

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
PROBATE AND ADMINISTRATION CAUSE NO. 458 OF 2015
IN THE MATTER OF THE ESTATE OF CHERUIYOT CHERONO
KIBUITO - DECEASED

SOLOMON K. CHERUIYOT.....APPLICANT
VERSUS
HARON KIPTARUS CHERONO.....RESPONDENT

RULING

1. By way of Originating Summons dated 4th November 2024, the Applicant seeks the following orders;
 - a. Spent
 - b. That the certificate of confirmation issued to Haron Kiptarus Cherono, on the 11th July 2019, be revoked.
 - c. That costs of this application be provided for
2. The Application is premised on the grounds on the face of it and the averments in the affidavit sworn by Solomon K. Cheruiyot.
3. In his affidavit, he deposed that he is a son of the deceased. He stated that the proceedings to obtain the grant and subsequent certificate of confirmation were defective in substance as the petitioner fraudulently made false statements, and also with the aid of the Chief Lembus/Kabimoi concealed from the court material particular being the fact that the late Cheruiyot Cherono Kibuito had two houses/wives with children who were all entitled

to their share of his estate. He annexed copies of letters from the Chief Kabimoi & Kiambogo Laikipia marked as SKC1 a & b. He urged that the letter of by the Chief Lembus / Kabimoi Location that was issued to the administrator did not list the children of the deceased other than the petitioner, annexing and marking the same as SKC2.

4. The deponent stated that the administrator did not have the interests of the beneficiaries at heart and therefore, he left them out of the other properties of the deceased that are now in the wrong hands and that the beneficiaries have tried to gather the estate and prevent loss and he annexed copies of complainants to various Government agencies marked as SKC4 in this regard. He further stated that they realized that the petitioner had secretly filed the petition at Eldoret High Court in total exclusion of the other beneficiaries and obtained a Certificate of Confirmation a copy of which he annexed as SKC5.
5. The deponent averred that the deceased was domiciled in Laikipia West at the time of his death where he was buried and his properties were in Laikipia West and Eldama Ravine, hence the right Court could have been Nakuru High Court or Nyahururu High Court. Additionally, that the filing of the cause at Eldoret High Court, was thus intended to put off the other beneficiaries from knowing of the existence of the Succession cause. He urged the court to revoke the grant.

Petitioners' Replying Affidavit

6. The Petitioner filed a Replying Affidavit dated 18th February 2025 in opposition to the Application. He averred that the deponent, Solomon K. Cheruiyot, has been less than candid in his averments before court and more specifically on his allegation that in his application the Petitioner has suppressed several pertinent material facts from the court.

7. The deponent stated that the deceased had made his arrangement and organized his affairs when he was alive and this was also reaffirmed by his late mother Kongato Cherono. Additionally, that he had made the following arrangement during his lifetime,
- (a) That the land Ngarua L.R No. 173-Lembus Kongasis Laikipia District shall be given to Albert Kipkisut Cherono and the same was given,
 - (b) That the land Chepkurgei L.R No.110 Lembus Kabimoi was to go to Harun Kiptarus Cherono and the same was given to him.
 - (c) That Solomon K. Cheruiyot was given several cows to sell and buy land at Sagasagik which he did and settled there with his family.
8. He urged that that was the arrangement until the time of the death of the deceased.
9. He stated that during the last customary ceremony of the deceased, in a ceremony called Chaik or Keilikanik, anything belonging to him was shared with the family members including the clan elders and the objector was present. Further, that he had no issue with L.R No. 110 which was stated to belong to Haron Cherono and the deponent. He urged that under the Tugen customary law, the ceremony known as “chaik” or “Keilikanik” is a ceremony usually performed after the death and burial of a deceased and it is at this ceremony that the deceased’ assets and/or properties were usually shared out.
10. The deponent further averred that his mother who took over the estate continued to maintain that arrangement, something she penned it down in writing in her wishes dated 22nd January, 2007, which document was attested

by three witnesses. He annexed and marked as “HKC1” a copy of the said document. He stated that he has lived in the land known as LEMBUS/KABIMOI/110 for several years, peacefully and openly with no objection and/or interruption. He urged that upon the death of their father his mother held the properties of the deceased in accordance with **Section 35 of the Law of Succession Act.**

11.He stated that it is evident that the objector had received his due share of the estate of the deceased. Further, that there is land in Laikipia in which Albert Kipkisut Cheruiyot is settled with his family. That he has already vested himself with a title deed to his land which he annexed and marked as “HKC3”. Urging that he did not arbitrarily acquire the L.R No. Lembus/Kabimoi/110, he produced the minutes of the meeting held on 9th April, 1999 in which the family inheritance was discussed and it was confirmed that the said land belonged to him, annexing and marking the same as “HKC4”.

12.He stated that the application has failed and further, that the long delay and/or indolence herein cannot be explained and/or justified. He pointed out that the objector has not offered an explanation for the same which disentitles him to a remedy, particularly when he has not demonstrated any real or threatened injustice to him or to any other person. He urged that the objection was without merit and prayed for its dismissal.

Applicants’ Further Affidavit

13.The applicant swore a further affidavit dated 17th March 2025 in response to the replying affidavit dated 18th February 2025. He stated that the respondent did not want to admit that he is the last born in their house and the deceased had three houses (wives) with his being the 2nd house. He stated that the contents of paragraphs 4 & 5 of the replying affidavit lack a base upon which

they are made. Nowhere in the said affidavit has the respondent shown how the said properties,

- a) Ngarua L.R NO. 173 - Lembus Kongasis Laikipia District was given to Albert Kipkisut Cherono.
- b) LEMBUS / KABIMOI/ 110 to Harun Kiptarus (Respondent).
- c) Solomon K. Cheruiyot given several cows to sell and buy land at Sagasagik..

14.Further, that even assuming the deceased shared the properties as alleged, the Law of succession requires, the local chief to list all the children/beneficiaries of the deceased in his letter, the children / beneficiaries will then be listed in the probate and administration forms which they will all attest to and give their consent and eventually appear before the Honourable Court during confirmation and individual confirmation that they are agreeable to the proposed mode of distribution of the deceased's estate and whoever does not wish to have a share will renounce his right. That the chief's letter that was used in filing this matter is wanting as the said chief states that the deceased was the father of HARON KIPTARUS CHERONO, without stating whether there were other wives and children.

15.He urged that Ngarua L.R No. 173-Lembus Kongasis Laikipia District, at the time of demise of their father on, did not exist. It was a big block of 66 Acres and the subdivision was done to create Ngarua L.R No. 172-Lembus Kongasis Laikipia District and Ngarua L.R No. 173-Lembus Kongasis Laikipia District (now registered as Gautama/ Mohomet Block 3/173). He stated that the chief's letter is a conspiracy between the respondent and the area chief. Additionally, that it's clear that the late CHERUIYOT

CHERONO had more than one house, in fact he had three (3) wives and a number of children (the respondent herein being the last born from the 2nd house). Further, that the lack of acknowledgement by way of signatures by those purported to have attended the meeting of 9th April 1999, makes this document suspect. The only acknowledgements are the alleged thumb print by Kongato Cheron and the signature of the Assistant Chief, urging that the same was a manufactured document as no such meeting took place and if it did, he was not made aware so as to attend.

16.He stated that he had lodged a caution in respect of land parcel number LEMBUS/KABIMOI/ 110 on the 17th November 1999, it cannot be said that he was agreeable to what the respondent alleges to have happened. He annexed a copy of the green card marked as SKC3 and urged that in respect of Gautama / Mohomet Block 3/173), a caution was lodged by his elder brother KIPSUIT CHERUIYOT which he annexed and marked as SKC4. He deposed that this makes the process through which the certificate of confirmation issued to Haron Kiptarus Cheron, fraudulent as it concealed material facts and excluded the other children/ beneficiaries of the deceased's estate from participating in the process He annexed a full list of the deceased children marked as SKC 5.

17.He contested the averments as contained in paragraphs 7, 8, 9, & 10, stating that to allege that their late mother attested to a document (HKC1), is farfetched. LEMBUS / KABIMOI/110 was registered in their father's name. When the alleged attestation, which is a forgery was done, succession had not taken place hence their late mother had no legal right to pass over any right of ownership to the respondent of a property registered in the name of the deceased. He stated that the respondent has not disputed the fact that he is his brother and hence a competent beneficiary to the estate of their father.

He stated that he and the other beneficiaries to the estate of the late CHERUIYOT CHERONO KIBUITO, will greatly be prejudiced should the order of revocation be denied.

Applicants' Submission

- 18.** Learned counsel for the applicants submitted that section 76 of the law of Succession Act sets grounds under which a grant may be revoked and sought to rely on the conditions as set out in the case of **Jamleck Maina Njoroge Vs Mary Wanjiru Mwangi (2015) eKLR**, where the court discussed the circumstances when a grant can be revoked.

- 19.** Counsel urged that the circumstances set out are obtainable in the present case as the grant was obtained by concealment of material facts. That the respondent did not seek consent from the beneficiaries of the estate as both the respondent and the area chief concealed material facts by not disclosing that the deceased had three wives and several children. He urged that from the averments in the supporting affidavit and further affidavit that the deceased had 3 wives and several children. These are the beneficiaries to the estate, however the chiefs letter the primary document that the respondent filed in court lists him as the only son to the deceased. The concealment of this relevant materials from the court was with the intent to prejudicing the applicant and the other beneficiaries, to the petitioners / respondents own benefit.

- 20.** He cited **Rule 7 of the Probate and Administration Rules**, urging that it provides that an application in relation to an estate of a deceased person to whose estate no grant or grant other than one under **Section 49** or a limited grant under **Section 67 of the Act** has been made, the application shall be by

petition supported by an affidavit. The said affidavit must contain amongst other details, the names, addresses, marital status and description of all surviving spouses and children of the deceased. Additionally, that **Rule 26** makes it mandatory that before any letters of administration are made, notice must have been given to every other person entitled in the same degree as or in priority to the petitioner. In the present cause, this was not done.

21. He stated that the respondent has gone to greater lengths to demonstrate that the said land was bequeathed to him by his deceased mother but whether he was bequeathed the land or not is neither here or there. He urged that if it was true the land had been bequeathed to him nothing would have been easier than for him to apply to have it devolved to him as the absolute owner during confirmation of grant in the presence of all the beneficiaries, who could then renounce their rights.

22. The applicant urged the court to use its discretion and take into account the interests of all the beneficiaries entitled to the deceased's estate and for the interest of justice revoke the certificate of confirmation issued to the respondent. He placed reliance on the case of **Albert Imbuga Kisigwa V Recho Kawai Kisigwa, Succession cause No. 158 of 2000** and **Matheka & Another Vs Matheka (2005)2 KLR 455**, in which the Court of Appeal laid the principle under **Section 76 (a) - (e)** upon which a grant of representation can be revoked.

Respondent's submissions

23. Learned counsel for the respondent submitted that the only issue for determination is whether or not the grant issued to the petitioner should be revoked or put differently, whether the applicant has made out a case that

satisfied **Section 76 of the Law of Succession Act** on the revocation or annulment of grant.

24. Counsel pointed out that the applicant created arguments which did not tell the “full story” in his affidavit as he stated a lot of things and/or made a lot of allegations but one thing is clear, he says from his one side of the mouth that the deceased had properties in Laikipia and Eldama Ravine and then very quickly shifts to the other side to advance arguments centred on one property, the respondent’s property herein and does not give “a full narration” of the affairs of the Estate but more fundamentally he says nothing about the deceased having organized his affairs when he was alive.

25. He stated further that the objector herein was given several cows to sell and buy land, something he has withheld making the objector’s case herein not only confused but one that was characterized by openly misleading a court of law and therefore making his claim not only ineffective but one in which the court process is being abused by seeking to use the court to achieve an extraneous agenda, namely to “come back for more share” and doing so 39 years after the death of the deceased. He cited the case of **Republic vs Registrar, Kenya medical Laboratory Technicians and Technologist Board & 3 Others; Ex Parte Applicant; John Oduor Owino (2020) eKLR** in this regard.

26. Counsel submitted that it is common ground that the deceased is the father to both the Objector and the petitioner in this matter and other children. However, what the objector has failed to acknowledge is that their late father had made arrangements and put his affairs in order with regards to his properties when he was alive. He reproduced the contents of the affidavit in

this regard and urged that from the evidence on record, no estate was left behind.

27. Further, he urged that the deceased had made gifts to his children during his lifetime and therefore the objector's objection herein fails. Additionally, that upon the death of the deceased, the objector's mother, also the mother to the respondent took over the deceased father's estate and continued to maintain the deceased wish, something she penned down in her wishes dated 22nd January 2007, reiterating the contents of the replying affidavit and urging that it was done in accordance with **Section 35 of the Law of Succession Act.**

28. Counsel submitted that it is crystal clear that the widow, the late mother Kongato Cheronno as the surviving spouse, oversaw the distribution of the estate in line with the wishes of the deceased. The objector/applicant was allocated his rightful share of the estate in the form of many cows, which he subsequently sold and used the proceeds to purchase land elsewhere. He cannot therefore say that he had been left out to mischievously gain more than the share he was given and he accepted and had utilized.

29. Counsel cited the case of **Doge v Kenya Cannery Ltd (1989) KLR** and reiterated his submissions on the deceased having made arrangements during his lifetime. He additionally cited **Succession Cause No. 113 of 2011 In re Late Morogo A Mugun (Deceased) [2019] eKLR** and the case of Sospeter Kimani Waithaka Succession Cause No. 341/1998. Counsel submitted that the courts have consistently upheld the wishes of the deceased regarding the distribution of their property and in this case the arrangement of the deceased during his lifetime. He pointed out that the applicant has brought this application nearly 39 years after the deceased's death, an unreasonable and inexcusable delay.

30. Counsel stated that whereas the objector was not listed in the petition that led to the confirmation of grant herein, it is not automatic that the grant has to be revoked in such circumstances. He invited the court to find that the objector has failed to meet the threshold of the revocation or annulment of grant under **Section 76 of the Law of Succession Act** because no fraud has been proved sufficiently or at all. That on the contrary and upon the death of the deceased, the widow maintained the deceased wishes in heeding with **Section 35 of the Law of Succession Act**.

31. Counsel urged that the objector had his remedy under **Section 35(3) of the Law of Succession Act** which was the main hurdle for the objector to surmount. He did not even attempt to surmount by filing an appropriate case and therefore his entire case had been placed on “a quick sand” and therefore for dismissal with costs.

32. Counsel reproduced his averments on Tugen culture in the affidavit and placed reliance on the case of **Reliance Bank Ltd v Mack Spares & Others Kisumu High Court Civil Case No. 139 of 1999**. He urged the court to dismiss the application and urged that it was not sufficient for the objector to make allegations. He ought to have furnished the facts which satisfy Section 76 of the law of Succession Act. The burden was all the time on the objector to prove his case and he failed to do the same.

33. He cited the case of **Ali v Nyang’ao (Civil Appeal E010 of 2024) [2024] KEHC 8319 (KLR) (11 July 2024) (Ruling)** and urged the court to dismiss the Summons.

Analysis & Determination

34. Having addressed my mind to the issues raised in the pleadings as well as the submissions filed by Counsel for each of the parties, it is my considered opinion that the only issue for determination is whether the applicant has demonstrated that the Petitioner in seeking for a Grant of Letters of Administration in the Estate of the Cheruiyot Rono (Deceased) did so in clear breach of the conditions precedent to the issuance of a grant as envisaged under the provisions of **Section 76 of the Law of Succession Act** under which the Application is expressed to have been brought. The said Section 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 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**

35. The main allegation made by the Applicant is that the Petitioner in his Petition seeking for the Grant did not disclose that the deceased had three wives and children other than himself. That instead, by way of the Chief's Letter, he presented himself in the said Petition as the only child of the Petitioner. That with this being the case, made a false statement and also concealed a material particular.

36. In seeking to establish the truthfulness or otherwise of this assertion, the court has perused the court record which record indeed confirms that the Chief's Letter filed dated 17th November 2015 stated to be from the Chief's Office at Lembus/Kabimoi Location and signed by one Jackson Tanui in his capacity as Chief indicates that the deceased Cheron Cheruiyot, the owner of land known as Lembus/Kabimoi/2110 was the father of Haron Kiptarus Cheron. The wife(ves) or other children of the said deceased are not indicated.

37. The Petitioner subsequently filed for and obtained the Grant which was subsequently confirmed on the strength of this letter as the sole beneficiary of the deceased Estate. The Court further notes that the said Chief's Letter

indicates that the Petitioner is a resident of his Location which is situate in Eldama Ravine. The parcel of land is also in Eldama ravine. The court under whose jurisdiction this matter rightly falls therefore is Nakuru High Court, which Court was very much in existence and fully operational when this cause was filed in Eldoret.

38. The above notwithstanding, I note from the depositions made by the Petitioner in his Response to the summons for revocation that even though he does openly admit, he does by way of the depositions made and the annexures to his Replying Affidavit that allude to the fact that indeed as deposed by the Objector, his deceased father had other children the objector being one of them. The court further notes that in the sub missions made by Counsel on behalf of the Petitioner, he stated as follows; “it is common ground that the deceased is the father to both the Objector and the petitioner in this matter and other children...” This being the case, the court is satisfied that the Petitioner herein at the time of filing the Petition for grant of letters was not the only beneficiary of the deceased herein.

39. It is the Petitioner’s position that because his late father had given this parcel of land to him exclusively during his lifetime, then he need not have involved the other beneficiaries in seeking for grant of letters for the purposes of the administration of this aspect of his father’s estate an argument the objector does not agree with. It is their submission that even supposing that were to be the case, nothing would have been easier than for him to apply to have it devolved to him as the absolute owner during confirmation of grant in the presence of all the beneficiaries, who could then renounce their rights.

40. The objectors also cited the provisions of **Rule 7 of the Probate and Administration Rules**, urging that it provides that an application in relation to an estate of a deceased person to whose estate no grant or grant other than one under **Section 49** or a limited grant under **Section 67 of the Act** has been made, the application shall be by petition supported by an affidavit. The said affidavit must contain amongst other details, the names, addresses, marital status and description of all surviving spouses and children of the deceased.

41. Additionally, that **Rule 26** makes it mandatory that before any letters of administration are made, notice must have been given to every other person entitled in the same degree as or in priority to the petitioner. In the present cause, this was not done. The court also notes that for some inexplicable reason, the Petitioner did not file this cause before the High Court at Nakuru which ideally is the one seized of jurisdiction but instead chose to come to Eldoret High Court.

42. The sum total of the court's findings above leads to the irresistible conclusion that in filing this petition, the Petitioner was clearly intent on obtaining the grant fraudulently by the making of a false statement and thus concealing from the court a very material and pertinent matter to this Cause which is that he is not the only child of the deceased but that the deceased did in fact have other children. A further conclusion is that the grant was obtained by means of an untrue allegation by the petitioner stating in his Petition that the estate of the deceased did not comprise of other properties other than the ones he had disclosed.

43. His explanation that by proceeding this way, he had no intention of leaving out the rest of his siblings in the succession cause ostensibly because he

genuinely believed that the property the subject matter of this cause had been given to him wholly by his later father to the exclusion of the rest of his siblings flies in the face of the fact of the forum that he chose to file his cause in.

44. In my very well considered opinion, if this was the case, and the petitioner's belief was as genuine, honest and done in good faith as he claims, he need not have filed the claim out of jurisdiction. This fact in my view only goes to show that his intentions were other than honest and were intentionally meant was to conceal his actions so as to lock out the rest of the family members from the proceedings.

45. Finally, there is an issue of note the court must consider before rendering its final verdict for the completion of its analysis even as the same was not submitted upon. It is that even as the Application is expressed to be brought under **Section 76 of the Law of Succession Act** and **Rule 73 of the Probate and Administration Rules**, the final order that the Applicant seeks as drawn in its prayer b) is as follows;

“That the certificate of confirmation issued to Haron Kiptarus Cherono on the 11th July 2019 be revoked.”

46. This is in fact an anomaly because it is the Grant of Letters of Administration that ought to be revoked and not the Certificate of Confirmation as drawn in prayer b). Indeed, from the pleadings filed and the submissions made on behalf of the parties, it is clearly apparent that the subject matter of the Objector's Objection is the Grant of Letters of Administration issued to the Petitioner and dated 3rd August 2016 which then

upon confirmation led to the issuance of the Certificate of Confirmation issued on 11th July 2019.

47. Indeed, both the Grant and the Certificate of Confirmation all belong to and are all part of the same process. However, the applicable procedure is that it is the Grant that is issued first and then subsequently confirmed after the expiry of a period of six (6) months by way of the issuance of the Certificate of Confirmation of the said Grant.

48. This being the case, the objector ought to have applied for the revocation of the Grant and not of the Certificate of Confirmation because that is what is in fact envisaged by the provisions of Section 76 of the Act and Rule 73 of the Rules. Before making its final determination therefore, the court needs to make a finding on whether this defect is one of form and therefore curable or whether it is one of substance and therefore fatal to the objector's cause.

49. That said it is my very well considered opinion that being satisfied that both comprise of and are part of the same process with one leading to the other, notwithstanding the manner in which the order sought is drawn, the court is mindful of and alive to the fact that in the exercise of judicial authority, its singular, core and primary mandate is to look to the substance of every matter before it.

50. As mandated under **Article 159(2)(d)** of the **Constitution** the court must ensure that justice shall be administered without undue regard to procedural technicalities, the court shall look to the provisions of the law under which the application has been brought as opposed to the form in which the final orders sought have been drafted. In doing so, the court is satisfied that same

is a technicality that is not fatal to the substance of the Application and I now hereby so find.

51. All considered therefore, It is my finding that the Objector has sufficiently discharged the burden placed upon him by **Section 107 and 108** of the **Evidence Act** and sufficiently demonstrated on a balance of probabilities that the grant was obtained by the Petitioner fraudulently by the making of a false statement or by the concealment from the court of something material to the case, and that further the same said 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.

52. In this regard the objector has satisfied the provisions of **Section 76(b) and (c)** of the **Law of Succession Act** on when the court can revoke a Grant and this being the case, it is my finding that the objector's Objection has merit and the same is upheld. Accordingly, the Grant issued to the Petitioner on the 3rd Day of August 2016 and subsequently confirmed on 11th July 2019 is now hereby revoked.

53. Each party is to bear their own costs

Read dated and Signed at ELDORET on 16th October 2025

E. OMINDE
JUDGE