

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NO. 18 OF 2019

IN THE MATTER OF THE ESTATE OF KIPTIONY TANGUS

ALIAS KIPTIONY ARAP TANGUS (DECEASED).

JULIUS KIPYEGON MARITIM PETITIONER

VERSUS

JANE CHEPKURGAT LANGAT 1ST

PROTESTOR

SAMWEL KIPKOSGEI TIONY 2ND

PROTESTOR

JOSEPH ARAP TIONY 3RD

PROTESTOR

RULING

1. The Protestors filed a Chamber Summons Application dated 14th April 2025 where they sought the following orders: -

I. Spent.

- II. THAT this court be pleased to stay execution of its Ruling delivered on 23rd January 2025 and the resultant Certificate of Confirmation of Grant issued on 5th March 2025 pending the inter parties hearing and determination of this Application and eventually of the Protest.
- III. THAT this court be pleased to review/set aside and/or vary the Ruling delivered on 23rd March 2025, re-open the case and order inclusion of the Applicants in the cause as Protestors firstly pending the inter parties hearing and determination of this Application and eventually of the Protest.
- IV. THAT this Honourable Court be pleased to revoke the Grant issued on 5th March 2025 to the Petitioner and make such further orders as it deems fit and just to grant.

2. The Application was brought under **Order 1 Rule 10(2), Order 45 Rule 2 of the Civil Procedure Rules, 2010,**

Rule 63 of the Probate and Administration Rules, section 76 of the Law of Succession Act, section 3A of the Civil Procedure Act and Articles 47 and 159 of the Constitution of Kenya. It was further premised on the grounds on the face of the Application and further by the Supporting Affidavit sworn by Jane Chepkurgat Langat on 14th April 2025.

The Protestors' case

3. Through her Supporting Affidavit dated 14th April 2025, the 1st Protestor stated that the deceased was her father and that the Petitioner had procured a Ruling that excluded them as siblings and dependants of the deceased's estate.
4. It was the 1st Protestor's case that KERICHO/CHEMAGEL/287 was omitted as part of the deceased's estate. That further, the previous Protestor, Philip Kipyegon Tiony was her brother and did not disclose that he had filed a Protest. It was the 1st Protestor's further case that her brother's lacklustre

prosecution of his Protest prejudiced them as the Judgement only recognized the Petitioner and his siblings. That the Protestors alongside Anna Tiony lived on KERICHO/CHEMAGEL/287.

5. The 1st Protestor stated that the concealment of KERICHO/CHEMAGEL/287 as well as the omission of other beneficiaries amounted to material non-disclosure. That the proceedings that led to the issuance of the Grant were defective.

6. In their written submissions dated 29th September 2025, the Protestors submitted that this court raised doubt as to the existence of two different people who shared the name of the deceased and this finding was sufficient to raise doubt as to the identity of the deceased. That the only lawful recourse available was to order a full inquiry as to the identity of the deceased. The Protestors further submitted that without the benefit of a full and proper inquiry, it could not conclusively

find that the Applicants were strangers to the deceased's estate.

7. It was the Protestors' submission that the omission of KERICHO/CHEMAGEL/287 rendered the proceedings defective. They relied on **section 76 of the Law of Succession Act and Re Estate of Wahome Mwenje Ngonoro (Deceased) (2016) eKLR.**

Response

8. The Petitioner filed a Replying Affidavit dated 23rd May 2025 where he stated that the Objectors were strangers to the deceased's estate and that the deceased's bona fide beneficiaries were himself, Raphael Kimutai Sang (deceased), John Kiprof Sang, Julius Kipyegon Maritim and Joel Cheruiyot. That the Protestors' brother, Philip Kipyegon had earlier sought to revoke the Grant claiming his family including the Protestors had been left out of the succession proceedings. The Petitioner further stated that in its Ruling dated 23rd January 2025 this court found that their brother was a stranger to the deceased's estate.

9. It was the Petitioner's case that the deceased was the registered owner of KERICHO/CHEMAGEL/1731, 1585 and 568 and they were occupied by the Petitioner and his co-beneficiaries while the estate occupied by the Protestors was located at Keronjo which was 12 kilometres from their home. That the present Protest was misconceived as the Protestors ought to have filed a separate and distinct Succession Cause. It was the Petitioner's case that the Protest had no merit and ought to be dismissed.

10. Through his written submissions dated 21st July 2025, the Petitioner submitted that the deceased was his father and not the Protestors' father. That this was evidenced by the comprehensive investigation report of the two individual who shared the name Kiptiony Tangus. That the Protestors lived 12 kilometres away from their home.

11. I have gone through the entire record, the Chamber Summons Application dated 14th April 2025, the Replying

Affidavit dated 23rd May 2025, the Petitioner's written submissions dated 21st July 2025 and the Protestors' written submissions dated 29th September 2025. The two issues that I have sieved for my determination are: -

- i) Whether this court should review and set aside its Ruling dated 23rd January 2025
- ii) Whether the Application has met the threshold for revoking the Grant as envisioned in **section 76 of the Law of Succession Act.**

- i) **Whether this court should review and set aside its Ruling dated 23rd January 2025.**

12. The law on Review is based on **section 80 of the Civil procedure Act** and **Order 45 Rule 1 of the Civil Procedure Rules, 2010**. It is salient to note that this court's power must be exercised within this circumscribed legal framework.

13. **Section 80 of the Civil Procedure Act** provides as follows: -

Any person who considers himself aggrieved-

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or**
- (b) by a decree or order from which no appeal is allowed by this Act,**

May apply for a review of judgement to the court, which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

14. **Order 45 Rule 1 of the Civil Procedure Rules, 2010** provides as follows: -

(1) Any person considering himself aggrieved-

- (a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or**
- (b) By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgement to the court which passed the decree or made the order without unreasonable delay.**

15. From the above provisions, it is clear that **section 80 of the Civil Procedure Act** gives the power of Review while **Order 45 of the Civil Procedure Rules 2010**, sets out the rules.

The rules limit the grounds applicable for Review as follows: -

- (i) The discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by him at the time when the Decree was passed or the Order made.
- (ii) On account of some mistake or error apparent on the face of the record.
- (iii) Any other sufficient reason and that the Application has to be made without unreasonable delay.

16. The Court of Appeal in **Gwaro v Kenya Revenue Authority [2025] KECA 1120 (KLR)** held: -

“It is trite that not all cases qualify for review. The grounds for review are narrower in scope compared to an appeal. The main grounds for review are; discovery of new and important matter of evidence; mistake or error apparent on the face of the record; and any other sufficient reason, and most importantly, the application has to be made without unreasonable delay.....

..... A review application is not meant to re-litigate a case based on a party's disappointment with the outcome, especially when the "new evidence" was arguably available or discoverable during the original proceedings, or its absence could have been addressed through other procedural avenues.....”

17. From the record, Philip Kipyegon Tiony (whom the Protestors have admitted was their sibling) sought to have the Grant

revoked for the reason that together with his siblings (the Protestors) they had been left out of the succession proceedings. Philip Kipyegon Tiony had claimed to be the deceased's son.

18. After considering the evidence before it, this court ruled on 23rd January 2025 that Philip Kipyegon Tiony had failed to prove that he was the deceased's son and was thus a stranger to the family. In the said Ruling, this court noted that it made its decision based on the evidence of No. 236536 CI Geoffery Omwenda (DCI) who visited the two families i.e., the Petitioner's and the Protestors'.

19. On the issue of the parcel known as KERICHO/CHEMAGEL/287 being left out of the deceased's parcel, I have noted that the Protestors' brother (former Protester) listed the deceased's estate as KERICHO/CHEMAGEL/1731 and KERICHO/CHEMAGEL/1585 and did not mention KERICHO/CHEMAGEL/287. I have further

noted that the Protest was to proceed by way of viva voce evidence but the witnesses were not called. This did not represent due diligence but rather portrayed laxity.

20. The only grounds the Protestors' prayer for Review could stand on were the discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by him at the time when the Decree was passed or the Order made and any other sufficient reason.

21. I have analyzed the record and the Protest keenly and I have not found any reason to review the Ruling dated 23rd January 2025. I say so because had due diligence had been exercised, the court should have been made aware of the existence of KERICHO/CHEMAGEL/287 during the Protest or before it made its Ruling. But as I have noted earlier, there was laxity in prosecuting the Protest. The present Protest having been made by the siblings of the former Protestor was an attempt at biting the cherry twice. In the exercise of

my discretion and in the interest of justice, I decline to review the Ruling dated 23rd January 2025.

ii) Whether the Application has met the threshold for revoking the Grant as envisioned in section 76 of the Law of Succession Act.

22. 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.

23. The Protestors stated that the proceedings leading to the issuance of the Grant were defective as the Petitioner had failed to include them as beneficiaries of the deceased's estate and had further omitted KERICHO/CHEMAGEL/287 from the deceased's estate.

24. Having declined to review the Ruling dated 23rd January 2025, it is still this court's position that the Protestors by virtue of being Philip Kipyegon Tiony's (former Protestor) siblings were strangers to the deceased's estate. Thus, they had no *locus* to seek revocation of the Grant. Accordingly, the Protestors' prayer for revocation of the Grant fails.

25. In the end, the Chamber Summons Application dated 14th April 2025 has no merit and is dismissed. The Protestors are to bear the costs of this Application.

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

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

Ruling Delivered in the presence of;

Susan/Siele Court Assistant

Petitioner present in person

No appearance for the 1st Protestor

No appearance for the 2nd Protestor

No appearance for the 3rd Protestor