



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Ayub Kiprono Chepkwony (Deceased) (Succession Cause
106 of 2024) [2025] KEHC 11498 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11498 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 106 OF 2024**

JK SERGON, J

JULY 31, 2025

IN THE MATTER OF THE ESTATE OF AYUB KIPRON CHEPKWONY (DECEASED)

BETWEEN

JAMES ARAP TALAM APPLICANT

AND

PAULINE CHEPCHIRCHIR CHEPKWONY 1ST ADMINISTRATOR

JOSEPHINE CHEMUTAI CHEPKWONY 2ND ADMINISTRATOR

IRENE CHEPKWONY 3RD ADMINISTRATOR

STELLA CHEBET CHEPKWONY 4TH ADMINISTRATOR

RULING

1. There are two applications coming up for determination. First is application dated 27th June, 2023 in which the Applicant seeks for the revocation of grant on the basis that there were material of non-disclosure of facts to wit that the applicant was a liability to the estate in the proceedings leading to confirmation of grant. The second application is dated 3rd March, 2025 in which the Applicant seeks for preservative orders in respect of the estate of the deceased.
2. There is a notice of motion dated 27th June, 2023 seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) That the honourable court be pleased to revoke the grant of representation issued on 15th day of June, 2023 and issue a fresh grant.
 - (iv) That the cost of this application be provided for



3. The application is supported by grounds on the face of it and an affidavit in support of the application sworn by James Arap Talam, the objector/applicant herein.
4. He contests that he is a creditor of the estate of the deceased after having been awarded 8 acres of property known Kericho/Kapsuser/952 registered in the name of Ayub Kipngetich A. Chepkwony alias Ayub Kiprono Chepkwony vide Kericho Magistrate Court Misc. No. 32 of 1984 and subsequently the subject parcel was surveyed and curved out and he was given Kericho/Kapsuser/2283 and Kericho/Kapsuser/2284 and that he has had peaceful occupation of the said parcels for over 20 years.
5. He contests that the administrators of the estate of the deceased obtained a grant of letters on the 15th day of June, 2023 based on material non- disclosure, they did not disclose that the applicant was a liability to the estate of the deceased and that administrators have incessantly refused and reneged to consider his entitlement to the estate of the deceased and unless this court intervenes, he shall suffer irreparable harm.
6. The Respondents filed grounds of opposition to the application dated 27th June, 2023 the primary ground of opposition being that the application had been filed too late in the day, the estate having been substantially distributed.
7. Pauline Chepchirchir Chepkwony the 1st administrator/ respondent and the only surviving widow of the deceased filed a replying affidavit in response to the application dated 27th June, 2023. She contends that the application does not meet the threshold for revocation of grant.
8. She further contends that her husband appealed against the findings in Kericho Magistrate Court Misc. No. 32 of 1984 and that on appeal the Nakuru High Court Civil Suit 932 of 1994 ruled in favour of her deceased husband and directed the eviction of the applicant from the subject parcel, she attached a copy of the eviction order.
9. It is her contention that in the confirmed grant this court took into consideration the beneficiaries of the estate and that no dependent as defined by section 29 of the Law of Succession Act was left out.
10. It is further her contention that as to whether the applicant has been in peaceful, uninterrupted and continuous occupation of the subject parcel can only be determined by the land court and not a probate court.
11. She was adamant that the application for revocation had long been overtaken by events since the confirmed grant has since been implemented to the latter.
12. Pauline Chepchirchir Chepkwony the 1st administrator/ respondent filed a further replying affidavit in response to the application dated 27th June, 2023 and reiterated that the Applicant is neither a liability nor a Creditor of the estate of her deceased husband and that it is not true that they conducted the Succession Proceedings herein in secrecy, or fraudulently since they did not owe any duty to inform the Applicant anything as he has no ascertainable interest in the estate.
13. She reiterated that the only reason interposed by the Applicant for his claim on the parcel of land is the dispute in Kericho Magistrate Court Misc. Application No. 32 of 1984 whose decision was overturned by the High Court in Nakuru High Court Civil Suit No. 932 of 1994 and that the High Court's ruling remains unchallenged to date.
14. She reiterated that the application herein has been overtaken by events since the Confirmed Grant which the Applicant seeks to revoke is no longer in existence by virtue of the fact that the same has since been implemented, the title documents issued and she further sold and subdivided the land to third



- parties to utilize the funds for my medication and education of my grandchildren. The Certificate of the Confirmed Grant is thus now obstinate and obsolete.
15. She is therefore adamant that the applicant's recourse lies elsewhere if he still considers that he has an ascertainable interest over her land for this court is now functus officio upon confirming the Grant and any other further disputes arising afterwards can only be channeled elsewhere.
 16. There is a notice of motion dated 3rd March, 2025 seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) That this Honourable Court be pleased to make an order of temporary injunction restraining the Respondents jointly and/or severally whether by themselves or through their employees, servants and/or agents from advertising for sale, selling, transferring, donating, bequeathing, alienating, charging, leasing, licensing or in any other way disposing off the suit property pending the hearing and determination of this suit.
 - (iv) Spent
 - (v) That in the alternative, this Honourable Court be pleased to make an inhibitory order to be registered against the suit property, restraining the registration of any dealings on it pending the hearing and determination of this suit.
 - (vi) That costs of this Application be borne by the Respondents jointly and/or severally.
 17. The application is supported by grounds on the face of it and an affidavit in support of the application sworn by James Arap Talam, the objector/applicant herein.
 18. He attests that he is a bonafide purchaser for value of an excision on Parcel Number Kericho/Kapsuser/952(hereinafter the suit property) vide a land sale agreement entered into on or about the year 1976 with Ayub Kipngetich A. Chepkwony alias Ayub Kiprono Chepkwony (Deceased) that some disagreements arose between the two contracting parties with regards to Parcel Number Kericho/Kapsuser/952 and the matter proceeded to Court under Misc. No. 32 of 1984 wherein the Magistrate Court at Kericho awarded the Applicant herein with 8acres of property to be excised from Parcel Number Kericho/Kapsuser/952 registered in the name of Ayub Kipngetich A. Chepkwony alias Ayub Kiprono Chepkwony.
 19. He further attests that Ayub Kipngetich A. Chepkwony alias Ayub Kiprono Chepkwony is now deceased and he died intestate and therefore the Administrators/Respondents herein applied for letters of administration which were issued on 9th October, 2014 and thereafter confirmed on 15th June 2023 and that the grants as issued are defective in substance since the Administrators while applying for the letters of administration, deliberately chose not to disclose the nature of the Applicant's dependency as a liability in the estate of the late Ayub Kipngetich A. Chepkwony alias Ayub Kiprono Chepkwony.
 20. He is adamant that a grant of representation whether or not confirmed, may at any time be revoked or annulled if 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 and that it is on the strength of the aforesaid defects and irregularities in obtaining the grants, that the Applicant filed an application dated 27th June 2023 seeking revocation of the now confirmed grant, which application is yet to be determined.



21. He claims to have received credible information that the Administrators/Respondents have commenced the process of transmission, mutation and or other facilitative processes as surveyors have been seen on the subject property.
22. It is therefore his claim that the subject suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued and should the Court not grant an injunction or any other order preserving the suit property pendente lite, there is a serious risk that the Administrators/Respondents may dispose off the suit to third parties and thus the refusal to grant orders of inhibition would render the Applicant's suit nugatory
23. The application came up for inter partes hearing.
24. The learned counsel for the objector/applicant stated that there are two applications pending hearing and determination; an application dated 27th June, 2023 and an application dated 3rd March, 2025. He stated that the application dated 3rd March, 2025 was served and there was no response to the same and therefore the application ought to be allowed unopposed.
25. The learned counsel for the respondent stated that the application dated 3rd March, 2025 was seeking preservative orders against the estate of the deceased, which property which was non-existent and therefore urged this court to deal with substantive application for revocation dated 27th June, 2023.
26. I have considered the applications, responses and oral submissions and find that the issue for determination is whether to revoke the confirmed grant and grant preservative orders in respect of the estate of the deceased.
27. On the issue as to whether to revoke the confirmed grant, on one part, the applicant contends that the administrators applied for letters of administration which were issued on 9th October, 2014 and thereafter confirmed on 15th June 2023 and that the grants as issued are defective in substance since the administrators deliberately chose not to disclose the nature of the applicant's dependency as a liability in the estate of the deceased. On the other part, the 1st administrator/respondent surviving widow of the deceased maintained that instant succession proceedings were not shrouded in secrecy and that they did not owe any duty to inform the applicant anything as he has no ascertainable interest in the estate given that there was an appeal filed against the finding of Kericho Magistrate Court Misc. No. 32 of 1984 and that on appeal the Nakuru High Court Civil Suit 932 of 1994 ruled in favour of her deceased husband and directed the eviction of the applicant from the subject parcel which ruling remains unchallenged. This court has considered the respective cases by the parties and finds that in light of the decision in Nakuru High Court Civil Suit 932 of 1994 the applicant has no ascertainable interest in the estate of the deceased and therefore the assertion that the applicant has been in peaceful, uninterrupted and continuous occupation of the subject parcel can only be heard determined by the land court and not a probate court and in any event the revocation of the confirmed grant will serve no useful purpose as the confirmed grant has since been implemented to the latter. In *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR the Court held that when disputes arise after the confirmation of the grant, the same ought to be determined outside the probate court. The court in the case stated as follows: - "Clearly, disputes between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation. In the meantime, the property in question is removed from the distribution table. The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most cases be functus officio so far as the property in question is concerned. The primary mandate of the probate court is distribution



of the estate and once an order is made distributing the estate, the court's work would be complete. The proposition therefore is that not every dispute over property of a dead person ought to be pushed to the probate court. The interventions by that court are limited to what I have stated above."

28. On the issue as to whether to grant preservatory orders in respect of the estate of the deceased, it is the finding of this court that the applicant has no ascertainable interest in the estate of the deceased and is therefore undeserving of the orders sought.
29. In the end, the Notice of Motion dated 27th June, 2023 and the other dated 3rd March, 2025 are found to be without merit. They are 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

Koech for 1st Administrator

Gitonga for the Applicant

