



In re Estate of Machii Kimugum Boit (Deceased) (Succession Cause 446 of 2015) [2024] KEHC 13666 (KLR) (6 November 2024) (Judgment)

Neutral citation: [2024] KEHC 13666 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 446 OF 2015
JRA WANANDA, J
NOVEMBER 6, 2024**

IN THE MATTER OF THE ESTATE OF MACHII KIMUGUM BOIT (DECEASED)

BETWEEN

SARAH JELIMO BOIT 1ST PETITIONER

WILSON KIMARU BOIT 2ND PETITIONER

AND

SILAS JELIMO BOIT 1ST OBJECTOR

JOSEPH KIPKETER BOIT 2ND OBJECTOR

JOHANA KIPKEMOI BOI 3RD OBJECTOR

CLEAPH KIPKURUI BOIT 4TH OBJECTOR

JUDGMENT

1. This Ruling is in respect of 3 separate Applications filed through 2 separate law firms and one filed in person. For this reason, it turned out to be a challenge on how to describe them in the title hereinabove as the litigants' interests are, in some instances distinct and, in others, quite overlapping and/or common. For the said reason, to avoid confusion and mix-up and for ease of reference, for the purpose of this Ruling, I have adopted the descriptions and numerical listing reproduced above to identify the parties.
2. The background of the matter is that the deceased, Machii Kimugun died on 18/08/2015 at the age of 93 years old. On 17/11/2015, the Petitioners, Sarah Jelimo Boit and Wilson Kimaru Boit, as daughter and son of the deceased, respectively, through Messrs Chemwok & Co. Advocates, filed a Petition jointly seeking a Grant of Letters of Administration intestate over the estate of the deceased. The Grant was then given by the Court on 14/12/2016 and was subsequently confirmed on 5/09/2018.



3. Now before me for determination are, as aforesaid, 3 Applications, dated 9/10/2023, 12/10/2023 and an undated one but filed on 15/11/2023, respectively. For ease of reference, the same shall be referred to as the 1st, 2nd and 3rd Applications, respectively.

1st Application

4. This Application (Summons) dated 9/10/2023 was filed in person by Silas Kiptoo Boit whom I have described as the 1st Objector, and seeks orders as follows:
- i. [.....] Spent.
 - ii. [.....] Spent.
 - iii. [.....] Spent.
 - iv. That the Grant of Letters of Administration Intestate made on 14/12/2016 to Sarah Jelimo Boit and Wilson Kimaru Boit and confirmed on 5/09/2018 be revoked and/or annulled.
 - v. That the Honourable Court be pleased to grant further orders that a petition for fresh Grant of Letters of Administration be filed after consensus on who amongst the beneficiaries is to be the Administrator of the Estate.
 - vi. That the costs of this Summons be awarded to the Applicant.
5. This 1st Application is expressed to be brought under Rule 44(1)(2) of the Probate and Administration Rules and Section 76 of the *Law of Succession Act*. It is premised on the grounds stated on the face thereof and is supported by the Affidavit sworn by the said Silas Kiptoo Boit.
6. In the Affidavit, the 1st Objector deponed that he is a beneficiary of the estate of the deceased by virtue of being his last born son, that throughout the process of obtaining and confirmation of the Grant, he was not involved and was never called to Court to confirm it, that he was not notified of the institution of the Succession proceedings and that the Petitioner has been continuing with the Petition without the 1st Objector's participation. He deponed that the process was conducted in secrecy and that he only came to learn of the existence of the Grant and the Certificate of Confirmation when he was served on 6/10/2023 with the notice to survey and sub-divide the land. He deponed that the 1st Petitioner named their brother, Wilson Kimaru Boit, as co-Petitioner but never involved the 1st Objector in the decision making. He deponed further that the proceedings to obtain the Grant were defective in substance for reason that the Letters of Administration were prepared in anticipation that their mother, Hellen Kikwai Boit would survive the deceased hence her inclusion in the list of beneficiaries, that it baffles him how the Grant was confirmed if the beneficiaries were called to attend Court for Confirmation with the name of Hellen Kikwai Boit who died on 13/8/2015 while their father, the deceased died on 18/8/2015 and were both buried on the same day.
7. He deponed further that he is not aware of any person by the name "Johanna Kipyego Boit" and how the Grant was confirmed with the inclusion of such a person is a sign of irregularity. He posed the question that; if it is true that all the beneficiaries had agreed on who will be the Administrator and how the estate would be distributed, then why the use of police in sub-division? He contended further that the confirmed schedule is also irregular as it does not show who will take what and particularly on the issue of land who will take the 13 acres from which parcel, that the schedule ought to have been clear as to avoid injustices and possible displacement owing to the fact that most beneficiaries are already settled and in use of the land. According to him therefore, the Grant was obtained fraudulently by concealing from Court vital facts material to the case. He added that one "Johana Kipkemboi Boit"



is not included in the list of beneficiaries, that one cow said to be having 3 calves has been included yet it is known that the cow does not belong to the deceased, and that it was not revealed to the Court that most beneficiaries are already in occupation of known portions, a fact that ought to have been taken into consideration.

8. In conclusion, he maintained that the 1st Petitioner's intention is to serve her own self interest and not to justly administer the estate, that he is shocked to be forced into a sub-division yet he had no knowledge of the proceedings and never participated therein, and that the Petitioner has now deployed the tact of intimidation and has misled the Court in obtaining ex parte orders directing the police to oversee the survey and sub-division. He urged that the ends of justice lean towards revoking the Grant as it was issued without granting him and other beneficiaries the opportunity to heard and thus against the rules of fairness and natural justice.

2nd Application

9. The 2nd Application (Summons) dated 12/10/2023 is indicated to be filed by the rest of the Objectors. The same is filed through Messrs Yegon & Co. Advocates and seeks orders as follows:
 - i. [.....] Spent.
 - ii. [.....] Spent.
 - iii. That the Certificate of Confirmation of Grant made to Sarah Jelimo Boit and Wilson Kimaru Boit on 14/12/2016, confirmed on 4/09/2018 and issued on 7/11/2018, be revoked and set aside on the following grounds:-
 - iv. That this Court be pleased to issue any other relief that it may deem fit and just to grant.
 - v. That the Petitioner/Respondent be ordered to pay costs of this Summons.
10. The Application is expressed to be brought under Sections 47, & 76 of the Law of Succession Act and Rules 44, 49, & 73 of the Probate and Administration Rules. It is premised on the grounds stated on the face thereof and is supported by the Affidavit sworn by Wilson Kimaru Boit.
11. It will be noted right away that the said Wilson Kimaru Boit, the deponent of the Affidavit, is, in fact, the 2nd Petitioner/co-Administrator. It can therefore be assumed that after jointly obtaining the Grant with the 1st Petitioner, he has now "jumped ship" and has become "an Objector". His choice as the person to swear the Affidavit herein also loudly sends the message that he has indeed fully decamped and has abandoned the 1st Petitioner. However, since he cannot wear two hats in this one Succession Cause, and although he may have now "crossed over to the enemy territory", for the purposes of this Ruling, I will retain his description as the 2nd Petitioner/co-Administrator.
12. In the Affidavit, he deponed that he has authority from the co-Objectors to swear the Affidavit, that he and his co-Objectors were never made aware that these Succession proceedings over the estate had been instituted. He then stated that the deceased left behind 11 dependants whom he listed and further deponed that throughout the proceedings, he and his co-Objectors were never involved in any consultive or decision-making process with respect to the mode of distribution of the estate, and that the entire process was solely done by the Petitioner in a bid to maliciously frustrate their input/views and rightful claims to shares in the estate. He stated that they only learnt of the proceedings after this Court had issued a Certificate of Confirmation of Grant on 7/11/2018 which was brought to their attention on 6/10/2023 after they collected the same from the Chief's Office, Kabiyeet Location, and that they were shocked to learn of the planned execution of the Grant through a letter dated



28/09/2023 served upon them on 29/09/2023 notifying them of the planned surveying and subdivision of some parcels of land.

13. He deponed further that they noted a serious discrepancy in the Certificate of Confirmation of Grant in that their late mother, Hellen Kikwai Boit, had been named as a beneficiary and even allocated a share of the estate, that such a serious error is sufficient enough to have the Certificate of Confirmation of Grant revoked and set aside since that their late mother passed away around the same time as their late father and they were in fact buried on the same day. He deponed further that the parcel of land Nandi/Ndulele/308 as described in the Certificate of Confirmation of Grant was never registered in their late father's name and that the said parcel of land is the subject to an ongoing case at the Environment and Land Court at Kapsabet; ELC No. 37 of 2021, and that the parcel of land Nandi/Ndulele/315 as described in the Certificate of Confirmation was not fully owned by their late father as he was only a co-owner thereof. He added that the description of the parcels of land listed in the Confirmed Grant does not give the correct and factual measurements thereof, that the measurements have been wrongly configured and are therefore misleading.
14. He further deponed that some of the names of the beneficiaries in the Certificate are wrongly captured, that for instance, the beneficiary known as Johana Kipkemboi Boit has been listed as Johana Kipyego Boit, that the property described as Tractor Massey Ferguson KDF 021 has its registration details wrongly captured since the correct details are KDX 021. He contended further that the Certificate further misrepresents the description of the property listed as "one cow taken by Silas belonging to Joyce now with two calves", that ideally, the same should not have been listed since it does not point to whether it belonged to their late father or to "Silas" or "Joyce", that the Certificate further ambiguously denotes that this particular property will be bought on priority basis by any beneficiaries and/or the same be sold after which the proceeds "shall be shared equally". He added further that the property referred to as "one developed permanent residential shop in ½ acre plot" is a false description, size and representation thereof as the true measurement is 1/8 acre.
15. He also pointed out that the "cattle dip" allegedly sitting in ½ acre is also false and wrongly captured as the same is located within the parcel of land known as Nandi/Ndulele/324 and not a separate property as alluded in the Certificate. According to him, the mentioned discrepancies and inconsistencies was as a result of deceitful and malicious sidelining of the Objectors from the Succession process. He reiterated that the entire Succession Cause is tainted by concealment of material facts and as such it introduces festering waters into the pure streams of justice, that the Certificate of Confirmation was obtained by means of untrue allegations and it therefore ought to be revoked but that the Petitioner has nonetheless made concerted efforts to effect distribution of the estate in line with the impugned Certificate. He deponed that he is apprehensive that unless execution of the Grant is stayed or grounded, the Petitioner may proceed to effect its terms to the substantial detriment of the Objectors.

3rd Application

16. The 3rd Application (Summons) is undated but was filed in Court on 15/11/2023. Although it is indicated to be filed by the Petitioners, only the participation of the 1st Petitioner, Sarah Jelimo Boit is evident thereon as she is the sole deponent of the Supporting Affidavit thereto. There is no indication of the participation thereon of the 2nd Petitioner, Wilson Kimaru Boit, who as aforesaid, appears to have long decamped to the side of the Objectors. The Application has been filed through Messrs Chemwok & Co. Advocates and seeks orders as follows:

- i. [.....] Spent.
- ii. That this Honourable Court orders the consolidation of the following titles



- a. Nandi/Ndulele/370
 - b. Nandi/Ndulele/315
 - c. Nandi/Ndulele/3661
 - d. Nandi/Ndulele/324
17. The Application is expressed to be brought under Order 51 Rule 3 of the Civil Procedure Rules and “all other enabling provisions of the law”. It is premised on the grounds stated on the face thereof and as already stated, it is supported by the Affidavit sworn by the 1st Petitioner, Sarah Jelimo Boit.
18. In the brief Affidavit, the 1st Petitioner deponed that there is need to consolidate the said parcels of land to enable the Administrators distribute the estate in accordance with the confirmed Grant, that disallowing the Application will make it impossible for the Administrators to do their legal duty properly and that granting the Application will facilitate expeditious disposal of the matter.

Hearing of the 3 Applications

19. It was then agreed that all the 3 Applications, being related, would be heard together and determined in one decision. It was also agreed that the Applications would be canvassed by way of written Submissions. Accordingly, I gave the parties liberty to file and exchange Responses to the respective Applications and thereafter, to also file and exchange written Submissions within the timelines given.
20. However, I have gone through the physical Court file and also the CTS portal and I am unable to find any Responses filed by any party against any of the 3 respective Applications. All I have come across are 2 sets of written Submissions. The 2 Submissions on record are the one filed on 11/01/2024 by Messrs Chemwok & Co. Advocates on behalf of the 1st Petitioner and the one filed on 27/02/2024 by Messrs Yegon & Co. Advocates filed on behalf of the Objectors (including, I believe, the 2nd Petitioner).

Objectors’ Submissions (Filed by Yegon & Co. Advocates)

21. Counsel reiterated the matters already contained in the Objectors’ Supporting Affidavit. These include the contention that the Certificate of Confirmation of Grant is defective and fails to accurately represent the true material facts over the estate, and that the same is marred by defects that undermine its validity and accuracy in representing the estate. He cited the Court of Appeal case of *Matheka and Another vs Matheka* [2005] 2 KLR 455 and also the case of *re Estate of Njagi Kandii (Deceased)* [2019] eKLR. He urged that the principal reason for seeking revocation of the grant is that the Petitioner obtained it by the making of a false statement and/or by the concealment from the Court of something material. He submitted further that the Certificate of Confirmation is a critical legal document that confirms the appointment of Administrators and validates their authority to administer the deceased’s estate. He added that Section 71 of the *Law of Succession Act* specifically outlines the procedure for obtaining the confirmation of a Grant with emphasis that the process ensures the estate administration complies with legal requirements and facilitates fair distribution of assets.
22. Counsel reiterated further that one of the key discrepancies pertains to the inclusion of their late mother, Hellen Kikwai Boit, as a beneficiary, that this inclusion is factually inaccurate as the late mother passed away around the same time as their deceased father, that therefore her status as a beneficiary is erroneous and misrepresents the true composition of the estate. He also cited Section 29 of the *Law of Succession Act*, which, he submitted, gives a clear definition of who a “dependant” is. He also reiterated the inaccuracies in the description of properties listed in the Grant, including parcels of land and other assets, inclusion of properties not registered in the name of the deceased or which are co-



owned, inclusion of a property which is the subject of a Court case at the Environment and Land Court at Kapsabet, giving of false descriptions, size and representation of some properties, wrongly severing properties into several descriptions, giving wrong registration number for a Tractor Massey Ferguson and giving ambiguous descriptions on how the shares are to be distributed. According to Counsel, the defectiveness of the Certificate is so loud and cannot go unnoticed. He cited the case of *Tirus Mwaniki Njiru v Jane Igandu* [2021] eKLR. He urged that the cited misrepresentations and concealment of material facts distorts the true nature and extent of the estate, potentially impacting the rights of beneficiaries, that the anomalies in the Certificate of Confirmation is also witnessed in the mix-up in the wrong manner in which the names of some of the beneficiaries are captured. He reiterated that, for instance, the beneficiary known as “Johana Kipkemboi Boit” has been listed down as “Johana Kipyego Boit”. He maintained that the Certificate must accurately reflect the true material facts and representations to ensure fairness and transparency, and that any defects or inaccuracies therein may render it null and void thereby necessitating its revocation.

23. Counsel reiterated that the Objectors were completely excluded from any consultative decision-making process about the distribution of the estate, that the Petitioner, acting unilaterally, assumed sole authority in determining the mode and manner of property distribution effectively side-lining the Objectors from any meaningful involvement in the process contrary to the aforesaid Section 71 of the *Law of Succession Act* which explicitly stipulates the rights of beneficiaries to participate therein, and that failure to adhere to this statutory provision constitutes a grave violation of the beneficiaries' rights.
24. He urged that the Objectors were best placed to give descriptions of their estate properties since they are actively residing and utilizing significant portions thereof being legitimate beneficiaries, that the discrepancies, inconsistencies, errors and concealment of material facts appearing in the Grant as cited above, were as a result of deceitful and malicious side-lining of the Objectors from the Succession proceedings. He cited the case of *Re Estate of Moses Wachira Kimotho (Deceased) Succession Cause 122 of 2002* [2009] eKLR. Counsel submitted that this Court has the jurisdiction to revoke and/or annul the Grant, that Article 159 of *the Constitution* gives this Court the powers to exercise its inherent jurisdiction and that Rule 73 of the Probate and Administration Rules also emphasizes that “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”. He submitted that revoking/annulling the Certificate of Confirmation alone is not viable. He also cited the case of *Estate of Kipkorir arap Chebogoioy (Deceased)* [2021] eKLR and urged the Court to revoke both the Certificate of Confirmation of Grant and the Grant.

Determination

25. It is evident that the issues that arise for determination herein are the following:
 - a. Whether the Grant issued herein, including its subsequent confirmation, should be annulled and revoked.
 - b. Whether the parcels of land comprising the estate should be consolidated for purposes of ease of sub-division and allocation to the individual beneficiaries.
26. I will first address the 1st and 2nd Applications, both which seek revocation of the Grant, since determination thereof shall have a direct bearing on the 3rd Application.
27. 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.”

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

29. On this 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.”

30. In this case, it is not in dispute that there are 11 survivors of the deceased. These are as listed in the Chief’s letter that was relied upon at the time of applying for the Grant. While the deceased died on 18/08/2015, in an unfortunate coincidence of family tragedy, his wife (mother to the beneficiaries) had also died 5 days earlier, on 13/08/2015. It is said that the two were even buried on the same day. The mistake apparent in the Chief’s letter is that although the deceased’s wife had already died as aforesaid, the letter still named her as one of the heirs to the estate. The Chief therefore erroneously listed 12 survivors, instead of 11.
31. I however notice that the consent to the Petition (Form 38) is signed by 12 family members, including the deceased’s wife who as aforesaid, pre-deceased her husband by 5 days. The consent also bears the signatures of all the Objectors herein and I have not heard any of them allege that their signatures were forged or that they were misled into appending the same. In the absence of any denial by the Objectors of signing the consent, I therefore believe it is safe to presume that they did sign the same, knowingly and voluntarily.
32. This brings me to the other interesting aspect that I have noted herein, namely, that while the deceased died on 18/08/2015 as aforesaid, the Petition and all pleadings attached thereto bear the date of 4/03/2015, a date more than 5 months earlier. It appears therefore that the same were prepared in advance, before the deceased passed away. Since none of the Objectors has cast any aspersions on this pre-dating of the Petition and since none has disowned his/her signature appearing in the said consent (Form 38) filed with the Petition, I do not want to speculate or finger the pre-dating as a possible act of fraud. I may however be allowed to assume that the pre-dating may have been done out of the realization and prediction that considering his age (93 years old) and his state of health, the deceased would not survive for long. This might also explain why the signature of his wife (beneficiaries’ mother), though she had pre-deceased her husband, still appeared in the consent as one of the survivors.
33. The above observations, particularly the inclusion and/or appearance of the Objectors’ signatures in the consent (Form 38), paints the Objectors as being dishonest in their claim that they were never made aware of the commencement of the Succession proceedings. The observation severely weakens their prayer that the Grant of Letters of Administration be revoked. The evidence fully points to their knowledge and involvement in the process.
34. The more surprising “turn-around” is however the one displayed by the 2nd Petitioner-Administrator, Wilson Kimaru Boit, who as aforesaid, has now broken ranks with the 1st Petitioner-Administrator and joined the “opposition”. His signature appears in both the Petition and the Supporting Affidavit thereto as a co-Petitioner and he has not disowned the signature appended in the presence of and/or witnessed by a Commissioner for Oaths. Indeed, his name appeared in the Notice of Advertisement of the Petition as a co-Petitioner and eventually appeared in the Grant as co-Administrator. He, too, has not alleged that the signature is a forgery or that he was misled into signing the documents. Despite all this, and without giving any explanation to the contrary, he, too, joins the bandwagon to claim that he was not aware of the Succession proceedings. Under these circumstances, it is beyond me how the 2nd



- Petitioner expects the Court to take him seriously. He should know that perjury is a criminal offence and that he might also be cited for contempt of Court.
35. For the above reasons, I find no reason to revoke the Grant of Letters of Administration dated and/or issued on 14/06/2016.
 36. Regarding the prayer for revocation of the Certificate of Confirmation of the Grant issued on 7/11/2018, I note that the Summons for Confirmation leading thereto was filed on 11/07/2018. The Affidavit in support thereto is only sworn and signed by the 1st Petitioner. There is no indication of the 2nd Petitioner's consensus thereto. There is also no consent (Form 37) on record, signed by the other survivors, attached to the Summons to signify their agreement with the proposed mode of distribution put forward by the 1st Petitioner in her Supporting Affidavit. Despite this "absence", I note that in her said Affidavit, the 1st Petitioner deponed that out of the 11 survivors, 7 (including herself) did sign the alleged Form 37 signifying their acceptance of the 1st Petitioner's proposed mode of distribution and that 4 did not sign as they held a different opinion and position on the mode of distribution. As aforesaid however, the alleged Form 37 claimed to have been signed by the 7 survivors is nowhere on record.
 37. What is however evident is that that the 4 survivors whom the 1st Petitioner claimed to have declined to sign the Form 37 are the same Objectors herein (2nd Petitioner and the 1st, 3rd and 4th Objectors). For this reason, I find the accusation made against the 1st Petitioner that allegedly she never involved the Objectors of the Summons for Confirmation of the Grant to be unfair and most probably, untrue. To her credit, she did disclose in her Affidavit that the Objectors held contrary opinions on the mode of distribution and that they had thus declined to sign the Form 37. Hers was to make this disclosure and then leave it to the Court to give directions thereon. How then can she be accused of non-disclosure or concealment of material facts?
 38. Regarding the 2nd Objector, Joseph Kipketer Boit, I notice that the 1st Petitioner had included him in her list of the 7 survivors whom she had claimed to have signed the however "non-existent" Form 37 and as therefore being one of the survivors who were in agreement with her proposed mode of distribution.
 39. I have also perused the Court file and noted that the hearing of the Summons for Confirmation of Grant was conducted on 5/09/2018 before L. Kimaru J (as he then was). The Court record indicates that on that date, the 7 survivors (including the 1st Petitioner and the 2nd Objector, Joseph Kipketer Boit) whom the 1st Petitioner had listed in her Affidavit as having signed the Form 37 and as therefore being in agreement with the 1st Petitioner's proposed mode of distribution, all attended Court and were identified by way of their respective National Identity Cards. As regards the 2nd Objector, Joseph Kipketer Boit, there is no indication before me that he has at any time denied attending Court on the said date and communicating his consent to Kimaru J (as he then was) accepting confirmation of the Grant as per the mode of distribution proposed by the 1st Petitioner. Under these circumstances, and unless he has been fraudulently included herein as an Objector without his knowledge or consent, I find the 2nd Objector to be blatantly dishonest and warn him that he risks dire consequences should he continue taking the Court for granted by advancing false narratives of this nature. The Court is not at all amused by the 2nd Objector's inexplicable flip-flopping conduct.
 40. Regarding the 4 "unwilling survivors" who were absent from Court on the date of hearing of the Summons for Confirmation before Kimaru J, there was an Affidavit of Service sworn by a Process Server by the name Vincent Ogotu filed in Court on 5/09/2018 indicating that the Objectors had all



been respectively served with the hearing notices. The Judge, upon perusing the Affidavit, was satisfied that service had indeed been effected. This is what the Judge is recorded to have stated:

“Order

Since the other beneficiaries who have declined to sign the consent to distribute have been served to attend Court and have failed to do so, the Grant of Letters of Administration intestate issued on 14/12/2016 is hereby confirmed. The estate of the deceased shall be distributed in accordance with para. 11 and 27 and 28 of the Affidavit of Support”

41. I believe that before filing the Summons for revocation herein, the Objectors and/or their Advocates, as a matter of basic diligence, took time to peruse the Court file to ascertain how the proceedings were conducted. They are therefore presumed to be aware of the proceedings as recounted above, including the existence of the Affidavit of Service referred to. In light thereof and considering the record of the proceedings as recited above, and there being no challenge raised against the correctness of the matters deponed in the Affidavit of Service, not even a request to cross-examine the Process Server, it is clear that there is no justification for the prayer that the Certificate of Confirmation of Grant be revoked on the purported ground that the Objectors were unaware of the proceedings leading thereto.
42. I also observe that apart from simply complaining about the process or procedure through which the confirmation of the Grant was conducted, the Objectors have not alleged any serious disagreement with the mode of distribution itself or the manner of allocation of shares as appears in the Certificate. None of them has alleged that he has been excluded from the distribution or that for instance, the share allocated to him/her is insufficient or discriminatory or that other beneficiaries have been favoured over others. The Objectors appear to only want to have the Grant revoked, not for any genuine benefit or to preserve or protect the estate, but simply for the sake of it. If so, then sorry, this Court will not allow itself to be used as a ground for settling sibling ego battles or superiority wars between members of the family of the deceased.
43. Further, having found that the Objectors were aware of the Succession proceedings and are just simply feigning ignorance, I find that there has been an inordinate delay to seek revocation of the Grant. The same was confirmed on 5/09/2018 and the Certificate of Confirmation issued 2 months later on 7/11/2018. The present Applications were then filed on 9/10/2023 and 12/10/2023, respectively, about 5 years later. The Objectors have not bothered to explain this obvious inordinate delay. 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. 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 time 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”.



44. 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
45. Like the said Judges, I, too, find in this case, that revocation of the Grant, if allowed at this late stage, will severely prejudice the estate as it will unnecessarily send all concerned parties back to square one, without any just cause. Indeed, “equity aides the vigilant and not the indolent”.
46. In any event, looking at the manner in which the estate was distributed, I find no prejudice caused to the Objectors at all. It is clear that each beneficiary’s name appears against each property as a joint owner. As it stands, all the beneficiaries are listed as joint owners of all the estate properties. At least for the respective parcels of land, each beneficiary has been allocated an equal 13.6 acres each. What they still have to do however is to agree on physical identification of the exact portions on the parcels of land after which the process of survey and sub-division will follow. For this reason, I would term the distribution that was done as being “inconclusive” since it seems the final distribution is yet to be agreed upon. What the distribution seems to have achieved is to transmit the properties from the name of the deceased into the names of all his children jointly, as co-owners. It is therefore clear that the beneficiaries still need to sit down and agree on outstanding matters. In the circumstances, it is this exercise that the beneficiaries (including the Objectors and the Petitioner) need to embark on to finalize the estate, not to insist on revocation of the Grant which will serve no useful purpose.
47. On a separate note, the Objectors strenuously submitted that one of the key discrepancies in the Grant pertains to the inclusion of their late mother, Hellen Kikwai Boit, as a beneficiary. They are no doubt right in arguing that this inclusion of their mother is inaccurate since, as aforesaid, their late mother passed away 5 days before their father. There is no doubt that their late mother’s name needs to be removed from the Grant as a beneficiary. The Objectors also pointed out various inaccuracies in the description of properties listed in the Grant, including parcels of land and other assets. They cited, for instance, inclusion of properties not owned by the deceased, giving of wrong size and representation of some properties, wrongly naming portions of properties as if they were full properties in their own right, giving wrong registration number for a Tractor Massey Ferguson and also giving ambiguous descriptions. The Objectors also pointed out some anomalies in the names of some of the beneficiaries. To my mind these are matters that do not necessarily warrant the revocation of the Grant and can be easily addressed and corrected by way of Review or Rectification or amendment of the Certificate of Confirmation, even by consent of the parties.
48. The same applies to the prayers made in the 3rd Application, namely, the 1st Petitioner’s undated Notice of Motion but filed in Court on 15/11/2023. The prayer seeks that the estate parcels of land be consolidated to facilitate accurate and ease of sub-division and allocation of portions thereof to the beneficiaries as set out in the Certificate of Confirmation. If it is concluded that that this Probate Court, and not necessarily the Environment & Land Court, possesses the jurisdiction to determine that prayer, then the same, I believe, can also be easily handled under Review or Rectification or amendment of the Certificate of Confirmation.



Final Orders

49. The upshot of my findings above is that I make orders as follows:
- i. The Objectors' Summons dated 9/10/2023 and 12/10/2023, respectively, are both dismissed
 - ii. The Objectors shall, within a period of 21 days from the date hereof, agree on and nominate one of them to be appointed a joint or co-Administrator to the 1st Petitioner.
 - iii. After appointment of the said co-Administrator, this matter shall be referred to Court annexed Mediation to assist the beneficiaries to explore an amicable settlement agreement on the outstanding matters, including agreeing on the correct identification and list of the estate properties, the possible Review, Rectification or amendment of the Certificate of Confirmation to address and/or correct the wrong descriptions and errors appearing thereon, and also agree on final identification and distribution of the beneficiaries' specific shares.
 - iv. For the above reasons, the 1st Petitioner's undated Notice of Motion, filed on 15/11/2023 is hereby held in abeyance pending outcome of the Court annexed Mediation.
 - v. This being a family matter, each party shall bear its own costs of the Objectors' Summons dated 9/10/2023 and 12/10/2023.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 6TH DAY OF NOVEMBER 2024

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WANANDA J. ANURO

JUDGE

Delivered in the presence of:

Munyoroku h/b for Yegon for Applicants

Chemwok for Petitioner

Court Assistant: Brian Kimathi

