



REPUBLIC OF KENYA



**In re Estate of Kiprotich Arap Biebei (Probate & Administration
E063 of 2021) [2024] KEHC 13869 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13869 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
PROBATE & ADMINISTRATION E063 OF 2021**

JK SERGON, J

NOVEMBER 7, 2024

IN THE MATTER OF THE ESTATE OF KIPROTICH ARAP BIEBEI

BETWEEN

MOSES KIPLANGAT MISIK OBJECTOR

AND

JOHN KIPKOECH ROTICH RESPONDENT

RULING

1. The application coming up for determination is a summons for revocation or annulment of grant dated 3rd August, 2023 seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) That the grant of letters of administration made to John Kipkoech Rotich on 31st May, 2022 and the certificate of confirmation and all resultant orders be revoked/ annulled.
 - (iv) That this honourable court be pleased to cancel the title in respect to land parcel L.R No. Kericho/Kapsorok/292 which is registered in the name of John Kipkoech Rotich to pave way for fresh and proper distribution of the estate of the deceased.
 - (v) That the honourable court be pleased to make such orders as it may deem fit and just to grant.
 - (vi) That costs be provided for.
2. The application is supported by grounds on the face of it and the supporting affidavit of Moses Kiplangat Misik the objector herein.



3. He avers that he and the petitioner filed Kericho P&A Cause No. 206 of 2000 and were granted letters of administration intestate which were confirmed on 27th September, 2004 and that under the said grant he was entitled to 10.69 acres of Kericho/Kapsorok/292 and the petitioner entitled to 11.56 acres of the subject parcel.
4. He avers that the petitioner asked him to vacate the subject parcel claiming that the whole parcel belonged to him and that this prompted him to conduct a search and he discovered that the petitioner had the subject parcel transmitted to him solely.
5. He avers that he discovered that the petitioner while concealing to this court that another grant had been issued under P&A Cause No. 206 of 2000, proceeded to file the instant succession cause and a grant was issued to him on 31st May, 2022. The certificate of confirmation was subsequently issued with the respondent/ petitioner as the only person entitled to the estate.
6. He avers that the grant in the instant succession cause was obtained fraudulently by the making of false statement and concealment of material facts to the case, specifically regarding the existence of another grant and certificate of confirmation of grant in respect to the same estate which had not been revoked and the persons entitled to a share of the estate himself included.
7. He avers that in view of the foregoing, if the grant of letters of administration made to John Kipkoech Rotich on 31st May, 2022 and the subsequent certificate of confirmation are not revoked and the resultant registration made in favour of the petitioner cancelled, the petitioner will evict him from the subject parcel thereby exposing him to great loss.
8. The matter came up for inter partes hearing and Mr. Kibet Learned Counsel for the objector stated that they served the firm of Juma Ombui & Co. and there was no response, he therefore urged this court to allow the application unopposed. There was no representation on the behalf of the respondent/ petitioner.
9. I have considered the application and I find that the following issue(s) are ripe for determination; firstly, whether this court should revoke/annul the grant of letters of administration made to John Kipkoech Rotich on 31st May, 2022 and the certificate of confirmation issued to the petitioner. Secondly, whether to cancel the title in respect to land parcel L.R No. Kericho/Kapsorok/292 which is registered in the name of John Kipkoech Rotich to pave way for fresh and proper distribution of the estate of the deceased.
10. On the issue as to whether to revoke the grant of letters of administration made to John Kipkoech Rotich on 31st May, 2022 and the certificate of confirmation in the instant succession matter, the answer is in the affirmative, this court having carefully studied the contents of the file finds that there are two grants in respect to the same estate and therefore it is imperative to revoke the latter grant which was obtained by the petitioner under unclear circumstance, it is therefore the finding of this court that the proceedings to obtain the grant were defective. I find that the instant application meets the threshold for revocation as set out in section 76 of the *Law of Succession Act*.
11. The *Law of Succession Act* provides for revocation of grants under section 76, which states 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.”

12. In the case of *In re Estate of Kiberenge Mukwa (Deceased)* [2021] KEHC 1392 (KLR) the court observed 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 marred by several irregularities. 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.”
13. On the issue as to whether to cancel the title in respect to land parcel L.R No. Kericho/Kapsorok/292 which is registered in the name of John Kipkoech Rotich to pave way for fresh and proper distribution of the estate of the deceased, the answer is in the affirmative, there are two grants in respect to the same estate and the latter grant which was obtained under unclear circumstances preceded the registration of the estate of the deceased in the name of the respondent solely thereby unjustly disinheriting the applicant therefore warranting the intervention of this Court. The probate court is vested with the inherent power to issue orders in the interest of justice.
14. Section 47 of the *Law of Succession Act* and Rule 73 of the *Probate and Administration Rules*, provides the inherent power of the probate court to grant orders in the interests of justice and to prevent abuse



of the court process. The court sitting as a probate court has power to issue orders to cancel titles or entries which were made pursuant to the Certificate of Confirmation of Grant.

15. Consequently, the summons dated 3rd August, 2023 is hereby allowed.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 7TH DAY OF NOVEMBER, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant

No Appearance for the Parties

