



REPUBLIC OF KENYA



KENYA LAW
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**Bundotich & another v Kipruto & 2 others (Succession Appeal
E001 of 2025) [2025] KEHC 16617 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16617 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
SUCCESSION APPEAL E001 OF 2025
RB NGETICH, J
NOVEMBER 13, 2025**

BETWEEN

EDISON KIPLAGAT BUNDOTICH 1ST APPELLANT

JEPCHUMBA BUNDOTICH 2ND APPELLANT

AND

LEKUAT TINDERET KIPRUTO 1ST RESPONDENT

JOSEP TANUI TINDERET 2ND RESPONDENT

KOSITANY KIPRUTO TINDERET 3RD RESPONDENT

*(Being an appeal from the ruling of Richard Koech (SPM) arising from
the application dated 13th may 2024 delivered on 30th January 2025)*

JUDGMENT

1. The appellants filed an application dated 13th May 2024 before the trial court seeking revocation of a grant issued to the respondents on 18th March 2014 in respect of the estate of the late Kipruto Tinderet Cheburet alias Tinderet Cheburet (deceased) who died on 21st February 1984.
2. The grounds in support were that the grant was obtained through false statements and concealment of material facts by the petitioners (now respondents); that the appellants were not informed of the succession cause and no consent was sought before the filing of the petition; and that they are grandchildren of the deceased being children of the late Bundotich Ruto.
3. The respondents filed a replying affidavit dated 25th September 2024 denying the allegations and averred that the application was based on falsehoods. They maintained that they are sons of the deceased, that the 1st appellant is a grandchild who does not rank in priority, and that the 2nd appellant



is a stranger to the estate. They argued that the late Bundotich Ruto was already listed as a beneficiary, hence there was no concealment of material facts.

4. A protestor, Nancy Jeruto Sigilai, filed an affidavit of protest dated 26th August 2024 claiming interest in the estate as a purchaser of part of the suit property.
5. By Riling delivered on 30th January 2025, the trial court dismissed the appellants' summons for revocation of grant, holding that they were not excluded from succession and were free to pursue their father's share during distribution.
6. Dissatisfied, the appellants lodged the present appeal raising the following issues for determination:
 - a. Whether the appellants had capacity and were entitled to apply for revocation of the grant.
 - b. Whether the minutes giving rise to the succession cause were free from challenge.
 - c. Whether upon the demise of their father, the late Bundotich Ruto, the appellants should have been involved in the succession proceedings.
 - d. Whether the property Lembus Kiplombe 278 ought to be preserved pending determination of the succession.

Appellants' Submissions

7. On capacity, the appellants submit that they are grandchildren of the deceased through their father, the late Bundotich Ruto, and thus qualify as "interested parties" under Section 76 of the *akn ke act 1972 14 Law of Succession Act*, which permits any interested party to apply for revocation of grant where there has been concealment, fraud, or procedural defect.
7. They argue that since the respondents admit the 1st appellant's father was a son of the deceased, the appellants are entitled to represent their father's house. The exclusion of his children's names from the petition and minutes renders the grant defective.
7. The appellants further contend that although the respondents described the 2nd appellant as a stranger, Section 76 allows any person with an interest to move the court for revocation. The omission of Bundotich Ruto's children from Form P & A 5 and family minutes confirms exclusion.
7. They maintain that the minutes of the alleged meeting of 1st June 2023 are questionable, as the appellants were not represented, and the chief said to have convened the meeting was not listed as present. The minutes were incomplete and failed to identify representatives from all houses of the deceased.
7. They urge that as direct descendants of Bundotich Ruto, the appellants herein were entitled to participate and represent his house in the succession proceedings.
7. In respect to the property Lembus Kiplombe 278, the appellants submit that it forms part of their ancestral home, that the respondents have been attempting to dispose of it, and that preservation is necessary pending determination of their claim.
7. They urge the court to revoke the grant and allow their application.

Respondents' Submissions

22. The respondents condensed the appeal to one key issue: whether the learned trial court erred in finding that the summons for revocation of grant failed to meet the threshold under Section 76 of the *akn ke act 1972 14 Law of Succession Act*.



22. They submit that the appellants failed to prove concealment or fraud. The 1st appellant's affidavit was inaccurate as it misstated the deceased's date of death, and the record shows that all rightful beneficiaries were included in Form P & A 5.
22. Under Rule 26(1) of the Probate and Administration Rules, the requirement is notice not consent of persons equally entitled. The appellants' failure to attend the family meeting does not invalidate the process.
22. They maintain that the late Bundotich Ruto was duly listed as a beneficiary, meaning his estate was recognized, and that his children can pursue their share at the distribution stage without revoking the grant.
22. They rely on *Tirus Mwaniki Njiru v Jane Igandu* (2021) eKLR, in re Estate of Nathan Kimaiyo Tarus (2024), and *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* (2016) eKLR, which affirm that revocation of a grant is a discretionary power exercised only upon proof of fraud, concealment, or material defect.
22. The respondents argue that the appellants have shown none of these grounds. They further submit that the 2nd appellant has not proved her relationship to the deceased or to the late Bundotich Ruto, as no DNA or other evidence was provided.
22. On the 1st appellant's claim of exclusion, they submit that under Section 66 of the *akn ke act 1972 14 Law of Succession Act*, priority in administration lies with surviving spouses and children, not grandchildren. Since the appellants' father was included in Form P & A 5, their lineage is already represented and protected.
22. They rely on in re Estate of Charles Shatsala Ikunza (Deceased) [2021] eKLR, where the court emphasized that those with lesser right to administration must obtain consent or citations from those with a prior right.
22. They therefore urge this court to dismiss the appeal as unmerited, uphold the decision of the trial court, and confirm the validity of the grant issued to the respondents.

Appellants' Supplementary Submissions

22. In response to the respondents' submissions, the appellants condensed the issues as follows:-
 - a. Whether inclusion of their father's name in the P & A forms was sufficient to exclude them.
 - b. Whether they ought to have been notified of the succession cause.
 - c. Whether the property Lembus Kiplombe 278 should be preserved.
 - d. Whether the protestor Nancy Jeruto Sigilai was properly heard.
 - e. Representation and compliance with Order 9 Rule 9 of the Civil Procedure Rules.
22. They argue that listing their deceased father's name in the petition without identifying his surviving children or representatives was inadequate, and that they were never invited to the family meeting or succession proceedings.
22. As regards the 2nd appellant, they dispute the respondents' claim that she is a stranger, asserting she is also a child of the late Bundotich Ruto. The issue of DNA was introduced belatedly in submissions, denying her a fair hearing.



22. They emphasize that the respondents' own acknowledgment that the 1st appellant's father was a beneficiary strengthens their claim to representation of his house. Since Bundotich Ruto is deceased, his children should have been included as beneficiaries or administrators.
22. The appellants submit that their exclusion amounts to disenfranchisement, and that the succession cause was initiated secretly without their knowledge or consent.
22. On representation, they argue that the appeal constitutes a new cause of action distinct from the lower court proceedings; hence Order 9 Rule 9 of the Civil Procedure Rules does not apply. The change of advocates therefore required no leave or consent.
22. They contend that the respondents have not demonstrated any prejudice and that the appeal should be determined on its merits in the spirit of Article 159 of *akn ke act 2010 constitution the Constitution*, which calls for substantive justice.
22. In conclusion, they urge the court to allow the appeal, set aside the trial court's decision, and revoke the grant issued to the respondents.

Analysis And Determination

22. I have carefully considered the record of the trial court, the memorandum of appeal, the rival submissions by the parties, and the applicable law. The main issue arising for determination is whether the learned magistrate erred in dismissing the application for revocation of grant without considering the appellants' right to representation of their late father's household.
22. Section 76 of the *akn ke act 1972 14 Law of Succession Act* empowers the court to revoke or annul a grant where the proceedings to obtain it were defective in substance, or where it was obtained fraudulently by making false statements or concealment of material facts. Section 66 of the Act provides the order of preference in the appointment of administrators, while section 41 provides for representation of a deceased child's family where that child predeceased the intestate.
22. The appellants are grandsons of the deceased, being sons of the late Bundotich Ruto, who was a son of the deceased. It is not in dispute that the deceased's children were listed as beneficiaries of his estate including the late Bundotich Ruto. The record shows, however, that at the time of petitioning for the grant and its subsequent confirmation, Bundotich had passed away, and his household was not directly represented among the administrators.
22. The trial court held that since Bundotich Ruto was listed as a beneficiary, his family could claim their share through him, and therefore there was no concealment or misrepresentation. While that finding is legally sound in so far as it relates to the recognition of the late Bundotich's entitlement, the court did not address the practical aspect of representation in administration.
22. Section 41 of the *akn ke act 1972 14 Law of Succession Act* envisages that where a child of the intestate dies before the deceased, leaving issue, such issue shall take, through representation, the share that their parent would have taken. That principle extends beyond distribution to ensure that every branch of the family is adequately represented in the administration of the estate. The inclusion of a representative from the household of a deceased's child fosters transparency, inclusivity, and accountability in the management of the estate.
22. In the present case, the estate of the deceased has already been substantially administered, and there is no evidence of concealment or fraudulent conduct by the respondents. Nevertheless, in order to protect the interest of the late Bundotich's family and to avoid future disputes during completion of the administration, it is just and equitable that one member from that household be appointed as a



co-administrator to represent the household of Late Bundotich. This limited intervention will not invalidate the existing grant but will enhance fairness in its execution.

22. I therefore find that while the appellants did not establish grounds for full revocation of the grant under section 76, the appeal partially succeeds on the question of representation in administration.

Final Orders:

22.

- a. This appeal is allowed to the limited extent that one representative from the family of the late Bundotich Ruto shall be included as co-administrator of the estate of the deceased, to act jointly with the existing administrators in completing the administration and distribution of the estate.
- b. Each party shall bear their own costs.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 13TH OF NOVEMBER 2025.

.....

RACHEL NGETICH

JUDGE

In the presence of :

Mr. Maragia for Appellant.

Mr. Arusei for Respondent.

CA, Karanja.

