

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAPSABET

FAMILY DIVISION

PROBATE & ADMINISTRATION CAUSE NO. 05 OF 2022

**IN THE MATTE OF THE ESTATE OF THE LATE ROSA
NGETICH:.....
:.....DECEASED**

BETWEEN

RAEL TANUI & 3

**OTHERS:.....PETITIONERS/
RESPONDENTS**

AND

EVERLINE

**TANUI:.....BENEFICIARY/
OBJECTOR**

**COLLINS TANUI [Suing as the legal Representative of
ISAACK TANUI alias KIPROTICH
ISAAC]:.....BENEFICIARY/APPLICANT**

RULING

1. The application dated 17th January 2025 is essentially for revocation of the grant said to have been issued to the

Petitioner, **Rael Tanui** and others and confirmed by the court on 18th October 2021.

The Applicant, **Collins Tanui** seeks orders “*inter-alia*” for status quo respecting the estate property **Land Parcel No. Nandi/Mutwot/160** to be maintained on the land register and on the land itself and that there be a stay of implementation or execution of the certificate of confirmation of grant.

2. Most importantly, the Applicant seeks revocation of the grant and the resultant certificate of confirmation of grant or a review of the said certificate.

The grounds for the application are set out in the appropriate summons for revocation of grant dated 17th January 2025 as buttressed by the averments of the Applicant in the supporting affidavit deposed by himself on 17th January 2025.

The Petitioner/ Respondent does not seem to have responded to the application by way of a replying affidavit, but is opposed to the application on the basis of the grounds contained in her written submissions.

3. The Second Petitioner/ Respondent, **Pamela Mwei**, opposed the application on grounds specified in her replying affidavit dated 12th June 2025.

All the parties did file their respective submissions which have been given due consideration by this court alongside the grounds in support of the application and those in apposition thereto.

4. Subsequent applications by the Petitioners/ Respondents dated 2nd May 2025 and 24th January 2025 were held in abeyance for the present application to be heard on priority basis.

Be that as it may, it cannot be gainsaid that the subject matter of this application and indeed the rest of the application is the alleged grant of letters of administration issued to the Petitioners and confirmed by the court vide the certificate of confirmation of grant made on 18th October 2021.

5. In that regard, the validity of the impugned grant and the certificate of confirmation of grant would be a factor in the determination of the application and if indeed the grant is valid then the next factor to be considered would be whether the grant was properly and lawfully obtained by the Petitioners. Hence, the determination of the second factor would invariably be dependent on the determination of the first factor.

6. For avoidance of doubt, the grant subject of this application and indeed the entire cause is that respecting the estate of the **Late Rosa Ngetich [deceased]** who died on the 22nd September 1993 and was survived by a son **Isaak Kiprotich Tanui** and her daughters-in-law, **Rael Tanui** and **Pamela Mwei**, being wives of her deceased sons. All these information was provided in the application for the petition for letters of administration intestate dated 25th June 2009 which was presented by the deceased's only surviving son, Isaak, who was at the material time aged seventy one [71] years old while the beneficiary **Rael** was sixty eight[68] years old, all being senior citizens.

7. The petition was in due course allowed and the grant of letters of administration intestate was made and issued to the Petitioner, **Isaak Kiprotich Tanui**, on the 31st July 2012. The sole estate property availed for distribution amongst the three beneficiaries was the parcel of land described as **No. Nandi/Mutwot/160** measuring 16.9hectares.

A walk down memory lane would reveal the trajectory of this matter after the issuance of the grant and create certainty on the validity or otherwise of the impugned grant and/or certificate of confirmation of grant and indeed, the present application for revocation of the grant.

8. In that regard, the court record shows that on the 10th July 2015, pursuant to **Section 73** of the **Law of Succession Act**, the Court revoked the grant under **Section 76[d][i]** of the **Succession Act** and marked the matter as closed. This was because the parties had failed to take steps to prosecute the matter since the grant was issued. However, prior to the revocation, on the 28th October 2014 in a Separate **Succession Cause No. 277 Of 2014** a grant of letters of administration intestate was issued to **John Ngetich** in respect of the estate of **Kiprotich Tanui** who passed away on 5th December 2013 a few months after being issued with the impugned grant. Perhaps, that explained why he failed to take further steps in prosecuting this matter thereby prompting the action by the court to revoke the grant which was yet to be confirmed.

9. The record shows that **John Ngetich** is a son of the deceased Administrator/ Petitioner and a grandson of the deceased herein **[i.e. Rosa Ngetich]** hence, a beneficiary of his grandmother's estate. He moved the court vide the summons dated 13th February 2019 for reinstatement of the petition and indeed, the revoked grant and for substitution of the deceased Petitioner with himself as the Petitioner/ Administrator. He also prayed for the original title of the estate property to revert to the late **Rosa Ngetich**

[deceased] having been irregularly interfered with to create four [4] distinct parcels of land with their own titles.

10. On 29th April 2019, the foregoing application was allowed by consent of the parties to the extent that **John Ngetich, Rael Tanui** and **Pamela Chepngetich Mwei** were appointed as co-administrators of the estate of the deceased in place of the departed administrator, **Isaac Kiprotich Tanui**. They were directed to file the necessary summons for confirmation of grant within forty five [45] days from that date.

11. The matter was thereafter fixed for mention to confirm compliance with the consent on the 17th June 2019, but was on that date stood over to the 7th October 2019 and thereafter to several other future dates. In the meantime, on the 5th September 2019, the parties apparently filed summons for confirmation of grant which came up for mention for directions on the 3rd August 2020, when it was sadly indicated that the First Administrator **[John Ngetich]** was deceased and needed to be substituted before distribution of the estate. The court was however, of a different opinion when it ruled that substitution was unnecessary given that the Administrators were more than one such that the surviving Administrators could proceed with the distribution of the estate.

12. The matter remained pending for confirmation of the grant and the distribution of the estate upto 18th October 2021, when the grant was purportedly confirmed and the estate distributed amongst the beneficiaries in accordance with the proposed mode of distribution dated 5th September 2019. The estate property being Land Parcel No. Nandi/Mutwot/160 was thus distributed as follows: -

- i. Rael Tanui - 20.5Acres**
- ii. Everline Tanui - 20.5Acres**
- iii. Pamela Mwei - 1Acre**

The three beneficiaries represented the three families of the deceased sons of the deceased herein and their respective shares of the estate was in accordance with the subsequent summons for confirmation of grant dated 5th April 2021 presented herein by **Rael Tanui**.

13. Everline Tanui as the wife of the departed grandson of the deceased and the First Administrator of the deceased's estate filed an affidavit of protest dated 4th May 2021 against the subsequent summons for confirmation of grant dated 20th April 2021, hence her description as a Protestor or Objector beneficiary.

- 14.** Immediately after the confirmation of the grant on 18th October 2021, the Protestor **Everline Tanui** filed an application on the same day seeking review or setting aside of the orders made by the court on that date. However, the application remained pending upto such time that this matter was transferred to this court from the Eldoret High Court where it was originally domiciled.
- 15.** On the 16th April, 2024, when the matter was mentioned before this court for directions of the application dated 18th October 2021, it was fixed for hearing on 10th June 2024, when the Applicant/Objector/ Protestor indicated with approval from Respondents/ Petitioners that the application was compromised vide a consent made on 23rd January 2023. The parties also indicated that they had commenced negotiations on the matter and requested for more time acknowledging the existence of the protest dated 4th May 2021.
- 16.** However, when the matter came up for mention on 13th November 2024, the court noted that the protest dated 4th May 2021, had been overtaken by events with the filing of the application dated 18th October 2021 which was eventually compromised. This therefore meant that with the confirmation of the impugned grant and distribution of

the estate amongst the beneficiaries the matter was duly concluded. It was therefore marked as closed.

17. At this juncture, it is instructive to note that all along since the 29th April 2019, when the original grant dated 31st July 2012 issued to the late sole administrator, **Isaak Kiprotich Tanui** was seemingly revoked and substituted for a fresh grant made in favour of the three Co-Administrators i.e. the **Late John Ngetich, Rael Tanui** and **Pamela Mwei**, no such grant was formally extracted and issued in order to facilitate the distribution of the estate vide a summons for confirmation of grant. Therefore, the grant purportedly confirmed on 18th October 2021, was non-existent. There was nothing to confirm, hence nothing to distribute.

18. In essence, the process for obtaining the purported grant and having it confirmed was grossly defective and therefore null and void “ab-initio”. The resultant effect of the defect which was substantial and fatal was to invalidate all other subsequent applications in this matter inclusive of the applications dated 24th January 2025 and 2nd May 2025 as well as the present application dated 17th January 2025 which is therefor misconceived as there is no valid grant of letters of administration intestate to revoke.

19. Even if it were taken that there is in existence a valid grant, then it would fall for revocation by dint of **Section 76[a]** of the **Law of Succession Act** for reasons already indicated hereinabove. Therefore, the entire process of distribution of the estate amongst the beneficiaries must recommence with the issuance forthwith of a fresh grant in the names of **Rael Tanui, Everline Tanui** and **Pamela Mwei** as joint administrators of the estate of the **Late Rosa Ngetich** [deceased].

20. The three Administrators are hereby directed to expeditiously take out the necessary summons for confirmation of grant to enable distribution of the estate among the beneficiaries and in any event, within the next four [4] months from this date hereof or any shorter period that they may deem necessary.

The matter be given a mention date to confirm compliance and/or further orders.

Delivered and Dated this 11th day of November, 2025

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