

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION APPEAL NO. E028 OF 2023

IN THE MATTER OF THE ESTATE OF KIPTOO NGENY ALIAS

KIPTOO NGENY (DECEASED)

BETWEEN

ARON SANG.....APPELLANT

VERSUS

JOHNSTONE KIPROTICH SANG

RESPONDENT

(Being an Appeal from the Judgement of Senior Principal Magistrate, Muleka E. at the Senior Principal Magistrate's Court at Sotik, Succession Cause Number 32 of 2020)

J U D G M E N T

1. In this matter, the Grant of Letters of Administration Intestate was issued to Aron Sang on 11th June 2021. The Appellant (then Petitioner) filed an Application for confirmation of the Grant on 4th August 2021.
2. There were two Protests filed in opposition to the confirmation of the Grant. The first Protest by Johnstone Kiprotich Sang was dated 23rd August 2021 and the second one was by Richard Kipngetich Rugut alias Joseah Sang and the same was dated 16th February 2022. On 18th April 2023, the trial court delivered a Judgement where it revoked the Grant.
3. Being aggrieved with the Judgement, the Appellant filed his Memorandum of Appeal dated 18th May 2023 in which they wanted the impugned Judgement set aside and the Grant reinstated.

4. My work as the 1st appellate court is to re-evaluate and re-examine the evidence of the trial court and come to my own findings and conclusions.
5. I shall briefly summarize the parties' cases in the trial court and their respective submissions in the present Appeal in the succeeding paragraphs.

The Appellant's/Petitioner's case.

6. The Petitioner stated that the deceased's estate comprised of KERICHO/GELEGELE/187 and that the deceased was survived by the following: -

- | | |
|---------------------------|----------|
| i. Esther Chemitey Ngeny | Widow |
| ii. Ludia Ngeny | Widow |
| iii. Alice Ngeny | Widow |
| iv. Johnstone Sang | Son |
| v. Anthony Sang | Son |
| vi. David Sang (deceased) | Son |
| vii. Mary Sang | Daughter |
| | in law |

viii. Raeli Cheruiyot	Daughter
ix. Pauline Sigei	Daughter
x. Rusi Mosonik (deceased)	Daughter
xi. Linner Chebii (deceased)	Daughter
xii. Sarah Cheruiyot (deceased)	Daughter
xiii. Stanley Sang (deceased)	Son
xiv. Wilter Sang law	Daughter in
xv. Joseah Sang	Son
xvi. Peter Sang	Son
xvii. Jane Cherono (deceased)	Daughter
xviii. Judith Koech	Daughter
xix. Denis Sang	Son
xx. Frankline Sang	Son
xxi. Aron Sang	Son
xxii. Agnes Chelangat	Daughter
xxiii. Beatrice Cheruto	Daughter

7. It was the Petitioner's proposal that the entire deceased's estate be shared equally between himself, Anthony Kiprono Sang and David Kipsigei Sang.

8. Through these written submissions dated 28th October 2025, the Appellant submitted that the following people signed the consent form while obtaining the Grant: -

- | | |
|------------------------|---------------------------|
| i. Mary Ruto | 1 st household |
| ii. Joseah Sang | 2 nd household |
| iii. Peter Sang | 2 nd household |
| iv. Dennis Sang | 3 rd household |
| v. Frankline Sang | 3 rd household |
| vi. Aron Sang | 3 rd household |
| vii. Agnes Chelangat | 3 rd household |
| viii. Beatrice Cheruto | 3 rd household |

9. It was the Appellant's submission that the other members of the 1st household declined to sign the consent form even

after being served. That they instructed the firm of Bii V.K & Co. Advocates to act on their behalf. It was the Appellant's further submission that the Respondent filed a Protest where he proposed a parallel mode of distribution and thereafter parties took directions to canvass the Protest through written submissions.

10. The Appellant submitted that the trial court erred when it found that the parties were not clear on who the beneficiaries were and commenced the process without the knowledge of all the three houses. That the trial court ought to make a determination on the mode of distribution.

The Respondent's/Protestor's case

11. The Protestor stated that the proposed distribution was done fraudulently without his consent. That the other beneficiaries had not consented to the mode of distribution. The Protestor further stated that the deceased's estate should be shared

equally among the beneficiaries with each getting 1.577778 acres.

12. The Protestor stated that the deceased was survived by the following: -

1st House

- | | |
|----------------------------------|----------|
| i. Tapnyobi Chemitei Ngeny | Widow |
| ii. Johnstone Sang | Son |
| iii. Anthony Sang | Son |
| iv. David Sang (deceased) | Son |
| v. Mary Sang | Daughter |
| law | in |
| vi. Raeli Cheruiyot | Daughter |
| vii. Pauline Sigei | Daughter |
| viii. Sarah Cheruiyot (deceased) | Daughter |
| ix. Rusi Mosonik (deceased) | Daughter |
| x. Linner Chebii (deceased) | Daughter |

2nd House

- | | |
|-------------------------------|--------------------|
| xi. Ludia Ngeny | Widow |
| xii. Jane Cherono (deceased) | Daughter |
| xiii. Stanley Sang (deceased) | Son |
| xiv. Wilter Sang | Daughter in
law |
| xv. Joseah Sang | Son |
| xvi. Judith Koech (deceased) | Daughter |
| xvii. Peter Sang | Son |

3rd House

- | | |
|----------------------------|----------|
| xviii. Alice Nyaboke Ngeny | Widow |
| xix. Denis Sang | Son |
| xx. Frankline Sang | Son |
| xxi. Aron Sang | Son |
| xxii. Agnes Chelangat | Daughter |
| xxiii. Beatrice Cheruto | Daughter |

13. Through his written submissions dated 30th October 2025, the Respondent submitted that the Appellant failed to comply with the trial court's orders and that the present Appeal was a waste of the court's time as it was meant to delay finalization of the succession process. The Respondent further submitted that the Record of Appeal was defective as the Appellant failed to extract the Judgement dated 18th April 2023.

14. I have gone through and carefully considered the trial court Record; the Record of Appeal and the respective parties' written submissions. The only issue for my determination was whether the trial court erred in revoking the Grant.

15. 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.

16.I have keenly gone through the Protest dated 23rd August 2021 by the Respondent. The Protest was headed and worded as a Protest against the confirmation of the Grant. I have also gone through the list of beneficiaries as captured by the Appellant and the Respondent and it was clear that

there was no dispute as the beneficiaries of the deceased's estate. I however note that some of them are deceased. As I understand this Protest, the Protestor/Respondent disagreed with the Petitioner's/Appellant's proposed mode of distribution and offered a counter-proposal. This was not a Protest on how the Grant was obtained.

17.I have also gone through the 2nd Protest by Richard Kipngetch Rugut alias Joseah Sang dated 16th February 2022 and it contained the same heading as the first Protest; it was a Protest against the confirmation of Grant which meant it was effectively contest on the mode of distribution. The 2nd Protestor's main contention was the mode of distribution stating that Zakayo Korir, Beatrice Chepkorir, Naumi Cherotich, Vicoty Chebet and Kiptoo Koech were not beneficiaries of the deceased's estate and ought not to get a share of the estate.

18. From the above, it is clear to me that the parties had no issue with the Grant or how it was obtained but their bone of contention was the mode of distribution. The same is fortified by the court record when it was noted on 28th September 2021 that the only issue in contention was distribution. It is my finding that the trial court erred when it revoked the Grant. With respect to the trial court, it should have made a determination on the distribution of the deceased's estate.

19. In the end, the Appeal dated 18th May 2023 has merit and the trial court's Judgement dated 18th April 2023 is set aside. The file is transmitted back to the trial court for determination on the issue of distribution.

Ruling delivered, dated and signed at Bomet this 3rd Day of March, 2026.

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HON. JULIUS K. NG'ARNG'AR
JUDGE

Ruling Delivered in the presence of;

Susan/Siele Court Assistant

Mr. Ngeno fop the Appellant

N/A for the Respondent

ORIGINAL