



In re Estate of Jonah Kipsang Ngeno (Deceased) (Succession Cause E53 of 2021) [2024] KEHC 15381 (KLR) (5 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15381 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE E53 OF 2021
JK SERGON, J
DECEMBER 5, 2024**

IN THE MATTER OF THE ESTATE OF JONAH KIPSANG NGENO (DECEASED)

BETWEEN

**GILBERT KIPRONO SANG 1ST OBJECTOR
RICHARD KIPKEMOI SANG 2ND OBJECTOR
KENNETH KIPROTICH SANG 3RD OBJECTOR
ROBERT KIBET SANG 4TH OBJECTOR
NANCY CHEPKEMOI MARITIM 5TH OBJECTOR**

AND

**ERICK KIPYEGON SANG 1ST RESPONDENT
CHEROTICH VIVILINE 2ND RESPONDENT**

RULING

1. There are two applications coming up for determination: a summons for revocation of grant dated 21st June, 2024 and a chamber summons dated 20th September, 2024.
2. In the summons for revocation of grant dated 21st June, 2024, the applicants seeking the following orders;
 - (i) Spent
 - (ii) That this Honourable Court be pleased to summon Erick Kipyegon Sang, David Kipkoech Rotich, David Kipngetich Koech, Daniel Mutai, Simon Koech, Charles Mutai, Beatrice Tanui, Gladys Ngetich, Erick Togom to appear before this court for cross examination in respect of the estate of the deceased.



- (iii) That this Honourable Court be pleased to revoke confirmation of grant dated 12th October, 2023.
 - (iv) That the application in protest against confirmation of grant dated 22nd May, 2023 be reinstated and heard on merit.
 - (v) That the costs of this application be provided for.
3. The application is supported by the grounds on the face of it and the supporting affidavit of Richard Kipkemoi Sang the 2nd Objector/Administrator herein with consent of the 1st, 3rd, 4th and 5th Objectors.
4. He avers that the Objectors filed an affidavit in protest to the confirmation of grant dated 22nd June, 2023, however the Respondents did not respond to the affidavit of protest within the timeframe provided by the law. He avers that this court issued directions on 4th July, 2023 directing the parties to file and serve written submissions and that he and the co-objectors were surprised to learn about the existence of a supplementary affidavit dated 20th July, 2023 on the face of the judgment delivered on 12th October, 2023 which led to the issuance of confirmation of grant dated 12th October, 2023. He contended that they were not served with the supplementary affidavit dated 20th July, 2023 and that this court did not grant leave for the said affidavit to be filed out of time.
5. He avers that the confirmation of grant dated 12th October, 2013 violates the wishes of the deceased. He avers that since the affidavit sworn on 20th July, 2023 as sworn by Erick Sang misled this court, there is need to cross examine him alongside other witnesses. He further avers that he and the co-objectors rely on the sworn affidavit dated 8th April, 2024 by Erick Togom who recorded a conversation of the deceased. They were also relying on the sworn affidavit dated 19th February, 2024 by Daniel Kikwai Mutai in respect of how the deceased transferred land to Simion Arap Koech (husband to the late sister Jane Chemutai Koech).
6. He avers that this court should revoke the confirmation of granted dated 12th October, 2024 and issue a new confirmation of grant which reflect the wishes of the deceased and/or consent of the parties.
7. In the chamber summons dated 20th September, 2024 the applicants therein Erick Kipyegon Sang and Viviline Cherotich Ngeno who are administrators of the estate of the deceased are seeking the following orders;
 - (i) Spent.
 - (ii) That an order do issue directing the Deputy Registrar of this Honourable Court to execute mutation and transmission forms and any other necessary documents necessary for effecting final distribution of the estate of the deceased in compliance with certificate of confirmation dated 12th October, 2023.
 - (iii) That necessary directions do issue.
 - (iv) That costs of this application be provided for.
8. The application is supported by grounds on the face of it and the supporting affidavit of Viviline Cherotich Ngeno, one of the administrators of the estate of the deceased.
9. She avers that a grant of letters of administration intestate was granted to her in respect to the estate of the deceased alongside other petitioners on 11th March, 2022 and confirmed on 12th October, 2023. She avers that soon after confirmation she alongside the beneficiaries of the estate took steps to implement the certificate of confirmation, however, Gibert Kiprono Sang and Richard Kipkemoi Sang



the Respondents thereon remained uncooperative and reluctant despite repeated requests to facilitate the final distribution of the estate.

10. She avers that in light of the Respondent refusal to consent and persistent efforts to frustrate the final distribution of the deceased's estate, she filed chamber summons dated 19th september, 2023 seeking further orders to implement the confirmed grant and this court vide a ruling delivered on 20th June, 2024 allowed the application and directed the Respondents to execute mutation forms and transfer forms for purposes of effecting final distribution of the estate in compliance with the certificate of confirmation dated 12th October, 2023.
11. She avers that the Respondents in utter defiance of the court orders refused to sign the aforesaid forms in abid to stall the final distribution of the estate, which necessitated the application of further orders to facilitate the final distribution of the estate of the deceased.
12. Gibert Kiprono Sang and Richard Kipkemoi Sang Respondent thereon filed grounds of opposition to the application dated 20th September, 2024 based on the following grounds;
 - (i) That a similar application had been made by the applicants in their application dated 19th December, 2023, which application had been heard and determined hence the same is res judicata and therefore the instant application is barred by operation of statute.
 - (ii) That the application seeking for order directing the Deputy Registrar of the Honourable Court to execute the mutation and transmission forms is frivolous and premature for the following reasons;
 - (a) The Respondent's application dated 31st January, 2024 that sought for review of the court's judgment dated 12th October, 2023 is yet to be heard and determined;
 - (b) The Respondent's application dated 21st June, 2024 that sought for stay of the court ruling and orders issued on 20th June, 2024 is pending hearing and disposal of the Respondent's application for revocation of confirmation of grant dated 12th October, 2023.
 - (iii) That the application is an abuse of court process and the intention of the applicants is to avoid the contested portions of land to wit Kericho/Chepsir/13, Kericho/Chepsir 52, Kericho/Kipkelion/Chepseon Block 4/123, Nakuru /Molo/Ikumbi Block 6/19 (Set Kabor) and Kericho Municipality 631/IV/20 Tengecha from being subjected to hearing and oral evidence and in doing so thereby overturn the wishes of the deceased who had settled all his children appropriately in their respective parcels of land.
 - (iv) That the clan of the deceased had met with family members severally and given their view with regards to the wishes of the deceased in respect to his children and their entitlement over his estate and attached copies of the minutes of the said minutes.
 - (v) That some property and their mode of distribution were not disclosed and/or included in the distribution schedule in the grant and therefore the grant ought to be revoked under section 76 of the *Law of Succession Act* and a new one issued which reflects the wishes of the deceased or consent of beneficiaries.
13. This court directed the parties to exchange and file their written submissions.
14. The Applicants submitted contended that the judgment of this court and the certified court proceedings have errors, they produced an excerpt of the judgment of this court, which I will reproduce in verbatim "(c) The Affidavit of Protest against Confirmation of Grant dated 26th June, 2023 is dismissed." The Applicants contended that the affidavit of protest against confirmation of grant is



dated 22nd May, 2023 whereas the affidavit dated 26th June, 2023 is an affidavit proposing the mode of distribution filed in compliance with the directions of this Court on 19th June, 2023. The Applicants contended that this court considered a supplementary affidavit dated 20th July, 2023 which was filed without leave of the court and therefore argued that the errors on the face of the record warranted revocation of the grant issued by this court.

15. The Applicants conceded that they did not produce any documentary evidence in support of the assertion that the deceased held meetings and distributed his property prior to his demise, however, they maintained that the deceased had distributed his property in his lifetime, documentary evidence notwithstanding. They cited the case of *Cecelia Chepkemboi Sangutet v Kiplanagt Arap Tonui* (2018) eKLR where the court held that; “the law is that if a deceased person had distributed his or her property in his lifetime, such distribution should be respected, however, such wishes must be demonstrably clear, and can only be so through oral or documentary evidence before the Court...” The Applicants contended that they were privy to the existence of oral evidence in respect to the wishes of the deceased.
16. The Applicants reiterated that the application dated 20th September, 2024 is res judicata as the 1st and 2nd Respondents were seeking an order they had previously sought in their application dated 19th December, 2023 which I wish to reproduce as follows; “THAT an order do issue directing the Deputy Registrar of this Honourable Court to execute mutation and transmission forms and any other necessary documents necessary for effecting final distribution of the estate of the deceased in compliance with certificate of confirmation dated 12th October, 2023.” The applicant contended that this court delivered its ruling on 20th June, 2024 in respect to the application dated 19th December, 2023, hence, the subject prayer was determined by this court and that the same is now res judicata pursuant to section 7 of the *Civil Procedure Act*.
17. The 1st and 2nd Respondents submitted that whereas it is the Applicants’ argument that grant issued violated the wishes of the deceased and therefore the grant ought to be revoked and a new one issued which reflects the wishes of the deceased or consent of beneficiaries, the 1st and 2nd Respondent maintained that this court issued the certificate of confirmation of grant upon ascertaining and being satisfied with the identities and shares of each beneficiary had been ascertained.
18. The 1st and 2nd Respondents submitted that the Applicants participated in the succession proceedings all along and therefore the Applicants contention that the were denied a chance to response to the supplementary affidavit is false, this Court gave the parties involved a chance to submit on the various modes of distribution and make oral submissions in respect to their respective positions before it delivered judgment.
19. The 1st and 2nd Respondents contended that the application for revocation is an abuse of court process as the applicant had not established any of the grounds set out in section 76 of the *Law of Succession Act* and cited the court of appeal in the case of *Matheka and Another vs Matheka* [2005] 2 KLR 455 where the court of appeal laid down the following guiding principles.
 - i. A grant may be revoked either by application by an interested party or by the court on its own motion.
 - ii. Even when revocation is by the court upon its own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or



that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.”

20. The 1st and 2nd Respondents reiterated that the summons for revocation was intended to delay and/or frustrate the final distribution of the deceased’s estate, thereby necessitating the application dated 20th September, 2024 seeking for further orders to facilitate implementation of the certificate of confirmation of grant.
21. I have considered the applications, grounds of opposition and submissions by the parties and I find that the issue (s) for determination are whether to revoke the certificate of confirmation dated 12th October, 2023 and whether to direct the Deputy Registrar of this Honourable Court to execute mutation and transmission forms and any other necessary documents necessary for effecting final distribution of the estate of the deceased in compliance with certificate of confirmation dated 12th October, 2023.
22. On the issue as to whether to revoke the certificate of confirmation dated 12th October, 2023 it is the Applicants’ argument that the grant issued violated the wishes of the deceased and therefore the grant ought to be revoked and a new one issued which reflects the wishes of the deceased or consent of beneficiaries. The Respondents contended that the summons for revocation has not established any of the grounds set out in section 76 of the Law of Succession Act, thereby warranting revocation of grant. The Respondents maintained that this court issued the certificate of confirmation of grant upon ascertaining and being satisfied that the identities and shares of each beneficiary had been ascertained. The Respondents argued that all participated in the succession proceedings and this Court gave the parties involved a chance to submit on the various modes of distribution and make oral submissions in respect to their respective positions before it delivered judgment. It is the finding of this court that summons for revocation of grant to disclose any of the grounds set out in section 76 of the Law of Succession Act. Section 76 was clearly expounded on by the court In re Estate of Prisca Ong’ayo Nande (Deceased) [2020] eKLR it was stated that: “ 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.” In the case of Albert Imbuga Kisigwa v Recho Kavai Kisigwa [2016] eKLR the court observed as follows; “Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest



of justice.” This court gave the beneficiaries a chance to submit on the various modes of distribution and make oral submissions in respect to their respective positions before it delivered a well reasoned judgment dated 12th October, 2023. This court having delivered its decision and issued a certificate of confirmation is hereby rendered functus officio.

23. On the issue as to whether to direct the Deputy Registrar to execute mutation and transmission forms and any other necessary documents necessary for effecting final distribution of the estate of the deceased. The Applicants argued that the application dated 20th September, 2024 is res judicata as the 1st and 2nd Respondents were seeking to have the Deputy Registrar execute mutation and transmission forms and any other necessary documents necessary for effecting final distribution of the estate of the deceased, an order they had previously sought in their application dated 19th December, 2023. The Respondent submitted that the Applicants have persistently undermined all efforts to facilitate the final distribution of the estate of the deceased, thereby necessitating the application dated 20th September, 2024 seeking for further orders to facilitate implementation of the certificate of confirmation of grant. This court has considered the ruling in respect to the application dated 19th December, 2023 and wishes to reproduce the orders granted as follows; (iii) Gilbert Kiprono Sang (3rd administrator) and Richard Kipkemoi Sang (4th administrator) are ordered and directed to execute the mutation and transfer forms for the purpose of effecting final distribution of the estate in compliance with the certificate of confirmation of grant dated 12th October, 2023. In light of the foregoing, it is clear that this court, having considered the subject prayer and rendered its decision in the application dated 19th December, 2023, is precluded from entertaining the application dated 20th September, 2024.
24. Consequently, the summons for revocation of grant dated 21st June, 2024 and the Chamber Summons dated 20th September, 2024 are devoid of merit they are ordered dismissed with each party bearing their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 5TH DAY OF DECEMBER, 2024.

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Langat

Kipkorir holding brief for Miss Sang for 1st and 2nd Administrator

Richard Kipkemoi Sang – Present in Person

