



**In re Estate of Samwel Kipfel Arap Boit (Deceased) (Succession Cause
18 of 1990) [2025] KEHC 14256 (KLR) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14256 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 18 OF 1990
RN NYAKUNDI, J
OCTOBER 13, 2025
IN THE MATTER OF THE ESTATE OF THE LATE
SAMWEL KIPEL ARAP BOIT (DECEASED)**

BETWEEN

HUSNA ALI ABDALLA APPLICANT

AND

SARAH CHELEL BOIT RESPONDENT

RULING

1. The Applicant herein filed Summons for Revocation of Grant dated 1st September 2025 pursuant to section 76 of the [Law of Succession Act](#) and Rule 44(1) of the Probate and Administration Rules seeking the following orders: -
 - a. That the Grant of representation issued to Sarah Chelel Boit and subsequently confirmed on 4th June 1992 and then amended on 3rd day of August 2022 be revoked, nullified or otherwise rectified as deemed appropriate.
 - b. That the Honourable Court gives further orders that it deems fit under the circumstances.
2. The Application is made on the following grounds on the face of it among others;
 - a. That the administrator of the estate herein through fraud, misrepresentation and non-disclosure of material facts has without any colour of right through an amendment to the certificate of confirmation of grant included property known as CR. 14325 Plot No 2096 Malindi as part of the assets to be administered/distributed when it does not in fact form part of the free property of the deceased estate.



- b. That the grant having already been confirmed gravely exposes the said land to the risk of distribution, or alienation, or other form of dealing or disposal, an eventuality that will be highly prejudicial to the Applicant herein.
 - c. That the Respondent had initially secured a Certificate of Confirmation of Grant way back on 4th June 1992. The amendment to include the suit was done in August 2022, some 30 years later, through a clever ploy by which the Respondent purported that she had lost the original title to the suit land, hence secured a duplicate, an act that was a lie, given that the Applicant has always had in her possession the original title document to the suit land.
3. The Application is supported by an annexed affidavit dated 1st September 2025 sworn by Husna Ali Abdalla, the Applicant herein who deponed as follows;
 - a. That I am the registered owner of land parcel CR. 14325 Plot No 2096 Malindi having acquired the said property from Miriam Cherop Chumo on 28th May 2019.
 - b. That I subsequently caused transfer of the suit property and issued with a Certificate of lease.
 - c. That the above named Samwel Kipfel Arap Boit- deceased and a grant of representation was made and/or confirmed to Sarah Chelel Boit on 3rd day of August 2022.
 - d. That the grant was made as amended on 3rd August 2022 was obtained through non-material disclosure of non-availability of property known as CR.14325 Plot no 2096 Malindi.
 - e. That the property so included in the amended certificate of grant was not a free property of the estate of the deceased up for distribution.
 - f. That to be distributed by a succession court has to be identifiable and clearly defined. Where the property involved is land, it has to be identified by a land reference number and registered in the name of the deceased.
 - g. That at the time of issuance of the certificate of grant the property was registered in my name hence not free property of the deceased.
 - h. That the duty of the probate court is to identify the estate of the deceased person, identify the lawful beneficiaries to the estate and distribute the same to the beneficiaries. The property CR. 14325 Plot No 2096 Malindi was not a free property of the deceased person.
 - i. That the administrator amended the said certificate of grant by fraudulently concealing facts and/or deliberately misrepresenting that the property whilst there is a land case ongoing between parties herein.
 - j. That failing to inform the court amount to concealment of material fact to warrant revocation of the amended certificate of grant issued to the administrator.
4. The Summons for revocation is opposed vide a Replying Affidavit dated 30th September 2025 sworn by Sarah Chelel Boit, the Respondent herein who deponed as follows: -
 - a. That the Applicant is a total stranger to the estate to estate of the late Samwel Kipfel Boit.
 - b. That the applicant's application is premature and misconceived is so far as it seeks to challenge grant before determination of the suit hereinafter named.
 - c. That the land parcel known as CR 14525 Plot No. 2096 is the property of the estate of late Samwel Kipfel Boit the deceased herein, having been acquired by the deceased on 24.11.1974.



- d. That land parcel number 14325 Plot No 2096 is registered in the name of Samuel Kipfel Boit and holds certificate of title in that regard.
 - e. That the Applicant, 4th defendant in Malindi ELC Case No 47 of 2015 Sarah Chelel Boit Vs Miriam Cherop Chumo & Husna Ali Abdalla which suit is premised on fraud by the purported vendor, one Miriam Jerop Chumo.
 - f. That one Miriam Jerop Chumo purported to have acquired the subject land in 3.7.1997 which was 8 years long after the death of the deceased (died in 19.5.1989) hence the suit premised on fraudulent acquisition of the land.
 - g. That the aforesaid case is a part-heard case before MAKORI J, having commenced trial on 30.7.2025 and shall be proceeding for further hearing on 25th November 2025. She has opted to re-litigate vide this succession cause.
 - h. That the purported sale of the subject land acquired by fraud is invalid and incapable of passing title to the Applicant by one Miriam Jerop Chumo.
 - i. That the applicant is neither a creditor nor a beneficiary of the estate of the late Samuel Kipfel Boit.
5. The Summons was canvassed by way of written submissions.
 6. I take note that by the time of writing this ruling the Applicant had not yet filed its submissions in the record. A look at the CTS also indicates that the Applicant had not uploaded its written submissions. I will however continue with the substantive merits of this summons application at hand.

Respondent's Written Submissions

7. The Respondent filed its submissions dated 8th October 2025 where two (2) issues were listed for determination: Has the applicant established any grounds for which the court herein annul or revoke grant under section 76 of the [Law of Succession Act](#) and is the Court clothed with civil jurisdiction to entertain a dispute over ownership of land or validity of certificate of title?
8. Counsel for the Respondent submitted that the Applicant had failed to establish any valid grounds under section 76 of the [Law of Succession Act](#) to warrant revocation of the grant. It was argued that the Applicant is a stranger to the estate, neither a family member nor a beneficiary and therefore had no legal standing to challenge the grant. The alleged purchase of the property in 2019, long after the deceased's death in 1989 and the filing of the succession cause in 1990 was said to be premised on a fraudulent transaction, as the purported vendor acquired the land in 1997 years after the deceased's demise. Counsel further noted that the ownership dispute over the said parcel is already pending before the Malindi ELC No. 47 of 2015 – Sarah Chelel Boit Vs Miriam Jerop Chumo & Husna Abdalla, hence this court lacks jurisdiction to adjudicate on ownership or title validity.
9. Relying on *Re Estate of Kamau Macharia (2025)* and *Re Estate of Solomon Mwangi Waweru (Deceased) (2018)* eKLR, counsel submitted that it is not the function of the succession court to determine ownership of assets but to identify estate property and beneficiaries. Any adverse claim to estate property should be pursued through the Environment and Land Court not via objection proceedings in succession. The Respondent therefore urged the court to find the application lacks merit and to dismiss it with costs.



Analysis and Determination

10. I have read and considered the summons, the affidavit in support and the replying affidavit in opposition of the same. There is one issue for determination before this Honourable Court; -

Whether the summons for revocation of the Grant is merited?

11. The grounds upon which a Grant may be revoked are contained in Section 76 of the Law of Succession Act which 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 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.
12. In the case of *Jamleck Maina Njoroge Vs Mary Wanjiru Mwangi* [2015] eKLR the court set out the circumstances under which a grant may be revoked as follows: -

“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 was defective in substance, or that the grant was obtained fraudulently by making of a false statement or by 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.”

13. In the case of *Albert Imbuga Kisigwa Vs Recho Kavai Kisigwa* [2000] eKLR it was held that

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not 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."

14. Section 76 of the [Law of Succession Act](#) empowers the Court to revoke a grant of representation where the grant was obtained by fraud, misrepresentation or non-disclosure of material facts. Rule 44(1) of the Probate & Administration Rules prescribe the procedure for applications for revocation and rectification of grants. It is well established that revocation is an exceptional remedy which the Court will exercise where there is clear evidence that the grant was improperly obtained. At the same time, the Court must be cautious not to usurp the role of courts of competent jurisdiction in resolving disputed title where those matters are already before another competent forum.
15. The Applicant has produced documentary evidence a transfer document, a Certificate of Postal Search as on 20th June 2019, Rates Clearance Certificate, Valuation Requisition for Stamp Duty and a sale agreement purporting to show that she acquired the parcel from Miriam Cherop Chumo on 28th May 2019 and that a title/lease was issued in her name. This is opposed by the Respondent who asserted that the parcel was acquired by the deceased in 1974 and remains registered in his name and that the Applicant's transfer derives from a fraudulent dealing by a third party (Miriam Jerop Chumo).
16. However, I note that there is also an ongoing ELC suit Malindi ELC Case No. 47 of 2015 in which the Applicant is a party/defendant and which is said to be part-heard before Makori J. The existence of that suit demonstrates that the ownership of the parcel is genuinely in dispute. Article 162 provides for the system of courts in Kenya. Article 162(2) authorizes Parliament to establish courts that are to occupy the same plain with the High Court and whose jurisdiction is to hear and determine disputes relating to employment and labour relations and environment and the use and occupation of and title to land. Those courts were established by parliament, for the purpose of land disputes relating to use and occupation thereof and title thereto was established ELC. Read together, Article 162(2) and Article 165(5) of [the Constitution](#) 2010 would mean that the High Court has no jurisdiction whatsoever over matters that fall within the jurisdiction of the courts set up under Article 162(2) of [the Constitution](#). In other words, the courts established under Article 162(2) have exclusive jurisdiction over the matters for which those courts have been established. I have not had a chance to peruse through the file in ELC suit Malindi ELC Case No. 47 of 2015, as the court file in respect of that matter within Article 162(2) of [the Constitution](#). In those circumstances, it would mean then that the High Court has no jurisdiction over the matter by virtue of Article 165(5) of [the Constitution](#).
17. It may be argued that the subject land is estate property and by dint of that fact the probate court would have jurisdiction thereon. The position is not as simple. The [Law of Succession Act](#) and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries and distribution of the assets. Disputes of course do arise in the process. The provisions of the [Law of Succession Act](#) and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries are for resolution outside of the framework set out in the [Law of Succession Act](#) and the Probate and Administration Rules which have elaborate rules on suits by and against executors and administrators.



18. In view of the ongoing proceedings in the ELC suit Malindi ELC Case No. 47 of 2015, which is likely to answer the question on the sanctity of the impugned title which is also subject matter of this revocation, it is fair and proportionate not to grant the remedy under section 76 of the [Law of Succession Act](#) at this state of the proceedings. This court can revisit the issue on being issued with the final judgment at Malindi ELC Court. In taking this position, the import of section 1A, 1B, 3 & 3A of the [Civil Procedure Act](#) as provided for in Rule 73(1) of the Probate and Administration Rules provided the anchor in invoking the judicial discretion in matters of this nature. There shall be no order as to the costs. Status Conference on 17th November 2025. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 13TH DAY OF OCTOBER 2025

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R. NYAKUNDI

JUDGE

