



REPUBLIC OF KENYA



In re Estate of the Late Kiplangat Too (Deceased) (Succession Cause 79 of 2009) [2025] KEHC 1276 (KLR) (26 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1276 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 79 OF 2009
JK SERGON, J
FEBRUARY 26, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE KIPLANGAT TOO (DECEASED)

BETWEEN

NANCY CHELANGAT MARITIM OBJECTOR

AND

HENRY KIPKIRUI KETER ADMINISTRATOR

AND

AGNES WOSUL INTERESTED PARTY

RULING

1. The application coming up for determination is a summons for revocation of grant dated 16th November, 2023 seeking the following orders;
 - (i) Spent.
 - (ii) That the schedule of distribution of the property of the deceased through a certificate of confirmation of grant issued on the 11th day of October, 2011 be revoked as provided for by rule 44 (1) of the *Probate and Administration Rules* and as per the annexed schedule.
 - (iii) That cost of this application be provided for.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Nancy Chelangat Maritim the Objector/Applicant.
3. The Applicant avers that she is one of the beneficiaries of the estate of the deceased.
4. The Applicant avers at the time of filing the instant matter in the year 2009, she was already married and therefore her siblings approached her to sign a consent confirming that she would not get any share



of her deceased father's estate and that signing the said consent was premised on the argument that according to Kalenjin cultural beliefs and traditions a married woman was precluded from inheriting a share of her father's estate.

5. The Applicant avers that around the year 2011, she was approached by her siblings to sign a consent on the mode of distribution of the estate of her deceased father to the other beneficiaries which she did.
6. The Applicant avers that around the year 2020, she learnt that the instant succession cause was in court having been revived through an objection raised by one Agnes Wosul who was a wife to the her late brother Jonah Wosul, she alleged that she had been left out during the distribution of the estate of her father-in-law and therefore despite a certificate of confirmation of the grant having been issued in the year 2011, it has since become useless and inoperative.
7. The Applicant avers that this court having issued a certificate of confirmation of grant in the year 2011 and the same having been implemented by the administrator through distribution of the estate, the objector was allowed by this court to occupy their late mother's house in the interim and that she had been tilling almost 6 acres of land where the house is situated, which parcel had already been distributed and a title deed issued, to the detriment of other beneficiaries of the estate.
8. The Applicant avers that by virtue of being a child of the deceased, she is a rightful beneficiary of the deceased and therefore entitled to a share of the estate, marriage notwithstanding. The Applicant cited section 29 (a) of the [Law of Succession Act](#) which recognises children of the deceased as dependants, marital status notwithstanding.
9. The Applicant avers that the deceased died before the 1st of July, 1981 the date of the commencement of the [Law of Succession Act](#) therefore section 2 (2) of the [Law of Succession Act](#) which provides that;

“The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless, the administration of their estates shall commence or proceed so far as possible in accordance with this [Act](#).” is applicable.

The Applicant argued that customary laws are applicable in so far as they are not repugnant to justice and morality and/or inconsistent with any written law.

10. The Applicant avers that discriminatory practices are outlawed as all persons are declared equal before the law, as per article 27 of the [Constitution of Kenya](#), 2010 which prohibits any form of discrimination based on race, sex, marital status or culture and therefore that it is only fair and just for all the children who survived the deceased ought to be treated equally in the distribution of the estate of the deceased.
11. The Applicant avers that in the circumstances, the certificate of confirmation of grant issued on 11th October, 2011 was obtained by means of allegation of a fact essential in point of law to justify the grant, which allegation was made ignorantly and/or inadvertently and that the grant has become useless and inoperative based on supervening circumstances after distribution of the estate of the deceased, therefore, the said certificate of confirmation ought to be revoked as per the provisions of section 76 (c) and (e) of the [Law of Succession Act](#).
12. Agnes Wosul the interested party filed a replying affidavit in response to the application.
13. She avers that the court record clearly shows that the Applicant freely renounced her rights of inheritance to the estate of the deceased by appending her signature.
14. She avers that the Applicant neither denounced nor rejected the authenticity of her signature on the consent.



15. She avers that she was the legally wedded wife of Jonah Wosul (deceased) until his untimely death and therefore as a wife to the deceased, she was entitled to graze her cattle on the 0.6 acre portion, cultivate the subject piece of land and pick tea bushes in order to obtain income to support the children of the deceased.
16. She avers that the Applicant failed to produce any shred of evidence to prove that she had vandalised the property that is subject of the instant succession proceedings.
17. This court directed the parties to canvas the application via written submissions, however, at the time of writing this ruling, the respondent had not uploaded any submissions on the Case Tracking System, therefore this court considered the material on record to arrive at a fair and just determination.
18. The objector/applicant conceded that she signed a consent ceding her share of the estate of the deceased, this notwithstanding, she reiterated that the current succession law, under Section 29 (a) of the *Laws of Succession Act*, recognizes "children" of the deceased as dependants and that the said section does not classify these children as sons or daughters, married or unmarried, she therefore contended that by virtue of being a child of the deceased, she is a rightful dependant of the estate of the deceased and that discriminatory practices have since been outlawed by the *constitution of Kenya*, 2010.
19. The objector/ applicant contended that the grant was obtained by means of allegation of a fact essential in point of law to justify the grant and which allegation was made ignorantly and/or inadvertently and therefore the existing application meets the provision and threshold outlined in Section 76 of the Laws of Succession on revocation of grant.
20. The objector/applicant reiterated that the Certificate of confirmation of grant issued on 11th October 2011 should be revoked and the estate of the Late Kiplangat Too (deceased) be distributed equally to all his beneficiaries.
21. I have considered the application, responses and submissions by parties and I find that the sole issue for determination is whether to revoke the certificate of confirmation of grant issued on the 11th day of October, 2011.
22. On the issue as to whether to revoke the certificate of confirmation of grant issued on the 11th day of October, 2011 on grounds that it obtained by means of untrue allegations of facts essential in point of law, this court finds that the objector/applicant conceded to having been approached to sign a consent renouncing her rights of inheritance from the estate of her deceased father and that she signed consent ceding her share of the estate of the deceased and she signed the consent on the mode of distribution of the estate of the deceased, therefore, the grant cannot be said to have been obtained by concealment of something material to the case or that the grant was obtained by means of untrue allegations of facts essential in a point of law.
23. The Court in *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No.158 of 2000) pronounced itself on the issue that;

“The power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order for revocation or annulment of a grant. And when a court is called upon to exercise this discretion, it must take into account the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”



24. Consequently, the summons for revocation of grant dated 16th November, 2023 is found to be without merit. The same is dismissed with no orders as to costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 26TH DAY OF FEBRUARY, 2025.

J. K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Kathurima for Nancy Chelangat

Wambeyi for the Petitioner

