



REPUBLIC OF KENYA



**In re Estate of Bernard Kibet Too (Deceased) (Civil Miscellaneous E037 of 2024) [2025] KEHC 7110 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7110 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL MISCELLANEOUS E037 OF 2024**

**JK SERGON, J**

**MAY 29, 2025**

**IN THE MATTER OF THE ESTATE OF BERNARD KIBET TOO (DECEASED)**

**BETWEEN**

**WINFRED RUTO ..... 1<sup>ST</sup> APPLICANT**

**PHILEMON RUTO ..... 2<sup>ND</sup> APPLICANT**

**JOSEPH TOO ..... 3<sup>RD</sup> APPLICANT**

**AND**

**PHOEBE NAKHUMICHA TOILI ..... 1<sup>ST</sup> RESPONDENT**

**CATHERINE NALIKA WABWOBA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicants filed chambers summons dated 29th August, 2024 seeking the following orders;
  - (i) Spent.
  - (ii) Spent.
  - (iii) That this honourable court be pleased to issue orders of stay of proceedings in Chief Magistrate Court, Milimani Family Division Succession Cause E033 of 2023 and in the Chief Magistrate Court Kericho Succession E081 of 2023 pending the hearing and determination of this application. (iv) THAT the Certificate of Grant of Letters of administration made to the 1st and 2nd Respondent and confirmed on 22nd January, 2024, be revoked on the following grounds: - a) That the grant was obtained fraudulently by the making of false statement or by the concealment from the court of some material facts. b) The grant was obtained by means of untrue allegation of facts essential in point of law to justify the grant particularly that the deceased was married and had a wife while in fact the deceased was a bachelor. c) That the



proceedings leading to making and confirmation of the impugned Grant were defective in substance as the Introductory Letter from the Chief was fraudulently obtained as the same does not disclose the rightful beneficiaries of the deceased.

- (v) That this Honourable Court be pleased to close the cause filed in the Chief Magistrate at Milimani Law Courts Succession Cause E033 of 2023 to allow the cause in Kericho Chief Magistrate E081 of 2023 as the same takes precedence on territorial jurisdiction.
  - (vi) That the costs of this application be provided for.
  - (vii) That the honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
2. The application is supported by grounds on the face of it and the supporting affidavit of Philemon Kiptoo Ruto the 2nd Applicant duly authorized to litigate and fully conversant with the facts of this case thus competent to swear this affidavit. He avers that he is related to the deceased by virtue of being his father, the deceased was his last-born son.
  3. He avers that the deceased prior to his death on the 10th February, 2023 the deceased was a Police Officer and that prior to his death, the deceased was a bachelor since he never conducted any marriage as per the Kalenjin Customs neither did, he participate in any dowry negotiation between himself and the Respondents parents.
  4. He avers that on the 16th February, 2023 he was issued with a burial permit from the city mortuary in order to allow them conduct the funeral and that the funeral was conducted without any involvement of the Respondents herein who never bothered to participate in the burial arrangements.
  5. He avers that after the said funeral they sought counsel from their advocate in order to ensure that the estate of the deceased was protected and that the same devolve to the rightful beneficiaries and they were advised that given the circumstance that the deceased died a bachelor, he together with his wife are ranked as the rightful beneficiaries to take out the Letters of Grant of Administration.
  6. He avers that subsequently they obtained an Introductory Letter from the Chief, Kaptoboiti Location that enabled them to petition for Letters of Administration Intestate, they attached a copy of the Letter from the Chief dated 16th March, 2023.
  7. He avers that the said cause was gazetted upon their petition for Letters of Administration pursuant to a gazette notice dated 24th April, 2023.
  8. He avers that on the 25th September, 2023 he together with his wife Winfred Mueni Ruto were issued with Grant of Letters of Administration and attached a copy of the Grant of Letters of Administration and subsequently after the 6 months had lapsed and after gazettelement they filed Summons for Confirmation and the same was confirmed vide a Certificate of Confirmation of Grant dated 30th April, 2024 and attached a copy of Certificate of Confirmation of Grant.
  9. He avers that the 1st and 2nd Respondents herein while misrepresenting themselves as wife and sister-in-law respectively of the deceased petitioned for Letters of Administration in the Chief Magistrate Court at Milimani Law Courts while aware that the deceased in his lifetime lived as a bachelor and that the said Letters of Administration was subsequently confirmed vide a Certificate of Confirmation dated 22nd January, 2024 and attached a copy of the Certificate of Confirmation of grant.
  10. He avers that the courts have pronounced that the filing of separate succession causes, in respect of the same estate, leading to issuance of different grants of administration, and the making of different orders on distribution of the same estate, is unacceptable as it can only lead to confusion.



11. He further avers that in such an instance rival groups would be holding different grants, all of them authorizing them to administer the same estate, and there would be the real spectre of the court giving conflicting orders or directions, on the distribution of that one estate, which would expose the court and the judicial system to disrepute and embarrassment.
12. He avers that this honourable Court has inherent powers in such a situation to make such orders as it deem fit including but not limited to revocation of grant and therefore that in such premise the High Court can call up any file pending before a subordinate court, in a probate and administration matter, using any of these provisions, and may make any order, or give any direction, it considers appropriate to ensure the fair administration of justice.
13. He avers that unless this application is heard and dispensed with, the Respondents may proceed to enforce the said Grant and sell properties thereby occasioning the rightful beneficiaries irreparable harm.
14. Phoebe Nakhumicha Toili the 1st respondent filed a replying affidavit in response to the instant application. She avers that she is duly conversant with the facts of this case hence competent to swear this Affidavit, and similarly has the authority of the second Respondent, Ms. Catherine Naliaka Wabwoba, to swear this Affidavit on her behalf.
15. She avers that having read the contents of the Application dated 29<sup>th</sup> August 2024 she noted that the said Application seeks a Stay of Proceedings in Milimani Succession Cause No. E033 of 2023 pending the hearing and determination of this application, a revocation of the certificate of Confirmation of Grant made to the Respondents herein on 22<sup>nd</sup> January 2024 on the grounds listed therein and further that Milimani Succession Cause No. E033 of 2023 be closed and that Kericho Succession Cause No. E081 of 2023 takes precedence.
16. She avers that the Applicants have not demonstrated to this Honorable Court the need for Stay of Proceedings in Milimani Succession Cause No. E033 of 2023.
17. She avers that a cursory look at the Applicants' indicates that the Grant was issued on 25<sup>th</sup> September 2023 and further confirmed on 30<sup>th</sup> April 2024 and their Grant was issued on 18<sup>th</sup> July 2023 and confirmed on 22<sup>nd</sup> January 2024, and therefore filed in priority before the said grant they intend to rely on. Therefore their grant thus takes priority and the Applicants ought to have taken note of the same, as the gazette notices were similarly published earlier than theirs.
18. She avers that allegations of fraud have to be strictly proven. The Applicants have only but alleged that the Respondent herein fraudulently obtained the grant issued on 22<sup>nd</sup> January, 2024 by fraud and concealment of facts but failed to tender proof in support of the same.
19. She avers that she got married to the deceased in the year 2013 and his parents visited her rural home in western to let her parents know. They had a ten year (2013-2023) old marriage and they were blessed with two (2) children and she remained married to the deceased until his demise.
20. She avers that on 17<sup>th</sup> April 2021, the deceased sent the 2<sup>nd</sup> Applicant herein alongside other male relatives to her rural home to negotiate dowry payment and pay the first installment/deposit which was successfully done. She attached copies of the proceedings recorded on the said date as regards the dowry payment ceremony, duly executed by the 2<sup>nd</sup> Applicant herein and copies of photos taken of the Applicants herein and their relatives.
21. . She avers that their parents thus agreed to the said union, and were officially aware of the same and that their two children were born and raised in the deceased person's rural home, in Kapchereren up



- until 2020 when they moved to stay in Gilgil and subsequently in Nairobi because of his job transfer and additionally her studies. She attached copies of the birth certificates of the said minors.
22. She avers that contrary to the Applicants' allegations, she was with the deceased person all through up until his untimely demise on the fateful day he passed on and at no point did she abandon him. She avers that the Applicants were fully aware of their union and marriage all through and cannot attempt to feign ignorance of the same in their greed and quest for the deceased's property which they have zealously and shamelessly shown their commitment towards entirely dispossessing his young school going children of the same.
  23. She avers that the area chief Kaptoboiti Location in Kericho County similarly wrote a letter confirming the dependents of the deceased herein, listing the said children as the children of the deceased herein.
  24. She avers that she stayed with the deceased, children and all his family members in a 2 bedroom house they had in Kilimani police station when the deceased was transferred to Nairobi, Kilimani Police Station. The deceased person was thus a resident of Nairobi at all material times and as such, Milimani Law Courts had the requisite jurisdiction to hear and determine the succession cause filed therein.
  25. She avers that it was during this period that the deceased fell seriously ill and became unable to make independent decisions. The Applicants herein, instead of helping in taking care of the deceased, instead took advantage of his situation and manipulated him, thus withdrawing and sending themselves all savings from his bank accounts.
  26. She avers that it is during this period, that the 3<sup>rd</sup> Applicant broke into the house they had rented in Gilgil and carried everything without neither her consent nor the deceased's and that she reported the matter to Gilgil police station under the OB59/15/2/2023 at 2102 hrs on 15<sup>th</sup> February, 2023, she attached a copy of the said OB Report.
  27. . She avers that when she enquired from the Applicants as to why they had broken into their house, they instead evicted her and their children out of their house in Kilimani, at the time during which the deceased was critically ill and admitted at the Nairobi Hospital, after which he fatefully passed on less than a week later.
  28. She avers that the Applicants actively blocked her from participating in the deceased's burial plans, to the extent that she had to be accompanied by security to attend his burial.
  29. She avers that the Applicants further used a forged death certificate in their said application whereas she is in possession of the original death certificate issued by one Ms. Esther Wanjiku Otieno, District Assistant Registrar for the National Registry, Serial Number 1556759, and Entry Number CA26266 of 17<sup>th</sup> February 2022 and will therefore be calling the registrar of deaths to confirm the authenticity of the same.
  30. . She avers that the Applicants have not met the threshold for a Stay of Proceedings being granted neither have they demonstrated meeting a threshold for the revocation of Grant as provided for in law, there being no fresh evidence tendered by them, no error apparent on the face of the record or no new evidence.
  31. . She avers that she therefore ranks above the Applicants by virtue of being the deceased's wife, in application for Grant of Letters of Administration. The Applicants have further brought their Application in bad faith, filled with falsehoods with the sole aim of misleading this Honorable Court and thus ought to be treated with the contempt it deserves and be dismissed with costs to the Respondent.



32. The matter came up for inter partes hearing and the parties agreed to have the application dispensed off by written submissions.
33. The applicants submitted that the grant dated 22nd January, 2024 was obtained fraudulently by making a false statement and/or by concealment from the court of material facts. The 1st Respondent falsely represented herself as a wife of the deceased which is a lie as the deceased died a bachelor. The Letter that was equally attached as a Letter identifying the beneficiaries by the 1st Respondent was fraudulently obtained and a perusal of the said Letter clearly indicates that the same was not an introductory letter as the reference cites the Applicant herein one Philemon Kiptoo Ruto. The applicants contended that the Introductory Letter dated 16th March, 2023 which was annexed to the instant application as annexure “PKR-4” is conclusive, the said being addressed to the court and referring to the estate of LATE Benard Kibet Too. The applicants contended that it is evident that the Respondents had an intention of disinheriting other rightful beneficiaries and resorted to conceal material facts before the honourable court in Milimani Family Division Succession Cause E033 OF 2023.
34. It is the Applicants' case that this Honourable Court is vested with inherent/supervisory jurisdiction and can make an order to have the cause filed in the Chief Magistrate court at Milimani Law Court, Succession Cause E033 of 2023 be closed for the following reasons:
- (i) The court lacks jurisdiction since the properties of the deceased to wit L.R. Kericho/kapsoit/674 and LR.No. Kericho/sosiot /1129 are all within Kericho.
  - (ii) The deceased was a resident of Kericho prior to his death as per the Death Certificate and chief's letter, the applicants relied on section 49 of the Law of Succession Act which highlights on the Territorial jurisdiction of magistrates: “The Resident Magistrate within whose area a deceased person had his last known place of residence shall, if the gross value of the estate of the deceased does not exceed one hundred thousand shillings, have in respect of that estate the jurisdiction conferred by section 48”
35. The Applicants therefore appealed to this court to exercise its inherent jurisdiction as provides for in section 47 of the Law of Succession Act and rule 73 of the Probate and Administration Rules and cited the case of Mangala v Mangala & another (Miscellaneous Civil KEHC 5942 (KLR) (27 May 2024) (Ruling) in which the court held as follows; “The Law of Succession Act and the Probate and Administration Rules may appear to be silent on that course of action, but there is inherent power, saved through Rule 73 of the Probate and Administration Rules, to enable the court do justice in the circumstances, and prevent abuse of the court process. Section 47 of the Law of Succession Act is often cited, as saving such inherent power, although I do not quite agree with that, but it is still a provision that those courts, who are persuaded that it saves the inherent power of the court in probate matters, can resort to, to deal with the anomaly of multiple succession causes in respect of the same estate. Of course, where a probate court doubts that section 47 and Rule 73 would be appropriate, in the circumstances, there is also Article 165(6) (7) of the Constitution, which gives the High Court supervisory powers over subordinate courts. The High Court can call up any file pending before a subordinate court, in a probate and administration matter, using any of these provisions, and may make any order, or give any direction it considers appropriate to ensure the fair administration of justice.”
36. The respondents submitted that a cursory look at the Applicants' Grant indicates that the Grant was issued on 25<sup>th</sup> September 2023 and further confirmed on 30<sup>th</sup> April 2024 whereas the Respondents' Grant was issued on 18<sup>th</sup> July 2023 and confirmed on 22<sup>nd</sup> January 2024, and therefore filed in priority before the said grant they intend to rely on. The Respondents' argued that their grant thus takes priority, not only by virtue of the provisions of the Succession Act but also due to the fact that the



Applicants ought to have taken note of the same, as the gazette notices were similarly published earlier than theirs.

37. The respondents contended that the allegations of fraud have to be strictly proven. The Applicants have only but alleged that the Respondent herein fraudulently obtained the grant issued on 22<sup>nd</sup> January 2024 by fraud and concealment of facts but failed to tender proof in support of the same.
38. The respondents maintained that the 1<sup>st</sup> Respondent was indeed married to the deceased person herein, facts which are well within the Applicants' knowledge. The Applicants were fully aware of the customary marriage that had taken place as between the 1<sup>st</sup> Respondent herein and the deceased, having been present during the celebration of the same. The 1<sup>st</sup> Applicant further produced Witnesses to the said marriage who swore Affidavits in proof of having witnessed the said marriage. The respondents further contended that the area chief Kaptoboiti Location in Kericho County similarly wrote a letter confirming the dependents of the deceased herein, listing the said children as the children of the deceased herein. The said letter was interestingly confirming the 2<sup>nd</sup> Applicant as the father of the deceased person herein, which he didn't object.
39. The respondents therefore urged that this court be guided by the case of *In re Estate of Joseph Akunda Okwabikha alias Joseph Akunda (Deceased)* [2024] KEHC 14641 (KLR), in which the Court rightfully dismissed the Applicant's Application for Revocation of Grant for not having met the threshold therein.
40. Having considered the instant application, response and submissions by the parties, this court finds that the issue (s) for determination are whether to revoke the certificate of Confirmation of Grant made to the Respondents herein on 22<sup>nd</sup> January, 2024 on the grounds listed therein and whether Milimani Succession Cause No. E033 of 2023 should be closed and that Kericho Succession Cause No. E081 of 2023 takes precedence on territorial jurisdiction.
41. On whether to revoke the certificate of Confirmation of Grant made to the Respondents herein on 22<sup>nd</sup> January, 2024 on the grounds listed therein to wit that the grant was obtained by means of untrue allegation of facts essential in point of law to justify the grant particularly that the deceased was married and had a wife while in fact the deceased was a bachelor. This court has considered the respective cases by the parties, on one part, the applicants maintained that the deceased, was a bachelor at the time of his demise as since he never conducted any marriage as per the Kalenjin Customs neither did, he participate in any dowry negotiation between himself and the Respondents parents and therefore the applicants, were ranked as the rightful beneficiaries to take out the Letters of Grant of Administration. On the other part, the 1st respondent maintained that she was married to the deceased person herein under customary law and dowry exchanged, facts which are well within the Applicants' knowledge, having been present during the celebration of the same. The laws in Kenya recognize marriage under various systems, including Customary, Civil and Christian. In appropriate cases the Court will also presume a marriage. This court finds that the parties involved did not formalize their union under either Civil or Christian Marriage and the evidence adduced stated that they had formalized their marriage under customary law and dowry exchanged, no further evidence was adduced as to the rites that crystallize a marriage under Kalenjin Customary law and whether the 1st respondent and the deceased complied with these. The 1st respondent has not placed evidence before this Court that would support a finding of presumption of marriage. On their own, the Chief's letter as furnished by the 1st respondent did not serve the purpose of an introductory letter, photographs and minutes of dowry negotiations furnished by the 1st respondents are fickle ground upon which to seek to base the existence of a marriage. The conclusion that must be drawn is that the relationship if any that existed between the deceased and the



1st respondent did not amount to a marriage, however, it did result in the birth of two minors who survived the deceased and were captured in introductory letter by the Chief dated 16th March, 2023.

The matter before this Court is a miscellaneous application. The Applicants are seeking for the revocation of the Certificate of Confirmed Grant issued vide Milimani C.M.C. Succession Cause No.033 of 2023. Such an application should have been made in the Milimani Succession Cause. This can only entertain such an application on Appeal. Consequently, that application is found to be incompetently before this Court. The same is hereby ordered struck out. Each party to meet his or her own costs..

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 29TH DAY OF MAY 2025.**

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**J.K. SERGON**

**JUDGE**

In the presence of:

Court Assistant – Rutoh

Omondi for the Respondent

No Appearance for the Applicant

