

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAPSABET
FAMILY DIVISION

PROBATE & ADMINISTRATION CAUSE NO. E015 OF 2023
IN THE MATTE OF THE ESTATE OF THE LATE KIPKOSGEI
ARAP MUTAI alias KIPKOSGEI

MUTAI:.....D

DECEASED
BETWEEN
PETER SOME

KEINO:.....1ST

APPLICANT
DANIEL KIPKEMEI

KOSGEI:.....2ND APPLICANT

AND
ENOCK

KADENY:.....1ST

RESPONDENT
PETER FILINGA

CHAVANAH:.....2ND

RESPONDENT
JOSEPH

TAVISI:.....3RD

RESPONDENT
SIMON MULALI

MURUNGA:.....4TH

RESPONDENT
ANDREW

SONGA:.....5TH

RESPONDENT
ISAAC WANYIKA

TSISIOVILI:.....6TH

RESPONDENT

- KEVIN**
- SINDANI**.....**7TH**
RESPONDENT
CHARLES
- KATAM**.....**8TH**
RESPONDENT
LEAH
- MULUPI**.....**9^T**
H RESPONDENT
SAMUEL
- SANGA**.....**10TH**
RESPONDENT
CALISTUS
- OKANG'A**.....**11TH**
RESPONDENT
TIMOTHY
- KISIANG'ANI**.....**12TH**
RESPONDENT
ZABETH
- MWANJA**.....**13TH**
RESPONDENT
MARK
- MASAMBA**.....**14TH**
RESPONDENT
JOSEPH
- NYONGESA**.....**15TH**
RESPONDENT
DAVID
- TAVIA**.....**16TH**
RESPONDENT
SHADRACK
- CHIVILILI**.....**17TH**
RESPONDENT

RULING

1. The objection, rather protest dated 18th November 2024 is made by a total of seventeen [17] individuals against the summons for confirmation of grant dated 12th July 2024, filed by **Daniel Kipkemei Kosgei** and **Peter Some Keino** in respect of the grant of Letters of Administration intestate issued to them on 17th April 2024 pursuant to the petition dated 20th April 2023 respecting the estate of their Late father, **Kipkosgei Arap Mutai alias Kipkosgei Mutai [deceased]** who passed away on 17th May 1974.

2. A part from the two Petitioners, the deceased was also survived by other children including **Francis Kendagor Kosgei, Christopher Kipkorir Kosgei, Teresa Jepkolum Busienei** and **Regina Jepkemboi Kirarei**, who therefore stood as the true and rightful beneficiaries of his estate comprising of **Land Parcel No. Nandi/Soimining/368** measuring 32.0hectares as per the certificate of search filed herein by the Petitioners dated 27th January 2023, showing that the deceased was the sole proprietor of the property having been registered as such on the 24th October 1973.

3. The holder of a grant of representation is required under **Section 71 [1]** of the **Succession Act** to apply to the Court for confirmation of the grant in order to empower the distribution of any capital assets within a period of Six [6]

months from the date of issue or such shorter period as the court may direct.

Accordingly, the impugned summons for confirmation of grant dated 12th July 2024 was filed herein by the Petitioners.

4. The affidavit in support of the summons contains a consent on the mode of distribution signed by all the beneficiaries. It is therein proposed that the entire estate measuring approximately seventy nine [79 acres] be distributed to the beneficiaries as follows: -

- | | | | |
|------|------------------------------------|---|----------------|
| i. | Peter Some Keino | - | 23Acres |
| ii. | Daniel Kipkemei Kosgei | - | |
| | 14.6Acres | | |
| iii. | Francis Kendagor Kosgei | - | |
| | 16Acres | | |
| iv. | Christopher Kipkorir KOsgei | - | |
| | 6.5Acres | | |
| v. | Teresa Jepklum Busienei | - | |
| | 6.5Acres | | |
| vi. | Regina Jepkemboi Kirorey | - | |
| | 12.4Acres | | |

5. The Proviso to **Section 71 [2] of the Succession Act** provides that in cases of intestatry, the grant of letters of

administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all person beneficially entitled, and when confirmed the grant shall specify all such person and their respective shares.

Herein, upto the point where the summons for confirmation of grant was filed, no dispute arose with regard to identities of the beneficiaries of the estate and their respective shares in respect thereof. Indeed they all signed the consent on the mode of distribution dated 12th July 2024 thereby confirming their beneficial entitlement to the estate and their respective shares.

6. In the petition for the grant there was no indication that the estate property was encumbered by any form of liability arising from any transactions undertaken thereon by the deceased prior to his demise. However, the present objection seems to suggest otherwise inasmuch as the Objectors are claiming a purchaser's interest in the estate. The affidavit in support of the objection dated 18th November 2024 deponed by the First Objector, **Enock Kadeny**, on behalf of all the Objectors indicates that they respectively purchased parts of the estate property, hence becoming beneficiaries of the estate by dint of the sale transactions.

7. The Objectors therefore imply that the summons for confirmation of the grant ought not be allowed unless they are included as beneficiaries of the estate alongside the Applicant/ Petitioners and their siblings. In that regard, they [Objectors] also imply that they want their respective shares of the estate determined before the grant is confirmed as applied by the Petitioners.

8. A list of the alleged purchases of parts of the estate property and the necessary sale agreements are exhibited in the Objectors' supporting affidavit as the annexure marked "EK2" consisting of written and handwritten copies of the originals.

In essence, the Objectors contended that the Petitioners obtained the grant by making false statement and concealing material facts such as their purchaser's interest in the estate property.

9. **Section 93** of the **Succession Act** provides for such purchaser's interest in the following terms: -

"[1] All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act, by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant

either before or after the commencement of this Act.

[2] A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the Purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies of the deceased have not been discharged nor provided for.”

10. This objection therefore turns on the question of validity of the land sale agreements exhibited herein by the Objectors to prove that they respectively purchased parts of the estate property hence their alleged purchaser’s interest in the property. This issue was not adequately or at all addressed in the Objector’s submissions dated 4th July 2025, particularly as relates to the sale of land transactions undertaken by the seller and buyer of the land.

11. A purchaser of land belonging to a deceased person would acquire a purchaser’s interest in the property only if it was sold to him or her by the deceased during his lifetime or by the holder of a valid grant duly confirmed.

Section 82 of the **Succession Act** provides for powers of holders of a grant and this includes the power to sell or otherwise to turn to account, so far as seems necessary or

desirable in the execution of their duties, all or any part of the assets vested in them as they think best.

12. Under **Section 82 [b][ii]** of the **Act**, immovable estate property such as land cannot be sold by a holder of a grant before the grant is confirmed by the court. The grant itself takes effect from the date of issue. Therefore, in intestate succession any act done in respect of the estate of a deceased person by a person who is not a holder of a valid grant of letters of representation would amount to nothing and be unlawful “*abinitio*.” **[See Virginia M. Thurania Vs. Purity N. Thurania 2017 eKLR]**

13. The authority to sell property belonging to a deceased person is thus derived for a valid grant of letters of administration and in case of immovable property the grant must be confirmed before such transaction is undertaken. Indeed, any acquisition of the property of an intestate deceased person contrary to the provisions of the law of Succession Act accounts to an unlawful acquisition which would have no protection of the law.

14. Therefore, any action undertaken by a person whose effect would be to interfere with property of an intestate deceased without being authorized to do so by the court amounts to intermeddling with the estate under Section 45

of the Law of Succession Act whose net effect is that the property of a deceased person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the law which authority emanates from a grant of representation and any person who handles such estate property without authority would be guilty of intermeddling, a very serious criminal offence. **[See, Veronica Njoki Wakagoto [deceased] 2013 eKLR].**

15. The deceased herein died in 1974 and the grant respecting his estate was issued to the Petitioners rather belatedly in the year 2024. The common thread running through the sale agreements exhibited herein by the Objectors is that the agreements are uncertain and unspecified as to what parcel of land was under sale at the time. In most of those agreements there is no specific description of the land being sold to and purchased by the Objectors.

16. And, even if it were to be accepted that the land being sold was actually the estate property subject of these proceedings, the agreements indicate that the transactions occurred long after the deceased died and prior to the subject grant being issued to the Petitioners, both of whom had no legal authority to deal with the property before the issuance of the grant and its confirmation.

17. The years that can be picked out with difficulty from the exhibited sale agreements are 2016, 2017 and 2018. The identities of the parties in all the agreement are uncertain such that it is not known who was selling and who was buying.

But, one thing is certain, the seller was not the deceased. He was long gone from this world and if his surviving dependants sold his land, then they did so before the grant of representation was issued to them therefore rendering their action unlawful, null and void.

18. In the circumstances, the Objectors cannot lay any claim to the estate property on account of a Purchaser's interest. The sale agreements exhibited herein are invalid for the purposes of this succession cause and clearly show that if there is any remedy available to the Objectors, then it should be sought in a Civil Suit against the purported sellers of the estate property, be they any of the actual beneficiaries herein or third parties.

19. In sum, the present objection is devoid of merit and is hereby dismissed with costs to the Petitioner/ Respondents.

The impugned summons for confirmation of grant dated 12th July 2024 be fixed for hearing on a nearer date before the end of the current court's term.

Ordered accordingly.

Delivered and Dated this 12th day of November, 2025

**HON. J. R. KARANJAH,
JUDGE**