

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO. 31 OF 2003

**IN THE MATTER OF THE ESTATE OF MARITIM ARAP CHUMO
alias MORITIM CHUMO (DECEASED)**

**RUTH CHEPWOGEN ROTICH.....1st
OBJECTOR/APPLICANT**

**JANE CHEMETET CHEPKWONY2st
OBJECTOR/APPLICANT**

VERSUS

**ANNA CHEPNGETICH.....1st
PETITIONER/RESPONDENT**

**PHILIP MARITIM.....2nd
PETITIONER/RESPONDENT**

**DAVID KIPLANGAT MARITIM.....3rd
PETITIONER/RESPONDENT**

**JOSEPH KIBET KOSKE.....4th
PETITIONER/RESPONDENT**

JUDGMENT

1. This Succession Cause relates to the estate of ***Maritim Arap Chumo alias Moritim Chumo***, hereinafter referred to as “the Deceased”. A Grant of Letters of Administration Intestate was issued to the Petitioners on 22nd June 2006, and a Certificate of Confirmation of Grant was issued on 17th April 2018. The Confirmed Grant was subsequently rectified on 7th October 2019.

2. By a Summons for Revocation of Grant dated 30th May 2022, the Objectors seek to have the Grant revoked under Section 76 of

the Law of Succession Act, Chapter 160 of the Laws of Kenya, and Rule 44 of the Probate and Administration Rules. The Objectors contend that the Grant was obtained fraudulently through concealment of material facts, namely the existence of the first house of the Deceased, and that a stranger was improperly included as an administrator.

3. I have carefully considered the pleadings, the oral testimony of all witnesses, the exhibits tendered, and the written submissions filed by both parties.

4. The Deceased died intestate on 28th January 1994. At the time of his death, he was the registered proprietor of land parcel **LR. NO. KERICHO/KAPSUSER/438**, measuring approximately 5.52 Hectares.

5. The Objectors filed the present application for revocation of grant on grounds that the Petitioners concealed the existence of the first house of the Deceased and fraudulently obtained the grant without involving all rightful beneficiaries. The Objectors claim that the Deceased had two wives, and that the first house was deliberately omitted from the succession cause.

6. The Petitioners oppose the application, contending that the Objectors have failed to prove the existence of a second wife, that the grant was rectified on 7th October 2019, and that the Objectors have been indolent in bringing their application after many years. The Objectors called five witnesses in support of their case.

7. **PW1 -Jane Chemetet Chepkwony**, the second Objector, testified that she is a daughter of the Deceased from the first house. She stated that her mother was **Tapnyobii Chumo**, who passed away when she was young. She testified that her father had two wives, and that after her mother's death, the Deceased married a second wife to take care of her and her elder sister Rachel. She stated that her father had allocated land to her and her sister during his lifetime. She testified that she was born in 1952. She admitted under cross-examination that she had no death certificate for her mother and no letter from the chief to confirm her relationship to the Deceased.

8. **PW2- Ruth Chepwogen Rotich**, the first Objector, testified that she is a granddaughter of the Deceased through her mother Rachel **Chepkirui Chepkwony**. She testified that the area chief did not record the names of her mother and her aunt Jane as beneficiaries of the estate. She admitted that she was married in another place.

9. **PW3- Reuben Kipkorir Sigei**, a relative of the Deceased, testified that the Deceased had two wives. He stated that the first wife was **Tapnyobii Chumo**, who passed away, and the second wife was **Anna Chumo**. He testified that the first wife had two daughters named Rachael and Jane. He told the court that the first wife was buried on the land. During cross-examination, he admitted that he never saw the first wife because she passed away before he was born. He also admitted that he was not a

party to the succession and could not state with certainty when the Deceased died.

10. **PW4 - John Kipngeno Rugut**, a neighbor of the Deceased, testified that the Deceased had two wives and that the first wife was buried on the Deceased's land. He stated that the Deceased had subdivided his land in the 1970s. He testified that the Deceased married the second wife four years after the death of the first wife. He told the court that after the Deceased's death, the Objectors were chased away from the land. During cross-examination, he admitted that he did not report the eviction to the police.

11. **PW5- Leonard Kipsigei Langat**, testified that he was the former village elder of Seretet village, serving from 1998 to 2021. He testified that he knew the Deceased well as a neighbor. He confirmed that the Deceased had two wives. He stated that Rachael and Jane were daughters of the Deceased from the first wife. He testified that the first wife was buried on the Deceased's land. During re-examination, he corrected a portion of his statement, stating that it was wrongly recorded that the Objectors were chased away, and that he considered that an error to be corrected. He also admitted that he did not attend the Deceased's funeral.

12. After the testimony of PW5, the Objectors closed their case.

13. The Petitioners called three witnesses in their defense.

14. **DW1 -Philip Kipkorir Maritim**, is the second Petitioner and a son of the Deceased from the second house. He testified that he was born in 1974 and that his father died in 1994. He claimed that the Deceased did not have a second wife. He testified that he did not know Ruth Rotich. During cross-examination, he averred that he do not know **Taputany Chumo** and **Jane Chepkwony** is just a neighbor.

15. **DW2- Joseph Kibet Koskei**, a son of the Deceased. He testified that he **Ruth Chebwogen Rotich** is not known to him. He stated that the Deceased died in 1994, and that he attended the burial and no one attempted to stop it. He stated that he do not know **Rachael,Ruth,Alice Richard** and **Geoffrey**. He said he was born in 1951.

16. **DW3- Wilson Kiporono Siele**, testified that he is a farmer, lives in Seretet and a neighbor. He stated that he went to school with the first born of Chumo called **Joseph Koskei**. He stated that he is the village manager and now 72 years old. That he did not know **Tapnyobii Chumo**. He further stated that he interacted with the family of **Martim arap Chumo**.

17. **DW4- Charlie Kipkorir Cheruiyot**, is a neighbor who was born in 1986. He testified that he did not see the Deceased, who passed away in 1994. He stated that he knew **Jane Chemetet** as his neighbor but did not know her mother. He testified that he knew the children of the deceased. He stated that he had never heard of **Taplelgoi Chumo**.

18. After the testimony of DW4, the Petitioners closed their case.

19. Having considered the pleadings, the evidence, and the submissions, the following issues arise for determination;

a) *Whether the Objectors have established grounds for revocation of the Grant under Section 76 of the Law of Succession Act.*

b) *Whether the Objectors have proved the existence of a valid marriage between the Deceased and the alleged first wife.*

c) *Who should bear the costs of the application.*

20. Section 76 of the Law of Succession Act provides for revocation of grants. It states;

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 may order; or

(ii) to proceed diligently with the administration of the estate; or

(e) that the person to whom the grant was made has failed, after due notice and without reasonable cause, to render to the court as required by section 83 a statement of account and to produce any such documents as may be required under those sections.

21. The law is settled that revocation of a grant is a drastic remedy. The Court of Appeal in ***Matheka v Matheka [2005] eKLR*** held that allegations of fraud or concealment must be specifically pleaded and strictly proved. General or vague allegations are insufficient.

22. In ***re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR***, the court emphasized that the applicant must demonstrate the existence of one or more of the grounds set out under Section 76. Revocation is not automatic.

23. The Objectors' entire case rests on the assertion that the Deceased had two wives. It was therefore incumbent upon them to prove, on a balance of probabilities, the existence of a valid marriage between the Deceased and the alleged first wife.

24. The Objectors did not produce any documentary evidence to support this assertion. No marriage certificate was tendered. No evidence of a customary marriage, such as dowry negotiations or the involvement of elders, was presented. No death certificate for the alleged first wife was produced. PW1 admitted under cross-examination that she had no death certificate for her alleged mother, no burial permit, and no letter from the chief confirming her relationship to the Deceased.

25. He who alleges marriage must prove. In ***Hortensiah Wanjiku Yawe v Public Trustee [1976] eKLR***, the court held that the onus of proving marriage rests upon the person who alleges it.

26. The evidence on record falls far short of this standard. The Objectors' own witnesses made critical admissions under cross-examination. PW3 admitted that he never saw the alleged first wife because she died before he was born. PW4's testimony about the timing of the second marriage was contradicted by PW1's own evidence. PW5, the former village elder, admitted that he did not attend the Deceased's funeral and could not recall when the alleged first wife died.

27. Moreover, there was no evidence that the Deceased ever acknowledged or introduced the alleged first wife during his lifetime. PW2 admitted that the area chief did not record or recognize their names. The weight of the evidence suggests that the alleged first wife was not recognized by the family or the community. I find that the Objectors have failed to prove the existence of a valid marriage between the Deceased and the alleged first wife.

29. Even if I were to overlook the failure to prove the marriage, the Objectors' case is riddled with internal contradictions that undermine its credibility.

30. PW1 claimed to be a daughter of the Deceased born in 1952. PW4 testified that the second wife was married four years after the death of the first wife. However, evidence on record shows that a child of **Anna Chepngetich** was born as early as 1952, the same year PW1 claims to have been born. This makes PW4's timeline implausible and inconsistent with PW1's own testimony.

31. PW5, who presented himself as a village elder, incorrectly stated that the Deceased died in 1970s, whereas the death certificate on record shows that the Deceased died in 1994. This error undermines the reliability of his testimony.

32. PW1 suggested that the Objectors were known to the chief and attended the funeral. PW2 admitted that the chief did not record their names. PW5 admitted that he did not attend the funeral at all. These contradictions go to the root of recognition

and repute, which are essential elements in proving a marriage under customary law.

33. When the testimonies of the Objectors' witnesses are read together, they contradict each other on critical issues: the existence of the alleged wife, the timing of the alleged marriage, recognition by the family and local administration, and even the date of death of the Deceased.

34. In ***In re Estate of M'Ngarithi M'Miriti (Deceased)(2017) eKLR***, the Court of Appeal emphasized that a party seeking to upset a grant must present clear and consistent evidence. The Objectors have failed to do so.

35. This Succession Cause was filed in 2003. The Grant of Letters of Administration was issued on 22nd June 2006. The Certificate of Confirmation was issued on 17th April 2018, and was rectified on 7th October 2019. The Objectors filed their Summons for Revocation in 2022, some sixteen years after the Grant was issued and four years after the Grant was confirmed.

36. The Objectors were not strangers to the community. PW1 lived in the same village as the Petitioners. If she was truly a daughter of the Deceased, she must have been aware when the succession proceedings were initiated. The fact that she waited until 2022 to raise her claim, after the grant had been confirmed and rectified, suggests either acquiescence or lack of diligence.

37. The Court of Appeal has consistently held that delay in seeking revocation may be a ground for refusing the remedy. In

re Estate of G.K.K (Deceased) [2017] eKLR, the court stated that Section 76 was not intended to provide an avenue for endless litigation and that the principle of finality must apply.

38. The Objectors have not offered a satisfactory explanation for the long delay. I find that their delay in bringing this application further militates against the grant of the relief they seek.

39. The Petitioners obtained a rectified grant on 7th October 2019. The rectification process provided an opportunity for any person with an interest in the estate to come forward and object. The Objectors did not do so. Their silence at that juncture supports the conclusion that they have acquiesced in the administration of the estate by the Petitioners.

40. The Objectors submitted that the Petitioners' witnesses were impeached because they allegedly acknowledged the Applicants in their written statements but denied them at trial. I have carefully reviewed the record. None of the Petitioners' witnesses filed written statements that acknowledged the existence of the alleged first wife or the Applicants' status as beneficiaries. The argument that the witnesses were "blowing hot and cold" is therefore not supported by the evidence.

41. In any event, the burden of proof remained with the Objectors. Even if inconsistencies existed in the Petitioners' testimony, the Objectors were still required to prove their own case. They failed to do so.

44. In the upshot, the Summons for Revocation of Grant dated 30th May 2022 is hereby dismissed with no orders as to costs.

Orders accordingly.

**Dated, signed and delivered at Kericho this 31st day
of March, 2026**

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**J. K. SERGON
JUDGE**

In the presence of:

C/Assistant - Rutoh

No Appearance