem and Anna Chepkorir Chetoch and confirmed on 29/07/2015 by Hon. Justice G.K. Kimondo in respect to the estate of the deceased Tarkok Chemitei Chepchoge who died on 27/07/1995 be rectified so as to indicate L.R. No. Irong/Mutei/384 instead of L.R. No. Irong/Mutei/394 and the Petitioner/Respondent to share 2 acres equally with the Applicant.
 - iii. Costs of this Application be in the Cause.
4. The Application is expressed to be brought under Section 76 as read together with Section 74 and 47 of the *Law of Succession Act* and Rules 48, 44(1) and 73 of the Probate and Administration Act and “all enabling provisions of the law”. The grounds of the Application are as set out on the face thereof and it is supported by the Affidavit sworn by the Applicant.
5. In the Affidavit, the Applicant deponed that she is one of the beneficiaries of the estate of the deceased, that her sister - the Respondent herein - allocated to herself 2 acres of the said parcel of land instead of equally sharing it with her, and that the land is Irong/Mutei/384 and not Irong/Mutei/394 as appears in the Confirmation of Grant. She deponed further that it has come to her attention that the Respondent has excluded her from the distribution of the property, and that the Respondent has failed to faithfully, diligently and lawfully proceed with the distribution. She deponed further that the Respondent did not comply with the provisions of Rule 26 of the Probate and Administration Rules and that the consent which was purportedly executed is null and void on account of the same having been made fraudulently. She also deponed that nobody shall be prejudiced if the Application is allowed so as to allow the Applicant inherit the property of her deceased mother like the other beneficiaries and that the Application is made in good faith.

Respondent’s Response

6. The Application is opposed vide the Replying Affidavit sworn by the Respondent and filed on 30/03/2023 through Messrs Songok & Co. Advocates. She deponed that the Application is Res Judicata since a suit by the Applicant was filed and determined in Iten Chief Magistrate’s Court ELC No. 20 of 2020, that the averments by the Applicant that the Respondent allocated herself 2 acres are



false and baseless as the Applicant fully participated in the Succession process until when the same was confirmed as she consented to the mode of distribution. She deponed further that the Applicant's averment that she had been excluded in the distribution is a lie calculated at defeating justice, that the Applicant, initially before commencement of the Succession process, had been allocated 1 acre from the parcel of land as agreed by the family which she later sold it to Chelingwo Secondary, a fact which she confirmed at the time of confirmation of the Grant. Regarding the reference of the parcel of land as Irong/Mutei/394 instead of Irong/Mutei/384, she deponed that the same was a typing error which she is amenable to being rectified.

7. She submitted further that the confirmation of the Grant was done way back, 6 years ago and the prayers sought are overtaken by events since the transmission has been completed and there is no residue of the estate. According to her therefore, there is no basis for setting aside the orders as the Objector participated fully in arriving at the same. She reiterated that the Applicant filed a suit in the Magistrate's Court at Iten ELC Case No. 20 of 2020 in which the Court established that she consented to the mode of distribution and dismissed her case with costs. She contended that the Applicant established her entitlement to 2 acres which she is currently occupying to the satisfaction of the Court which then issued the confirmation of Grant and thus it will be unfair to her for the issue to be revisited. She also urged that the Applicant is not the only one who got 1 acre, and that the prayer for redistribution is biased since the Applicant has only targeted the share belonging to the Respondent, amongst all the beneficiaries.
8. I have also come across a Witness Statement made by one Maurice Changwony in which he stated that he is the last-born son to the deceased and I note that the same is in support of the Respondent's case. The same must have been filed in the anticipation that this matter would proceed by way of viva voce hearing. Since the matter did not so proceed on such viva voce basis and since there is no consent or agreement recorded by the parties allowing the Witness Statement to be admitted in evidence without calling the maker thereof, I will not consider it.

Hearing of the Application

9. The Application was canvassed by way of written Submissions. The Applicant's Submissions was filed on 4/03/2024 while the Respondent's was filed earlier on 18/12/2023.

Applicant's Submissions

10. The Applicant's Counsel cited Section 76 of the *Law of Succession Act* and reiterated that the Applicant was not involved in the Succession process herein and was thus disinherited from the estate. He submitted that according to the Applicant, she is supposed to get 1 acre of the land and that this fact has not been denied by the Respondent, save to allege that the Applicant had sold her land. He urged further that although the Respondent has alleged that the Applicant was involved in the process, there is no proof thereof. He also contended that the Respondent intentionally concealed important facts from the Court and as a result, fraudulently disinherited the Applicant of her rightful share of the estate and is not founded on evidence. He cited the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR.

Respondent's Submissions

11. On his part, Counsel for the Respondent acknowledged and/or reiterated that they are amenable to the rectification of the Certificate of Confirmation of Grant to read Irong/Mutei/384, instead of Irong/Mutei/394 and termed the same as a typing error.



12. Regarding the prayer for re-distribution of the estate, Counsel cited Section 76 of the [Law of Succession Act](#) and also the case of Estate of Prisca Ongayo Nande (Deceased) [2020] eKLR and submitted that the averments by the Applicant that the Court was misled to grant the Letters of Administration to the Applicant instead of equally sharing with the Objector is false. He contended that the Grant was issued to 4 siblings and the estate distributed among all the beneficiaries, including the Objector, and that the allegation that the Grant was obtained by means of untrue allegations of facts and intended to maliciously exclude the Applicant from receiving any property of the deceased is false. Counsel submitted further that the Applicant was present during the Succession proceedings. He submitted further that the Applicant had been allocated 1 acre from the land as agreed by the family which she later sold to Chelingwa Secondary School, and that the Applicant cannot now renege on the same as she had already given her consent thereto. He cited the case of Re Estate of Moses Wachira Kimotho (Deceased) Succession Cause 122 of 2002 [2009] eKLR and submitted further that the Applicant was present during the proceedings and could have had her interest heard and taken care of at that time and cannot therefore not claim that the same was done fraudulently.

Determination

13. Before I delve into determining this matter, I observe that, as aforesaid, the parties are in agreement that the reference to the estate property as the parcel of land Irong/Mutei/349 in the Certificate of Grant was erroneous and that the correct description should be Irong/Mutei/348. By the powers conferred upon this Court under Section 74 and 47 of the [Law of Succession Act](#) and also Rule 73 of the Probate and Administration Act, the prayer for rectification limited to this description shall therefore be granted.
14. I also note that the Application has been brought by way of a Notice of Motion when Rules 43 and 44 of the Probate & Administration Rules stipulate that an Application for Revocation or Rectification of a Grant ought to be brought by way of Summons. Since however no objection has been taken on this point, I will not turn into an issue.
15. In view thereof, the issue that remains for determination herein is “whether the Court should order for re-distribution of the estate herein and/or annul or revoke the Certificate of Confirmation of Grant issued herein”.
16. Regarding Revocation of a Grant, Section 76 of the [Law of Succession Act](#) provides 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.”

17. Evidently, the grounds relied upon by the Applicant are those falling within sub-Sections (a), (b) and (c) above.

18. On the issue of revocation of Grants, Section 76 was expounded upon by Hon. Justice W. Musyoka in the case of *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR in which he stated as follows:

“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.”

19. In this case, the Respondent submitted that the Applicant had been allocated 1 acre from the said parcel of land Irong/Mutei/384 as agreed by the family, which she later sold to Chelingwa Secondary School, and that the Applicant cannot now renege as she had already given her consent thereto. Well,



no evidence of such sale by the Applicant has been presented before this Court and I therefore have no material to make a finding thereon.

20. However, I have perused the Petition for Letters of Administration and also the subsequent Summons for Confirmation of the Grant and note that both were supported by respective Consents bearing the names of the beneficiaries/survivors and each is countersigned by the respective beneficiaries/survivors. The Applicant's name is among those that appear thereon and a signature is affixed in both consents. I have not heard the Applicant, either expressly or by implication, denying that the signature is hers or claiming that the same was forged or was procured fraudulently.
21. Further, I have looked at the record of the proceedings conducted on 26/09/2016 before Hon. Lady Justice C.W. Githua in which the Grant was confirmed. The record indicates that the beneficiaries/survivors attended Court. The Applicant is expressly listed as among the attendees on that date. The record indicates that when asked, each of the beneficiaries present verbally confirmed his/her consent and agreement with the mode of distribution presented and it is only upon such confirmation that the Grant was confirmed. For this reason, it is evident that the Applicant's allegation that the Respondent concealed important facts from the Court is wholly baseless. It is clear that the Applicant consented to the mode of distribution and fully participated in the whole process but has now, for some undisclosed reasons, changed her mind. The allegation that the distribution was fraudulent or was procured without her participation, apart from being a pure smokescreen, is also clearly false.
22. On a separate ground, the Respondent has contended that the Applicant has not explained the inordinate delay in filing the Application. It is true that the Grant was confirmed on 26/09/2016 and the present Application was filed on 28/02/2023, about 6 ½ years later. The Applicant has not bothered to explain this obvious inordinate delay neither does she allege that she was under any incapacity or that she was unaware of the distribution, which, in any case, and as aforesaid, was done in her presence and with her express consent. I refuse to accept the argument that simply because the Law of Succession Act does not stipulate a time limit for applying for revocation of a Grant, an Applicant who approaches the Court after an inordinate delay has no obligation to explain such delay.
23. On this view, I refer to the Court of Appeal case of Ali Omar Ali Abdulrahman v Mohamed Ali Abdulrahman [2020] eKLR, in which the Applicant sought extension of to file an Appeal to challenge the High Court's refusal to revoke a Grant. Sitting as a single Judge, and in declining the Application, Murgor JA, held as follows:

“With respect to whether any prejudice would be occasioned to the respondent, it is apparent that the application for revocation relates to a grant that was confirmed way back in 1992. This is clearly a very old succession matter. The question would arise as to whether the revocation sought would serve any useful purpose this late in the day.

All factors considered, I am not persuaded to exercise my unfettered discretion to allow the application, which I accordingly dismiss. Considering that this is a family dispute, I order each party to bear their own costs”.

24. Similarly, Achode J (as she then was), in the case of Monica Wangui Kimani & Another v Josphat Mburu Wainaina [2015] eKLR, stated as follows:

“16. Indeed Section 76 of the law of succession Act states that a grant may at any time be revoked, or annulled by the court if it finds that it was obtained fraudulently by making of false statements, or concealing material facts. This may appear to place no time limit within which an application for revocation may be brought.



The Probate Court is a court of Equity and has very wide discretion to aid the interest of justice. However, Equity aides the vigilant and not the indolent. It is not in dispute that the deceased whose Estate is in question died in 1962, or that both suit properties were sold and or transferred to third parties in 1968 or that Wainaina Karanja the administrator who is accused of perpetrating the malfeasance has since died.

17. It is therefore my considered view that the interest of the Applicant has been extinguished by effluxion of time since the suit property has already been transferred to innocent third parties who had no notice. The Estate is no longer available to enable her to enjoy her right of life interest and the administrator of the Estate of Stanley Kimani Karanja against whom she should have brought her claim has also died.

In the premise I find that the summons for revocation dated 22nd May 2014 cannot succeed and is therefore dismissed.”

25. For this reason, coupled with the Respondent’s unchallenged statement that the transmission of the estate to the respective beneficiaries has long been concluded, it is clear that the Application, if allowed at this late stage, would severely prejudice the beneficiaries. Indeed, “equity aides the vigilant and not the indolent”.
26. The Respondent also contended that the Applicant is being unfair because out of all the beneficiaries, she has only targeted the Respondent’s share. I agree that there is no explanation offered for the singling out of the Respondent’s share. If it is because the Respondent got 2 acres, then why has the Applicant not also targeted the other two other beneficiaries who also got 2 acres each? In the absence of any explanation for this apparent “discrimination”, I agree that the Application is malafides.
27. The Respondent also argued that the Application is Res Judicata because the Applicant had filed a previous suit, namely, Iten Chief Magistrate’s Court ELC No. 20 of 2020. I have perused the copy of the Judgment delivered therein and which the Respondent has exhibited. I note that the suit was dismissed on the ground of lack of jurisdiction as the Court held that it had no powers to interfere with distribution of estate done by the High Court. The matter was therefore not determined on merits and for this reason, the plea of Res Judicate cannot apply. However, the filing of the previous suit before the Magistrate’s Court seeking basically similar declarations as now sought herein, may be deemed as evidence of the Applicant’s abuse of the Court process.
28. For the above reasons, it is clear that the Applicant has clearly failed to meet the threshold set under Section 76 of the *Law of Succession Act* for Revocation or annulment of a Grant.
29. In the circumstances, I decline to interfere with the distribution adopted and reflected in the Certificate of Confirmation of Grant given herein on 26/09/2016.
30. Before I pen off, I am constrained to express my displeasure by the Applicant’s Counsel as regards the prayer for re-distribution of the estate or for revocation or annulment of the Certificate of Confirmation of Grant. I wonder whether Counsel even perused the Court file or any other material relevant to this matter. Assuming that he did, it is beyond me how, with the record being as clear as set out above, he still accepted to take the brief, proceeded to draw the pleadings, and file the same in Court. To make matters worse, Counsel still found it fit to prosecute the Application, knowing very well how hopeless it was. The Application seems to have been filed simply for the sake of it and for the purposes of irritating the Court. The result of the above is that the Court has been forced into wasting precious judicial time on a non-starter Application thus denying other well-deserved litigants time to



present their cases. I trust that Counsel will take this observation for what it is meant to be, an honest friendly rebuke, and not as a personal attack on his conduct.

Final Orders

31. In the end, I order as follows:

- i. The prayer for re-distribution of the estate or for revocation or annulment of the Certificate of Grant given on 26/09/2016 is hereby declined.
- ii. However, the said Certificate of Confirmation of Grant given on 26/09/2016 shall be rectified and/or amended to now refer to the estate property herein as Irong/Mutei/384, instead of Irong/Mutei/394.
- iii. I award the costs of the Application to the Respondent – Irene Jepkemoi Cheserem.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 15TH DAY OF NOVEMBER 2024

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WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Songok for the Petitioner-Respondent

N/A for Objector-Applicant

Court Assistant: Brian Kimathi

Eldoret High Court Succession Cause No. 108 of 2014

