REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO. 299 OF 1999

IN THE MATTER OF THE ESTATE OF WILSON KIPROTICH TERER (DECEASED)

LINER CHEPKEMOI TERER..... APPLICANT

VERSUS

MARGARET CHEPKOECH

CHERES.....1ST PETITIONER/RESPONDENT

ALICE CHEBII..... 2ND PETITIONER/RESPONDENT

RULING

1. The Applicant, **Liner Chepkemoi Terer**, brought this application by way of a Summons expressed to be brought under Rule 44(1) and Section 73 of the Probate and Administration Rules, and Section 76 of the Law of Succession Act, Cap 160 Laws of Kenya.

2. The Applicant seeks the following orders:

a) Spent.

b) That the Grant of Letters of Administration Intestate made

to Margaret Chepkoech Cheres and Alice Chebii and

confirmed on 6th October 2005 in respect of the estate of

the late Wilson Kiprotich Terer (Deceased) be revoked and/or annulled.

c) That the costs of this application be provided for.

3. The genesis of this application is the Applicant's contention that the process leading to the confirmation of the grant on 6th October 2005 was conducted without her involvement and to her exclusion, despite her status as a lawful child of the deceased. It is her case that the estate was to be shared into equal shares among all the children, but she was deliberately omitted from the proceedings.

4. The Applicant avers that she was not notified of the proceedings for confirmation and distribution of the deceased's estate despite being a lawful child of the deceased. She contends that the mode of distribution that was presented to and approved by the court on 6th October 2005 failed to account for her existence as a beneficiary, thereby disinheriting her completely.

5. I have carefully considered the application, the responses filed thereto, and the submissions of the parties. From the material placed before me, certain fundamental facts emerge which are not in dispute.

6. The parties are in agreement that the Applicant, Liner Chepkemoi Terer, is the daughter to the deceased. This filial relationship has been conceded by both respondents and is documented in the proceedings. The divergence is whether she

consented to the mode of distribution. That divergence is of significance for it does negate on the mode of distribution of the deceased estate on who gets the portion of the land.

7. It is not in doubt that the deceased was polygamous. It is also not in contest who the children of the deceased were. The deceased was survived by two wives and several children from both households. The Applicant belongs to one of these houses and is therefore, by any measure, a child of the deceased entitled to a share of his estate.

8. The Certificate of Confirmation of Grant issued on 6th October 2005 shows a distribution that was undertaken without any reference to the Applicant. Her name does not appear in the list of beneficiaries, and no portion of the estate was allocated to her. It is this omission that has precipitated the present application.

9. The respondents, while conceding that the Applicant is indeed a daughter of the deceased, have sought to defend the confirmation of grant on the basis that the Applicant either consented to the mode of distribution or was otherwise aware of the proceedings and chose not to participate.

10. However, the respondents have not placed before this court any tangible evidence to support this assertion. There is no affidavit of consent signed by the Applicant. There is no minute of a family meeting recording her agreement. There is no correspondence indicating that she was notified of the

confirmation hearing and elected to stay away. The respondents' case, therefore, rests on assertion rather than proof.

11. The Applicant's summons is brought under Section 76 of the Law of Succession Act. That provision sets out the grounds upon which a grant of representation, whether or not confirmed, may be revoked or annulled. The relevant grounds for purposes of this application are;

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.

12. It is trite law that for a revocation application to succeed, the applicant must demonstrate the existence of one or more of these statutory grounds. The burden of proof rests on the applicant, but once a prima facie case is established, the respondents must provide a credible explanation for the impugned grant.

13. I am guided by the procedural requirements of Section 76 and the substantive principles of equality and non-discrimination

that now form the bedrock of our legal system. The exclusion of a daughter from her father's estate is no longer a matter to be lightly regarded or excused by reference to custom or practice.

14. In the Matter of the ***Estate of M'Ngarithi M'Miriti alias Paul M'Ngarithi M'Miriti (Deceased) [2017] eKLR***, the court while frowning upon the then entrenched discrimination against daughters in inheritance had this to say:

"***From the arguments coming through, it is clear issues to do with discrimination based on gender and sex have emerged. There were bad times in the heavily patriarchal African society; that being born as daughter disinherited you. And so, even the judicial journey to liberate daughters from being so down-trodden by the patriarchal society in Kenya on matters of inheritance has been long and painful. As a matter of fact, due to the constitutional architecture of our nation at the time, before 2010, we only saw pin-prick thrusts and rapier-like strokes by courts on these persistent patriarchal biases. But, things changed when Rono Vs. Rono [2008] 1 KLR 803 delivered the downright bludgeon-blow on these discriminatory practices against women in inheritance; it splendidly paid deference to the international instruments against all forms of discrimination against women especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And, I am happy***

***to say that from thence, there are many cases—and the number is rising by the day as courts implement the Constitution—which states categorically that discrimination in inheritance on the basis of gender or sex or status is prohibited discrimination in law and the Constitution.*"**

15. Moreover, the Court of Appeal in the case of ***Stephen Gitonga M'murithi Vs. Faith Ngirumurithi [2015] eKLR*** held;

"***Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried...*"**

16. It establishes, without equivocation, that all children of a deceased person are entitled to equal treatment in the distribution of the intestate estate. Gender is not a relevant consideration. Marital status is not a relevant consideration too. Wealth or comfort also is not a relevant consideration. The only relevant fact is that the person is a child of the deceased.

17. It is apparent that the distribution cannot be left to stand. It must be revoked. The Applicant is an undisputed daughter of the deceased. She was excluded from the distribution that was confirmed on 6th October 2005. Whether this exclusion was intentional or inadvertent, the effect is the same, a child of the deceased has been disinherited.

18. I have carefully considered the record and the summons for confirmation of grant dated 9th August 2005 and I find that no consent was attached to it. There is no evidence showing the applicant’s signature on it. The respondent's argument that the Applicant may have consented to the distribution is, with respect, untenable. It is also not clear from the proceedings of 6th October 2005 whether the applicant was present in court or not.The law mandates equal distribution to all children. A distribution that omits a child is illegal, and consent cannot cure illegality. The Applicant, as a daughter, occupies a position that has historically been vulnerable to exclusion. The courts must be vigilant to protect her rights, not to facilitate their erosion through alleged consent.

19. I find that the proceedings leading to the confirmation of the grant on 6th October 2005 were defective in substance. They were defective because they proceeded on the basis of an incomplete and inaccurate list of beneficiaries. The omission of the Applicant, a lawful child of the deceased, from those proceedings rendered the entire confirmation process fundamentally flawed.

20. This Court further find that the grant was obtained by concealment from the court of a material fact. The material fact concealed was the existence of the Applicant as a child of the deceased entitled to a share of the estate. This concealment,

whether deliberate or through negligence, vitiates the grant and entitles the Applicant to the revocation she seeks.

21. For the reasons set out above the Summons for Revocation of Grant dated is found to be meritorious. Consequently, I make the following orders;

a) ***The Certificate of Confirmation of Grant issued on 6th October 2005 is hereby revoked and set aside in its entirety.***
b) ***The petitioners are hereby directed to file and serve a fresh application for confirmation of grant within sixty (60) days of the date hereof.***
c) ***Each party shall bear their own costs of this application, as these are family proceedings.***

Dated, signed and delivered at Kericho this 10th day

of March, 2026.

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J. K. SERGON
JUDGE

In the Presence of:-

C/Assistant – Rutoh

Malel for Applicant

Koech for Respondent