

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO. E036 OF 2024
**IN THE MATTER OF THE ESTATE OF MOSES KIPNGENO
KETER (DECEASED)**
GEOFFREY KIMUTAI NGENO.....CAVEATOR/APPLICANT
VERSUS
**JOICE CHELANGAT ARAP
TOO.....RESPONDENT/PETITIONER**
RULING

1. This Court is faced with two competing applications for determination arising from the estate of the late Moses Kipngeno Keter ("the deceased") who died on 7th November 2019.

2. The first application is the Notice of Motion dated 26th May 2025 filed by Geoffrey Kimutai Ngeno ("the Applicant") seeking;

- *Protection orders prohibiting intermeddling with the estate assets;*

- *A declaration that the sale of 0.7 acres of land parcel L.R. KERICHO/KAPSUSER/1670 to a stranger amount to illegal intermeddling under Section 45 of the Law of Succession Act;*

- *Revocation of the Grant of Letters of Administration Intestate issued to Joice Chelangat Arap Too ("the Respondent") on 4th December 2024;*

- *Substitution of the Respondent with the Applicant as administrator.*

3. The second application is the Summons for Confirmation of Grant dated 28th May 2025 filed by the Respondent seeking confirmation of the grant and distribution of the estate in accordance with the proposed mode of distribution filed herein.

4. The two applications are intertwined. The Applicant's objection, if successful, would render the Respondent's confirmation summons untenable. Conversely, if the Applicant's application fails, the confirmation summons may proceed for consideration.

5. The deceased died intestate on 7th November 2019. He was survived by ten (10) children, including both the Applicant and the Respondent herein. The sole asset of the estate is land parcel L.R. NO. KERICHO/KAPSUSER/1670 measuring approximately 8.4 acres, situated along the Kericho-Kisumu highway.

6. On 4th December 2024, this Court issued a Grant of Letters of Administration Intestate to the Respondent, Joice Chelangat Arap Too.

7. The Applicant did not consent to the making of the grant, as confirmed by the Respondent in Paragraph 6 of her Replying Affidavit.

8. On 28th May 2025, the Respondent filed the Summons for Confirmation of Grant proposing equal distribution of 0.84 acres to each of the ten beneficiaries, with the share of the late Daniel Kiprotich Ngeno (a deceased son) to be held in trust by the Respondent for his children.

9. The Applicant responded with the Notice of Motion dated 26th May 2025 alleging, inter alia, that the Respondent had sold 0.7 acres of the estate property to a stranger, one Samuel Kibet Bore, in August 2024 (prior to the issuance of the grant).

10. The Applicant's case is founded on the following allegations;

a) *Intermeddling: On 28th August 2024, a stranger, Samuel Kibet Bore, with the authority of the Respondent, took possession of 0.7 acres of the estate land, cut down approximately 500 tea bushes, and has continued to occupy the same. The Applicant reported the matter to Nyakacho Police Station under OB NO.10/28/08/2024.*

b) *Sale of Estate Property: The Respondent sold the said 0.7 acres valued at Kshs 35,000,000.00, being the portion abutting the Kericho-Kisumu highway.*

c) *Conflict of Interest: The Respondent's advocates on record, M/S Bett & Co. Advocates, and specifically Counsel Caleb Koech, allegedly drew and witnessed the sale agreement between the Respondent and Samuel Kibet Bore. Further, the said advocate allegedly called the Applicant to collect his share of the sale proceeds.*

d) *Omission of Beneficiaries: The Respondent initially omitted three adult children of the late Daniel Kiprotich Ngeno (Robert Rotich, Cynthia Chepkemoi, and Diana Chepkirui) from the list of beneficiaries.*

e) Flawed Distribution Formula: The proposed distribution of 0.84 acres per beneficiary is based on guesswork without proper survey, ignoring the higher value of the highway frontage.

11. The Applicant urges the Court to revoke the grant issued to the Respondent and substitute her with the Applicant as administrator.

12. The Respondent opposes the Applicant's application and supports the confirmation of her grant on the following grounds;

a) Denial of Sale: The Respondent denies any sale of estate property to Samuel Kibet Bore or any third party, stating that the allegations are "not further from the truth."

b) Lack of Evidence: The Respondent submits that the Applicant has not discharged the burden of proof under Section 107 of the Evidence Act, as he has produced no sale agreement, no witness to the alleged transaction, and no proof of payment.

c) Admission of Error: The Respondent concedes that she "inadvertently" listed three children of Daniel Kiprotich Ngeno instead of six, but argues that this caused no prejudice as the property is proposed to be held in trust for Daniel's estate. She now proposes that the 0.84 acres be vested directly in the "Estate of Daniel Kiprotich Ngeno" for separate administration.

d) Consent of Beneficiaries: The Respondent argues that all beneficiaries except the Applicant consented to the grant and the proposed distribution.

e) Compliance with Timelines: The Respondent states she is merely complying with Section 71 of the Law of Succession Act, which requires an application for confirmation within six months of the grant.

13. The Respondent relies on the cases of ***Re Estate of Daudi Kirunga Muchiri (Deceased) [2023] KEHC 23960 (KLR)*** and ***re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR*** for the proposition that mere allegations without evidence cannot justify revocation under Section 76.

14. At the heart of this ruling is a fundamental question; What evidence has the Applicant placed before the Court to prove his allegations?

15. The Court has carefully scrutinized the entire record. The Applicant has provided no documentary evidence of the alleged sale. There is no sale agreement, no acknowledgment of payment, no bank statements showing receipt of Kshs 35,000,000.00, no affidavit from Samuel Kibet Bore, and no photographs of the cleared land or destroyed tea bushes.

16. The police OB number, without more, proves only that a report was made. It does not prove the truth of the report. The police could have investigated and found the complaint baseless. The OB number alone is not evidence of the underlying facts.

17. Regarding the conflict of interest allegation, the Applicant has provided no copy of the alleged agreement, no details of the phone calls (dates, times, phone numbers), and no independent

witness. The Respondent's advocates have not responded to this allegation, but the burden of proof lies with the Applicant. Silence from the Respondent's advocates does not prove the Applicant's case.

18. Section 107 of the Evidence Act (Cap 80) provides:

(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.

19. The Court of Appeal in ***M'Mukanya v M'Mukanya [2020] eKLR*** held;

"He who alleges must prove. Allegations of fraud, intermeddling, or misconduct in succession causes must be proved on a balance of probabilities. Mere assertions, however vociferously made, cannot substitute for evidence."

20. In ***Re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR***, the court stated:

"The revocation of a grant is a serious matter with significant consequences for the administration of an estate. It cannot be granted on the basis of unsubstantiated allegations. The Applicant must place before the court tangible, credible evidence that satisfies the grounds in Section 76."

21. The only allegation that is proved by evidence is the omission of three adult children of the late Daniel Kiprotich Ngeno. The Respondent herself, in Paragraph 6 of her Supplementary Replying Affidavit sworn on 16th September 2025, stated:

"I have further noted that in my earlier deposition, I inadvertently indicated that my late brother, Daniel Kiprotich Ngeno, had three (3) children. However, the correct position is that my said brother left behind six (6) children, namely: Robert Rotich, Cynthia Chepkemoui, Diana Chepkiri, Lornah Chepchumba, Gift Cheruiyot, and Herika Chebet."

22. This is a formal admission on oath. It is evidence. The Respondent has admitted that she filed an affidavit containing incorrect information regarding the number of Daniel's children.

23. The Respondent argues that this omission caused "no prejudice" because she proposes to hold the property in trust. The Court disagrees. The three adult children of Daniel:

- *Were not listed as beneficiaries in the initial pleadings;*
- *Were not notified of these proceedings;*
- *Were not consulted on the mode of distribution;*
- *Were not given an opportunity to be heard on who should administer their late father's share.*

24. This constitutes prejudice. They have been excluded from the process entirely. The question is whether this single proven

ground is sufficient to warrant revocation under Section 76(c) of the Law of Succession Act.

25. Section 76(c) provides for revocation where;

"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"

26. Was the list of beneficiaries "essential" to justify the grant? Yes. A petition for letters of administration must list all survivors of the deceased. The court relies on this list to determine who is entitled to notice, who should consent, and whether the proposed administrator is suitable. An incomplete list undermines the entire process.

27. The Court finds that the Respondent made an untrue allegation regarding the number of Daniel Kiprotich Ngeno's children, and this allegation was material to the grant. This brings the case within Section 76(c).

28. The more serious allegations of sale of 0.7 acres, intermeddling, destruction of tea bushes, and conflict of interest remain wholly unproven. The Applicant has placed no tangible evidence before the Court to substantiate these claims. The Court cannot act on unproven allegations; however serious they may sound. To do so would be a miscarriage of justice. These allegations are accordingly rejected for lack of evidence.

29. The Applicant's complaint that the proposed distribution is "guesswork" is not an allegation requiring proof. It is a submission about the adequacy of the proposed distribution. The Respondent's own affidavit states the distribution is "subject to further survey and subdivision as may be directed by the court upon confirmation of the grant." This implicitly acknowledges that the 0.84-acre figure is provisional. The Court notes that land with highway frontage may have higher value than interior land. A simple mathematical division without regard to differential value may be inequitable. This is a matter the Court can address through appropriate directions.

30. The Court must balance several competing interests;

- ***The need for finality in succession matters (this estate has been pending since 2019);***

- ***The principle that revocation is a serious remedy not to be granted lightly;***

- ***The rights of all beneficiaries, including the three adult children of Daniel who were omitted;***

- ***The lack of evidence for the most serious allegations against the Respondent.***

31. The Court is also guided by Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, which give the Court wide discretion to make such orders

as may be expedient for the just and efficient administration of the estate.

32. Having carefully considered the pleadings, affidavits, and submissions, the Court makes the following findings;

a) The Applicant has failed to prove the allegations of sale of 0.7 acres, intermeddling, destruction of tea bushes, and conflict of interest. These allegations are dismissed for lack of evidence.

b) The Applicant has proved that the Respondent made an untrue allegation regarding the number of children of the late Daniel Kiprotich Ngeno. This omission resulted in three adult beneficiaries being excluded from these proceedings.

c) This untrue allegation was material to the grant and brings the case within Section 76(c) of the Law of Succession Act.

d) However, full revocation of the grant is not the only remedy available to the Court. The Court may fashion orders that remedy the proven defect while preserving the administration already undertaken.

e) The proposed distribution of 0.84 acres per beneficiary is provisional and requires proper survey to account for differential land values.

33. Accordingly, the Court makes the following orders;

- a) The application for revocation is partially allowed to the extent that the Respondent made an untrue allegation regarding the number of children of Daniel Kiprotich Ngeno.**
- b) Instead of full revocation, this Court appoints GEOFFREY KIMUTAI NGENO as a JOINT ADMINISTRATOR alongside the Respondent, JOICE CHELANGAT ARAP TOO, to ensure transparency and representation of all beneficiaries.**
- c) The Summons for Confirmation of Grant dated 28th May 2025 is hereby STRUCK OUT.**
- d) The joint administrators are directed to file a fresh Summons for Confirmation of Grant within 30 days of the date hereof.**
- e) Pending the confirmation of the grant, this Court issues an INHIBITION ORDER under Section 45 of the Law of Succession Act prohibiting any sale, transfer, lease, charge, or other disposition of land parcel L.R. NO. KERICHO/KAPSUSER/1670 or any portion thereof.**
- f) Given the family nature of this dispute, each party shall bear their own costs.**

Dated, signed and delivered at Kericho this 10th day of March, 2026.

.....
J. K. SERGON

JUDGE

In the Presence of:-

C/Assistant - Rutoh

Koech for the Petitioner

Miss Cherono holding brief for O. Langat for Applicant