



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kipkosgei Birgen (Deceased) (Succession Cause
11 of 2023) [2025] KEHC 14880 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14880 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
SUCCESSION CAUSE 11 OF 2023**

JR KARANJA, J

OCTOBER 14, 2025

IN THE MATTER OF THE ESTATE OF KIPKOSGEI BIRGEN:.....(DECEASED)

BETWEEN

JACOBETH BURETI PETITIONER

AND

MAGDALINE JEMELI APPLICANT

RULING

1. The subject grant of Letters of Administration Intestate respecting the Estate of the Late Kipkosgei Birgen [Deceased] was issued on 2nd July 2021 and belatedly confirmed on the 13th June 2024, in favour of Jacobeth Bureti [Petitioner/ Respondent] as son of the deceased among other siblings comprising of four [4] sons and eight [8] daughters.
2. The estate property availed for distribution included Land Parcel No. Nandi/Lessos/346 measuring 14.2HA and Cheptiret/ Cheplaskei Block 3 [Serwet]/153 measuring 2.02HA. The total value of the estate was placed at kshs. 30,000,000/- [30 million] as at the time the petitioner for Letters of Administration was filed in the month of March 2020.
3. The Certificate of Confirmation of grant dated 13th June 2024, indicated that the entire estate was shared among the Beneficiaries in the manner specified therein. The Applicant herein, Magdalene Jemeli was among the beneficiaries who benefitted in the equal distribution of Land Parcel No. Nandi/Lessos/346 at 2.924Acres each.

The Second Parcel of Land [Cheptiret/Cheplaskei Block 3[Serwet]/153 was wholly distributed to the beneficiary Joseph Kipruto Ngetich Rugut.

4. The distribution of the estate marked the end of this succession cause, so it seemed. But, the law under Section 76 of the [Law of Succession Act](#), provides for annulment or revocation of a grant whether or not confirmed. It was pursuant to this provision of the law that the Applicant filed the present application



dated 7th February 2025, seeking revocation of the subject grant and/or the Certificate of Confirmation of Grant dated 13th June 2024.

5. The grounds on which the application is anchored are set out in the summons for revocation and fortified by the Applicant’s averments in the supporting affidavit dated 7th February 2025 and supplementary affidavit dated 9th May 2025.

A replying affidavit deponed by the eldest child of the deceased, Emily Jepkurgat Koskei, on the 7th April 2025 is apparently in support of the confirmed mode of distribution of the estate and in opposition to the present application. The Respondent’s replying affidavit was dated 24th February 2025.

6. Section 76 of the *Succession Act* provides 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 an 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.
- e.

7. In her supporting affidavit as fortified by her submissions the Applicant contended that the impugned grant was obtained fraudulently by making of false statement and concealment of material fact.

Further, that the proceedings to obtain the grant were defective in substance and were initiated without the consent of all the beneficiaries. All these factors fell within Section 76[a] [b] and [c] of the Succession Act.

8. Most importantly, it is clear from her supporting grounds and submissions that the applicant does not “per-se” challenge the issuance of the grant, but the manner the estate property was distributed, in particular, Land Parcel No. Cheptiret/ Cheplaskei/Block 3[Serwet/153, which was distributed exclusively to the beneficiary Joseph Kipruto Ngetich. She contended that her consent was not sought prior to the distribution of the entire estate and/or proposed manner of distribution of the Estate.

9. The Applicant therefore implied that the confirmation proceedings were improper and defective in as much as she was not made aware of them and were initiated without her consent and that of other beneficiaries. She contended that other beneficiaries were entitled to a share of the Cheptiret parcel of land and that other beneficiaries had benefited from other assets including the Cheptiret land and ought not therefor have shared the Lessos Parcel of Land equally with the other beneficiaries.

10. The Respondent’s opposition to the application on grounds contained in the replying affidavits was a contention that both the grant and the certificate of confirmation of grant were regularly obtained in accordance with the Law and with the consent and/or knowledge of the Applicant who only changed her mind on the agreed mode of distribution at the confirmation stage.



11. Without any doubt and as decreed by the law a grant obtained in defective proceedings and/or by misrepresentation and/or false representations and/or by concealment of material facts would invariably be annulled or revoked if any of the foregoing factors are established against the Petitioner or Petitioners.

12. The burden to establish and prove such factors lies with the Applicant and is achieved by producing evidence which must not only be sufficient but also credible enough to warrant exercise of discretion in favour of the Applicant.

The record of the court could at time or mostly be a key indicator on whether or not the process of obtaining the grant was defective or was marred by fraud, misrepresentation or concealment of material facts. It cannot be gainsaid that the record would speak for itself and assist in the determination of an application such as the present one.

13. Any allegation of impropriety on the part of the petitioner in the process of obtaining the grant would stand only if it is backed by cogent and credible evidence.

In this case, the Applicant made several allegations of fraud and concealment of material facts some of which do not form part of her supporting grounds, but fell short of providing necessary evidence to prove the allegations. The annexures in her supporting affidavit apart from being documents extracted from the court record do not in any manner prove the allegations of fraud, misrepresentation and concealment of material facts made against the Petitioner by the Applicant.

14. On the contrary, the court record clearly shows that the issuance of the grant was procedurally above board. The chief's letter dated 25th April 2019 was provided and remained undisputed.

The Form P & A 5 specified all dependants of the deceased, dead or alive as well as the estate property availed for distribution i.e. both the Lessos and the Cheptiret parcels of land.

Upon being satisfied that all pre-requisites had been complied with the court issued the subject grant on the 2nd July 2021 and when the summons for confirmation of grant were taken out by the Petitioner on the 22nd April 2024, a date was set for hearing thereof.

15. The date was the 13th June 2024, when the Petitioner and some of the beneficiaries appeared in court represented by Counsel, Mr. Chepkwony. The summons was allowed by the court without any dispute from anybody.

Consequently, the certificate of confirmation of grant dated 13th June 2024 was issued and the entire estate was accordingly shared.

16. Apparently, the distribution of the estate in the manner reposed in the schedule of distribution dated 22nd April 2024 and confirmed by the court on 13th June 2024 is what provoked the present application.

However, the affidavit of service dated 20th May 2024, contained in this record shows that the Applicant was served with a notice of hearing of the summons for confirmation of grant. She could not therefore be heard to say that she was not aware of the confirmation proceedings.

17. In any event, the Applicant did not raise any protest to confirmation of the grant in the manner proposed. Therefore, she could not be heard to later say that the grant was issued and confirmed irregularly, fraudulently or by misrepresentation and/or concealment of material facts.

18. However, despite the failure of the Applicant to file a protest to confirmation or for that matter, any other beneficiary, it is worth of note that the schedule of distribution of the estate annexed to



the Petitioner's affidavit in support of confirmation dated 22nd April 2024, was not signed by some beneficiaries including the Applicant even though a majority of the beneficiaries signed it.

19. The failure to sign the schedule by some of the beneficiaries signified a lack of total consensus between the beneficiaries on the proposed mode of distribution of the estate thereby implying that the summons of confirmation of grant was presented pre-maturely in court by the Petitioner as supported by a section of the beneficiaries.
20. Otherwise, this court does not see or find any cogent reason for revocation of the grant on account of the unproven allegations of impropriety against the Petitioner. In any event, the court record vindicates the Petitioner with regard to the issuance of the grant. The Applicant's allegations in respect therefore are devoid of merit and so is the present application.
21. With regard to the certificate of confirmation of grant it is evident that it was regularly obtained without any element of fraud and misrepresentation, but it was obtained rather pre-maturely on the assumption that all the beneficiaries had mutually agreed on the proposed mode of distribution of the estate, yet the failure of some of the beneficiaries to sign the schedule of distribution signified a lack of consensus in that regard.
22. It is the opinion of this court that the pre-mature presentation of the summons for confirmation of the grant by the Petitioner was an abuse of the court process on his part and all the beneficiaries who supported his action. This is the sole reason why this court invokes the provisions of Rule 73 of the *Probate and Administration Rules* to now revoke, set aside or invalidate the certificate of confirmation of grant dated 13th June 2024 and order that a fresh summons for confirmation of grant be taken out after all the beneficiaries have accepted and agreed on the proposed mode of distribution. In any event within a period of six [6] months or any shorter period from this date hereof.
23. The matter be given a mention date for the parties to appraise on the existing status and further orders. The parties will bear their own costs of the application.

Ordered accordingly.

DELIVERED AND DATED THIS 14TH DAY OF OCTOBER, 2025.

HON. J. R. KARANJAH,

JUDGE

