



REPUBLIC OF KENYA



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**In re Estate of the Late Chemase Ego (Deceased) (Succession Cause 116 of 2000) [2025] KEHC 527 (KLR) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 527 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 116 OF 2000  
RN NYAKUNDI, J  
JANUARY 27, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE CHEMASE EGO - DECEASED**

**BETWEEN**

**MARY MOKICHO KIPKEMOI ..... PETITIONER**

**AND**

**JENNIFER CHEMASE ..... 1<sup>ST</sup> APPLICANT**

**LEONARD KIMUTAI CHERUIYOT ..... 2<sup>ND</sup> APPLICANT**

**RULING**

M/s A.K. Chepkong'a & Company Advocates

M/s Mathai Maina & Company Advocates

1. The matter concerns the estate of Chemase Ego, who passed away on 30<sup>th</sup> July, 1982. Following an 18-year interval, Cosmas Kimwetich Chemase initiated proceedings by petitioning for Grant of Letters of Administration intestate. In his petition, Cosmas identified only two surviving beneficiaries: himself and his mother, Cecilia Tingo Chemase, who was the widow of the deceased. However, before the administration process could be completed, Cosmas Kimwetich Chemase also passed away. Subsequently, Mary Mokicho Kemboi, sister to the deceased Cosmas, stepped forward and applied to be substituted as co-administrator alongside Cecilia Tingo Chemase. Following Cecilia's subsequent death, Mary Mokicho Kemboi remained as the sole administrator, and she was accordingly issued with an amended certificate for confirmation of Grant on 1<sup>st</sup> August, 2022. The petition identified a single asset belonging to the estate: land parcel Irong/Iten/165, measuring 13 acres, with no attached liabilities.
2. Following the grant of administration, the administrator proceeded to seek a court order directing the County Land Surveyor of Elgeyo Marakwet County to undertake the subdivision of Land parcel



- Irong/Iten/165. This application was made pursuant to the Amended Certificate of Confirmation of Grant issued by the court on 1<sup>st</sup> August, 2022. The court subsequently issued the requested order on 19<sup>th</sup> October, 2022, with specific directions as follows:
- a. That the County Land Surveyor Elgeyo Marakwet County to carry out subdivision of the Land parcel number Irong/Iten/165 pursuant to the amended certificate of confirmation of Grant issued by the court on the 1<sup>st</sup> August, 2022.
  - b. That the Officer commanding station (OCS) – Iten Police station to provide adequate security during the subdivision exercise.
  - c. That the County Land Surveyor Elgeyo Marakwet County to file a report in court on the subdivision exercise on or before the 8<sup>th</sup> December, 2022.
3. The said directions I presume provoked the instant summons for revocation dated 17<sup>th</sup> March, 2023 that I am now called to determine. The summons is expressed to be brought under the provisions of Section 76 of the *Law of Succession Act* and Rule 44 and 73 of the Probate and Administration Rules. The applicant seeks an order that the Grant of representation made to Mary Mokicho Kipkemoi issued on the 14<sup>th</sup> day of August, 2022 be revoked and that costs be provided for.
4. The summons is predicated upon grounds that:
- a. The Grant was obtained fraudulently by concealing material facts from this court namely that;
    - i. The existence of liabilities to the estate of the deceased.
    - ii. Part of the estate of the deceased titled Irong/Iten/165 had been sold to:
      1. Leonard Kimutai Cheruiyot
      2. AIC Mindililwo
  - b. The petition, affidavit and proceedings leading to the award of Grant to LUCIA CHEMASE on the 14<sup>th</sup> August, 2002 failed to disclose that 5 acres out of the 13 acres registered under the name of the deceased had already been sold out.
  - c. The court would not have issued a grant for the administration of property which had already been sold and therefore no longer forms part of the Estate of CHEMASE EGO.
5. Pursuant to the directions issued by this court on 29<sup>th</sup> June, 2023, the County Land Surveyor, Elgeyo Marakwet conducted a survey in the presence of all the stakeholders and filed a report establishing that the Land Irong/Iten/165 is currently used by AIC Kaptebengwo, Jennifer Chemise, Leonard Cheruiyot and Mr. Kenneth.
6. The Petitioner/Respondent on her part filed a replying affidavit dated 13<sup>th</sup> April, 2023 in which she opposed the application in its entirety. The parties took directions to canvass the application by way of written submissions and on record I have had sight of two sets of submissions. One for the Petitioner/Respondent dated 23<sup>rd</sup> January, 2025 and another by the applicant's submission dated 10<sup>th</sup> December, 2024.
7. In response to the application, the Petitioner/Respondent filed a comprehensive replying affidavit dated April 13, 2023, expressing unequivocal opposition to all aspects of the application. Following procedural directions, the parties agreed to present their arguments through written submissions. The court record reflects two sets of submissions: The Petitioner/Respondent's submissions dated 23<sup>rd</sup> January, 2025, and the Applicant's submissions dated 10<sup>th</sup> December, 2024.



### **Applicant's written submissions**

8. Learned Counsel Mr. Mathai started by arguing that the Application was grounded in Sections 44 and 73 of the *Law of Succession Act* and Rules 44 of the Probate and Administration Rules. In supporting his argument, learned Counsel drew the Court's attention to Section 49 of the *Law of Succession Act* Cap 160, which vests the High Court with jurisdiction to entertain and determine such applications.
9. Counsel maintained that Section 76 of the *Law of Succession Act* Cap 160 provides clear grounds for revocation of grants, whether confirmed or not. He elaborated that Rule 44 of the Probate and Administration Rules prescribes the procedural requirements for such revocation applications, including the requirement to use Form 107.
10. In addressing the material facts warranting revocation, learned Counsel argued that the proceedings leading to the grant were defective in substance. He contended that the grant was obtained fraudulently through false statements and concealment of vital material facts. Specifically, Mr. Mathai submitted that the Petitioner deliberately concealed the existence of liabilities to the estate and the fact that part of the estate titled Irong/Iten/165 had been sold to Leonard Kimutai and AIC Mindiliwo.
11. Counsel emphasized the fundamental duty of litigants to make full and fair disclosure of material facts. He argued that the Petitioner's non-disclosure was not innocent but deliberate, as evidenced by her failure to involve the objector at the time of filing proceedings and not listing him among the beneficiaries. Mr. Mathai maintained that this amounted to concealment of material facts that would have influenced the Court's decision to issue the grant.
12. In further supporting his position, learned Counsel cited Rule 26 of the Probate Administration Rules, which mandates notice to all persons entitled in the same degree as or in priority to the applicant. He argued that the petition was filed in contravention of this rule, particularly highlighting subsections (i) and (ii) regarding notice requirements and the necessity of written consent or renunciation.
13. Mr. Mathai concluded his submissions by referring to Rule 2 of the Probate and Administration Rules, emphasizing that the objector falls within the definition of "a person who has lodged an objection under rule 17 to the issue of a grant." He stressed that the objector's interest was not as a purchaser but as a common tenant of equal share in the parcel of land known as Irong/Iten/165.
14. Finally, Counsel maintained that the grounds enumerated under Section 76 of the Act had been established, and urged the Honourable Court to revoke or annul the grant as provided for under the Act.

### **Petitioner's written submissions**

15. Learned Counsel Mr. Chepkong'a started by outlining the brief background of the matter, explaining that Chemase Ego died intestate on 30<sup>th</sup> July 1982 at Mindililwo. The succession cause was filed on 15<sup>th</sup> May 2000, and a Grant of Letters of Administration intestate was issued on 14<sup>th</sup> August 2000 to Cosmas Kimwetich Chemase and Lucia Chemase, the deceased's son and widow respectively.
16. Mr. Chepkong'a traced the chronology of events, noting that following Cosmas Kimwetich Chemase's death on 28<sup>th</sup> June 2008, Mary Mokicho was substituted on 21<sup>st</sup> November 2011. He further pointed out that Lucia Chemase passed away on 7<sup>th</sup> December 2015, and the Grant was subsequently confirmed on 17<sup>th</sup> April 2021 in favor of Mary Mokicho as the Administrator.



17. In addressing the central issue for determination; whether the Applicant had established statutory grounds warranting revocation of the grant, learned Counsel argued emphatically that the applicant had not met the prerequisites in law to warrant the court's issuance of an order for revocation.
18. Supporting this position, Mr. Chepkong'a cited the decision in *In Re Estate of Mukhobi Namonya (Deceased)* [2020] eKLR, where the Court held that the omission of persons who claim to be claimants or creditors from an estate is not a ground for revoking a grant. He emphasized that creditors have priority in settling their debts before distribution, and administrators have a duty to identify and pay creditors before proposing distribution.
19. Counsel maintained that the Applicant's claim regarding ownership of part of the estate which he contends should be excluded from the cause cannot be entertained by a succession court as it falls under the purview of the Environment and Land Court. To fortify this argument, Mr. Chepkong'a cited the case of *In re Estate of Stone Kathuli Muinde (Deceased)* [2016] eKLR.
20. On the question of whether the purchases qualify as liabilities of the estate, learned Counsel argued that a liability must arise from transactions entered into personally between individuals or entities and the deceased during his lifetime. He supported this by referencing Justice W. Musyoka's holding in *Re Estate of Mukhobi Namonya (Supra)*.
21. Mr. Chepkong'a concluded his submissions by urging the Court to dismiss the Application with costs to the Petitioner, emphasizing that the property transactions in question occurred after the deceased's death and were thus not binding on the estate.

### **Analysis and determination**

22. I have considered the application and the replying affidavit together with submissions presented by both learned counsel, and the applicable legal framework, I find myself confronted with the duty of striking a delicate balance between protecting the integrity of grants of administration and ensuring justice for all interested parties. The instant application for revocation brings to the fore questions about the disclosure obligations of administrators, the nature of estate liabilities, and the threshold for establishing grounds under Section 76 of the *Law of Succession Act*. In determining this application, this Court must navigate through these intersecting legal principles while remaining mindful that succession matters invariably touch on human relationships and family dynamics that extend far beyond the confines of legal discourse. The pivotal question before this Court is whether the applicant has established sufficient grounds to warrant the drastic remedy of revoking the grant issued to Mary Mokicho Kipkemoi on 14th August, 2022.
23. The application for revocation is principally anchored on allegations of fraudulent procurement through concealment of material facts; specifically, the purported existence of liabilities against the estate and the alleged prior sale of portions of land parcel Irong/Iten/165 to Leonard Kimutai Cheruiyot and AIC Mindililwo. This Court has carefully examined the parameters established by Section 76 of the *Law of Succession Act*, which sets forth the threshold requirements for revocation of grants. It bears emphasis that the power to revoke a grant of representation is a discretionary one, to be exercised not merely on the basis of omissions or oversights, but rather upon clear and compelling evidence of substantial impropriety in either the procurement or execution of the grant.



24. On whether the grant should be revoked the applicable law is *Law of Succession Act* section 76 which provides:

“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.”

25. In the case of *In re Estate of Mukhobi Namonya (Deceased)* [2020] eKLR stated that:

“under section 76 of the Act, a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining the grant was attended by glaring difficulties, such as where the same was defective, say because the person who obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant. The second general ground is where the grant is obtained procedurally, but the administrator subsequently runs into difficulties during the process of administration of the estate. Such difficulties include his failure or omission to apply for confirmation of his grant within the period allowed in law, or where he fails to exercise diligence in administration of the estate, such as where he omits to collect or get in an asset, or where he fails to render accounts as and when he is required to do so by the law. The third general ground is where the grant has become inoperative or useless on account of subsequent circumstances, such as where the sole administrator died or loses the soundness of his mind or is adjudged bankrupt.”

26. As Justice Musyoka aptly observed in *Re Estate of Mukhobi Namonya (Deceased)* (supra), revocation may be warranted in three broad circumstances: where the process of obtaining the grant was



fundamentally flawed, where the administrator has failed in their duties post-grant, or where subsequent circumstances have rendered the grant inoperative. The applicant's case primarily invokes the first category, necessitating a thorough examination of whether the alleged non-disclosure rises to the level of fraudulent concealment contemplated by the statute.

27. The pivotal question that emerges from this matrix of facts concerns the legal efficacy of transactions undertaken during that precarious period between petition and confirmation of grant. It is a well-established principle, as illuminated by a constellation of authorities, that the mere fact that one has petitioned for letters of administration does not vest in them the authority to deal with estate assets. Section 82 of the *Law of Succession Act* is unequivocal in this regard, particularly through the explicit prohibition contained in subsection (b)(ii) which categorically proscribes the sale of immovable property before confirmation of the grant. This provision serves not merely as a procedural hurdle but as a substantive safeguard ensuring that estate assets remain intact until the court has properly scrutinized and approved the proposed scheme of distribution.
28. For avoidance of doubt, let me outline the provisions of Section 82 of the *Law of Succession Act* which speak to the powers of personal representatives. The section provides:

“Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers:

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
- (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that:

- (i) any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and
  - (ii) no immovable property shall be sold before confirmation of the grant;
- (c) to assent, at any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof;
  - (d) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as to them may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of such estate, and to make any transfer which may be requisite for giving effect to such appropriation:

Provided that except so far as otherwise expressly provided by any will:



- (i) no appropriation shall be made so as to affect adversely any specific legacy;
- (ii) no appropriation shall be made for the benefit of a person absolutely and beneficially entitled in possession without his consent, nor for the purpose of a continuing trust without the consent of either the trustees thereof (not being the personal representatives themselves) or the person for the time being entitled to the income thereof, unless the person whose consent is so required is a minor or of unsound mind, in which case consent on his behalf by his parent or guardian (if any) or by the manager of his estate (if any) or by the court shall be required.”

29. In the present case, the alleged transactions involving portions of land parcel Irong/Iten/165 must be examined against this statutory backdrop. The evidence adduced before this court, particularly through the County Land Surveyor's report, reveals current occupation by various parties including AIC Kaptebengwo, Jennifer Chemase, Leonard Cheruiyot and Mr. Kenneth. However, the critical question is not merely one of current occupation but rather the legal validity of the underlying transactions that purportedly gave rise to these interests. When these transactions are subjected to the rigorous requirements of Section 82(b)(ii) of the Act, it becomes apparent that any purported sale of the subject land prior to confirmation of the grant would have been void ab initio, regardless of any assurances or undertakings given by the administrator during that period.
30. A matter of particular significance that emerges from the chronology of events is the position of Cosmas Kimwetich Chemase, the original petitioner who passed away before the administration process could be completed. The record before this Court does not clearly establish whether Cosmas received his share of the estate prior to his death, nor does it definitively address the devolution of his beneficial interest. This presents a compelling consideration: if Cosmas had a vested beneficial interest that remained undistributed at the time of his death, legal principles would dictate that such interest should pass to his estate. Therefore, any valid claims against Cosmas's share of the estate would properly lie against that portion, rather than against the entire estate of Chemase Ego. However, this distinction, while legally significant, does not reach the threshold required for revocation under Section 76 of the *Law of Succession Act*. Instead, it points to the need for a more targeted remedy; potentially through a separate application for rectification or clarification of the distribution scheme rather than the wholesale revocation of the grant.
31. The current administrator, Mary Mokicho Kipkemoi, finds herself in a position where she must navigate competing claims to the estate assets. However, the law provides clear guidance through Section 82 of the Act regarding the scope and limitations of an administrator's powers. The fact that the current occupation of land parcel Irong/Iten/165 differs from what might have been initially contemplated does not, in itself, constitute grounds for revocation. Rather, it points to the need for proper determination of these competing claims through appropriate legal channels. The survey report by the County Land Surveyor, while revealing current occupation patterns, cannot retroactively validate transactions that were void ab initio under Section 82(b)(ii).



32. A significant consideration in this matrix is the principle articulated in *In Re Estate of Barrack Deya Okul (Deceased)* [2018] eKLR, where the court held that:

“My clear understanding of this requirement is that once a Petitioner is notified of the existence of a liability (debt) by a creditor or once the Petitioner comes to learn of an existing proven liability (debt) owed by the estate, it is mandatory to include such a liability or debt as required above

A decree against a deceased person, in the absence of a variation, setting aside or otherwise being stayed is in my view a proven liability against the estate of the deceased. It must be included in the list of liabilities in form 5 alluded to above.

Such a debt shall, as provided for in Section 86 of the *Law of Succession Act*, be paid before any legacy. For emphasis, that section provides;

“Section 86: Debts of every description enforceable at Law and owed by or out of an estate shall be paid before any legacy”

I have no doubt in my mind that a decree of Court against a deceased person is a debt enforceable at Law. From sub-section (b) above, it is quite clear that the duties of personal representatives would include getting in all free property of the deceased including debts owing to him and moneys payable to his personal representative by reason of his death and in the same vein under Sub-section (d), to ascertain and pay out of the estate of the deceased, all his debts”

33. It is evidence that while administrators have a duty to disclose known liabilities, not every claim against an estate rises to the level of a liability requiring disclosure. I am of the view that the threshold for revocation based on non-disclosure must be substantial and material to the administration of the estate. In the present case, while there are clearly competing claims to portions of the estate assets, these claims emerged after the deceased's death and do not constitute the kind of pre-existing liabilities whose non-disclosure would warrant revocation.
34. Having weighed all the factors in this matter, I find that the application for revocation falls short of establishing the threshold required under Section 76 of the *Law of Succession Act*. Several considerations inform this determination. First, the alleged non-disclosure of purported land sales cannot constitute material concealment as these transactions, having occurred before confirmation of the grant, were void ab initio by operation of Section 82(b)(ii) of the Act. Second, the claims against the estate do not qualify as liabilities requiring disclosure since they did not arise from transactions with the deceased during his lifetime. Third, while the current occupation of land parcel Irong/Iten/165 presents complex issues requiring resolution, these matters are properly within the jurisdiction of the Environment and Land Court rather than forming grounds for revocation of the grant.
35. Accordingly, I find that the summons for revocation dated 17<sup>th</sup> March, 2023, lacks merit and is hereby dismissed. However, given the complexity of the issues raised and the genuine concerns about proper distribution of the estate assets, I direct that each party shall bear their own costs.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 27<sup>TH</sup> DAY OF JANUARY 2025**

.....

**R. NYAKUNDI**

**JUDGE**



In the Presence of:

Lugwe for the Petitioner

Mr Mathai for the Defendant

Warigi for the Appellant

