



REPUBLIC OF KENYA



In re Estate of Kipkorir Arap Tuimising (Deceased) (Succession Cause E034 of 2023) [2025] KEHC 13597 (KLR) (1 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13597 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE E034 OF 2023
JK NG'ARNG'AR, J
OCTOBER 1, 2025**

IN THE MATTER OF THE ESTATE OF KIPKORIR ARAP TUIMISING (DECEASED)

BETWEEN

DAVID BIRIR OBJECTOR

AND

DAVID KIPKOECH KORIR 1ST PETITIONER

BEN KIBET KORIR 2ND PETITIONER

RULING

1. The Petitioners petitioned for Letters of Administration Intestate for the estate of Kipkorir Arap Tuimising (deceased). They petitioned in their capacities as the deceased's sons. The deceased's estate comprised of Kericho/Ndubai/204 And Kericho/Ndubai/764.
2. A Grant in the joint names of the Petitioners was issued on 5th March 2024 and were further issued a Certificate of Confirmation of Grant dated 29th January 2025. The Certificate showed the acreage that the 13 beneficiaries would get in the deceased's estate.
3. The Objector filed the present Summons for Revocation of Grant dated 24th February 2025.

The Objector's case

4. Through his Supporting Affidavit dated 24th February 2025, the Objector stated that he was a liability in the deceased's estate by virtue of being a purchaser. That on 7th July 2021, he entered into a Sale Agreement with Mrs. Taputany Tuimising (deceased's wife) and Victor Korir (deceased's son) and purchased 2.14 acres of land for Kshs 164,200/= . The Objector stated that he took full occupation of the land upon completion of his purchase.



5. It was the Objector's case that the Petitioners indicated to him that they would transfer his share of 2.14 acres upon completion of the present succession proceedings. That he was surprised to see that he had been allocated 1 acre out of the 2.14 acres. It was the Objector's further case that he did not consent to the allocation of the share.
6. The Objector stated that the 1st Petitioner had severally tried to trespass on his land.
7. Through his written submissions dated 23rd July 2025, the Objector submitted that he was a purchaser in the deceased's estate and his purchase was witnessed by some of the beneficiaries to the deceased's estate. That the Petitioners recognized him as a liability to the deceased's estate.
8. It was the Objector's submission that he did not sign the consent form and did not attend court for the confirmation of the Grant. That without the consent of all the beneficiaries, the Grant was considered defective. It was the Objector's further submission that he had been in continuous occupation of the land and had extensively developed it.
9. The Objector submitted that the Petitioners had not produced evidence to invalidate his Sale Agreement and further that his proprietary rights could not be taken away because of the Petitioners' mere denials. That as a liability to the deceased's estate, his rights should be protected.

The Response.

10. Through his Replying Affidavit dated 6th March 2025, the 1st Petitioner stated that the Objector did not purchase the parcel of land from the deceased. That he only purchased 1 acre from their late mother and their brother, Victor Korir. The 1st Petitioner stated that the Objector ought to claim the extra acreage from the estate of their mother and a share of Victor Korir once the Title Deeds have been issued.
11. It was the 1st Petitioner's case that the deceased's estate had been distributed among the beneficiaries and nothing had been left. It was the 1st Petitioner's further case that they were neither aware of the Sale Agreement nor did they sign it.
12. The 1st Petitioner stated that the issues of sale and ownership of land were not within the jurisdiction of this court but with the Environmental and Land Court. The 1st Petitioner further stated that the Grant was obtained legally as no issue was concealed and there was no fraudulent act committed.
13. Through his written submissions dated 16th July 2025, the 1st Petitioner submitted that the Objector had not raised any grounds within the realm of section 76 of the *Law of Succession Act* to warrant revoking the Grant.
14. It was the 1st Petitioner's submission that this court was not seized with the jurisdiction to deal with matters touching on sale and ownership of land. That he categorically denied that the Objector had purchased 2.14 acres of the deceased's estate. He relied on Articles 162 (2) and 165 (5) of the *Constitution* of Kenya and in *Re Estate of Mathew Liluma Shinjili alias Mathew Lilimi Shinjili (Deceased)* [2022] KEHC 10959 (KLR).
15. I have gone through the record, the Summons for Revocation dated 24th February 2025, the Replying Affidavit dated 6th March 2025, the Objector's written submissions dated 23rd July 2025 and the 1st Petitioner's written submissions dated 16th July 2025. The sole issue for my determination was whether there were sufficient grounds to revoke the Grant dated 5th March 2024.



16. Section 76 of the Law of Succession Act 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.

17. In the present case, the Objector states that he was a liability to the deceased's estate. That he bought 2.14 acres of Kericho/ndubai/204 from the 1st Petitioner's mother and brother. He annexed a Sale Agreement to buttress his claim of purchase. I have gone through the Sale Agreement and it indicated that the sale was conducted on 25th July 2011. From the record, the deceased's Death Certificate indicated that he died on 12th March 2001. Further from the record, the present succession proceedings commenced in September 2023.

18. From the above excerpt, the alleged sale and purchase of land by the Objector was illegal ab initio. At the time of the purported sale, the deceased's estate had not vested on anyone. The purported sellers had no capacity to enter into any transactions affecting the deceased's estate. What they were simply doing was intermeddling in the estate, an act which is criminalized under section 45 of the Law of Succession Act. It goes without saying that illegal transactions are unenforceable in law.

19. Further to the above, in terms of a liability to the deceased's estate, I concur with Chirchir J. in Re Estate of Alfred Mukabana Eshinali (Deceased) [2023] KEHC 20032 (KLR), where she held: -

“.....A Liability to an estate is a liability that was incurred or entered into prior to a deceased's person's demise. Any transaction thereafter is not a liability to the Estate. It is therefore a misconception to allude that a sale which took place after the demise of the deceased, was a liability to the deceased's Estate.”



20. I have already found that any purported sale of the deceased's land before the inception and completion of succession proceedings was illegal and unenforceable. I must however agree with the 1st Petitioner that this court lacks the jurisdiction to determine issues of ownership of land.

21. A dispute in the current case arose when the 1st Petitioner denied the existence of the purchase of 2.14 acres of Kericho/ndubai/204 which formed part of the deceased's estate. To resolve such, this court would be required to delve into the specifics of the transactions, something that is reserved for the Environmental and Land Court. I am in total alignment with *Re Estate of Stone Kathuli Muinde (Deceased)* [2016] KEHC 3725 (KLR) where the court held that: -

“With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.

Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the *Civil Procedure Rules*. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it”. (Emphasis mine)

22. Flowing from the above, it is my finding that the Objector has not presented any evidence within the provisions of section 76 of the *Law of Succession Act* to warrant this court to revoke the Grant dated 5th March 2024.

23. In the end, the Summons for Revocation of Grant dated 24th February 2025 has no merit and is dismissed. Each party to bear their own costs.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 1ST DAY OF OCTOBER, 2025.

.....

HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence of:

Siele/Susan (Court Assistants)

Chirchir for the Objector

Kenduiywo for the 1st and 2nd Petitioners

