



REPUBLIC OF KENYA



In re Estate of Cicilia Chelangat Keiyo (Deceased) (Succession Cause E008 of 2023) [2025] KEHC 14712 (KLR) (22 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14712 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE E008 OF 2023
JK NG'ARNG'AR, J
OCTOBER 22, 2025**

IN THE MATTER OF THE ESTATE OF CICILIA CHELANGAT KEIYO (DECEASED)

BETWEEN

**ISAAC KIPKEMOI MUTAI 1ST PETITIONER
ANTHONY KIPNGENO BETT 2ND PETITIONER**

AND

**ALEXANDER ROTICH 1ST OBJECTOR
PATRICK NGERECHI 2ND OBJECTOR
JOHN CHEPKWONY 3RD OBJECTOR
ELIZABETH LASOI 4TH OBJECTOR
JOYCE CHESANG 5TH OBJECTOR**

RULING

1. The Petitioners petitioned for Letters of Administration Intestate for the estate of Cicilia Chelangat Keiyo on 2nd March 2023. A Grant was issued in the joint names of the Petitioners on 19th April 2023.
2. The 1st Objector filed the Notice of Motion Application dated 30th May 2023 where he sought among other orders, revocation of the Grant. The Application was brought under Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules, sections 1, 1A, 3, 3A and 63 (e) of the *Civil Procedure Act*, sections 45, 47, 71, 76, 86 and 94 of the *Law of Succession Act* and Rules 44(1), 59(6) of the Probate and Administration Rules. The Application was anchored on the grounds on the face of the Application together with the Supporting Affidavit sworn by John Chepkwony on 30th May 2023.



The 3rd Objector's case

3. Through his Supporting Affidavit dated 30th May 2023, the 3rd Objector stated that he was a nephew to the deceased and the other objectors were his cousins. That the Petitioners concealed material facts and further that they were never summoned to attend court.
4. It was the 3rd Objector's case that this court was misled to confirming the Grant without the input of all the beneficiaries and that the Grant was thus tainted with forgery. It was the 3rd Objector's further case that they had not been served with any summons for confirmation.
5. The 3rd Objector stated that he was apprehensive that the Petitioners would sell, transfer or waste the deceased's estate. That if the orders sought in the Application were not granted, they would suffer substantial loss as the deceased's estate would be wasted.
6. Through his written submissions dated 24th December 2023, the 3rd Objector submitted that the 1st Petitioner had not proved that he was the deceased's husband. That in a meeting held on 3rd February 2018 between Thomas Keiyo family and the 1st Petitioner, it was resolved that the 1st Petitioner had failed to prove that he was married to the deceased under Kipsigis customary culture. The 3rd Objector further stated that it being a traditional marriage, the payment of dowry could not be substantiated and he relied on section 43 of the Marriage Act. That the deceased was unmarried and the 1st Petitioner was an imposter.
7. It was the 3rd Objector's submission that they had satisfied the conditions precedent for granting an injunction. That on the first ground of establishing a prima facie case, the 3rd Objector submitted that the 1st Petitioner together with the Land Registrar Bomet County fraudulently prepared the Transfer of Lease that the 1st Petitioner relied on. It was the 3rd Objector's further submission that they had a valid claim of fraud regarding Bomet Township/335.
8. The 3rd Objector submitted that he demonstrated an irreparable loss which could not be compensated by way of damages. That he was a relative of the deceased and the Petitioners were imposters and their entire claim was anchored on a fraudulently acquired title deed. The 3rd Objector further submitted that the Petitioners may sell or waste the deceased's land. That the Petitioners did not have a good title to the land and the Objectors could not be compensated by damages in ascertainable monetary terms. It was the 3rd Objector's submission that the balance of convenience tilted in their favour.
9. It was the 3rd Objector's submission that the Grant should be revoked. That the Petitioners violated Part VII Rule 26 (1) and 2 of the Probate and Administration Rules. It was his further submission that the Petitioners obtained the Grant without notice to them and they did not consent.
10. The 3rd Objector submitted that he had a legal right to be appointed as the administrator of the deceased's estate and he relied on section 66 of the Law of Succession Act. That the deceased was unmarried during her lifetime and the property she left behind was among her late father's property. He further submitted that he was the deceased's nephew.
11. The Petitioners did not file a Replying Affidavit to the present Application but filed their written submissions dated 19th February 2024. In the said submissions, the Petitioners submitted that the Grant should not be revoked. That the Objectors were the deceased's nephews and nieces and that the present Petition was instituted by the 1st and 2nd Petitioners who were the deceased's husband and nephew respectively. The Petitioners further submitted that the deceased had indicated that she wanted to allocate Bomet Township Plot Numbers 326, 327 and 329 in equal shares.



12. It was the Petitioners' submission that their Petition was supported by the requisite Chief's letter dated 18th January 2023 which confirmed that the 1st Petitioner was the deceased's spouse. That they complied with the provisions of section 51(2) of the *Law of Succession Act* and Rule 7 of the Probate and Administration Rules. It was their further submission that in accordance to section 29 of the *Law of Succession Act*, if a deceased person is survived by a spouse and no children, then no person can claim from the deceased's estate unless they prove that they were maintained by the deceased during her lifetime.
13. The 1st Petitioner submitted that he married the deceased in the year 1994 and cohabited for 28 years. That the Objectors had not pleaded with specificity their purported challenge on his relationship with the deceased and had not led any evidence controverting the 1st Petitioner's position that he was married to the deceased. They relied on *Hottensiah Wanjiku Yawe v Public Trustee* [1976] KECA 1 (KLR).
14. It was the Petitioners' submission that section 66 of the *Law of Succession Act* set out the order of preference of persons entitles to administer a deceased's estate. That as a surviving spouse, the 1st Petitioner ranked in priority against the Objectors. They relied on re estate of *Obedi Ndwiga Rubarita (Deceased)* (2021) eKLR.
15. The Petitioners submitted that the Objectors had not led any evidence to prove that the current proceedings were defective in substance or whether the Grant was obtained fraudulently by making a false statement or whether any facts were concealed. That the Objectors had not produced any evidence of forgery and they asked this court to dismiss the present Application.
16. I have considered the Notice of Motion Application dated 30th May 2023; the Objectors' written submissions dated 24th December 2023 and the Petitioners' written submissions dated 19th February 2024. I have sieved two issues for my determination: -
 - I. Whether there were sufficient grounds to revoke the Grant issued on 19th April 2023
 - II. Whether the 3rd Objector merited the prayer for an injunction

Whether there were sufficient grounds to revoke the Grant issued on 19th April 2023.

17. As I have noted earlier in this Ruling, the present Application was unopposed. However, that does not mean that the court will grant the prayers as prayed. The court has a duty to interrogate the evidence vis a vis the prayers to determine if such prayers are merited. 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.....”

18. In regards to the prayer to revoke the Grant, Section 76 of the *Law of Succession Act* provides: -

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.
19. 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.”
20. The 3rd Objector stated that the Petitioners concealed the fact that there were other beneficiaries (Objectors) to the deceased’s estate. That the Objectors did not consent during the Petition for Letters Intestate. Further, that they were not informed or summoned to court before the Grant was issued.
21. I have looked at the court record and I have noted that Petitioners petitioned this court for Letters of Administration Intestate for the estate of Cecilia Chelangat Keiyo (deceased) on 2nd March 2023. The 1st and 2nd Petitioner stated that they were the deceased’s husband and nephew respectively. I have also seen the Senior Chief’s letter dated 18th January 2023 indicating that the 1st Petitioner married the deceased in the year 1994 under the Kipsigis customary law and further that the deceased had no child. This was prima facie evidence that the 1st Petitioner was married to the deceased.
22. The 3rd Objector challenged the existence of this marriage. It is trite that he who alleges must prove. This meant that the 3rd Objector had to prove that the deceased and the 1st Petitioner were not married. The 3rd Objector’s specific claim was that there was no dowry paid hence there was no marriage.
23. I have keenly gone through the 3rd Objector’s annextures and I have noted that he attached Minutes of a family meeting held on 24th January 2023. I have gone through the Minutes and there was no mention/indication of the 1st Petitioner’s marriage to the deceased. The said Minutes only showed that the 3rd Objector had been chosen to take care of the deceased’s property. By virtue of section 107 of the *Evidence Act*, the 3rd objector did not provide any evidence to support his claim that the 1st Petitioner and the deceased were not married. It is my finding that the 3rd Objector did not discharge his burden of proof and as such his claim remained an allegation.



24. In regards to the claim that the Objectors were not notified or summoned to court before the Grant was issued, I have noted that the Petition was gazetted on 10th March 2023 and the notice invited any objections to the issuance of the Grant to be tabled within 30 days. It is trite law that once a matter has been placed in the Kenya Gazette or a newspaper with national circulation, the parties involved have been notified and served. Accordingly, this claim falls.
25. On the issue of not consenting to the issuance of the Grant, the 3rd Objector stated that he was the nephew of the deceased. The law on the preference of issuing Grants Intestate is found in section 66 of the *Law of Succession Act* which provides: -
- When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—
- (a) surviving spouse or spouses, with or without association of other beneficiaries;
 - (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
 - (c) the Public Trustee; and
 - (d) creditors:
- Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.
26. Section 39 of the *Law of Succession Act* gives the order of priority of people who would administer a deceased's estate in the event the deceased left no spouse or child. It provides: -
- (1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—
 - (a) father; or if dead
 - (b) mother; or if dead
 - (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
 - (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
 - (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.
 - (2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.
27. It is clear from the above that there was an order of preference in terms of persons who would administer a deceased's estate. As I have found earlier in this Ruling, the 3rd Objector did not prove his claim that the deceased and the 1st Petitioner were not married. Based on the prima facie evidence availed to this court, it is my finding that the 1st Petitioner was the deceased's spouse. This then meant that the 1st Petitioner outranked the Objectors as persons entitled to administer the deceased's estate. It



is therefore my further finding that the Objectors had no locus standi in this case and were not entitled to administer the deceased's estate before the 1st Petitioner.

28. By virtue of the Objectors having no locus standi in this case, the prayer for an injunction against the Petitioners cannot issue.
29. Flowing from the above, it is my finding that the Objectors did not meet the grounds stipulated under section 76 of the *Law of Succession Act* to satisfy their prayer for revoking the Grant.
30. In the end, the Notice of Application dated 30th May 2023 has no merit and is dismissed.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 22ND DAY OF OCTOBER, 2025.

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HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence of:

Siele/Susan (Court Assistants).

Kipkorir for the Petitioners/Respondents

Mugumya for the Objectors/Applicants

