



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Kiprotich Kipkirong Rugut (Deceased) (Probate & Administration  
48 of 2021) [2024] KEHC 15303 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15303 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
PROBATE & ADMINISTRATION 48 OF 2021**

**JR KARANJA, J**

**DECEMBER 5, 2024**

**IN THE MATTER OF THE ESTATE OF KIPROTICH KIPKIRONG RUGUT:::DECEASED**

**RULING**

1. The subject grant of letters of administration intestate respecting this estate of the Late Kiprotich Kipkirong Rugut [deceased] who died on 16<sup>th</sup> May 2012 was issued on the 2<sup>nd</sup> October 2014 to Nelly Jeptum Rugut [Petitioner] and after an inordinate long period of time the summons for confirmation of grant was taken out on the 28<sup>th</sup> October 2020 in which it was proposed that the sole estate property being Land Parcel No. Nandi/Kilibwoni/555 be shared between the Petitioner, her step mother Grace Jepkesi Rugut [Objector] and a daughter of the deceased named Lilian Chebet.
2. It was indicated that the deceased was survived by the Petitioner and her siblings as well as his second widow. Suffice to say that the deceased was a polygamous intestate with two houses.  
At the hearing of the summons for confirmation of grant the Objector filed an affidavit of protest against confirmation of grant dated 5<sup>th</sup> May 2023.
3. The court directed that the protest be disposed of by way of affidavit evidence and written submissions. In that regard, the Objector filed her submissions on 22<sup>nd</sup> September 2023 through Maiyo Jesang and Company Advocates. Her averments alludes to the grant having been obtained fraudulently by the Petitioner even though what is being dealt with herein is a protest to confirmation of grant rather than an application for revocation and/or annulment of grant. However, there is a suggestion that some of the beneficiaries of the estate would be disinherited if the grant is confirmed in the manner proposed by the Petitioner.
4. Simply put, the Objector is saying that some of the beneficiaries will be omitted from the distribution of the estate property much to the benefit of the Petitioner, should the grant be confirmed at this juncture. The protest does not make any proposal as to how the estate property ought to be shared amongst the true beneficiaries.
5. The Petitioner opposed the protest and filed her submissions in that regard through Kipkosgei Choge and Company Advocates. Learned Counsel, Mr. Choge, in a statement from the bar informed the



court that the Petitioner is since deceased and that the process of substituting her with any other person as the administrator of the estate is ongoing. Accordingly, it was submitted that Section 47 of the Succession Act and Rule 73 of the Probate and Administration Rules would be the most appropriate in the circumstances in order that a new administrator be appointed to replace the deceased Petitioner/ Administrator.

6. However, the issue here is whether the grant obtained by the deceased Petitioner ought to be confirmed in the manner proposed in paragraph [9] of this Petitioner's supporting affidavit dated 28<sup>th</sup> October 2020. Section 71 of the Law of Succession Act provides for confirmation of grants after the expiration of a period of six months in order to empower the distribution of the estate of a deceased person.
7. The present application for confirmation of the grant was made by the Petitioner prior to her demise and in the absence of a substitute administrator the application cannot be granted post humously in the favour of the deceased administrator. It would have been prudent if the application were to be withdrawn instead of allowing it to reach the hearing stage before substitution of the deceased Petitioner.
8. In any event, the impugned grant and the summons for confirmation of grant abated with the demise of the sole Petitioner thereby rendering the protest by the Objector moribund and unsustainable in the circumstances. However, given that the deceased had two wives and several children inclusive of the deceased Petitioner and that the Objector was the surviving widow it would be fair and just for this court to issue a fresh/ new grant respecting the estate of the deceased to the Objector and the surviving eldest daughter of the deceased, Lilian Chebet.
9. The two become the new joint administrators of the deceased's estate with orders to ensure that the new grant is confirmed within a period of Six [6] months from this date hereof or any shorter period that they may deem necessary. A date will be fixed for mention of the matter for status appraisal and/ or further orders.

Orders accordingly.

**DELIVERED AND DATED THIS 5<sup>TH</sup> DAY OF DECEMBER 2024**

**J. R. KARANJAH,**

**JUDGE**

