



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kipkoech Arap Mosonik (Deceased) (Succession Cause
20 of 2017) [2025] KEHC 13289 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13289 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 20 OF 2017
JK NG'ARNG'AR, J
SEPTEMBER 29, 2025
IN THE MATTER OF THE ESTATE OF KIPKOECH ARAP MOSONIK (DECEASED)**

BETWEEN

JOSEPH KIPSANG KOSKE OBJECTOR

AND

SAMWEL CHERUIYOT KOECH PETITIONER

RULING

1. The Petitioner petitioned for Letters of Administration Intestate for the estate of Kipkoech Arap Mosonik on 16th March 2017. He petitioned in his capacity as the deceased's son and the deceased's estate was known as Kericho/Chemagel/1531.
2. A Grant was issued to the Petitioner on 14th February 2018. The Petitioner then filed Summons for Confirmation of the Grant on 8th December 2020 together with his proposed mode of distribution. A Certificate of Confirmation of Grant was issued by this court on 6th July 2021.
3. The Objector filed the present Summons for Revocation of Grant dated 11th March 2022. The Objector wanted the Grant to be revoked and a fresh Grant be issued in his name.

The Objector's case

4. Through his Supporting Affidavit dated 11th March 2022, the Objector stated that the suit land (Kericho/Chemagel/1531) had been sold to his late father by the deceased and that the area Chief and Village elders were aware of the sale. That his late father took possession of the suit land and developed it. The Objector further stated that his family had been residing on the suit land for the last 20 years.
5. It was the Objector's case that the Petitioner colluded with the area Chief to conduct succession proceedings without their participation, input and inclusion. That the Petitioner was in the process



of acquiring Title Deeds. It was the Objector's further case that the Petitioner failed to inform the court that the Objector was a purchaser and a liability to the estate. That the Petitioner's process of confirming the Grant was actuated by malice and fraud.

6. The Objector stated that the Petitioner intended to disinherit them.
7. Through his written submissions dated 29th April 2025, the Objector submitted that they had lived on the suit land peacefully and uninterrupted since his later father took possession. That the Petitioner fraudulently obtained the Grant by material non-disclosure. He relied on section 76 of the Law of Succession Act, Re Estate of Julius Chokera Mbogo (Deceased) (2012) eKLR and Re Estate of Laban Kagai (Deceased) (2017) eKLR.
8. The Petitioner did not file a response to the present Application despite being directed to do by this court as way back as 14th June 2022. I have carefully gone through the court record and I have confirmed that the Petitioner had been served severally by dint of the Affidavits of Service on record. The Petitioner did not also file his written submissions despite being directed by this court to do so. The net result of the above is that the present Application was unopposed.
9. Having gone through the record, the Summons For Revocation dated 11th March 2022 and the Objector's written submissions dated 29th April 2025, the sole issue for my determination was whether there were sufficient grounds to revoke the Grant dated 14th February 2018.
10. The law on revocation of Grants is provided for in Section 76 of the Law of Succession Act which states that: -

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.
11. In the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] KEHC 7143 (KLR), Achode J. (as she then was) observed: -

“The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party



or on the court's 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 making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

12. Similarly, Mwita J. in *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] KEHC 1528 (KLR) held: -

“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 wrong doing 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 interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

13. In regards to unopposed Applications, the Supreme Court of Kenya in *Konchellah v Sunkuli & 2 others* [2018] KESC 58 (KLR) held: -

“.....It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter.....” (Emphasis mine)

14. The Objector stated that the Petitioner obtained the Grant fraudulently as he did not inform the court that the deceased's estate had a liability. That the deceased had sold the suit land to his late father and that they had been in occupation of the suit land for the last 20 years. I have looked at the Petition for Letters of Administration Intestate filed on 16th March 2017 and I have noted that the Objector was not included in the list of beneficiaries. There was also no mention that the suit land had been sold and that the estate had a liability. The same was also not included in the subsequent Summons for Confirmation of Grant dated 26th November 2020.

15. Based on the above, I am satisfied that there was prima facie evidence that the Petitioner concealed this crucial information from this court while obtaining the Grant. Thus, the Grant can only be classified as defective as contemplated under section 76 of the *Law of Succession Act*.

16. In the end, the Grant issued on 14th February 2018 and confirmed on 6th July 2021 is revoked.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 29TH DAY OF SEPTEMBER, 2025.

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HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence of:

Siele/Susan (Court Assistants)

N/A for the Petitioner

Objector: present

