



REPUBLIC OF KENYA



KENYA LAW
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**Bett v Kimetto & 3 others (Succession Cause 89 of 2014)
[2025] KEHC 11369 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11369 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 89 OF 2014**

**JK SERGON, J
JULY 31, 2025**

BETWEEN

JOSEPH KITONUI BETT APPLICANT

AND

LEAH CHEPKOROS KIMETTO 1ST RESPONDENT

JOEL KIPSANG BETT 2ND RESPONDENT

JANE CHEMELI METTO 3RD RESPONDENT

DAVID KIPLANGAT BETT 4TH RESPONDENT

RULING

1. The application coming up for determination is a summons for revocation and/or annulment of grant dated 12th February, 2025 seeking the following orders;
 - (i) Spent
 - (ii) That the majority of the beneficiaries listed on the grant are not bonafide and lawful ones and no explanation or justification has been placed before Court to demonstrate their presence in the grant thereby rendering the confirmed grant illegal, unlawful and non-compliant as required by Law. It therefore holds that the grant was obtained fraudulently by the making of a false statement or by the concealment of something material to the case and should be annulled in accordance with Section 76 (b) of the *Law of Succession Act*, Cap 160, Laws of Kenya.
 - (iii) Spent
 - (iv) Spent



- (v) That this Honourable Court be pleased to revoke and/ or annul the Certificate of Confirmation of grant dated the 2nd day of February, 2023 and rectified on the 7th day of November, 2024.
 - (vi) Spent
 - (vii) That this court Honourable Court be pleased to issue any other order it may deem just and fit to grant.
 - (viii) That costs of this application be provided for.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Joseph Kiptonui Bett a beneficiary to the estate herein being the son to the late Daniel Kipkemoi Rotich whose estate is the subject matter of the instant succession cause.
 3. He avers that his late father was a polygamous man, his mother being the first wife who in the proceedings herein is described as the 3rd Respondent/ Administrator and now deceased and she was blessed with three children who are all grown up namely:- Joseph Kiptonui Bett (applicant) David Kiplangat Bett (Deceased) and Gladys Kimetto Chelangat.
 4. He avers that both his mother and brother hereinabove named were both administrators to the estate of his late father but upon their demise no substitution was done to have a representative from their homestead made an administrator hence jeopardising their position in the Succession proceedings herein.
 5. He avers that the grant to the estate herein was first confirmed on the 25th day of September, 2019 all the properties were assigned to the administrators of the estate to be distributed in accordance with Section 40 of the Law of Succession Act and part of it to be transferred to the bonafide purchasers whose proceeds were confirmed to have been utilized to offset the liabilities of the estate.
 6. He avers that unfortunately the distribution of the estate was not done until the 2nd day of February, 2023 when a mode of distribution was presented before Onger J. the then presiding Judge at Kericho Law Courts who then proceeded to confirm the said mode of distribution without considering his input. He avers that he personally objected to the mode of distribution aforesaid and refused to sign the consent for confirmation but the Judge overruled his objection and said she was ruling in favour of the majority.
 7. He avers that it is instructive to note that Justice Asenath Onger on her own motion without any application by any interested party or order setting aside discarded and/or neglected to act on item number 4 of the confirmed grant of 25th September, 2019 thereby rendering the beneficiaries to suffer a lot distress and agony in spite of them having legitimately purchased land within Kericho/Kipkelion/ Barsiele Block 6 whose proceeds was used to offset the outstanding loans to the estate.
 8. He avers that their late father died intestate and therefore the properties to be administered are strictly ones that were registered in his name and not otherwise as provided for in the first grant that was confirmed on the 25th day of September, 2019.
 9. He avers that contrary to the provisions of the Law of Succession Act Cap 160, Laws of Kenya, the administrators who were then alive decided to include properties which were not registered in the name of their late father specifically parcel number Kericho/ Kiptere/4380 which is registered in his name and went ahead to distribute the same without confirming the legitimate ownership thereby abusing the Law and the court process.



10. He avers that land parcel number Kericho Kiptere/1035 measuring in size three decimal five hectares (3.5 ha) listed as one of the properties and distributed in the grant in issue was sold and subdivided and two titles issued on the 30th day of November, 2004 being Kericho/ Kiptere/4523 and Kericho/ Kiptere/4524 respectively.
11. He avers that in view of the development hereinabove described, it is apparent and evident that the Certificate of confirmation in issue was issued based on incorrect information and non - disclosure of material facts thus rendering the proceedings to obtain the grant defective in substance hence the same should be annulled and revoked accordingly.
12. He avers that this Honourable Court cannot be hoodwinked or misled to distribute properties which do not form part of the estate.
13. He avers that the surviving administrator together with his siblings are guilty of intermeddling with the estate herein having disposed of about one hundred and fifty acres of Land in Londiani without the authority of the Court contrary to the provisions of Section 45 of the Laws of Succession Act.
14. He avers that the allocation of parcels Kericho/ Sosiot/408 measuring in size two decimal six hectares (2.6 ha), Kericho/Kipkelion/Barsiele BLOCK 6 measuring two decimal one nought hectares (2.10 ha) and Kericho/ Kiptere/ 2182 measuring in size nought decimal three eight Hectares (0.38 ha) absolutely to Joel Kipsang Bett purportedly to settle legal fees and other expenses is an outright rip off of the estate to the detriment of other beneficiaries and the same should be stopped by this Honourable Court and the consent of all the beneficiaries be sought to confirm the true status of the alleged liabilities.
15. He avers that there are grandchildren who have been listed as beneficiaries contrary to the provisions of the Law and no explanation has been given to justify their being given shares in the parcels of land and that due to the foregoing it is apparent that the rectified grant dated the 7th day of November, 2024 is not compliant and the same should be revoked and annulled accordingly.
16. He avers that in the circumstances due to the foregoing it is only just and fair that this Honourable Court do issue orders restraining any dealings or transactions in the estate pending the hearing and determination of the application herein and consequently revoke the grant issued on the 2nd day of February, 2023 and rectified on the 7th day of November, 2024.
17. He avers that is quite evident that the Honourable Court went ahead to distribute properties without confirming the true status on ownership and eligibility of the beneficiaries which has led to miscarriage of justice to innocent and bonafide beneficiaries to the estate hence necessitating the revocation of the current rectified grant and a fresh exercise of distribution be done in accordance with the Law.
18. Joel Kipsang Bett the 2nd respondent/administrator herein filed a notice of preliminary objection based on the following grounds;
 - (i) That this Honourable Court lacks jurisdiction to hear and determine this matter as it is functus officio.
 - (ii) That the matter is res judicata as the issues in question were heard and finally determined in former suits delivered by His Lordship Justice J.K. Serгон on 16.5.2023 and 5.12.2024.
 - (iii) That this Honourable court is divested of jurisdiction to hear and determine the matter.
 - (iv) That the said application is lost, frivolous, bad in law, incompetent and an abuse of the court process.



19. The matter came up for inter partes hearing and the parties were directed to file written submissions, however, at the time of writing this ruling the parties had not uploaded their submissions on the case tracking system.
20. This court has considered the summons for revocation of grant and preliminary objection and finds that the sole issue (s) for determination is whether to revoke and/ or annul the Certificate of Confirmation of grant dated the 2nd day of February, 2023 and rectified on the 7th day of November, 2024.
21. On the issue as to whether to revoke and/ or annul the certificate of confirmation of grant dated the 2nd day of February, 2023 and rectified on the 7th day of November, 2024. On one part the objector/ applicant contends that the certificate of confirmation of grant was issued based on concealment and non - disclosure of material facts thus rendering the proceedings to obtain the grant defective in substance, thereby necessitating the revocation of the current rectified grant and a fresh exercise of distribution be done in accordance with the Law.
22. On the other part, the respondent filed a preliminary objection in response to the said application arguing that the court is functus officio having confirmed the grant.
23. It is the considered view of this court that having confirmed the grant in the instant succession proceedings, it is rendered functus officio and therefore any party aggrieved with the process leading to the confirmation of grant should appeal or apply for review. This court cannot therefore entertain the instant application.
24. In re Estate of Juma Shitseswa Linani (Deceased) [2021] eKLR the court observed as follows; “The ideal situation, where a person is unhappy with the process of confirmation of grant, for it would appear that that is what the applicant herein is aggrieved about, is not to move the court under section 76 for revocation of grant, for the reasons that I have discussed in the foregoing paragraphs. What such a person should do instead, is to file an appeal against the orders made by the court on distribution. The court confirming a grant largely becomes functus officio so far as confirmation of the grant is concerned, and cannot revisit the matter unless upon review.”
25. It is evident from the instant application that the objector/applicant is disputing the orders made on distribution of the estate of the deceased under the guise of an application for revocation. In any event, in order for this court to revoke the grant in question, it is a prerequisite that the conditions for revocation as set out under section 76 of the Law of Succession Act must be proved.
26. In the case of Albert Imbuga Kisigwa v Recho Kawai Kisigwa, Succession Cause No.158 OF 2000 the court held as follows; “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.”
27. The objector/applicant has not demonstrated any of the grounds for revocation as set out in section 76 of the Law of Succession Act. In view of the foregoing, it is the finding of this court that the notice of preliminary objection in respect to the summons for revocation of grant dated 12th February, 2025 is therefore merited.
28. In the end, the summons for revocation and/or annulment of grant dated 12th February, 2025 is without merit. The same is dismissed with each party bearing their own costs.



DELIVERED, SIGNED AND DATED AT Kericho THIS 31ST DAY OF JULY, 2025

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Kiletyen for 2nd Respondent

No Appearance for the Applicant

