

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

SUCCESSION CAUSE NO. 134 OF 2009

**IN THE MATTER OF THE ESTATE OF KIBOR ARAP SEGO
(DECEASED)**

THOMAS

KIMITEI

KOBOR.....PETITIONER/RESPONDENT

VERSUS

ANGELLAH JEPCHIRCHIR KIBOR.....OBJECTOR/APPLICANT

RULING

1. By a Notice of Motion dated 3rd April 2025, the Objector/Applicant seeks the following orders:

1) Spent.

2) That summons be issued against the Petitioner/Respondent, THOMAS KIMITEI KIBOR, to personally appear before this Honourable Court and show cause why he should not be committed to civil jail for such term as the Court may deem just for being in contempt of Court.

3) That the Petitioner/Respondent, THOMAS KIMITEI KIBOR, be cited for contempt of Court and be committed to civil jail for such

period as the Court may deem just and/or until he purges his contempt by implementing the Grant of Letters of Administration confirmed on 4th February 2022.

- 4) That the Grant of Letters of Administration issued to the Petitioner/Respondent, THOMAS KIMITEI KIBOR, be revoked pursuant to Section 83 of the Law of Succession Act, Cap 160 Laws of Kenya, and a new administrator be appointed in his place.**
 - 5) That the Petitioner/Respondent be ordered to provide a full and accurate account of all the proceeds and benefits derived from the estate since the confirmation of grant.**
 - 6) That the Officer Commanding Eldoret Police Station be ordered to assist with ensuring compliance with this Court's order and decree herein by the Petitioner/Respondent.**
 - 7) That this Honourable Court be pleased to grant such any other or further orders for the purposes of protecting the dignity and authority of this Honourable Court and ensuring proper administration of the deceased's estate.**
 - 8) That the costs of this Application be provided for.**
- 2. The Application is expressed to be brought under Section 45, 76, 77 and 83 of the Law of Succession Act, Cap 160 Laws of Kenya and Order 40 of the Civil Procedure Rules and all other enabling provisions of the law. It is**

premised on the grounds set out thereon and the contents of the Supporting Affidavit sworn by the Objector, **Angellah Jepchirchir Kibor**.

3. The Objector deposed that the Grant of Letters of Administration in respect of the Estate of KIBOR ARAP SEGO (Deceased) was confirmed on 4th February 2022. That despite the confirmation over two (2) years ago, the Petitioner/Respondent has made no effort whatsoever to implement the distribution of the estate as directed by this Honourable Court.
4. That due to the Petitioner's refusal to act, her advocates wrote to his advocates on 16th February 2024 requesting for the Original Title Deed and identification documents to facilitate the transfer and subdivision process and on 21st February 2024 wrote a demand letter to the Petitioner/Respondent demanding immediate commencement of the transfer process. On 23rd February 2024, the Petitioner/Respondent's advocates responded to her letter requesting for a family meeting.
5. That the meeting was convened on 9th March 2024 and was attended by all family members and the advocates from both parties. In the said meeting, it was unanimously agreed that a survey would be conducted on parcel SERGOIT/ELGEYO BORDER BLOCK 1 (BELIOMO)/171; beacons would be established and the Grant would be amended to reflect new acreages following the death of some members and voluntary surrender of shares by others.
6. The Objector further deposed that following the meeting, her advocates wrote to the Petitioner/Respondent's advocates on 21st May 2024, regarding the survey fees and amendment fees as agreed. That on 20th January 2025,

having received no response, her advocates wrote a reminder letter to the Petitioner/Respondent's advocates and to date, the Petitioner/Respondent has neither responded to her correspondence nor taken any steps to implement the Grant.

7. The Objector contended that the Petitioner/Respondent continues to exclusively occupy and cultivate the land, thereby deriving sole benefit from the estate to the detriment of other beneficiaries, including herself and that the Petitioner/Respondent has personally been harvesting crops and using the suit parcel without accounting for the same to other beneficiaries, thereby depleting the estate's resources. That she has made multiple attempts to engage the Petitioner/Respondent directly and through other family members, all of which have been met with hostility and outright refusal to cooperate.

8. That the Petitioner/Respondent's conduct amounts to contempt of Court and a breach of his fiduciary duties as an administrator under **Sections 45 and 76 of the Law of Succession Act**. That the Petitioner/Respondent's continued disregard of this Honourable Court's authority has caused me and other beneficiaries' significant prejudice, financial hardship, and distress, as they have been unable to utilize our rightful inheritance for over two (2) years and that the Petitioner/Respondent's actions and/or inactions constitute sufficient ground for his committal to civil jail for contempt of Court and for his removal as an administrator pursuant to **Section 83 of the Law of Succession Act**.

9. The Objector is apprehensive that unless this Honourable Court intervenes, the estate will continue to suffer irreparable loss and damage, and the beneficiaries will be permanently denied their rightful inheritance.

Replying Affidavit

10. The Application was opposed by the Petitioner/Respondent vide his Replying Affidavit filed on dated 7th April 2025 wherein he denied the allegation by the Objector that he has refused to distribute the estate.
11. The Petitioner maintained that he has always been willing and ready to effect the required transfers, but co-operation from the Applicant and the rest of the family members has been a challenge. That some family members have surrendered their shares in the estate to certain members, with the effect that the certificate of confirmation of grant will also need an amendment to reflect the new in sharing out of the land and that he been waiting for communication from the Applicant's advocates after his advocate wrote to them concerning the issue of sub-division but there has never been any communication.
12. The Petitioner deposed that in the course of the family meetings held, it came to his knowledge that the acreage of the subject land known as SERGOIT/ELGEYO BORDER/BLOCK 1 (BELIOMO)/171 is not 13.57 HA as was captured in the certificate of confirmation of grant and that there is need to amend the grant to correct the error in the acreage for the complete distribution of the estate.

13. According to the Petitioner, it is therefore imperative that a survey exercise be done first to ascertain the acreage of the whole land, after which the certificate of confirmation of grant is to issue, reflecting the true acreage and agreement of the family.

Submissions

14. The application was canvassed vide written submissions. The Objector filed submissions dated 16th May 2025 while the Petitioner filed submissions dated 3rd June 2025.

Objector's Submissions

15. Counsel for the Objector cited **Section 83 of the Law of Succession Act** with regard to the duties of personal representatives and submitted that the Petitioner has failed to complete the administration of the estate within six months from the date of confirmation of the grant and produce to the Court a full and accurate account of the completed administration as he is required to do under this provision of the Act.

16. Counsel submitted that **Section 76(d) of the Law of Succession Act** provides that failure by the Administrator to administer a deceased's estate forms ground for the revocation of grant of letters of administration. That the said position was affirmed by Ho. Justice W.M. Musyoka in the case of **In re Estate of Martha Eladi Obelai (Deceased)** [20231 KEHC 3717 (KLR)] where the learned judge stated that:

"Failure to complete administration would be a fertile ground for removing an administrator, under section 76(d)(ii) of the Law of Succession Act."

17. Counsel submitted that the Respondent's allegations in his Replying Affidavit are unsupported and only intended to mislead this Honorable Court and urged that the Respondent's allegations therein are only meant to further his illegal actions and to frustrate the Applicant and the beneficiaries even further. That if at all the Petitioner/Respondent genuinely believed that there was an error in the acreage as he alleges, he had a duty to promptly apply for amendment of the grant and then proceed with the administration. Counsel urged that his failure to take this corrective action for over two years demonstrates that this claim is not made in good faith and is merely another delaying tactic.

18. Counsel maintained that the Respondent's conduct in this matter only demonstrates his unwillingness to administer this estate and have it concluded and thus there is need to have the letters of grant of representation issued to him revoked and a new administrator appointed. In this regard he relied inter alia on **re Estate of Mehmuda Huseinbhai Anjarwalla (Deceased)[2022] KEHC 480 (KLR)** where the Court held that:

"It is apparent from the averments of Salma that she is not ready to facilitate distribution of the estate. The issues she is raising cannot be addressed through the route she has taken. She cannot question the Court's decision through an affidavit or disobeying its implementation. What she should know is that she is an agent of the Court as a trustee of the estate and that the Court can on its

own motion under section 66 of the law of succession Act remove her from the role of an administrator if confirmed that she has failed to play her role as such.”

19.Counsel urged that despite the Petitioner/Respondent's claim in his Replying Affidavit that he has "always been willing and ready to effect the required transfers," his actions-or more accurately, his inaction-over the past two years tell a different story for he has not only failed to provide any documentary evidence of steps taken to distribute the estate; he has also failed to produce any applications for amendment of the grant to correct the alleged acreage discrepancy and has also not provided any written evidence of the alleged "surrender of shares" by some family members. On the contrary, Counsel argued that he continues to exclusively occupy and benefit from the deceased's land while other beneficiaries remain disinherited through the Respondent's actions.

20.Counsel submitted that for reasons that the Respondent has willfully and or without any justification failed to administer the estate, then the grant of representation issued to him be revoked as per the provisions of **Section 76(d) (li) of the Law of Succession Act** and further that in line with **Section 83 of the Law of Succession Act**, the Respondent be ordered to provide a full and accurate account of the estate herein failure to which further and/or such appropriate orders be issued against the Respondent.

Petitioner’s /Respondent’s Submissions

21.Counsel for the Petitioner submitted that power to revoke grant is discretionary, and is only to be applied judiciously and not capriciously. Counsel urged that the Petitioner has deponed that the failure to implement

the grant has been occasioned by the impossibility to effect it as it is, unless an order for amendment is issued. As such, Counsel submitted that a family meeting was held and it was agreed by the family members, including the Objector that there is need to amend the same after ascertainment of acreage by the surveyor. Counsel maintained that this is a fact that was not controverted by the Objector and it is trite that facts not otherwise controverted are deemed admitted. Counsel urged that the reasons advanced by the Petitioner are true and admitted by the Objector.

22. Counsel further submitted that revoking the grant would be very costly and drastic upon the estate, when the said grant is capable of being amended and the Petitioner given an opportunity to complete the administration of the estate. Further, Counsel urged that the Court has the jurisdiction to order for an amendment and to further order the administration of the estate by the Deputy Registrar, in the event that it is proved that the Petitioner is not capable of implementing the grant, which will be fair and just as opposed to revoking the grant. Counsel relied on the case of **Albert Imbuga Kisigwa v Recho Kawai Kisigwa, Succession Cause No.158 of 2000**, where the Court stated as follows:

"(13) Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing 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 interests of all beneficiaries

entitled to the deceased's estate and ensure that the action taken will be for the interest of justice."

Determination

23. Before delving into the merits otherwise of the application herein, I find it important to note that the Objector in her submissions only chose to submit on prayers No. (4) and (5) respectively. As a result, the court shall presume that the Objector/Applicant has abandoned the issues raised in the other prayers. I will therefore proceed to render myself solely on the aforementioned prayers.

24. Having appreciated parties' pleadings on record, it is clear that the only issue for determination in the instant Cause is;

Whether the Grant of Letters of Administration issued to the Petitioner herein should be revoked.

25. **Section 76 of the Law of Succession Act** provides for the circumstances under which a grant can be revoked as follows;

Revocation or annulment of grant

"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 has ordered or allowed; 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.”

26.The provisions of this section were very clearly restated by Hon Justice W Musyoka in the case of **Re Estate of Prisca Ong’ayo Nande (Deceased)**

[2020] eKLR which decision I fully associate myself with. In the case of **Tirus Mwaniki Njiru Vs Jane Igandu [2021] eKLR**, while discussing the said grounds for the revocation of grant Njuguna J. held that:-

“These grounds ought to be proved with evidence as the power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds but not to be exercised whimsically or capriciously.”

27. The Objector herein seek that the Court to revoke the Grant herein on grounds that the person to whom the grant was made has failed, after due notice and without reasonable cause to proceed diligently with the administration of the estate. The Objector alleges that the Petitioner herein has failed to proceed diligently with the administration of the estate of the deceased thereby denying her and other beneficiaries their respective shares of the estate herein.

28. **Section 79 of the Law of Succession** provides that,

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

29. It is vital then that any transaction or transfer relating to the said property belonging to the deceased has to be approved by the administrators and in

this case, to facilitate transfer of the said item the administrators have to sign the necessary documents. Upon confirmation of the grant, the administrators are tasked with distribution of the assets of the deceased after payment of expenses.

30. Section 83 provides that,

“(f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;”

31. Further, as provided under Section 83, it is the duty of the administrators,

“(i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

32. Section 47 of the **Law of Succession Act** gives the Court the power to pronounce itself on any Application before it in a manner that it considers just and expedient. It provides that:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient...”

33.Rule 73 of the Probate and Administration Rules provides as follows;

Nothing in these Rules shall limit or otherwise affect the inherent power 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.

34.The Petitioner/Respondent has given reasons why he has not yet completed the distribution of the estate as already herein summarized which reasons I have considered and addressed my mind to at length. It is important to note that the distribution to the deceased’s estate is not in dispute. Having critically analyzed the issues that have been canvassed by the respective parties, whereas I am satisfied that the Objector has indeed, made a good case for the revocation of the Grant herein on account that the Petitioner/Respondent has failed to proceed diligently with the administration of the estate of the deceased, in my considered opinion, the Petitioner too has made a good case as to why he has not acted as he is required to do by law as an administrator and in the interest of justice I do not find prudent to revoke the Grant herein in the first instance but rather give the Petitioner the benefit of the doubt and allow him to take care of that which he says has impeded him from acting as he ought to.

35. In this regard, the Petitioner is now hereby directed to do the following within;

- i. Correct the error in the acreage of the subject land known as SERGOIT/ELGEYO BORDER/BLOCK 1 (BELIOMO)/171.
- ii. Distribute the estate as directed in the grant as confirmed **on 4th February 2022** while taking into consideration the shares of the family members who have since died and the family members that have surrendered their shares.
- iii. File the necessary Summons for the amendment of the grant as confirmed in light of the new proposed mode of distribution.
- iv. Compliance with the above directions shall be within sixty days from the date of this Ruling.
- v. The Deputy Registrar is to have the matter listed for mention as will be appropriate upon the expiry of the sixty days from the date of the Ruling.

Read Dated and Signed at ELDORET on 20th February 2026

E. OMINDE
JUDGE