

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NO. 202 OF 2015

IN THE MATTER OF THE ESTATE OF KAMBUNI ARAP SIGEI

(DECEASED)

JOSEPH KIPKEMOI RUTO 1ST

PETITIONER

RAELI CHEPKEMOI SIGEI 2ND

PETITIONER

VERSUS

WILLIAM MUTAI KORIR 1ST OBJECTOR

EDNAH CHEPNGENO SIGEI 2ND

OBJECTOR

RULING

1. In this matter, the Petitioners as the uncle and brother-in-law respectively of the deceased petitioned for Letters of Administration Intestate of the deceased on 27th October 2015. A Grant was issued in their joint names on 29th March 2016. A Certificate of Confirmation of Grant was issued on 22nd February 2018 and a subsequent Rectified Certificate of Confirmation of Grant was issued on 10th March 2021.

2. The Objectors filed Summons for Revocation of the Grant dated 5th March 2025. The Objectors wanted the Grant revoked on the ground that the Petitioners were strangers to the deceased's estate.

The Objection

3. Through his Supporting Affidavit dated 5th March 2025, the 1st Objector stated that he was the deceased's biological son. That the Objectors were strangers to the deceased's estate and were not entitled to run the affairs of the estate. The 1st

Objector stated that the Petitioners had partitioned the estate parcel known as KERICHO/KYOGONG/67.

4. It was the 1st Objector's case that the documents used in the Petition were fraudulent and were not executed in accordance to the law.
5. Through their written submissions dated 29th September 2025, the Objectors submitted that the Petitioners were not the deceased's biological children. That despite their existence as the deceased's children, the Petitioners failed to disclose this fact in their Petition. The Objectors further submitted that they had the priority in terms of distribution of the estate.
6. It was the Objectors' submission that the Petitioners had no relationship with the deceased. That the Grant was obtained by fraudulent concealment of material facts and further that the process was irregular as the deceased's children had not

participated neither were they informed of the succession proceedings. They relied on **Re Estate of Kibui Njage (Deceased) Family Miscellaneous Application 79 of 2013 [2025] KEHC 1977 (20 February 2025) (Judgment).**

7. The Objectors submitted that this court lacked jurisdiction to determine whether the deceased's estate was held in trust as it offended the provisions of Article 165(5) and Article 162(2)(b) of the Constitution of Kenya. That such jurisdiction was vested in the Environmental and Land Court. They relied on **Diasproperty Limited & 5 others v Githae & 10 others [2024] KECA 318 (KLR) et.al.**

Response

8. Through his Replying Affidavit dated 12th August 2025, the 1st Petitioner stated that they filed the present Petition with the full knowledge of the Objectors and their late brother, Peter Kipngetich Korir. That the deceased died in the year 1982

and left his family members and brothers residing on his estate being KERICHO/KYOGONG/67.

9. It was the 1st Petitioner's case that the present Application was meant to delay the conclusion of the succession proceedings. It was the Petitioner's further case that their late brother, Peter Kipngetich Korir who died on 12th March 2025 was given 8.5 acres of the deceased's estate as a trustee on behalf of his siblings. That the Objectors concealed the fact that the deceased was the registered proprietor of KERICHO/KYOGONG/67 on behalf of his two deceased brothers (Kipruto Sigei and John Kiplangat Sigei) who had been in occupation of the parcel before the adjudication of the area.

10. At the time of writing this Judgement, the Objectors had not filed their written submissions despite being directed to do so by this court on 30th September 2025.

11. I have gone through the record, the Summons for Revocation dated 5th March 2025, the Replying Affidavit dated 12th August 2025 and the Objectors' written submissions dated 29th September 2025. The sole issue for my determination was whether there were sufficient grounds to revoke the Grant dated 29th March 2016.

12. **Section 76 of the 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.

13. In the present case, the Objectors main ground of supporting their application for revocation was that the Petitioners concealed the fact that they (Objectors) were the deceased's biological children and thus had ranking priority over the Petitioners in terms of being the administrators of the deceased's estate.

14. I have noted from the record that the Objectors did not produce any evidence to show that they were the deceased's biological children. However, the Petitioners admitted in their Replying Affidavit dated 12th August 2025 that the Objectors' deceased brother, Peter Kipngetich Korir had been allocated 8.56 acres of the deceased's estate to hold in trust for his siblings. I have looked at the rectified Certificate of Grant dated 10th March 2021 and I have noted that Peter Kipngetich Korir's (deceased) siblings were Paul

Korir, Josephine C. Korir, William Korir (1st Objector) and Charles Korir. My conclusion from the above is that the Objectors were the deceased's children.

15. This takes me to the issue of ranking priority. **Section 66 of the Law of Succession Act** provides: -

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c)the Public Trustee; and

(d)creditors.....

16. Rule 26 of the Probate and Administration Rules
provides: -

(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.

(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by

an affidavit of the applicant and such other evidence as the court may require.

(3) Unless the court otherwise directs for reasons to be recorded, administration shall be granted to a living person in his own right in preference to the personal representative of a deceased person who would, if living, have been entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.

17. In **Adome v Ogutu [2024] KEHC 7682 (KLR)**, Musyoka J. held: -

“The courts have repeatedly held that the list of preference in section 66 of the Law of Succession Act, with regard to appointment of administrators, is not binding on the courts, nor cast in stone. It is only a guide..... (Emphasis mine)

18. Similarly, in **re Estate of William Kamiri Ngeru (Deceased) [2025] KEHC 9256 (KLR)**, the court held: -

“Section 66 of the Law of Succession Act bestows this court with the discretion to appoint the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made.”

19. The Objectors contend that they were not notified of the existence of the present succession proceedings and further that the Petitioners concealed from this court the existence of the deceased's biological children (Petitioners). I have looked at the record and I have noted that the Petition was filed 27th September 2015 and the Grant was issued on 29th March 2016. Before the Grant was issued, the Petition had been published in the Kenya Gazette dated 12th February 2016 where the Objectors had 30 days within which they could file their Objections. They did not.

20. The Petitioners filed Summons for Confirmation of the Grant on 25th October 2016. From the record, I have seen five Affidavits of Service sworn by Walter Kiprono Kosge all dated 19th February 2018. The process server indicated that he served Paul Korir on 6th February 2018, Josephine Korir on 2nd February 2018, William K Korir on 8th February 2018, Jeremiah Korir on 2nd February 2018 and Charles Korir on 8th February 2018 with the Application for confirmation of the Grant. The process server further indicated that they all received the Application but declined to sign. From the above, I am satisfied that the Objectors were aware of the existence of the present succession proceedings.

21. On the issue of the Petitioners being strangers to the deceased's estate, I have noted from the Petition that the Petitioners brought the Petition as the deceased's uncle and brother-in-law. The law does not limit the list of beneficiaries to be the direct descendants of the deceased. **Section 29 of the Law of Succession Act** provides: -

(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, grandparents, 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; and

(c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death. (Emphasis mine)

22. Flowing from the above, it is my finding that the Petitioners were not strangers to the deceased's estate. The Petitioners had every right as the Objectors to petition for letters of administration in relation to the deceased's estate. In the

present case, the only hurdle the Petitioners had to jump was to give notice to any other person entitled to apply for the letters, in this case the Objectors. Such notice was given when the application was published in the Kenya Gazette and further, the Objectors were served with the subsequent Application for confirmation of the Grant. Therefore, the Objectors' claim that they were not aware of the present succession proceedings fails.

23. As provided for by **section 66 of the Law of Succession Act**, this court has discretionary power to appoint administrators of a deceased's estate. Having considered the Application as a whole and the circumstances therein, it is my finding that the present Application was an afterthought and was meant to delay the conclusion of this matter. The Petitioners included the Objectors in the distribution of the deceased's estate as evidenced by the rectified Certificate of Confirmation of Grant dated 10th March 2021 and the present Application exhibits nothing but bad faith and indolence from

the Objectors and it did not fall within the provisions of **section 76 of the Law of Succession Act.**

24. In the end, the Application dated 5th March 2025 has no merit and is dismissed. This being a family matter, each party shall bear their own costs.

Ruling delivered, dated and signed at Bomet this 12th day of November, 2025.

.....
Hon. JULIUS K. NG'ARNG'AR
JUDGE

Ruling delivered in the presence of:

Siele/Susan (Court Assistants).

N/A for the Petitioners

Leteipa for the Objectors

ORIGINAL