



REPUBLIC OF KENYA



**In re Estate of Kiptim Lagat (Deceased) (Succession Cause 57 of 2008)  
[2025] KEHC 2506 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2506 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 57 OF 2008  
SM MOHOCHI, J  
FEBRUARY 28, 2025**

**BETWEEN**

**TABARNO KOIMA ..... 1<sup>ST</sup> OBJECTOR  
TALAI JEBICHI KIPTIM ..... 2<sup>ND</sup> OBJECTOR  
GRACE KIMOI BITTOK ..... 3<sup>RD</sup> OBJECTOR  
COLLINS KIPRONO BITTOK ..... 4<sup>TH</sup> OBJECTOR  
ALVINE KIPROTICH BITTOK ..... 5<sup>TH</sup> OBJECTOR  
SALINA KIPLAGAT ..... 6<sup>TH</sup> OBJECTOR  
GLADYS JERUTO ..... 7<sup>TH</sup> OBJECTOR  
ISAAC KIPKEMOI ..... 8<sup>TH</sup> OBJECTOR  
MATHEW KIPRUTO ..... 9<sup>TH</sup> OBJECTOR  
NIXONE KIPROP KIBTOK ..... 10<sup>TH</sup> OBJECTOR**

**AND**

**SAMSON KIPKOSGEI ARAP TIM ..... PETITIONER**

**JUDGMENT**

1. The Deceased died on 4<sup>th</sup> February 1972 leaving behind the estate comprising of and thirty-six (36) years later Samson Kipkosgei Arap Tim, the Petitioner/Applicant, petitioned for grant of probate of letters of administration intestate, on the 27<sup>th</sup> February 2008 which grant was issued on the 16<sup>th</sup> April 2008 and confirmed and a certificate of confirmation of grant was issued by justice D.K Maraga (Rtd Chief Justice Emeritus) on the 10<sup>th</sup> December 2008.



2. Almost two years after the confirmation of grant on the 24<sup>th</sup> November 2010, the Court received representation by way of handwritten letter by Collins Kibitok Kiprono applying for photocopies of the entire succession proceedings alleging to be the son of the deceased brother to the petitioner, the late Joseph Kibitok Kiptim and also on behalf of the estate of a deceased brother to the petitioner the late Symon A. Tim and he was duly issued with the photocopies.
3. On the 8<sup>th</sup> October 2012, the Objectors/Respondents filed summons for revocation of the grant on the grounds that the grant was defective in substance, that the petitioner had made a false statement by making a material concealment from the Court of facts and information material to the cause and that the grant was obtained by means of untrue allegations of facts essential in point of law to justify the grant.
4. It is noteworthy that the ten (10) Objectors/Applicants contention was that Kiptim Lagat (deceased) was a resident of Tine Location in Koibatek District and Married to Kabon Kiptim Arap Lagat (deceased) and were blessed with Six (6) children who were his survivors and beneficiaries of his estate as follows;
  - a. The estate of Joseph Kibitok Kiptim (now deceased) -Son
  - b. Tabarno Koima-Daughter;
  - c. Simeon Kimeli Tim (now deceased) -Son;
  - d. Talai Jebichii Kiptim-Daughter;
  - e. Samson Kipkogei Arap Tim-Son;
  - f. Christine Jepkoech Kiptim (deceased) -Daughter;
5. That the estate of Joseph Kibitok Kiptim (deceased) constitutes the following dependents;
  - a. Grace Kimoi Kibitok-Deceased- Widow;
  - b. Joyce Jesang Kibitok-Daughter;
  - c. Mathew Kipruto Bitok-Son;
  - d. Judy Jeptarus Kibitok-Daughter;
  - e. Nixon Kiprop Kibitok-Son;
  - f. Collins Kiprono Kibitok-Son;
  - g. Alvine Kiprotich Bitok-Son; and
  - h. Arnold Kipkemoi Kibitok-Son
6. That the estate of Simeon Kimeli Tim (Deceased) constitutes the following dependents
  - a. Salina Kiplagat-Deceased- Widow;
  - b. Gladys Jeruto-Daughter;
  - c. Isaac Kipkemoi Tim-Son;
  - d. Veronica Jeptoo Tim-Daughter; and
  - e. Eunice Jebet Tim-Daughter



7. The Objector's Application dated 8<sup>th</sup> October 2012 was withdrawn owing to the fact that the Advocate who filed the same was unqualified.
8. The Objectors subsequently filed a fresh summons for revocation dated 17<sup>th</sup> September 2014 filed on the same date and on the same grounds. This Application has remained pending determination ever since.
9. It has now come to pass that the summons for revocation of grant has been pending for eleven years. The Ruling dated 1<sup>st</sup> September 2023 paved way for the viva voce hearing on the 18<sup>th</sup> April 2024.
10. This ruling shall potentially settle the eviction suit filed Eldoret ELC No.346 of 2013 by the Petitioner who is invoking his proprietary rights acquired upon confirmation of this grant.
11. This judgment is intended to allow the deceased Kiptim Lagat rest in peace Fifty-Three (53) Years since his death on the 4<sup>th</sup> February 1972.
12. While the deceased might have actually had 3 parcels of land two of them were never in his name at any point and could thus never had formed part of the estate.

### **The Petitioners Case**

13. In Addition to his oral testimony the Petitioner contends that, having laid a basis for that the only property for consideration is LR NO. LEMBUS/TORONGO 402, he frames the following issues for determination:
  - i. Whether the objectors have locus standi to lodge the application for revocation of the grant herein.
  - ii. Whether a case has been made for revocation of the grant issued herein
  - iii. Who is to bear the costs of the application,
    - i. As to whether the objectors have a locus standi to lodge the application for revocation of the grant?
14. The Petitioner submits that, Succession Law has to do with spouses and children of the deceased including dependants as can be discerned from Section 29 of the Law of Succession Act and the objectors did not provide any material evidence to demonstrate the existence of marriage such as a marriage certificate, evidence of custom marriage, any evidence to demonstrate long cohabitation or any evidence to demonstrate the existence of marriage.
15. That the Petitioner- DW1 stated that, Joseph Kiptim chased away PW 3 after they were only blessed with one child by the names of Joyce Jesang Bitok. According to him, PW3 is not entitled to inherit because she was chased away and as such no marriage can be discerned.
16. On the issue of children of Joseph Kiptim, the petitioner contends that there is concurrence that Joyce Jesang Bitok is the only child of Joseph Kiptim and PW3. The Objector herself admits to this fact although the said child is not a party to the application for revocation of grant. The petitioners stated in evidence that the said child is married elsewhere and as such, she has never declared her interest in the estate through her father Joseph Kiptim.
17. Reliance is placed upon the case of In re Estate of David Omare Kimori (Deceased) (Succession Cause 4 of 2020) [2023] KEHC 23286 (KLR) (28<sup>th</sup> September 2023) (Judgment) where this Court differently constituted held as follows:



124. There was no tangible evidence adduced to prove that the deceased paid the school fees for the said children, when their father was available and known. There is no evidence that the deceased took up the parental responsibility of the three children exclusively or even attempted to adopt the children of Livingstone Nyaribo who is well and alive and there is no evidence that Livingstone Nyaribo relinquished his parental responsibility towards the said children. If anything, the 1<sup>st</sup> objector was bound by law to seek for the children's maintenance from their biological father since the deceased never sought consent of their biological father to be their guardians or to adopt them as his own. There being no evidence that the deceased assumed parental responsibility over the objector's children in as much as they may have been fond of him and that they had moved in his house with their mother.
125. In addition, the 1st Objector's attempt to change the identity and therefore the paternity of two of her children from Nyaribo to Omare, which attempt led to her being convicted of the offence of false registration of persons, is an indictment that clearly disentitles her to claim that the deceased maintained her children as there is no evidence that the deceased was involved in the unorthodox change of the said names of the said children so that he could assume parental responsibility over them.
126. Every child has a right to know their parents and there is no evidence that Livingstone Nyaribo had given away his Children for adoption by the deceased who only lived with them by virtue of his marriage to their mother.
127. Accordingly, I am not satisfied that the 2<sup>nd</sup> – 4<sup>th</sup> Objectors qualify to be the deceased's dependants. I reject their proposition and further find that for that very reason, they are legally not entitled to inherit from his estate.”
18. That, they therefore do not qualify as children or dependants of the deceased under Section 29 of the *Law of Succession Act*. They cannot therefore claim any interest from the estate of the said Kiptim Lagat deceased herein through the late Joseph Kiptim also (Deceased). We urge the Court to find and hold that the 4<sup>th</sup>, 5<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> are not children of Joseph Kiptim (Deceased) and such they cannot claim what they would have been entitled in the estate of the Kiptim Lagat deceased herein.
- ii. As to whether a case has been made for revocation of the grant issued herein?
19. That the objector's case is anchored upon Section 76 of the *Law of Succession Act* on 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.
20. That, the question therefore will be whether the petitioner concealed any material facts that would have affected any person's interest in the estate. That the Petitioner has already submitted that PW 3 the (3<sup>rd</sup> objector), 4<sup>th</sup>, 5<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> objectors have no interest in the estate herein. PW1 and (1<sup>st</sup> objector), testified in her cross-examination that, she is not interested in the estate as she has her share where she lives in her own land. This clearly indicates that she has renounced her beneficial interest. It seems to us that the children of the deceased are not interested in LR No. Lembus/torongo 402. Even the uncontested child of Joseph Kiptim was not in Court to pursue her interest.
  21. That, the 1<sup>st</sup> objector demonstrates the Petitioners African Culture where women leave their brothers to take family land. Perhaps that is why PW1 is not interested in the estate. The Petitioner presumes that is why the 2<sup>nd</sup> objector never came to testify as she had nothing to claim from her father voluntarily.
  22. That, the whole objection focuses on the 3<sup>rd</sup> Objector and the interest of her children. The legitimate child of Joseph Kiptim by the names of Joyce Jesang Bitok never bothered to struggle for her interest but the petitioner stated that, he would give her 10 acres; he remains with 10 acres and the remaining 4 acres to be used to settle the costs of the administration proceedings.
  23. That, all that the Objectors had to disclose was that land LR No. Lembus/torongo 402 was bequeathed to Joseph Kiptim but no will was ever produced to support such. Lembus/Torongo/402 became the free property of the deceased.
  24. However, since the said Joseph Kiptim is dead and left no spouse, there was nothing to revert to him. The petitioner seems to have no issue giving a share to the said Joyce Jesang Bitok who never bothered to participate in the proceedings. In the view, the nondisclosure in this matter was not material as the children of the deceased herein are not interested in LR No. Lembus/torongo 402.
  25. That the petitioner has demonstrated his willingness to give a share to the said Joyce Jesang Bitok who may turn out not to be interested. Consequently, we pray that the application for revocation of grant dated 17<sup>th</sup> September 2014 be dismissed as it is sponsored by outsiders
  26. That, the said outsiders have caused the petitioner lose allot by not using his father inheritance despite being the rightful administrator of the said estate by receiving threats from the 3<sup>rd</sup> Objector who have been insisting the said children toward the petitioner and putting the petitioner life in danger and the said Objector's children are not entitle to claim any share therefore we further pray that upon the dismissal of the said Objectors application dated 17<sup>th</sup> September 2014 the 3<sup>rd</sup> Objector be directed by this Court for adequate compensation to the petitioner, which same application should be dismissed with costs.
  27. That, to conclusively deal with this matter, let the administrator transfer 10 acres to Joyce Jesang Bitok, he retains the 10 acres and the 4 acres to be used to cater for administration costs of this matter and all who are not entitled be removed and give vacant and further the Court do give full protection during and after the process of transfer since no peace among the 3<sup>rd</sup> Objector's children being highly incited by their mother the 3<sup>rd</sup> Objector.
  28. The Petitioner relies on the authorities cited above and annexed hereto.



## Objectors Case

29. The Objectors called five witnesses to testify, who adopted witness statements dated 9<sup>th</sup> July 2019 who advanced a theory that the 3<sup>rd</sup> Objector was a wife to a beneficiary in this estate together with her children that the deceased had three separate parcels of land of which he settled each son including the petitioner who in fact received 14 heads of cows in addition to the Torongo 704 Land that belonged to the father of the deceased;
30. That the Petitioner thus could not stake any claim upon land parcel No. Lembus/Torongo/402 which should be as a whole given to the 3<sup>rd</sup> Objector and her Offspring.
31. The Objectors application is anchored on section 76 of the Law of Succession which provides thus:

## Analysis and Determination

32. I have carefully considered the filed affidavits, witness statements, testimonies by witnesses, submissions by the parties and thus make the following observations;
  - a. That the Petitioner/Applicant is subject to the Court, by virtue of the grant made and issued, and should thus be interested in laying to rest the adverse allegations made against him in seeking the revocation, he however appears unperturbed and in no hurry to conclude the succession.
  - b. That the Petitioner admits in his pleadings of, there being of other beneficiaries in the estate of the deceased, contradicting his earlier affidavit sworn on the 4<sup>th</sup> November 2008 where he deponed of being the only beneficiary.
  - c. The Petitioner Offers 10 acres of land to be excised from parcel No. Lembus/Torongo/402 to be transferred to the 3<sup>rd</sup> Objector by herself, he further proposes to retain 10 acres of land while appropriate 4 acres towards expenses associated with the estate.
  - d. That the Estate of the deceased comprise of land parcel No. Lembus/Torongo/402 that is subject of a land dispute by the parties herein High Court at Eldoret ELC No 346 of 2013 where the petitioner seeks to evict the Objectors having acquired the entire parcel by way of transmission in this cause.
  - e. That the Dispute in High Court at Eldoret ELC No 346 of 2013 is awaiting conclusion of the succession for the same to be determined by the Land Court.
33. I have laboriously gone through the pleadings hereto. Revocation of Grant of Letters of Administration and the jurisdiction of this Court to entertain an application by an interested party or on its own motion revoke a Grant is predominantly expressed under Section 76 of the [Law of Succession Act](#) which provides that:

“76. 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.
34. The Court in *Matheka and Another V Matheka (2005) EA 251* as cited In re Estate of Njagi Kandii (Deceased) [2019] eKLR stated as follows:
- “A grant may be revoked either by application or by an interested party or on the Courts own motion. Even when revocation is by the Court upon its own of motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegations of facts essential. In point of Law or that the person named has failed to apply for Confirmation or to proceed diligently with the administration of the estate. The grant may also be revoked if it can be shown to the Court that the person to which the grant has been issued has failed to produce to the Court such inventory or account of administration as may be acquired”
35. It must also be considered that, the Court’s Power to revoke a grant is a discretionary power that must be exercised judiciously. The reasons for revocation or annulment must be sound and reasonable and there must be evidence of wrongdoing, concealment of facts or mistake or fraud. For this Court to exercise discretion caution must be taken while factoring the best interest of the estate of the deceased.
36. This Court is troubled of the fact that it took 37 years for the petitioner to move Court while the objectors were unperturbed and in bothered and the fight only erupted after the Petitioner had transmitted the sole asset of the deceased to himself. If the Court were to revoke the grant how much longer would it take to settle this estate?
37. Inheritance in contemporary Kenya has gathered currency to become an enterprise, to many it the only way to acquire property owing to lack of opportunities across the country. Parties so inheriting are often at times clouded in objectivity others would engage in extreme ego contestations manifestation of raw greed that consumes humans including maternal siblings.
38. This Court accordingly finds that, the proceedings to obtain the grant issued on the 16<sup>th</sup> April 2008 and confirmed and a certificate of confirmation of grant was issued by justice D.K Maraga (Rtd Chief Justice Emeritus) on the 10th December 2008 were defective in substance as has been admitted by the Petitioner that he never included the 3<sup>rd</sup> Objector Grace Kimoi Bittok because her deceased husband had chased her away.



39. The 3<sup>rd</sup> Objector, Grace Kimoi Bittok and her offspring have settled upon the LR No. Lembus/Torongo 402 for over forty (40) years and it would be safe to say that she knows nowhere else. Any attempts at dispossessing or displacing her shall not be in the interests of justice in any case her continued occupation has almost assumed adverse possession properties.
40. The situation here has a petitioner whose grant has been demonstrated was obtained thirty-six (36) years after the demise of the deceased and the sole asset of his estate was occupied by a wife of the petitioner's deceased brother whose life was lost attributable to marital disputes between the 3<sup>rd</sup> Objector and the late Joseph Kibitok Kiptim (deceased) according to the Petitioner the suicide of his brother was attributable to the 3<sup>rd</sup> Objector.
41. The 1<sup>st</sup> Objector renounced her interest in open Court while the 2<sup>nd</sup> Objector never presented any objection for the Court to discern. However, her rights as a beneficiary were neither laid out or challenged.
42. The 3<sup>rd</sup> Objector, Grace Kimoi Bittok had only one issue Joyce Jesang Kibitok with when the late Joseph Kibitok Kiptim (deceased) committed suicide. This simply means that the 3<sup>rd</sup> Objector and Joyce Jesang Kibitok are entitled to the share from the estate of the deceased herein.
43. The 4<sup>th</sup> Objector Collins Kiprono Kibitok, 5<sup>th</sup> Objector Alvine Kiprotich Bitok; 9<sup>th</sup> Objector Mathew Kipruto Bitok; and 10<sup>th</sup> Objector Nixon Kiprop Kibitok are children of the 3<sup>rd</sup> Objector admittedly born long after the demise of late Joseph Kibitok Kiptim (deceased). They are therefore unqualified as dependants and or beneficiaries in this estate I thus accordingly find.
44. The 3<sup>rd</sup> Objector is at liberty to share her bequest from this estate with the 4<sup>th</sup> Objector Collins Kiprono Kibitok, 5<sup>th</sup> Objector Alvine Kiprotich Bitok; 9<sup>th</sup> Objector Mathew Kipruto Bitok; and 10<sup>th</sup> Objector Nixon Kiprop Kibitok
45. As for Judy Jeptarus Kibitok - Daughter late Joseph Kibitok Kiptim (deceased) she is hereby deemed a beneficiary who notwithstanding her non-participation in these proceedings is entitled to a share and has not renounced her interest.
46. The 6<sup>th</sup> to the 8<sup>th</sup> Objectors case is not well articulated for any meaningful deliberation.
47. This Court finds that the following properties LR No. Lembus/Torongo/720, and Laikipia West LR No. Gituamba/Muhototetu Block 3/270 were not in the name of the deceased as alleged by the objectors and would accordingly not form part of this estate and LR No. Lembus/Torongo 402 was the only asset forming part of the estate. The fact that the petitioner received inheritance from his grandfather to disinherit him in this probate was not well articulated.
48. The Petitioner, Samson Kipkosgei Arap Tim, the 3<sup>rd</sup> Objector, Grace Kimoi Bittok and Judy Jeptarus Kibitok shall be entitled to 1/3 share each in LR No. Lembus/Torongo 402.
49. Samson Kipkosgei Arap Tim is not without fault he moved Court secretly attempted to render destitute a sister in-law which hit a naught this informs the decision of this Court to distribute the asset of the deceased without further subjecting it to expenses that were not accrued in good faith. Those expenses shall be met exclusively by the petitioner.

## Conclusion

50. In the upshot I issue the following orders;
  - a. The Objectors summons for revocation dated 17th September 2014 is found to be of merit.



- b. The Court shall however impose conditions upon which any default shall automatically trigger the revocation of the grant herein.
- c. The Petitioner shall forthwith within the next forty-five (45) days withdraw at no cost the Eldoret ELC No.346 of 2013.
- d. The only Property forming part of the estate of the deceased LR No. Lembus/torongo 402 shall be distributed to Samson Kipkosgei Arap Tim, Grace Kimoi Bittok and Judy Jeptarus Kibitok at 1/3 share each.
- e. The Petitioner shall transfer within the next six (6) months, 16 acres of land from LR No. Lembus/torongo 402 and any resultant subdivisions to the Grace Kimoi Bittok and Judy Jeptarus Kibitok to be shared equally.
- f. The Expenses and costs of the sub-division and transfer shall be borne by the petitioner.
- g. Failure to Undertake the Transfer within the timelines provided shall result in the forthwith automatic revocation of the grant herein.
- h. Upon such Automatic revocation any beneficiary shall be entitled to institute a fresh petition for issue of grant.
- i. This Matter shall be mentioned after six (6) months to determine compliance and close this matter
- j. This being a family matter, parties shall bear their own costs.

It is So Ordered.

**SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 28TH FEBRUARY 2025**

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**MOHOCHI S.M**

**JUDGE**

In the presence of: -

Mr. Gai, Advocate for the Objectors

Mr Arusei Advocate for the Petitioner

