

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAPSABET
FAMILY DIVISION
AMILY MISCELLANEOUS CASE NO. E006 OF 2024
IN THE MATTER OF THE ESTATE OF CHEISIMINY ARAP
KOGO.....
.....**DECEASED**
BETWEEN
JOYCE CHEPNGETICH
BET.....**APPLICANT**
AND
BENJAMIN KIRWA
TERIGIN.....**RESPONDENT**
AND
ZAKAYO KIPSUGUT KOSGEI, PAUL KIPLAGAT MUGE, DAVID
KIMUREI MURGOK, JAMES KIPRONO KOECH, BENJAMIN
KIRWA TERIGIN & DAVID
SEREM.....**INTERE**
STED PARTIES

RULING

1. The disputed grant dated 13th February 2020, respecting the estate of the **Late Chesiminy Arap Kogo** [deceased] was issued to the Petitioner, **Benjamin Kirwa Terigin** in his capacity as a dependant of the deceased. The chief’s letter dated 18th June 2018 indicated that the deceased was survived by the Petitioner and the deceased’s eight [8] children four of whom were deceased i.e. three sons **[Viz:**

Kimurgok, Murkorir and Kipsoo] and one daughter [**viz: - Hellen Barsulai**].

2. The death certificate dated 21st April 2009, showed that the deceased died at the very ripe age of one hundred and four [104] years while the search certificate dated 19th June 2018 showed that the deceased was the sole proprietor of **Land Parcel No. Nandi/Kipsigak/525** which was registered on 11th June 1973 and a land certificate issued on 19th November 1982. Prior to the issuance of the grant, an objection dated 19th February 2019 was filed by Joyce Chepngetich Bett [Objector], but the record is unclear as to what became of it.
3. After the issuance of the grant on the 29th July 2022, the Petitioner filed summons for confirmation of the grant which specified the identities and shares of all persons beneficially entitled to the estate. This is reflected in Paragraph 5 of the supporting affidavit. Pursuant to the application, the grant was eventually confirmed by the magistrate's court at Eldoret. A certificate of confirmation of grant dated 5th August 2022 was accordingly issued.
4. The estate property was duly shared amongst the beneficiaries as follows: -

1. Zakayo Kipsugut Kosgei - 3Acres

- 2. Paul Kiplagat Muge - 2.5Acres**
- 3. David Kirorei Murgor - 2.5Acres**
- 4. James Kiprono Koech - 2.0Acres**
- 5. Benjamin Kirwa Tergit - 2.0Acres**
- 6. David Serem - 1.0Acres**

However, the present summons for revocation and/or annulment of the grant dated 4th April 2024 was filed herein by on grounds specified herein as fortified by the Objector's supporting affidavit dated 4th April 2024.

5. It may be noted that the Objector sought a revocation of the grant almost two [2] years after its confirmation by the court. The application was however, opposed by the Petitioner/ Respondent on the basis of the grounds and averments, contained in the replying affidavit dated 20th May 2024. A beneficiary, **Kiplagat Muge**, also filed a replying affidavit dated 2nd April 2025 opposing the application.

6. Sadly, the Petitioner [**Benjamin**] passed away on 12th April 2025 and was replaced in this mater by **Thomas Kimeli** vide the application dated 22nd May 2025, which was not opposed by the Objector.

For avoidance of any doubt, the subject objection is that which is brought vide the summons for revocation of grant dated 4th April 2024, rather than that dated 19th February

2019 which was an objection to the making of grant and was overtaken by events after the issuance of the grant on the 13th February 2020.

7. As directed by the court the hearing of the objection was by way of affidavit evidence and written submissions.

Both parties filed their respective submissions through **Chepkwony & Company Advocates** for the Applicant/Objector and **Kipkosgei Choge & Company Advocates**, for the Respondent/ Petitioner.

8. The Respondent, in his submissions, raised the issue of jurisdiction and contended that this court is devoid of the jurisdiction to deal with the present application. This is a pertinent issue which must be given priority for determination before any other issue is considered in the light of the decision of the Court of Appeal in the case of **Owners of the Motor Vehicle “Lillian S” Vs. Caltex Oil [K] Limited [1989] KLR**, where it was stated that: -

“Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter

before it the moment it holds the opinion that it is without jurisdiction.”

9. The Court of Appeal in the case of **Kenya Ports Authority Vs. Modern Holding [EA] Limited [2017] eKLR**, emphasized the need to raise the question of jurisdiction at the earliest opportunity in the following terms: -

“We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage of the proceedings and even on appeal though it is always prudent to raise it as soon as the occasion arises. It can be raised “..... at any time, in any manner, even for the first time on appeal, or even viva-voce and indeed even by the court itself provided only that where the court raises it suo-moto, parties are to be accorded an opportunity to be heard.”

10. Herein, the issue of jurisdiction was raised at the earliest opportunity when the Respondent filed his replying affidavit dated 20th May 2024. Indeed, the Objector contended in her submissions that this court has the jurisdiction to deal with this matter on account of the geographical situation of the estate property i.e Nandi County.

However, the Respondent's submissions clearly imply that it is not the geographical jurisdiction of this court which is in issue but rather the constitutional and statutory jurisdiction of this court to deal with the present application.

Indeed, there is no contest with regard to this court's geographical or territorial jurisdiction.

11. The present application is premised on the **Provisions** of the **Law of Succession Act** and the **Rules** made thereunder inclusive of **Rule 73** of the **Probate and Administration Rules** which provides for the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. However, **Section 76 of the Succession Act** is the most relevant provision for the purposes of this application inasmuch as it provides for revocation and annulment of grant.

12. Be that as it may, the application seeks a revocation of the order of confirmation made on the 2nd August 2022 as expressed in the accruing certificate for confirmation of grant dated 5th August 2022. In essence, what is being sought herein is an order of revocation and/or annulment of the certificate of confirmation of grant dated 5th August 2022. The power to make such order lies with a Succession Court by dint of **Section 76 of the Succession Act.**

13. The grounds in support of the application as fortified by the Applicant's averments in the supporting affidavit are hinged on the law of succession and the alleged procedural defects in the issuance of the impugned certificate of confirmation of grant thereby placing this matter within the jurisdiction of this court. the fact that the application for confirmation of the grant proceeded on the notion that the estate property belonged to the deceased herein and that it was distributed to the rightful beneficiaries in the manner prescribed in the impugned certificate of confirmation of grant, meant that any dispute relating to the ownership of the land after the distribution would fall within the jurisdiction of the Environment and Land Court, unless of course, the grant is revoked and/or the certificate of confirmation set aside.

14. The present dispute is not "*per-se*" on ownership of the estate property inasmuch as it was distributed to the rightful beneficiaries, it is on propriety of the distribution process and the issuance of the impugned certificate of confirmation of grant.

In that regard, the Respondent's contention that this court lacks the jurisdiction to deal with this matter at this stage on

account of the dispute being one related to ownership of land is clearly misplaced.

15. Such dispute may only arise after confirmation of grant and distribution of the estate property in which case the aggrieved party may move the appropriate court and if the dispute comes during the succession proceedings then it would be considered and determined within the proceedings before confirmation of grant.

16. In sum, this court does have the jurisdiction to deal with the present application. The Respondent's objection thereto is hereby overruled and dismissed.

As to the merits of the application, **Section 76** of the **Succession Act** provides for revocation of a grant whether or not confirmed. The parameters for such revocation are spelt out in **sub-sections [a] to [e]** of the **provisions**. This application is essentially grounded on Sub-Sections [a], [b] and [c] but aimed at the impugned certificate of confirmation.

17. A certificate of confirmation of grant is not a grant of representation. It is a document extracted after confirmation of a grant and as was held by the **High Court in Re-Estate of Prisca Ongayo Nande [deceased] [2020] e KLR: -,**

The confirmation process does not produce another grant, the grant of representation itself remains to be the only proclamation/ order of the court that can be legally revoked or annulled. In that case just like in the present case, the main or principle prayer was for revocation of the certificate of confirmation of grant.

18. Basically, a certificate of confirmation of grant is an expression of an order for confirmation of a grant and can only be revoked, annulled or set aside if the grant on which it is founded is revoked. **Section 76** of the **Succession Act** does not directly mention the certificate of confirmation of grant, but a revocation of the grant automatically nullifies the certificate and the court may issue an order to that effect.

19. This court derives its power to revoke a grant of representation from **Section 76** of the **Succession Act** which does not contain a separate provision that specifically allows a court to revoke a certificate of confirmation of grant. If the underlying grant is revoked the certificate of confirmation that was issued on the basis of that grant becomes ineffective and the court can order its cancellation.

20. The revocation of a grant and its confirmation are factors which are intertwined such that once the grant is set

aside, annulled or revoked the certificate of confirmation of grant loses its legal force. **[See Kagai Vs. Wanjohi [2023] e KLR]**. In as much as the present application is for revocation of the certificate of confirmation of grant rather than the grant in itself, it would be regarded as being procedurally defective and a misconception fit for dismissal.

21. However, considering that **Article 159[2][d]** of the **Constitution** provides that justice shall be administered without undue regard to procedural technicalities and also considering that **Rule 73** of the **Probate and Administration Rules** bestows the court with inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process, this court deems it fit to disregard the procedural flows in this application and concentrate on its merit or otherwise.

22. The substratum of the Applicant's case is that she was omitted as a beneficiary of the deceased's estate and left out of the distribution process, yet she enjoyed a purchaser's interest in part of the estate.

In her supporting affidavit, she states that she is the administrator of the estate of **Late Keino Kiptum** also known as **Kibet Arap Keino** [deceased]. Annexure "JC 3" in her affidavit confirms as much.

23. The Applicant averred that the **Late Kibet Keino Kiptum** purchased three [3] acres of the estate property thereby implying that he **[Late Kibet]** had a Purchaser's interest in the property which interest was transferred or transmitted to her [Applicant] as the administrator and beneficiary of his estate.

A handwritten sale agreement **[Annexure marked JC4]** was exhibited to confirm the purchase.

24. The validity or otherwise of the sale agreement was a clear factor for determination during the confirmation process had the Applicant been duly notified. She implied that the process of obtaining the grant and its confirmation was undertaken without her knowledge and in total disregard of her purchaser's interest in the property.

25. The Applicant contended that the Petitioner/Respondent misled the court into confirming the grant and issuing the impugned certificate of confirmation. The chief's letter dated 18th June 2018 annexed to the Applicants affidavit as annexure 'J.C 7" clearly indicates that the **Late Kibet Keino Kiptum** [deceased] had an interest in the estate along with the **late Shayi Arap Tembor** [deceased].

26. The letter is a copy of the original copy which was exhibited and filed in court together with other documents

for purposes of the petition for grant of letters of administrate intestate, which meant that the interest of the **Late Kibet** in the estate property ought to have been considered but it was not thereby depriving the Applicant of her inheritance vis-à-vis the estate of the **Late Kibet**.

27. It is the ultimate opinion of this court that the present application is merited. The ends of justice dictate that the process of distribution of the estate property herein ought to be repeated.

Accordingly, the impugned certificate of confirmation of grant dated 5th August 2022 is hereby cancelled and/or set aside with orders that the Petitioner takes out fresh summons for confirmation of grant for purposes of a proper distribution of the estate property amongst the beneficiary inclusive of parties proven to be beneficially interested in the property on account of valid sale agreements.

28. Otherwise, the grant of letters of administration intestate dated 13th February 2020 remains valid for a repeat confirmation process. The matter be given a mention date on status and way forward. The parties shall bear their own costs of the application.

Delivered and Dated this 12th day of November, 2025

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