

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**SUCCESSION APPEAL NO. E020 OF 2024**

**IN THE MATTER OF THE ESTATE OF JACKSON KIPKATAM**

**ARAP KENDUIWO (DECEASED)**

**BETWEEN**

**THEOPHILUS KIMUTAI RONO..... 1<sup>ST</sup>**  
**APPELLANT**

**GRACE RONO ..... 2<sup>ND</sup>**  
**APPELLANT**

**VERSUS**

**LOISE CHELANGAT RONO .....**  
**RESPONDENT**

*(Being an Appeal from the Ruling of Principal Magistrate, Rabera M.O at the Principal Magistrate's Court at Bomet, Succession Cause Number 3 of 2003)*

**JUDGMENT**

1. In this matter, the Grant of Letters of Administration Intestate was issued to Jeremiah Kiplangat Rono (now deceased) on 3<sup>rd</sup> July 2003. The Certificate of Confirmation of Grant was then issued on 10<sup>th</sup> May 2006.
2. The Appellants (then Objectors) filed an Objection dated 26<sup>th</sup> September 2022 seeking to revoke the Grant. The Application was opposed through a Replying Affidavit dated 11<sup>th</sup> April 2023. The Application was canvassed by way of written submissions and the Ruling was delivered on 17<sup>th</sup> August 2023 where the trial court declined to revoke the Grant and dismissed the Application.
3. Being aggrieved with the Ruling of the trial court, the Appellants filed their Memorandum of Appeal dated 20<sup>th</sup> September 2023 in which they wanted the impugned Ruling set aside and this court revoke the Grant.
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. This principle was espoused in the Court of Appeal case of **Abok James Odera T/A A.J Odera**

**& Associates v John Patrick Machira T/A Machira & Co.  
Advocates [2013] KECA 208 (KLR).**

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 Appellants'/Objectors' case.**

6. The Objectors stated that the Petitioner filed the succession suit without their consent and that their signatures were forged in the consent form. The Objectors further stated that the mode of distribution was unfair.

7. It was the Objectors' case that the Petitioner secretly allocated himself and Fredrick Rono land measuring 1.5 acres in KERICHO/KAPSIMBIRI/297 whereas their deceased father had allocated them the whole of KERICHO/SILIBWET/546 and further directed that they would not have any share of land in Kapsimbiri. It was their further case that Wesley Kimutai Ngetich was given land and he was neither a dependant or a liability to the estate.

8. The Objectors stated that the Petitioner, at the time of his death, had not completely administered the deceased's estate.
9. Through their Supplementary Affidavit dated 6<sup>th</sup> June 2023, they stated that the family had not sat down to deliberate any succession issue concerning their father's estate. That they did not sign any consent form during the confirmation of the Grant.
10. Through their written submissions dated 20<sup>th</sup> September 2023, the Appellants submitted that the Grant was obtained fraudulently by concealment of material facts. They further submitted that the confirmation of Grant contravened **Rule 26 of the Probate and Administration Rules** which required the consent of all beneficiaries. They relied on **re Estate of Wahome Njoki (Deceased) (2013) eKLR** and **Muthoni Karanja vs Njuguna (2015) eKLR**. That forged consents could not be equated to valid participation.

11. It was the Appellants' submission that the Respondent failed to diligently administer the deceased's estate and that **section 76(d) of the Law of Succession Act** allowed for revocation of the Grant where an Administrator failed to proceed diligently. They relied on **Mwathi vs Mwathi & another (1995-1998) 1 EA 229 et.al.** It was the Appellants' further submission that the Respondent unlawfully transferred estate land to an intermeddler in contravention to **section 45 of the Law of Succession Act.**

12. The Appellants submitted that the trial court improperly invoked adverse possession in a succession cause and they relied on **re Estate of Gitau (Deceased) (2016) eKLR.**

### **The Respondent's/Petitioner's case**

13. The Petitioner stated that the family of the deceased met to discuss the succession of their father's estate and agreed to have Jeremiah Kiplangat Rono (deceased) as the administrator. That all the beneficiaries signed the consent form for confirmation of the Grant.

14. It was the Petitioner's case that Jeremiah Kiplangat Rono (deceased) only sold his share from KERICHO/KAPSIMBIRI/297. That the Objectors had been in possession of a portion of KERICHO/KAPSIMBIRI/297 since 2007 and had not raised any issue. It was the Petitioner's further case that the Objectors had been allocated larger shares compared to the other beneficiaries.

15. The Petitioner stated that she did not conceal any material facts during the confirmation and that the Application was brought in bad faith.

16. Through her written submissions dated 11<sup>th</sup> November 2025, the Respondent submitted that the beneficiaries of the deceased's estate waited until Jeremiah Kiplangat Rono (deceased) had died so that they could file the Application stating that their signatures had been forged. That the beneficiaries had agreed as a family that Jeremiah Kiplangat Rono (deceased) would be the administrator. The Respondent further submitted that Jeremiah Kiplangat Rono (deceased) only sold his land portion after the Grant had been confirmed and the beneficiaries were aware of the same.

17. It was the Respondent's submission that no proof was tendered to show that the Appellants' signatures had been forged. That allegations of fraud had to be proved and she relied on **R.G Patel v Lalji Makanji (1957) EA 314** and **Ndolo v Ndolo (2008) 1 KLR (G & F) 742.**

18. 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 failing to revoke the Grant.

19. 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.**

20. In the present case, the Appellants anchored their prayer for revocation on two grounds. The first ground was that they did not consent to the confirmation of Grant and that the signatures contained in the consent form were forgeries. The burden of proof here lay with the Appellants. **Section 107 of the Evidence Act** describes the burden of proof as follows: -

**(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the**

**existence of facts which he asserts must prove that those facts exist.**

**(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.**

21. As stated above, the Appellants claimed forgery. The Court of Appeal in **Kinyanjui Kamau vs George Kamau [2015] eKLR** expressed itself as follows: -

***“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required***

***of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”***

22. Similarly, in **re Estate of Julius Mimano (Deceased) [2019] KEHC 10103 (KLR)**, the court held: -

***“The allegation of forgery placed a heavy burden upon the applicant to prove beyond reasonable doubt, or at least beyond balance of probability, that indeed the signatures were forged. He led no evidence on the alleged forgery. It is clear, therefore, that he failed to discharge the burden of proof and thus his allegation of forgery cannot succeed.....”***

23. I have carefully gone through the record and there was no evidence tendered by the Appellants to support their claims that their signatures had been forged. In my view, without such evidence, the claims remained allegations and could not succeed.

24. The second ground was that the Petitioner had failed to fully administer the deceased's estate. I have gone through the record and I have noted that the Grant was issued on 3<sup>rd</sup> July 2003 and it was confirmed on 10<sup>th</sup> May 2006. I have also noted that the mode of distribution contained the deceased's children and each of them got a share of the deceased's estate including the Appellants. The Appellants bore the burden of showing or demonstrating how the Petitioner failed to administer the deceased's estate diligently. No such evidence was tendered. It is therefore my finding that the Petitioner/Respondent confirmed the Grant after the requisite 6 months and shared the deceased's estate among its beneficiaries. It is my further finding that the

Petitioner/Respondent distributed the deceased's estate within the confines of the law.

25. Flowing from the above, it is my finding that the Appellants failed to discharge their burden of proof. They did not meet the requirements of revocation as captured in **section 76 of the Law of Succession Act**. The final analysis is that I uphold the trial court's Ruling dated 17<sup>th</sup> August 2023.

26. In the end, the Appeal dated 20<sup>th</sup> September 2023 has no merit and is dismissed. Each Party will bear their own costs being a family matter.

**Judgment delivered, dated and signed at Bomet this 3<sup>rd</sup> Day of March, 2026.**

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

**Judgment Delivered in the presence of;**

**Susan/Siele Court Assistant**

**Mr. Koech for the 1<sup>st</sup> Appellant**

**Mr. Koech for the 2<sup>nd</sup> Appellant**

**M/S Chirchir for the Respondent**

ORIGINAL