

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO.142 OF 2008

**IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH KIPKORIR
KASITET-DECEASED**

DINAH CHEPCHUMBA KASITET.....OBECTOR/APPLICANT

VERSUS

JOSEPH KIPROP YEGO.....RESPONDENT/PETITIONER

RULING

1. This cause relates to the estate of the late Joseph Kipkorir Kasitet (deceased) who died on 7/7/1995 domiciled at Kapyego Location in the then Marakwet District.
2. **Joseph Kirop Yego**, the petitioner in the petition for letters of administration listed himself as the nephew and the only dependant to the deceased. He was granted the letters of administration dated 27/10/2008. The record shows that the deceased's estate comprised a parcel of land known as Lelan/Kapyego/28 measuring 15.5.ha. The grant was confirmed on 7/11/2011 and the administrator was given the property comprising the estate.
3. Later on 28/1/2014, **Dinah Chepchumba Kasitet**, the applicant herein lodged summons for revocation of grant dated 28/1/2014. Her grounds for revocation of grant were inter alia that she was a wife to the deceased and had 5 children with him.

4. She faulted the petitioner for trying to defeat the ends of justice by secretly filing the petition for grant of letters of administration without seeking her consent.
5. In her affidavit sworn on 21/1/2014, she avers that the deceased was survived by the following;
 - (i) **Dinah Chepchumba Kasitet- widow**
 - (ii) **Alex Kipsang Kasitet**
 - (iii) **Lydia Cherop Kasitet**
 - (iv) **Henry Kiprono Kasitet**
6. She avers in a further affidavit sworn on 21/1/2014 that 2 children died leaving the 3 children named above.
7. During hearing done vide viva voce evidence the applicant/objector testified she was born in 1963 and got married to the deceased in 1979 and had 5 children but 2 of them had since died. She insisted that she lived in Kapyego parcel which comprises the estate herein.
8. When cross-examined by Wanyama counsel for the petitioner/respondent, the applicant stated that she applied for her identity card when she was residing in Rongai. She further conceded that the identity card indicated that she was born in 1978 and that the documents for identity card application, indicated that her father was John Kasitet. She stated that the information was incorrect and she had applied to correct the details. She also stated that she did not have birth certificates of her children. She stated that the documents got burnt and that though she reported to the police, she had no police abstract.
9. She further conceded that the deceased lived on a tree but that he had another dwelling on the ground. She stated that the

deceased was a cultural artist and had a following stating that there was a research done by a University Professor who indicated that the deceased was unmarried and had no children. She further conceded that she had no evidence of a house where she lived with the deceased.

10. Alex Kipsang Kasitet (**PW2**) on his part testified that the deceased herein was his dad and that he died on 7/7/1995. He stated that he was born on 14/12/1991 and does not live on the estate claiming that he left when disputes arose.
11. Under cross-examination he stated that his identity card indicated that his mother was one Teresia Torotich Elias and not Dinah the applicant herein. He stated that Teresia looked after him and raised him up and that his mother did not have an identity Card.
12. He recalled that he used to live in a mud house made of mud and papers with the deceased and confirmed that the picture of that house is the one carried in the paper by Professor William Ostberg of University of Stockholm. He also confirmed that the photograph in the paper belongs to his father.
13. In her written submission dated 6/11/23 done through learned counsel Cheruiyot Kirui & Co Advocates, the applicant has given a summary of the evidence tendered during the trial. She submits that the petitioner did not include the plots the deceased reportedly owned in Eldoret Town as part of the estate of the deceased herein.
14. She submits that she has laid sufficient grounds under section 76 of Law of Succession Act to have the grant revoked.

She points out that the respondent misrepresented himself as a son to the deceased.

15. According to her the deceased died in Eldoret and not Kapyego as indicated in the Death Certificate.
16. That the petitioner failed to mention other beneficiaries to the estate. She submits that the petitioner obtained the letters of administration fraudulently and relies on the case of **Re Estate of Prisca Ong'ayo Nande (dcd) (2020)eKLR** and **Re Estate of Moses Wachira Kimotho (2009)eKLR** where the court nullified the grant for non-disclosure of material facts.
17. She submits that she has demonstrated on a balance of probability that she was a wife to the deceased in this case and were blessed with 5 children. She relies on a letters from the chief dated 30/11/2012 tendered as **PExhibit 7** and **PExhibit 10**. She asserts that the 2 letters confirm that she was a wife.
18. The respondent is opposed to this application and filed an affidavit in response dated 30/10/2014. He stated that the deceased was his maternal uncle. He stated that the deceased went to his parents and asked them to let him go and be a caretaker in the parcel comprising the estate. That he went and lived on the land in 1956 when he was 18 years old. He stated that he has lived on that land since. He stated that the deceased used to live in Eldoret Town but used to visit him.
19. He conceded that the deceased died in Eldoret but denied the applicant's claims that he was married. He stated that the deceased lived in a dwelling made of boxes and polythene within Eldoret Town and many tourists visited him. He stated that the

history of the deceased is annexed to his response adding that there was a Research Paper titled **“The Bard of Marakwet”**.

20. He stated that the applicant was never married to the deceased and that her father is known as John Kasitet from Molo Nakuru. He added that there is no relation between John Kasitet and Joseph Kasitet (deceased herein).
21. He further claimed that the objector’s children belonged to one Mohammed Idris and not the deceased herein.
22. He stated that Mohammed Idris wanted to be a joint administrator with the applicant in the estate of deceased because the two were together. That he testified in a Criminal Case No.E233 of 2021 where he was charged with making false statement and uttering a false document. He stated he was acquitted of both counts.
23. He conceded under cross-examination that he did not include the deceased’s property in Eldoret because he was only given the plot at Kapyego to take care of it. He further stated that though the death certificate indicates that he died in Kapyego, the deceased actually died in Eldoret aged 70 years old.
24. He stated that the chief wrote a letter indicating that the deceased was not married and that the letter exhibited by the applicant indicating otherwise was false.
25. He stated that the title of parcel in Kapyego got lost and he reported the loss at the police station with a view to getting a replacement. He denied that there was any family meeting that recognized the applicant. He stated that he paid a loan of

Khss.135,000 which the deceased had taken using the title of the estate as security.

26. He stated that the Identity Card belonging to the applicant indicates that she was born in 1978 which means that by 1995 she was only 14 years and could not have been married to the deceased at that age.
27. In his written submissions through learned counsel D.M. Wanyama & Co Advocate dated 17/7/25, the respondent submits that he took care of the estate for over 40 years during the lifetime of the deceased and that he even helped the deceased offset a loan secured using the estate Lelan/Kapyego/28 as security. He faults the objector for resurfacing 3 years after he had concluded succession proceedings.
28. He contends that the claims by the applicant that she was married to the deceased were unsubstantiated because there was no proof of marriage whether civil or customary adding that there was no evidence of prolonged cohabitation between the applicant and deceased to suggest or imply that there was presumption of marriage.
29. He further submits that the applicant is married to Mohammed Abdi Idris pointing out that she always turned up in court wearing a hijab and being accompanied by the said Mohammed Idris. He points out that when the parallel Succession Cause No.368/14 was filed in Eldoret was brought to Kitale, it transpired that the applicant had been lying since in Succession Cause No.368/14, she swore an affidavit indicating that Mohammed Abdi is her **“current husband”**.

30. He submits that he was acquitted in Criminal Case No.E233 of 2021 and in the judgment the trial court found that the complainant including the applicant and Alex Kipsang had concocted evidence.
- 31.** He submits that the paper published by a Professor Wilhelm Ostberg from Stockholm University indicated that the deceased led a solitary life with no family and titled his paper “**The Bard of Marakwet**”.
32. He submits that he cannot be accused of concealing what does not exist. He terms the objector’s claim as fictitious stating that the claim that she had 5 children with the deceased has not been proven.
33. It is his case that because dependency has not been established, the applicant has no locus to ask for revocation of grant.
34. He contends that the attempts to alter her identification documents showed that the applicant was out for some mischief questioning the timing of the attempts. He submits that the attempted alteration only happened in 2014 after the demise of the deceased.
35. He submits that the chief’s letters adduced by the applicant are not proof of dependency stating that they are merely introductory letters to whoever wants to file succession proceedings.
36. He contends that the letters adduced by the objector cannot override the letter issued in 2008 which did not name the objector as a beneficiary. He relies on the decision in **Re Estate of M’ithinji M’Anjara (dcd)(2014)eKLR** where the court held

that the chief's letter tendered was not proof of marriage. He submits that because there are two contradictory letters from the chief one recognizing and the other one not recognizing, little weight should be given to the said letters.

37. He submits that the onus was on the applicant to establish and prove the grounds for revocation of grant as provided under section 76 of Law of Succession Act. He submits that the applicant has failed to discharge the burden of proof adding that fraud or concealment have not been established. He submits that the proceedings in this cause are regular and procedural and cannot be termed defective in any way.

38. He submits that by commencing parallel succession proceedings the objector was out to cause mischief. He further accuses the applicant for waiting for 19 years after the deceased died before taking any action in filing succession proceedings if she was truly a dependant.

39. This court has considered this application and the response made. This is an application for revocation of grant. Revocation of grant can be made by a dependant applicant or any interested party if he/she can establish any of the grounds listed under section 76 of Law of Succession Act. Section 76 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”

40. The applicant’s main gist in her summons for revocation of grant is hinged on section 76(b). She says that the respondent concealed some material facts to the court when filing the petition herein. She claims that she is a wife to the deceased and had children with him. The same is denied in equal measure by the respondent and the singular issue in this matter is whether or not the applicant and her children are dependants within the meaning ascribed under section 29 of Law of Succession Act.

41. A ‘wife’ is defined under section 3 of Law of Succession Act to include ‘a wife who is separated from her husband and terms ‘husband’ and ‘spouse’ ‘widow’, widower shall have corresponding meaning.

The provision of section 29 of Law of Succession Act gives the meaning of ‘dependant’ as;

“For the purposes of this Part, "dependant" means—

(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

(b) such of the deceased’s parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken

into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death”

42. Going by the above definitions, and in light of the fact that the application before me is hinged on dependency, it was incumbent upon the applicant to establish this issue to the required standard applicable in civil law which is on balance of probability. This is because of the cardinal rule in Evidence that whoever alleges must prove. (See section 106 and 107 of the Evidence Act)
43. The basis of my finding is that the applicant is claiming that she and her children are dependants within the meaning of section 29 and that the respondent concealed that fact and hence the basis why the grant should then be annulled or revoked by this court. That is basically the issue before this court.
44. Now let me delve into the evidence placed before court with respect to dependency by the applicant and her children. The main documents relied upon by the applicant in this regard are chief's letters dated 30/11/2012 and 14/1/2014 both of which indicate that the applicant was a wife to the deceased. There are minutes of a meeting dated 10/5/2013 which was a meeting held to deliberate on the dispute over the land comprising the estate. The minutes indicate that there was a meeting to resolve a dispute over land between the applicant and the respondent.
45. This court has considered the response by the respondent with respect to the above and find that the response poses legitimate question for determination by this court. The first issue in this regard is whether a chief's letter on its own is sufficient proof that someone is a spouse, a child or a dependant to a

deceased person. The answer to that question is in the negative because a chief's letter in succession proceedings is merely an introductory letter that whoever has it is presumed to be the next of kin to the deceased either a child, or spouse. But like every presumption of fact, it is subject to rebuttal. The letter per se is not proof of marriage or dependency. It is presumptive and if another person comes and challenges the contents of the letter the presumption is rebutted.

46. In this instance, the respondent has drawn the attention of this court to another chief's letter dated 10/2/2008 which he filed together with the petition herein. In that letter the same chief V.K. Kimitto of Kapyego Location states that the deceased Joseph Kipkiror Kasitet **"was not married and died aged 70 years"**. The subsequent letter dated 30/11/2012 tendered by the applicant is authored by the same chief V.K. Kimitto. The same chief in contrast to the earlier letter then stated that the deceased was married to the applicant with 5 children.

47. The contradiction is a clear indication that at times some chiefs can be manipulated and it is unsafe to take their letters as gospel truth unless they are called to testify. In that case their evidence will be interrogated and subjected to cross-examination. That way their evidence can be given some weight depending on their credibility and demeanor when testifying in court

48. In this instance, the said chief was not called to clear the air or offer an explanation on the obvious contradiction. In the absence of an explanation it is hard for this court to cherry pick which letter is authentic or credible as opposed to the other. The applicant bore the burden of proof as I have observed above and

that burden needed to be discharged which has not been done in this case.

49. This court is persuaded by the holding in the cited case of **Re Estate of M'ithinji M'Anjara (dcd) (supra)** that the production of a chief's letter on its own cannot be proof of marriage or paternity. An applicant requires more to proof the same.

50. I have considered the minutes of a meeting held to deliberate on the land dispute between the applicant and the respondent dated 10/5/2013. The existence of a dispute again does simply show that there was a dispute over who the dependants of the estate were. It does not proof marriage of the applicant to the deceased. None of the alleged elders to that meeting was called to testify in court. What is more significant is that in this application the applicant has not stated where their matrimonial home was. She conceded during cross-examination that the deceased had built his dwelling on a tree but added that he had another ramshackle of a house on the ground. She did not tell or explain whether she lived on the tree with him or on the ground below the tree.

51. She did not state where they got married, if any dowry was ever paid if at all the marriage was customary as claimed. She did not bring any of her relative or that from the deceased's side to confirm any of her assertion of marriage. She did not live on the estate and none of her children ever lived there. No evidence has been adduced to that effect. So basically the applicant's case stands on thin ice so to speak.

52. The respondent has further raised serious questions that dimmed the applicant's claim. The question raised regarding her age as captured on her Identity Card left serious doubts about her claims of dependency. Her identity card shows that she was born in 1978. In her affidavit in support of the summons for revocation of grant sworn on 21/1/2014 the applicant was abt cagey on when she got married to the deceased or when the alleged children were born. In her evidence in court she stated that she got married in 1979. I have seen from the documents filed that she made an application to change the particulars of dates of birth vide an application dated 15/12/15 long after the demise of the deceased. The reasons for her applications are not clear because the form exhibited is not legible. What is however certain is that no evidence has been tendered to show if the District Registrar of Persons, Nakuru was persuaded to change the particulars. It is not known if her application was approved or disproved. Of course one expects that if it was approved she could have used it in the proceedings to show that she was born in 1963 as she testified in court and not 1978 as indicated in her identity card. What is obtaining in so far as her year of birth is concerned is 1978 as indicated from her identification card tendered in court. It is also mind boggling that a mistake of such a magnitude of 15 years could have been made at the time she was registering for the identity card. This perhaps lends credence to the submission by the respondent. The applicant's action to apply for change of particulars was an afterthought and made in bad faith.

53. It is not lost given the history of the deceased well captured by a person no less than a professor from Stockholm University named Wilhelm Ostberg in a paper titled **“The bard of Marakwet”** the deceased without question was a unique and enigmatic person described as a cultural enthusiast who lived on a tree within Eldoret Town. His fame as told by professor and supported by parties in this cause spread far and wide. It is therefore not far-fetched that his life of solitude is remarkable as it was reported could have attracted speculators out to benefit from his properties when he passed on.
54. The applicant’s case is my conserved view could be a classic example of such because how can one explain someone turning up 9 years after demise of a deceased and without any documents like marriage certificate, birth certificates of the children, proof of support like payment of school fees, family photographs or portraits. Nothing. Just a claim that so and so who is the deceased and owner of such a property was a spouse or a father?
55. The Law of Succession Act and the Evidence Act in my view comes in handy to protect the estates of deceased persons from such speculators and this court finds that the applicant’s claim clearly fails short in terms of proof.
56. The applicant has pointed out issues she claims were fraudulent like a report made by the respondent regarding loss of title deed. That there was impersonation and that he was charged in court for fraud but the respondent has clearly demonstrated that he was acquitted of the offence and though the respondent could have done better by adducing the evidence

of acquittal, I do not find any evidence showing he was convicted of the offences he was allegedly charged with.

57. This court finds that having failed to prove that she was a spouse or that the children are dependants to the estate, the applicant lacks the capacity to move this court under section 76 of Law of Succession Act. She has not sufficiently demonstrated her interest in the estate and her application dated 28/1/2014 is unsustainable as it lacks in merit. The same is dismissed with costs.

**DELIVERED, DATED and SIGNED at KITALE this27th .
..... day ofOCTOBER....., 2025.**

HON JUSTICE R.K. LIMO
KITALE HIGH COURT

Ruling delivered in open court

In the presence of

Dina Kasitet

Joseph Yego

No appearance for advocates on record

Duke/Chemosop -court assistants