



REPUBLIC OF KENYA



**In re Estate of Stephen Kiplagat Mutai (Deceased) (Succession Cause
368 of 2012) [2025] KEHC 348 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 348 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 368 OF 2012
JRA WANANDA, J
JANUARY 24, 2025**

BETWEEN

PATROBA J. MUTAI PETITIONER

AND

ZENAH CHEPKEMBOI OBJECTOR

RULING

1. The deceased, Stephen Kiplagat Mutai (deceased) died on 28/09/2000. 12 years later, on 15/11/2012, his son and daughter, the late Chapta Lagat, and Patroba Mutai (the Petitioner-Administrator herein), as joint Petitioners, filed an Application for Letters of Administration in respect to the estate of the deceased. The Petition was filed through Messrs E.C. Rotich & Co. Advocates and therein, apart from the 2 Petitioners, their 6 other siblings, were also listed as survivors of the deceased. The only estate property mentioned as comprising the estate was Moi's Bridge/Moi's Bridge Block 3 (Mogoon)12 whose value was placed at approximately Kshs 2 Million and which, from the documents on record, measures approximately 30.85 acres. It was also stated that there were 33 purchasers of portions of the property and who therefore amounted to liabilities.
2. The Grant was then issued to the two joint Petitioners on 26/04/2013 and the same was subsequently confirmed on 9/06/2014. In distribution, the said property, Moi's Bridge/Moi's Bridge Block 3 (Mogoon)12, was distributed in two parts. One part was distributed amongst the purchasers, although those listed were much less than the 33 referred to in the Petition. The other part was distributed between the said Chapta Kipchirchir Lagat (5.77 Ha) and the Petitioner, Patroba Jephumba Mutai (1.10 Ha), respectively. 2 further portions, 1.04 and 0.04 Ha, respectively, were then also distributed, jointly, to the said Chapta Kipchirchir Lagat and the Petitioner, Patroba Jephumba Mutai.
3. On 28/11/2019, Patroba J. Mutai returned to Court with the disclosure that Chapta Kipchirchir Lagat had since died on 24/08/2014 and for that reason, this time through Messrs Kigen, Ngetich & Co. Advocates, applied that the name of Chapta Kipchirchir Lagat be deleted from the Grant as co-



Administrator. The Petitioner also applied that the portions earlier distributed to Chapta Kipchirchir Lagat be now re-distributed to her. The Application was allowed as prayed on 29/11/2019 and an Amended Certificate of Confirmation of Grant issued. It is this amendment that jolted the Objector into action leading to the filing of the Application the subject of this Ruling.

4. The Application is the Summons dated 07/12/2020 filed through Messrs E.J. Kemei & Co. Advocates. The same prays for orders as follows:
 - i. [.....] Spent
 - ii. [.....] Spent
 - iii. [.....] Spent
 - iv. That the amended grant of letters of administration made to Patroba J Mutai on 29th November be revoked on the following grounds;
 - a. That the same was obtained fraudulently by means of untrue allegation of fact.
 - b. That the Grant was obtained by untrue allegation of a fact essential in a point of law to justify the Grant in that the Petitioner failed to disclose to the court that the widow of a deceased beneficiary one Chapta Kipchirchir Lagat was entitled to a share in the estate of the deceased by virtue of her marriage. As such, the Petitioner substituted the name of the deceased beneficiary with herself consequently locking out the deceased beneficiary's widow.
5. The Application is premised on the grounds set out on the face thereof it and the Supporting Affidavit sworn by the Objector.
6. In the Affidavit, the Objector deponed that she is the daughter-in-law of the deceased and that the Petitioner is her sister-in-law as the Objector was married to the Petitioner's deceased brother, the said Chapta Kipchirchir Lagat. She stated that on 03/03/2020, she learnt that the Petitioner had applied for amendment of the Grant of Letters of Administration in respect to the estate of the Objector's father-in-law which amendment sought to substitute the Petitioner's late husband from the schedule of distribution, that instead of substituting the Objector's husband with the Objector, the Petitioner replaced him with the Petitioner thereby locking out the Objector and her children from inheritance. She deponed further that upon perusal of the proceedings, she realised that in the initial Grant, her late husband had been allocated 5.77 Hectares being part of the property known as LR No. Moi's Bridge/ Moi's Bridge Block 3 (Mogoon)12, and that she discovered that the Grant was issued on 06/07/2015 and amended on 04/12/2019.
7. She contended that the Petitioner failed to disclose to the Court that the Objector's husband had dependants, namely, the Objector and their 2 children who are still minors and that by excluding them from the list of beneficiaries, the Petitioner has denied them their rightful share of inheritance. She deponed further that had the Petitioner abided by the law, then the Objector would have been entitled to the 5.77 Hectares aforesaid having been vested to her late husband. According to her, the said 2 children are now destitute and homeless, and that her prayer is that the estate of the deceased be sub-divided and she be granted the share initially allocated to her husband. For the said reasons, she contended that the Amended Grant was obtained by the Petitioner by means of untrue allegations, deliberate omissions and concealment of material facts and therefore ought to be revoked. She also deponed that the Petitioner has caused the removal of the restriction that the Objector had lodged on 4/04/2018 against the title to the property and is in the process of registering the beneficiaries named in the Grant as proprietors of the property



Replying Affidavit

8. The Petitioner opposed the Application vide her Replying Affidavit filed on 2/12/2023 through Messrs Kalya & Co. Advocates who had by this time taken over representation of the Petitioner. In the Affidavit, she deponed that the Application was brought as an afterthought after the Objector's case, namely, Eldoret Chief Magistrates Court Environment and Land Court (ELC) Misc. App 5 of 2019 – Zenah Chepkemboi vs Patroba Chepchumba & 2 Others was dismissed, and in which suit, the Objector had sued the Petitioner over ownership of the property, Moi's Bridge Block 3 (Mogoon) 28 which is under litigation at the ELC. She stated further that the Objector wanted her to abandon her claim against trespassers who have grabbed the property Moi's Bridge Block 3 (Mogoon) 28 with the help of the Objector but that when the Petitioner refused to do so, the Objector filed the said ELC suit against the third parties then moved this Court to revoke the Grant so as to deny the Petitioner locus standi before the ELC and as a vendetta against the Petitioner's siblings who are not allowing her antics of intermeddling with the estate of the deceased.
9. She conceded that the Applicant has always resided on the property Moi's Bridge Block 3 (Mogoon) 28 but that with the Objector's help, trespassers have taken part possession and have gone as far as subdividing and registering part of the property in their names. The Petitioner then cited the provisions of Section 76 of the Law of Succession Act which governs Applications seeking Revocation of Grants and deponed that the Applicant has not satisfied the conditions laid down therein to warrant such Revocation.
10. According to her, the Objector is not a beneficiary of the estate as she was neither a dependant nor was she ever married to the Petitioner's late brother, Chapta Kipchirchir Lagat, and neither has she provided evidence of marriage. She urged further that the Objector has not taken any grant of representation in the estate or any ad litem grant to warrant her institution of the instant Application on behalf of the estate of Chapta Kipchirchir Lagat. She deponed further that together with Chapta Kipchirchir Lagat, she (Petitioner) took out a Grant of Letters of Administration of the estate of their father, and that prior to the institution of the Succession Cause, the beneficiaries had a sit down and agreed that the two would institute the proceedings on behalf of the family.
11. She deponed further that it was agreed that the portion of the property known as of Moi's Bridge Block 3 (Mogoon) 12 measuring 5.77 Hectares would be registered in the name of Chapta Kipchirchir Lagat, and after reclaiming of Moi's Bridge Block 3 (Mogoon) 28 which had been grabbed by trespassers, he would sub-divide the same and register it in the names of the beneficiaries, that however, he died before he could reclaim the land and sub-divide the same, and that after his death, the beneficiaries demanded transfer of their properties and therefore, the children of the deceased held a meeting and agreed on the way forward. She deponed that she then applied for Rectification of the Grant and was issued with the Amended Grant dated 04/12/2019.
12. She denied that she had disinherited the children of her deceased brother, Chapta Kipchirchir Lagat and deponed that she registered the property in her name awaiting sub-division to her siblings as agreed and the reclaiming of the property Moi's Bridge Block 3 (Mogoon) 112 and Moi's Bridge Block 3 (Mogoon) 111 which was initially Moi's Bridge Block 3 (Mogoon) 28, and conclusion of the pending case, Eldoret ELC Case No. 40 of 2020, that they have not interfered with the Objectors' occupation of Moi's Bridge Block 3 (Mogoon) 28 as she has 30 acres where she resides with the minors, and that she and her siblings have always ensured that the children of Chapta Kipchirchir Lagat have enjoyed peace even with the change of ownership by the trespassers. She claimed further that her brother, Chapta Kipchirchir Lagat, sold his part of the estate to third parties and who are now threatening the Petitioner and demanding that the land be transferred to them, that she is pursuing the ELC case as



the Administrator and that once she obtains the title for Moi's Bridge Block 3 (Mogoon) 28 restored in the name of the deceased on behalf of the estate, she shall ensure that the sub-division is done to its totality and that the Objector will get a portion of the land to hold in trust for the children of Chapta Kipchirchir Lagat.

13. She added that she has been unable to administer the estate to completion as a result of the Objectors' actions, including, reporting the Petitioner to the police, instituting another suit in the Chief Magistrates' Court seeking ownership of parcels of land which are in the name of the deceased, and by frustrating efforts to transfer the land to the liabilities of the estate by lodging restrictions and cautions on estate properties. She deponed further that their brother, Chapta Kipchirchir Lagat never informed them of having entered into a marriage with anyone nor has any evidence been provided proving the alleged marriage, and that like the rest of them, the Objector should also be patient and wait for the estate properties to be accumulated before sub-division of the properties is undertaken.

Hearing of the Application

14. The Application was canvassed by way of written Submissions. Pursuant thereto, the Objector filed her Submissions on 19/06/2023 through her new Advocates, Messrs Martim & Co., while the Petitioner filed hers on 2/12/2023.

Objector's Submissions

15. The Objector's Counsel basically did a recap of the matters deponed in the Supporting Affidavit and regarding Revocation of the Grant, he cited the case of *Musa Nyaribari Gekone & 2 Others vs Peter Miyienda & Another* [2015] eKLR. On whether the Objector and her children are beneficiaries of Chapta Lagat, he submitted that the Chief's letter exhibited proves that they are. He then cited the case of *Beatrice Ciamutua Rugamba v Fredrick Nkari Mutegi & 5 Others* [2016] eKLR on the principle that a dependent under Section 29(b) and (c) of the *Law of Succession Act* must prove that he/she was being maintained by the deceased and that it is not the mere relationship that matters, but proof of dependency. According to him, the Objector has proved such dependency.

Petitioners' Submissions

16. Counsel for the Petitioner submitted that the estate of the deceased had to be confirmed because of pressure from the liabilities of the estate who wanted to have their portions and reiterated that the survivors/beneficiaries agreed that apart from the portions of the liabilities, the entire land be registered in the name of the said Chapta Kipchirchir Lagat, being their elder brother and that he would then sub-divide and transfer shares to each beneficiary once they had successfully recovered all the land that had been grabbed by trespassers, namely, Moi's Bridge Block 3 (Mogoon) 28 restored. She reiterated that however, Chapta Kipchirchir Lagat died before the land was transferred and which thus prompted the Petitioner, as co-Administrator, to apply to amend the Grant and have the portion registered in her name. Counsel urged that the Objector has no locus to bring the instant Application as she is neither a beneficiary nor a dependent under Section 29 of the *Law of Succession Act* aforesaid, and also Section 66, that the Objector claims to be a spouse to one of the beneficiaries to the estate but has not provided any evidence whatsoever to prove such marriage. She urged further that the Objector has no necessary grant or any document which gives her the mandate to interfere with the administration of the estate of the deceased or move this Court in respect to the estate. She cited the case of *Ibrahim v Hassan & Charles Kimenyi Macharia, Interested Party* [2019] eKLR and submitted that the Objector has failed to obtain Letters of Administration, hence vitiating any right to institute an action on behalf of Chapta Kipchirchir Lagat.



17. In respect to the grounds recognized for revoking a Grant, she cited the case of *Re Estate of Wahome Mwenie Ngonoro Deceased* (2016) eKLR. Regarding the propriety of the Grant making process, she urged that the procedure followed by the Petitioner was in compliance with the requirements of the law, that once the co-Administrator died, the Petitioner moved the Court to have his name deleted from the Grant so as to enable the Petitioner administer the estate, that the Petitioner informed the Court about the death of Chapta Kipchirchir Lagat with consent of all beneficiaries, that she therefore moved the Court appropriately, and the Court agreed with her that administration has to proceed and granted her the Amended Grant. She cited the case of *In re Estate of Tuaruchiu Marete (Deceased)* [2019] eKLR. On the allegations of fraud or concealment of material facts, Counsel submitted that no evidence has been led by the Objector to prove these serious allegations, and that the Objector was aware of the Application as she has used the same document to move this Court and exhibited the same Application in the Supporting Affidavit. She cited the case of *In re estate of Stephen Kurgat Kimwei Deceased* (2017) eKLR.
18. She then contended that the Objector was never a spouse to their brother at any given time and that he only gave her a portion of the suit land under contestation in the ELC to help his child. In respect to the allegation of mal-administration, Counsel submitted that no application has been filed alleging mismanagement of the estate by the Petitioner nor has she been cited to render accounts and that the Objector has failed to demonstrate any mismanagement, especially in light of the fact that the Petitioner and the Objector are currently in control of the assets of the estate to the exclusion of the rest. She urged that the power to revoke must be exercised judiciously and only on sound grounds, not whimsically or capriciously, and urged the Court to take judicial notice of the fact that all the beneficiaries of the estate reside on the suit land and revoking the Grant will be prejudicial to all of them. She contended that from the foregoing, it is clear that the Objector is guilty of non-disclosure and distortion of material facts and thus undeserving of the reliefs sought in her application as she failed to notify the Court that she still inhabits the property. In conclusion, Counsel cited the case of *In re Estate of Tuaruchiu Marete (Deceased)* [2019] eKLR on the issue of claims by the survivors of one of the beneficiaries to an estate, and the case of *Christopher Ndaru Kagina vs Esther Mbandi Kagina & Another* [2016] eKLR on the issue of proof of claims of fraud

Determination

19. The issues that arise for determination herein may, in view, be summarized as follows:
 - i. Whether the Objector, as an alleged daughter-in-law of the deceased, and whose alleged husband is now dead, has the locus to apply for Revocation of the Grant herein.
 - ii. Whether the Objector, as an alleged daughter-in-law whose husband has since died, can in her own capacity inherit from the estate of the deceased.
 - iii. Whether the Objector has demonstrated sufficient basis to justify revocation of the Grant of Letters of Administration confirmed herein on 6/11/2014.
20. I now proceed to determine the said issues.

Whether the Objector has the locus to apply for Revocation of the Grant.

21. What the Objector prays for in the instant Application is that the Grant issued herein be revoked and/or annulled. The reason that she has given for seeking that prayer is that the Grant was obtained by concealment of the material fact that the Objector is the widow of the late Chapta Kipchirchir Lagat, a son of the deceased and thus, a brother to the Petitioner, formerly a co-Administrator and with whom



the Objector has children. She claimed therefore that the Objector is entitled to a share in the estate of the deceased by virtue of her marriage. A further ground is that after the said Chaptu Kipchirchir Lagat died, the Petitioner failed to substitute him with the Objector, being his widow but instead, chose to remain alone as the sole Administrator.

22. In respect to revocation of Grants, Section 76 of the [Law of Succession Act](#) provides as follows:

“Revocation or annulment of grant

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.”

23. As provided above, “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”. As regards the persons who can apply for revocation of Grant therefore, the window is quite wide. The Court may also on its own motion, suo motu, without even being moved by any party, revoke or annul the Grant. The term “interested party” was defined by the Supreme Court in the case of *Trusted Society of Human Rights Alliance Vs. Mumo Matemu & 5 others*, Supreme Court Petition No. 12 2013, [2014 eKLR] as follows:

“(18) An Interested Party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause”

24. It is accordingly generally agreed that an “Interested Party” is one who has a recognizable stake (and therefore standing) in the matter at hand. In other words, it is a person who has an identifiable stake or



legal interest or duty in the proceedings before the Court, but is not necessarily already a party to the proceedings or may not be directly involved in the litigation.

25. Although the Petitioner has cast doubts over the Objector's alleged married to her brother, Chapta Kipchirchir Lagat, I note that she has conceded that even before his death, the brother had been living with the Objector on the family property and that they also had children. The Petitioner has also conceded that the family fully embraced and accepted the children as being her brother's. Having based her Application on the ground that she is an alleged widow of the late son of the deceased, with whom they have children, I find no reason that may justifiably deny the Objector the description of an "interested party" within the meaning ascribed in Section 76 aforesaid, and thus the right to apply for Revocation of the Grant. Of course, this finding does not by itself, at this stage, in any way answer the issue whether or not the Objector has indeed proved that she was married to the said Chapta Kipchirchir Lagat, or that she is his widow as alleged. As regards her stake in the matter however, I am satisfied that prima facie, she has established sufficient basis for the conclusion that she has the requisite locus to apply for Revocation of the Grant.
26. In any event, while going through the Court file, I have come across the Supplementary Affidavit sworn by the Objector and filed on 19/06/2023 through Messrs Martim & Co. Advocates. Although neither of the parties referred to this Affidavit, it seems to have been filed in further support of the instant Application. I say so because I note from the record that on 8/05/2023, I granted the Objector leave to file a Supplementary Affidavit.
27. Now, to the Affidavit, the Objector deponed that she has now taken a Grant of Letters of Administration of the estate of the said Chapta Kipchirchir Lagat. She has then exhibited a copy of the said Grant given on 26/07/2022 in Eldoret Chief Magistrate's Court Succession Cause No. E28 of 2022. I have no reason to doubt this statement made under oath.
28. From the foregoing, I find that the Objector has sufficiently demonstrated and established her locus to apply for revocation of the Grant herein.

Whether the Objector, as an alleged daughter-in-law whose husband has since died, can in her own personal capacity claim inheritance from the estate herein

29. The Objector has also challenged the Objector's participation in this matter or her capacity to claim as a beneficiary in the estate herein as a daughter in law. Regarding this issue, Odunga J (as he then was) in the case of *In Re Estate of Catherine Nduku Malinda (Deceased) (2020) eKLR* held as follows:

"176. In my view a daughter in law may lay a claim as a beneficiary not in her own right but as a legal representative of a deceased son. In other words, the legal representatives of a deceased's dependants may properly stake a claim to the estate of a deceased person on behalf of legally recognized dependants. However, that is not the Protestor's claim in these proceedings. My view is reinforced by the decision in the case of *Re Estate of Munyua Mbeke (Deceased) [2015]*"

30. In the said case of *In Re Estate of Munyua Mbeke (Deceased) [2015] eKLR*, W. Musyoka J, held that:

"3. The clear wording of section 29 of the act does not include daughters-in-law of the deceased. Daughters-in-law are not children of the deceased and therefore they do not fall within the category of the children of the deceased.



They therefore cannot mount an application under section 26 of the Act as the applicant has done in this case.”

31. W. Musyoka J, again, in the case of *In Re Estate of Cecilia Wanjiru Kibicho(Deceased)* (2016) eKLR, pronounced himself as follows:

“20. I should also add that a daughter-in-law is not listed in section 29(b) of the Act as being among persons who may move the court under section 26 for reasonable provision and who the court may declare to be a dependant.

.....

26. The applicant in the confirmation application is a daughter-in-law of the deceased, by dint of her having had married the deceased’s son, She is not a blood relative of the deceased. She, therefore, does not qualify to be among the survivors of the deceased as defined in Part V. She is, consequently, not entitled to a share in the deceased’s estate. However, her children with the deceased’s son would be blood relatives of the deceased in their capacity as grandchildren of the dead.

.....

28. However, in view of what I have stated with respect to the applicant, the fact that the protestor had been married to the deceased’s son may not be a relevant fact in determining whether she was a survivor of the deceased in terms of Part V of the Act. She was not a blood relative of the deceased, and the fact of having been a spouse of the deceased’s son does not make her a survivor of the deceased. She is therefore not entitled to a share in her estate. However, her biological children with the deceased qualify automatically to be survivors of the deceased, by virtue of being the biological grandchildren of the deceased.”

32. Similarly, Riechi J, in the case of *In re Estate of James George Maruti (Deceased)* [2021] eKLR found as follows:

“It is common ground that the applicant does not have any or the above limited grant of letter of administration. What then is the position of the applicant? In *Rajesh Pranjivan Chandasame* [2014] eKLR the court stated:

“It is common ground that at the time of institution of the said summons the respondent was not in possession of grant of letters of administration. The respondent acknowledges that he may have known of the existence of the will but according to time he doubted the validity of the will. In his view therefore the deceased died intestate. As far as he was concerned he moved to court by virtue of being a beneficiary for purposes of preserving the deceased’s estate. That may well be the case but in our view the position in law as regards locus standi in Succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or full grant of letters of administration in cases of Intestate Succession. In *Otieno -Vs- Ougo* (Supra) this court differently constituted rendered itself thus;

“an administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.”



33. In an even more elaborate elucidation of the law on the matter, W. Musyoka J, again, in the case of *In re Estate of Imoli Luhitse Paul (Deceased)* [2021] eKLR, pronounced himself as follows:

“ 4. I believe that there is a misconception. Grandchildren are not in the same footing with the daughters-in-law or children-in-law of the deceased. Grandchildren would be blood relatives of the deceased. They would be entitled automatically, as blood kin of their grandparent, to take the share due to their own parents, the biological children of the deceased, where such biological children are dead. A surviving spouse of a dead child of the deceased is not a biological kin of the deceased parent-in-law. Such a child-in-law would have no automatic right or entitlement to a share in the estate of her parent-in-law. Whereas statute is clear that grandchildren have a right under sections 39 and 41 of the *Law of Succession Act*, there is not a single provision in the *Law of Succession Act*, or any other statute for that matter, which makes provision for any in-law. Consequently, since in-laws have no rights of inheritance from the estates of their in-laws, they can only approach the court upon obtaining representation to the estates of the persons on whose account they claim. Their claim to a stake in the estate of the parent-in-law would not be in their own right, but rather on behalf of the estate of another, their dead spouse. They can only stake a direct claim to the estate of their late spouse, whose assets include what the dead spouse inherits from the estate of their parents. I must emphasize that grandchildren are not in that boat with such in-laws, and they claim from their grandparent’s estate, not on behalf of their dead parents, but directly as grandchildren, children of such dead children, the share that ought to have gone to their parents.”

34. W. Musyoka J, again, in the case of *In re Estate of Francis Andachila Luta (Deceased)* (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment), went even further by stating as follows:

“ 29. One of the sons of the deceased is dead, and that is to say the husband of the protestor. I have mentioned section 41 above, in connection with how the share of a dead child of a deceased parent is to be handled. When a child of the deceased dies, and is survived by offspring, their entitlement is not extinguished or diminished. It should go to their offspring or to his/her estate. Section 41 says that the offspring step into the shoes of their dead parent, and take the share that is due to such dead parent. That share should be equal to the shares taken by the surviving children of the deceased. More importantly, section 41 talks of the offspring of the dead child of the deceased and not the spouse of the dead child. In intestate succession, the estate passes to the kindred of the deceased, that is to say the blood relatives of the deceased, except for the surviving spouse of the deceased. In-laws, be they parents-in-laws or children-in-laws, are not blood relatives of their children-in-law or father-in-law. They have no right or entitlement to the intestate estate of their dead in-law. The *Law of Succession Act* does not recognize them or their rights. Indeed, the *Law of Succession Act* does not even mention them. They can only claim on behalf of others. A daughter-in-law, for example, can only claim the share due to her late husband, otherwise she has no direct right. For her to access the share due



to her late husband, she has to obtain representation to his estate first, by way of a grant of letters of administration intestate. Pursuing the interest due to her late husband without first obtaining the grant in his estate would amount to intermeddling, and her activities would run afoul of section 45 of the Law of Succession Act. Section 45 of the Law of Succession Act provides as follows:-

“45. No intermeddling with property of deceased person

.....

30. The protestor is not a child of the deceased. She is a daughter-in-law. In terms of rights or entitlement to a share in the estate, she had none at all. She is not in the same league with the applicant nor the son, Andrew Muchenditsi. Nor any of the other daughters of the deceased. She has zero right or entitlement. It is her children, with her late husband, who have right or entitlement to a share of the estate, by dint of section 41, by way of stepping into the shoes of their late father. The protestor can only agitate a claim on behalf of her late husband, and she can only agitate the same upon obtaining a grant of representation to his estate, for it only that grant that would clothe her with authority to speak on behalf of her husband, speaking for her husband without obtaining a grant to his estate amounts to intermeddling into his estate, which is a criminal offence under section 45(2) of the Law of Succession Act. The mere fact that she is his surviving spouse clothes her with no authority whatsoever to claim that which accrues to her late husband. The protestor has not provided any proof that she holds such a grant with respect to the estate of her husband.”

35. I fully agree and associate myself with the above sentiments of the said respective Judges. Like them, I, too, find that the Objector, claiming as a daughter-in-law, is so far removed from, and is too remote to the estate of the deceased herein. The law does not recognize a daughter-in-law to be a direct beneficiary in the estate of her father-in-law. She can only sustain a claim, as a legal representative, on behalf of her children since it is only they, the children, who are permitted in law, to “step into” the position of their late father and claim his share of the inheritance.

36. Although the Objector, in urging that daughters-in-law were long established by the Courts as being dependants and cited the decision of A. Mshila J, in the case of Re Estate of Karuri Magu(deceased (2016) eKLR, having read through that authority, I find nowhere in it where the Judge expressly stated that a daughter-in-law can be recognized as a survivor of the deceased, or as a beneficiary to the estate of the deceased, by virtue of being married to a son of the deceased. The daughter-in-law in that case was only included in the distribution of the estate as representing the estate of her late husband, and not in her own direct right. No issue of the nature in issue herein was placed before the Judge for determination and the interpretation alleged by the Objector appears to have been made out of extent.

Whether the Objector has demonstrated a basis for revocation of the Grant

37. Section 76 set out above was expounded upon by W. Musyoka J, in the case of Re Estate of Prisca Ong’ayo Nande (Deceased) [2020] eKLR where he stated as follows:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective,



either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

38. Evidently, the grounds relied upon by the Applicant are those falling within sub-Sections (a), (b) and (c) above.
39. In this case, the Objector basically claims that the Petitioner, by successfully applying to remove the Objector’s husband’s name as co-Administrator, after his death, obtained an amendment of the confirmed Grant without the Objector being involved or without the Objector’s consent. It is therefore clear that the Objector therefore has no problem with the Grant of Letters of Administration, and also the Certificate of Confirmation of Grant prior to the amendment, but with only the amendment.
40. Regarding the impugned amendment, having found that the Objector, being a daughter-in-law, cannot herself in her personal capacity share in or maintain a claim in distribution of the estate as she is neither a dependent nor a direct beneficiary, I also, by extension, find that she does not rank in the priority of the persons eligible to be appointed as Administrators of the estate when the direct survivors of the deceased are still alive and willing to be so appointed. She cannot therefore fault the Petitioner for not involving her in the process of amendment of the Grant. In any case, she did not even, at that point in time, hold any Letters of Administration over the estate of her alleged late husband, Chapta Kipchirchir Lagat. As demonstrated above, although she may now be the legal representative of the estate of Chapta Kipchirchir Lagat, having been obtained a Grant of Letters of Administration in July 2022 in respect to his estate, as at the time that the amendment was made in December 2019, she had not yet obtained such Letters of Administration.
41. Further, it is generally agreed that Section 76 of the *Law of Succession Act* is discretionary in that it gives the Court discretion whether to revoke or annul a grant. It is not therefore the position that any breach or violation must always or automatically lead to revocation of a Grant. As guided by Mwita J in the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR, the power to revoke a Grant is a discretionary power that must be exercised judiciously and only on sound grounds. The Court must take into account interests of all beneficiaries and ensure that the action taken will be for the interest of justice and the discretion must therefore not be exercised whimsically or capriciously. In this case, I am not satisfied that it has been established or demonstrated that revocation of the Grant is the best alternative that will serve the interest of justice.
42. In the circumstances, I decline to revoke the Amended Certificate. I shall however give directions and/or orders that I believe takes into account the interests of all beneficiaries and that will ensure that the interest of justice is met.



Final Orders

43. The upshot of my findings is that the Summons dated 7/12/2020 only partially succeeds, and I rule and order as follows:
- i. It is declared that even if the Objector were to prove that she is a daughter-in-law of the deceased by virtue of being the alleged widow of the late Chapta Kipchichir Lagat, a son of the deceased, the Objector would still not in her own personal capacity be legally entitled to claim any direct inheritance from or a share of the estate of the deceased as a beneficiary; only the children of her late alleged husband can make such claim in respect to the share that their father would have been entitled to. The Objector would however, if indeed she is the holder of Letters of Administration in respect to the estate of the late Chapta Kipchichir Lagat, be legally entitled to maintain an action as a legal representative, on behalf of the estate of Chapta Kipchichir Lagat for, on behalf of and for the benefit of the said children for inheritance.
 - ii. As the Petitioner contends that the shares currently held in her name in respect to the property known as Moi's Bridge Block 3 (Mogoon) 12, as per the Amended Certificate of Confirmation of Grant dated 4/12/2019 are so held in trust for the rest of the survivors/beneficiaries of the deceased herein, and that further or conclusive distribution amongst them is yet to be undertaken, it is directed that such further distribution be now undertaken to finalize the distribution of the said property.
 - iii. Any other properties/assets not currently listed as comprising the estate and/or which may still be subject of litigation before the Environment & Land Court (ELC) should not hold up final distribution of the property known as Moi's Bridge Block 3 (Mogoon) 12, and which is the one and only property currently listed as comprising the estate of the deceased herein.
 - iv. Consequently, within thirty (30) days from the date hereof, the Petitioner-Administrator shall file and serve an Application for Further Amendment of the Certificate of Confirmation of Grant, or any other appropriate description, and to the Affidavit thereto, shall attach a schedule of her proposed mode of distribution amongst the survivors/beneficiaries of the deceased, including the estate of the late Chapta Kipchirchir Langat, of the remainder of the property known as Moi's Bridge Block 3 (Mogoon) 12 still available for distribution, excluding the portions already allocated in the Amended Certificate of Confirmation to third parties/purchasers.
 - v. It is expected that the proposed distribution referred to above shall be on the basis of equal shares amongst all the survivors/beneficiaries and shall take into account the shares already allocated to the Petitioner and to the said the late Chapta Kipchirchir Langat in advance, as appears in the current/existing Amended Certificate of Confirmation of Grant dated 4/12/2019. The Petitioner shall however be at liberty to propose a mode of distribution grounded on any other basis other than "on the basis of equal shares", but in the event of a proposal of such nature, she shall present a clear explanation and/or justification thereof for consideration by the Court.
 - vi. Upon receipt/service of the Application, the Objector shall have fourteen (14) days thereafter, to file and serve her response to the Petitioner's distribution proposal.
 - vii. The parties shall then be at liberty to discuss and explore an amicable settlement on the issue of distribution as aforesaid, and/or the Court may refer the matter to Court annexed Mediation for such purposes, but in the event of failure to reach such settlement, the Court shall proceed



to determine such distribution of the estate. In regard thereto, a Mention date shall now be fixed when appropriate directions shall be given thereon.

- viii. In the interim, there shall no sale, transfer, sub-division or any other such activity to be undertaken at the Lands Office by any party in respect to the property known as Moi's Bridge Block 3 (Mogoon) 12 and/or any title or parcel of land resulting from sub-division thereof, if any.
- ix. Each party shall bear its own costs of the Application herein.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 24TH DAY OF JANUARY 2025

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Ms Rotich h/b for Mr. Martim for the Objector-Applicant

Ms Chirchir h/b for Ms Kesei for the Respondent

Court Assistant: Mr. Kuto

