

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NO. 52 OF 2017

IN THE MATTER OF THE ESTATE OF KIPKOECH ROGITO

ALIAS CHEBUSIT ARAP ROGITO (DECEASED)

ZIPPORAH CHEROTICH 1ST

APPLICANT

ELIZABETH TABSABEI TESOT 2ND APPLICANT

VERSUS

RECHO CHEBII KOECH 1ST

RESPONDENT

ALICE CHELANGAT KORGOREN 2ND

RESPONDENT

RULING

1. In this matter, a Grant was issued in the joint names of the Respondents as joint administrators on 28th January 2025. This court issued a Certificate of Confirmation of Grant dated

28th January 2025 in respect of the deceased's estate. In the said Certificate, the deceased's beneficiaries were captured as Elizabeth Rogito (2nd Applicant), Samwel Koech, Recho Chebii Koech (1st Respondent), Emily Rohito, Zipporah Rogito (1st Applicant), Alice Chelangat Korgoren (2nd Respondent), Esther Chepkemoi, Eunice Chemutai Rogito and Nancy Chepkemoi. The beneficiaries were each allocated 0.463 acres and 0.521 acres in KERICHO/SILIBWET/541 and KERICHO/SILIBWET/621 respectively.

2. The Applicants filed an Application dated 6th May 2025 seeking to revoke the Grant issued on 28th January 2025. The Applicants stated that the succession proceedings had been initiated and concluded in secrecy. That they had filed another succession cause being Succession Cause Number E10 of 2024. The Applicants further stated that not all beneficiaries were included in the present proceedings.

3. It was the Applicants' case that she had a different mode of distribution as per the discussions held on 30th September 2023. That they were going to suffer irreparable damage if their Application was not allowed. It was their further case that the Grant was obtained fraudulently by concealment of material facts.

4. At the time of writing this Ruling, the Applicants had not filed their written submissions.

5. I have gone through the record including the CTS and I have not found any response to the present Application. The 2nd Respondent however filed their written submissions.

2nd Respondent's written submissions

6. Through her written submissions dated 10th November 2025, the 2nd Respondent submitted that the present Application had not met threshold for revoking the Grant. That no beneficiary or deceased's property was left out during the succession process. The 2nd Respondent further submitted

that despite the Applicants claiming that some beneficiaries were left out, they failed to identify the said beneficiaries. That the Applicants got an equal share as other beneficiaries in both parcels of land.

7. It was the 2nd Respondent's submission that prior to filing the present succession proceedings, the 1st Respondent had filed a Citation and this court allowed her to file the present succession cause. That the Applicants were summoned to appear in the court annexed mediation but they failed to do so.

8. The 2nd Respondent submitted that the Succession Cause Number E10 of 2024 was filed long after the present cause and was later dismissed on the ground that the instant cause was active. That the Applicants had filed the Succession Cause Number E10 of 2024 with the intention of secretly subdividing the deceased's estate. The 2nd Respondent further submitted that there was no evidence of

concealment of material facts. That they conducted the succession proceedings diligently and the deceased's estate was divided equally.

9. It was the 2nd Respondent's submissions that the Minutes of the meeting availed by the Applicants was not binding as several members of the family were absent and thus had no evidentiary value.

Analysis

10. The law on revocation of Grants is provided for in **Section 76 of the Law of Succession Act** which states that: -

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.

11. In the case of **Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] KEHC 7143 (KLR)**, Achode J. (as she then was) observed: -

“The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was

obtained by means of untrue allegations of facts essential in point of law.”

12. From the outset, it is important to state that the burden of proof in this case lay with the Applicants and the standard of proof is similar to that used in civil cases i.e. on a balance of probabilities.

13. The Applicants stated that the Grant was obtained fraudulently by concealment of material facts. That the succession proceedings were initiated in secrecy and that some beneficiaries of the deceased's estate had been left out. I have gone through the record and I have that there was a Citation by the 1st Respondent where she cited the Applicants to take out succession proceedings in regards to the deceased's estate. When they failed to do so, this court issued a Citation Order dated 13th July 2017 allowing the 1st Respondent to file the current succession proceedings.

14. I have also noted from the record that the 1st Respondent followed the requisite procedure when Petitioning for Letters of Administration intestate including gazettelement which invited objections. There were no objections then. Gazettelement was a public notice intending to inform the public (including the Applicants) of the existence of the succession proceedings. It is my finding that the gazettelement was sufficient notice and that the Applicants were aware of the existence of the current succession proceedings. This ground accordingly fails.

15. The Applicants stated that some beneficiaries of the deceased's estate had been left out. However, the Applicants failed to disclose such beneficiaries. This court treats this ground as an allegation and it accordingly fails.

16. Flowing from the above, it is my finding that the Applicants have failed to satisfy the requisite grounds for revocation of a Grant as captured in **section 76 of the Law of**

Succession Act. I therefore decline their prayer to revoke the Grant dated 28th January 2025.

17. That said, I have noted that the Applicants were included in the list of beneficiaries and were each provided an equal share as other beneficiaries in the deceased's estate being KERICHO/SILIBWET/541 and KERICHO/SILIBWET/621. It appears to me that the Applicants' main contention was their displeasure with the mode of distribution as contained in the Certificate of Confirmation of Grant dated 28th January 2025. The proper relief available to the Applicants would be to appeal this court's finding on distribution as opposed to seeking to have the Grant revoked.

Notice of Motion Application dated 1st July 2025.

18. The 2nd Respondent asked this court to direct the OCS Silibwet Police Station to provide security for surveyors to visit and survey the land parcels known as KERICHO/SILIBWET/541 and KERICHO/SILIBWET/621.

19. The 2nd Respondent stated that this court had confirmed the Grant and issued a Certificate of Confirmation of the same. That some of the beneficiaries including the Respondents were living within the deceased's estate whereas some had acquired land elsewhere. The 2nd Respondent further stated that there was tension as some beneficiaries did not want to have the deceased's estate sub-divided.
20. The 2nd Respondent submitted that her Application should be allowed as survey issues were emotive and chaotic. That the Application had not been opposed.
21. I have gone through the record and I have noted that the Application was unopposed. Having found no grounds to revoke the Grant, it was necessary to the matter to proceed to the next stage which was the survey and subsequent sub-division. The 2nd Respondent has expressed safety concerns during the survey process and has asked this court for police protection. Having considered everything in totality and in

the exercise of my discretionary power, I allow the Notice of Motion Application dated 1st July 2025.

22. In the end, I make the following orders: -

- I. The Application for Revocation of Grant dated 6th May 2025 is dismissed.
- II. The OCS Silibwet Police Station is directed to provide security for surveyors to visit and survey the parcels of land known as KERICHO/SILIBWET/541 and KERICHO/SILIBWET/621.
- III. The Applicants to bear the costs of the Application dated 6th May 2025. There are no orders to costs in relation to the Notice of Motion Application dated 1st July 2025.

Ruling delivered, dated and signed at Bomet this 16th Day of December, 2025.

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HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling Delivered in the presence of;

Susan/Siele Court Assistant

J.K. Koech for the 1st Applicant

No appearance for the 2nd Applicant

No appearance for the 1st Respondent

No appearance for the 2nd Respondent

ORIGINAL