

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NUMBER 21B OF 2024

IN THE MATTER OF THE ESTATE OF ELIJAH KAMOING

BOLDO (DECEASED)

ZACHARIA KIPKEMOI KAMOING 1ST

PETITIONER

JACKLINE CHEPKOECH KAVINDU 2ND

PETITIONER

VS

ESTHER CHEPKEMOI KAMOING OBJECTOR

R U L I N G

1. In this matter, a Grant was issued to the Petitioners on 7th December 2023 and thereafter a Certificate of Confirmation

of Grant was issued on 2nd April 2025 in respect of the deceased's estate known as KERICHO/CHEMOIBEN/129.

Summons for Revocation

2. The Objector filed her Application for revocation of the Grant dated 5th April 2025. Through her Supporting Affidavit even dated, the Objector stated that she was the wife of the deceased's son called Joshua Kamoing (Deceased). That the Petitioners filed the Petition in Bomet when they knew this court lacked jurisdiction to handle the matter as there was an ongoing case in Kericho being Kericho ELC Number 70B of 2021 between Joshua Kiprono Kamoing and Joseph Chepkwony. The Objector further stated that the Petitioners produced a fraudulent list of beneficiaries to this court and failed to disclose that the said Joseph Chepkwony was not a liability to the deceased's estate.

3. It was the Objector's case that when her husband (Joshua Kamoing) died, she took over Kericho ELC Number 70B of

2021 to its conclusion and the court ruled that the defendant (Joshua Chepkwony) was entitled to a refund of the purchase price as the sale violated **section 45 and 82 of the Law of Succession Act**. That at the time the Grant was confirmed, the Judgement in Kericho ELC Number 70B of 2021 had already been delivered and the Judgment indicated that Joshua Chepkwony was not a liability to the deceased's estate. It was the Objector's further case that Joshua Chepkwony was given 3.5 acres of the deceased's estate yet he was not a beneficiary.

4. The Objector stated that she was supposed to be given 5.117 acres of the deceased's estate.

5. Through her written submissions dated 8th October 2025, the Objector submitted that the inclusion of Joseph Chepkwony as a liability was a nullity and made the process of obtaining the Grant faulty. The Objector further submitted that this court lacked jurisdiction and ought to down its tools. That the deceased's estate was situated in Kericho and yet the

succession cause was filed in Bomet. She relied on **section 47 of the Law of Succession Act** and **re Estate of Shajama Mohamed (Deceased) (Miscellaneous Application 30 of 2022) [2025] KEHC 1509 (KLR)**.

6. It was the Objector's submission that the Grant was defective and ought to be revoked. She relied on **section 76 of the Law of Succession Act** and **Samuel Wafula Wasike v Hudson Simiyu Wafula (1993) eKLR**.

Response

7. Through her Replying Affidavit dated 23rd July 2025, the 2nd Petitioner stated that this matter was initially filed at the Sotik Principal Magistrate's Court being Sotik PM Succession Cause Number 28 of 2018 before it was transferred to this court for want of pecuniary jurisdiction. That they did not obtain the Grant fraudulently as alleged by the Objector as

the same was issued with the consent of all the beneficiaries and more so during the lifetime of the Objector's husband.

8. It was the 2nd Petitioner's case that in relation to Kericho ELC Number 70B of 2021, the Objector's husband was conditionally given 3 months to refund Kshs 3,320,000/= to Joseph Chepkwony and the Objector's husband failed to do so. That the Judgement was then overtaken by events. It was the 2nd Petitioner's case that Joseph Chepkwony was a purchaser for value as he purchased 3.5 acres of the deceased's estate.

9. The 2nd Petitioner stated that after the purchase, Joseph Chepkwony developed the said portion and built permanent houses on it. That he had lived peacefully on the said portion for over 16 years and the Objector had instituted the said Objection in bad faith. The 2nd Petitioner further stated that when the matter came up for confirmation of the Grant, all beneficiaries of the estate including the Objector's husband

agreed on the mode of distribution and further agreed that the Objector's husband would receive 1.617 acres while Joseph Chepkwony would receive 3.5 acres of the deceased's estate. That the Objection was an afterthought and was meant to derail the conclusion of the succession proceedings.

10. Through their written submissions dated 7th January 2026, the Petitioners submitted that Joseph Chepkwony bought 3.5 acres of land from Joshua Kamoing (Objector's husband) and he built a permanent residential home on it. That in the year 2018, with the concurrence of all the family members including the Objector's husband, a succession suit was filed in Sotik Principal Magistrate's Court which culminated in the confirmation of the Grant which included Joseph Chepkwony as one of the beneficiaries of the deceased's estate.

11. It was the Petitioners' submission that in Kericho ELC Number 70B of 2021, the Objector's husband sought to evict Joseph Chepkwony alluding that at the point of sale, he had

no capacity to do so. That the court ruled that he ought to refund Joseph Chepkwony Kshs 3,320,000/= and he failed to do so meaning the Judgement was overtaken by events. It was the Petitioners' further submission that the Grant was obtained with the consent of all the deceased's beneficiaries. That the Objector had participated in the succession cause in the lower court through to this court and had failed to raise any objection.

12. I have gone through the entire record and the only issue for my determination was whether the Grant dated 7th December 2023 and confirmed on 2nd April 2025 should be revoked.

13. On the issue of jurisdiction, this court had unlimited original jurisdiction to hear and determine any civil or criminal matters as provided for under **Article 165 (3) (a) of the Constitution**. Succession proceedings as in the present

case fall squarely in this court's jurisdiction. This argument thus fails.

14. 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.

15. In the present case, the Objector stated that the Grant was obtained fraudulently as the name of Joseph Chepkwony was included in the list of beneficiaries and was allocated 3.5 acres of the deceased's estate. The Objector further opined that through Kericho ELC Number 70B of 2021 between Joshua Kiprono Kamoing (Objector's husband) and Joseph Chepkwony, the court held that Joseph Chepkwony did not purchase the said 3.5 acres. The Objector attached the said Judgement marked as "ECK-4". On the other hand, the 2nd Petitioner stated that the Judgement gave Joshua Kiprono Kamoing a conditional order to refund Kshs 3,320,000/= to Joseph Chepkwony which he failed to do so, hence the Judgement was overtaken by events. The 2nd Petitioner attached Sale Agreements marked as "JK1 (a), (b) and (c)".

16. In reference to the above, Joseph Chepkwony swore an Affidavit dated 26th February 2024 in which he stated that he purchased the piece of land from the Objector's husband and had built a permanent house and had planted tea bushes. That he had been in occupation of the land for over 19 years without any interference from the beneficiaries. Joseph Chepkwony further stated that the Objector's husband, Joshua Kamoing assured him that when they filed the succession suit, his name would be included as a liability to the deceased's estate. Joseph Chepkwony attached Sale Agreements between himself and Joshua Kamoing. This evidence corroborated the contents of the Petitioners' Replying Affidavit dated 23rd July 2025.

17. Flowing from the above, it was clear that there was a dispute of ownership of 3.5 acres of the deceased's estate. Unfortunately, this court has no jurisdiction to determine the ownership. The same lay with the Environment and Land Court. It is the primary duty of the Probate court to distribute

the free estate of a deceased. In the case of **re Estate of Julius Ndubi Javan (Deceased)** [2018] KEHC 8523 (KLR), Gikonyo J. held: -

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.”

18. Similarly, in **re Estate of Stone Kathuli Muinde (Deceased)** [2016] KEHC 3725 (KLR) the court held that:

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“.....It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.

Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the Civil Procedure Act and the Civil Procedure Rules. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it”.

19. In the final analysis, it is my finding that it is in the interest of justice that the ownership of the deceased's estate is determined as a matter of precedence to enable this court distribute the deceased's free estate. In the circumstances, it is my further finding that the Grant dated 7th December 2023 was ripe for revocation as provided for in **section 76 of the Law of Succession Act.**

20. In the end, the Application dated 5th April 2025 has merit and the Grant dated 7th December 2023 and confirmed on 2nd April 2025 is hereby revoked.

Ruling delivered, dated and signed at Bomet this 30th Day of April, 2026.

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HON. JULIUS K. NG'ARNG'AR
JUDGE

Ruling Delivered in the presence of;

Susan/Siele Court Assistant

2nd Petitioner - present

Objector - present

ORIGINAL