

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO. 44 OF 2006
IN THE MATTER OF THE ESTATE OF ELIJAH
CHEBOKOIYO CHEPKWONY (DECEASED)

**DAVID CHEBOGOIYO.....1ST PETITIONER/
APPLICANT
RUTHCHEPNGENOCHEPKWONY...2NDPETITIONER/
RESPONDENT**

VERSUS
JANE CHEPKORIR.....OBJECTOR/RESPONDENT

JUDGMENT

1. The application coming up for determination is a summons for revocation and/or annulment of grant dated 23rd October, 2024 seeking the following orders;

(i) Spent

(ii) Spent

(iii) That the confirmed grant dated 27th October, 2022 be revoked /annulled.

(iv) That the honourable court be pleased to make such orders as it may deem fit and just.

(v) That costs be provided for.

2. The application is supported by grounds on the face of it and the affidavit of **David Chebogooyo** in support of the application sworn by the 1st **petitioner/applicant** herein.
3. He deposes that in the instant succession matter, there is an operational grant, that was confirmed and issued on 7th February, 2018, he attached a copy of the grant and further deposes that pursuant to the said grant he made an application dated 31st October, 2023 seeking that the Deputy Registrar of this Court do execute the documents on behalf of the 2nd Petitioner who had declined to do so.
4. He further deposes that upon realizing that there was a grant dated 27th October, 2022 which was made without his knowledge, he requested his advocate to withdraw the application dated 31/10/2023 and file the instant application for revocation of the said grant.

5. He therefore deposes that the grant dated 27th October, 2022 was obtained by means of untrue information and that the beneficiaries were not privy to any proceedings revoking the grant dated 7th February 2018 and that the beneficiaries listed in the mode of distribution have all disputed to the consent of distribution which was done illegally without their involvement.
6. It is therefore his deposition that the grant was obtained by means of untrue allegation of a fact essential in law to justify the revocation of grant notwithstanding that the allegation was made in ignorance or inadvertently.
7. It is further his deposition that in view of the foregoing, the proceedings preceding confirmation of grant dated 27th October, 2022 were shrouded in secrecy and without the involvement of all the beneficiaries of the deceased and that if the said grant is not revoked/annulled the beneficiaries of the estate of the deceased stand to suffer immense prejudice by being unjustly disinherited.

8. I have considered the application which is unopposed and find that the issue for determination is whether to revoke the **confirmed grant dated 27th October, 2022.**

9. Revocation of grants of representation is provided for by section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. The circumstances under which the court may revoke a grant were considered and elaborated at length in the case of ***In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR)*** the court stated as follows; ***“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and***

then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator,

or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

10. This court wishes to point out that the power to revoke a grant is a discretionary remedy. In ***Albert Imbuga Kisigwa v Recho Kavai Kisigwa [2016] KEHC 1528 (KLR)*** stated as follows; ***“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”***

11. In view of the foregoing decision, revocation of grant is a remedy that should be used sparingly and in deserving cases. In the instant matter, it is clear that there are two

grants in respect of the same estate. Both grants cannot be valid at the same time. It is therefore the finding of this court that in the absence of any proceedings revoking the grant dated 7th February 2018, the process of obtaining the grant dated 27th October, 2022 in respect to the same estate was irregular. In the circumstances, I hereby issue an order to revoke the grant issued on 27th October, 2022.

12. In light of the foregoing, the summons for revocation/annulment dated 23rd October, 2024 is hereby allowed.

**Delivered, signed and dated at Kericho this 18th day
of December, 2025.**

.....
**J.K. SERGON
JUDGE**

In the Presence of:

C/Assistant Rutoh

Malel for Applicant

No Appearance for Respondent

