



REPUBLIC OF KENYA



**In re Estate of Chebokoros Albert Rowlands (Deceased) (Succession Cause 110 of 2006) [2025] KEHC 11368 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11368 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 110 OF 2006  
JK SERGON, J  
JULY 31, 2025**

**IN THE MATTER OF THE ESTATE OF CHEBOKOROS ALBERT ROWLANDS (DECEASED)**

**BETWEEN**

**DENNIS KIPNGENO BETT ..... APPLICANT**

**AND**

**ANN CHERONO KOECH ..... 1<sup>ST</sup> PETITIONER**

**ARNOLD KIPNGETICH BETT ..... 2<sup>ND</sup> PETITIONER**

**AND**

**DENNIS KIPNGENO BETT ..... INTERESTED PARTY**

**RULING**

1. The application coming up for determination is a summons for revocation and/or annulment of grant dated 11th March, 2025 seeking the following orders;
  - (i) Spent
  - (ii) That the Certificate of Grant of letters of administration made to Ann Cheronko Koech and Arnold Kipngetch Bett and confirmed on 16th day of May 2007, be revoked on the following grounds:- (a) That the proceedings to obtain the grant were defective in substance hence an ambiguous certificate of confirmation issued. (b) That the Administrators /Petitioners to whom the grant was made to, have failed and without any reasonable ground to produce to this honourable court any such inventory or account of administration within the prescribed period required by the provisions of Section 83 of the *Law of Succession Act*.
  - (iii) That the grant has become useless and inoperative through subsequent circumstances.



2. The application is supported by grounds on the face of it and an affidavit in support of the application sworn by Dennis Kipngeno Bett applicant herein.
3. He states that he is one of the sons of Daniel Chebokoros Albert Rowlands Koech (Deceased) and the Petitioners are his mother and elder brother and that at the time of taking out Letters of Administration Intestate in his deceased father's estate he and his two sisters and were minors and therefore only the Petitioners could administer the Estate.
4. He further states that upon reaching the age of maturity, he went through the probate proceedings including the Certificate of Confirmation issued on the 16th day May 2007 and further consulted his advocates on record on its interpretation to understand the same.
5. He further stated that while they were growing up his mother, the 1st Petitioner was working for Kenya Plants Health Inspectorate Service (KPHIS) Ministry of Agriculture at Nairobi and that she took out mortgage facility at Barclays Bank and bought a house, he attached a copy of the Loan Application and that upon clearance of payment for purchase of the property, she obtained a lease in her name and the ownership is absolute, he attached a copy of the allotment letter and Certificate of Lease for Title Number Nairobi/Block 72/1945
6. He stated that upon perusal of the Certificate of Confirmation of grant, he noted that the properties listed include: 1. Rubia Estate House 756 2. Flat No.H10 23 listed for administration and he contends that there is no property known as Rubia Estate House No.756 G available for distribution and that the house situated on land known as Nairobi/Block 72/1945 which belongs to the 1st Petitioner absolute hence making the grant useless and inoperational.
7. He contends that to date the Petitioners have not fully administered the Estate and filed their returns since the content of the Certificate of Confirmation of Grant is ambiguous and further that the 2nd Petitioner is not willing to cooperate and have corrections made on the grant to enable proper administration of the Estate.
8. It is contention that all the children of the Estate of his deceased father herein have become of age and they are willing to participate in the re-distribution of the properties of the Estate.
9. He concedes that he is aware that Section 35(1) of the *law of Succession Act* provides that “a spouse of the Estate shall be entitled personal households of the deceased absolutely and a life interest of the whole residence of the net intestate estate” and is cognisant that the same provisions ought to have been considered to enable their mother the 1st Petitioner to peacefully occupy some of the properties or use the same to maintain herself since she has retired and requires upkeep for herself and pay for utilities.
10. It is his contention that unless the said grant is not revoked and redistribution done properly, the Estate is going to continue being unadministered properly and incur expenses e.g land rates and rents and would subject the beneficiaries into liabilities and that by virtue of being a beneficiary of the estate of the deceased, he is an Interested Party who can bring this Summons for Revocation of Grant earlier issued in the estate taking into account the interests of the 1st Petitioner and his siblings.
11. Ann Cherono Koech the 1st petitioner/respondent filed a replying affidavit in response to the summons for revocation.
12. She deposes that she is one of the administrators of the estate of the late Daniel Chebokoros Koech who was her husband. She confirmed that she alongside her eldest son took out letters of administration intestate and that the same were confirmed on 16th MAY, 2007 and further that distribution in terms of the shares listed and motor vehicle have been transferred as per the terms of the confirmed grant.



13. She deposes that it is true that they bought a property known as Nairobi/Block72/1945 described as Rubia Estate in the confirmed grant which was their family home and that she applied for a loan facility and made a deposit of Kshs. 1,760,000/= on 28th October, 2004 through a cheque drawn to the Permanent Secretary to allow her deceased husband to be allocated the said property.
14. She further deposes that after the deposit the house was allocated in the name of her husband and the said property is now known as Nairobi/Block72/1945 and that he applied for a mortgage facility and upon his demise insurance took over payment of the balance of the purchase price.
15. It is her disposition that when they took out letters of administration, the lease was transferred to her in view of her contributions towards acquisition of the said property and that they all lived on the said property until all children were of age and her eldest son who is her co-administrator started limiting her access to the property and that further to this he has not been paying the utility bills, rent and rates in respect to the said property.
16. She therefore urged this court to protect her interests as a wife to the deceased and consider the wishes of her other children who were now of age.
17. Arnold Kipngetich Bett the 2nd petitioner/respondent filed a replying affidavit in response to the summons for revocation.
18. He deposes that he is one of the administrators and beneficiaries of the Estate of the Late Daniel Chebokoros Albert Rowlands Koech who was his father.
19. He depones that the house known as HG 756 Block 72/1945 Rubia Estate was purchased by his father the Late Daniel C.A.R Koech through the Civil Servants Housing Scheme sometime in December 2004 for Kshs 1760,000.00, he annexed a copy of the letter of offer, a copy of the signed letter of acceptance and the purchase/ sale agreement and that his father was paying for the house through a government mortgage facility that attracted monthly payments of Kshs 20,053.00 before his unfortunate demise in the year 2005.
20. He further depones that his father had taken out a mortgage protection life insurance policy with Blue Shield Insurance Company Limited during his lifetime and after his demise, the insurance company paid the balance of the purchase price amounting to Kshs. 1,409,621.00 on the 29th of July 2006.
21. It is therefore his disposition that in light of the foregoing, the 1st Petitioner did not purchase the house as alleged by the applicant neither did his father indicate that the house was being jointly purchased with his mother Ann Cherono Koech, with undivided shares.
22. He contends that it is therefore not factually correct to state that there is no property known as Rubia Estate House HG 756 which formed part of his deceased father's estate. The letter of offer, acceptance and sale agreement all show that Rubia Estate House HG 756 is the same as Nairobi Block 72/1945 and further to this the 1st Petitioner consented to the confirmation of the grant dated 16th May 2007 in which the house Rubia Estate House HG 756 (Nairobi Block 72/1945) was given to the administrators of the deceased's estate, it is therefore strange that the Applicant now alleges that the house was not part of the estate of the deceased.
23. He claims that the Applicant has not demonstrated any evidence that the Administrators (including the Applicant) have failed to produce an inventory or account of distribution of the estate of the deceased allegedly under Section 83 of the *Law of Succession Act* and the Applicant has not demonstrated how the grant is useless and inoperational and therefore this court cannot be invited into the arena of posturing, speculation and conjecture.



24. He is adamant that the instant dated 11th March 2025 lacks merit and ought to be dismissed and that the is an attempt to mislead the court to re-distribute the estate of the deceased person yet the confirmation of grant was done above board and with the participation of all the beneficiaries of the estate of his late father.
25. He asserts that the certificate of title/lease in the name of the 1st Petitioner/Respondent dated 23rd May 2008 is erroneous and illegal since it ought to have the names of the administrators in accordance with the confirmed grant dated 16th May 2007 and that he intends to apply for cancellation of the title in the Environment and Land Court.
26. The application came up for inter partes hearing and this court directed parties to file written submissions.
27. The applicant filed submissions and reiterated that the grant confirmed has become useless and inoperative and therefore needs to be revoked and record made clear.the Rubia House Estate house on land registered in the name of the 1st Respondent cannot be separated for use by the 1st Respondent in her lifetime hence the aspect of administration as in the Grant is ambiguous.
28. It is further the Applicant's submission that the property is known as Flat No. H10 23 that was put under Administration by 1st Petitioner, Diana Chengeno Koech and Agness Chepkorir Koech is no longer operational since the said daughters have become independent and the Petitioner has retired, therefore, it should be left for the 1st Petitioner/Respondent to use it to maintain herself as per section 35(1) of the Law of Succession.
29. The applicant cited the case of Tau Katungi Versus Margrethe Thorning Katungi and Another (2014) EKLK where the Musyoka J. stated as follows; "In the context of Section 35,,it is interest held the surviving spouse during their lifetime of the residue of the net Estate. Its effect is that the surviving spouse first enjoys the Rights over property and at his/her death the property passes on to the other persons"
30. The learned Judge further explained that, "The effect of Section 35(1) is that the children of the deceased are not entitled to access the Net Estate so long as there is a surviving spouse. The widow is entitled to exclusive rights over the net estate. The other aspect is that life interest ties up the concept of matrimonial property, the property would be in most cases, be part of property acquired during marriage and with the contribution of the surviving spouse. Direct devolution of such property to children would deny the surviving spouse of enjoyment of this property"
31. The Applicant reiterated that the 2nd Respondent by virtue of being Administrator has thrown the 1st Respondent, his own Mother, a widow in the Estate of the deceased, out of the matrimonial home. This is an abuse of the powers of an Administrator hence ought to be corrected by this Honourable Court by allowing the Summons for Revocation herein. It is argued that the Administration intended by the confirmed Grant is no longer operational.
32. The Applicant contended that the 1st and 2nd Respondents in their Replying Affidavits have not disputed the Grant being revoked. They have actually proposed different ways of re-distribution. It is therefore imminent that the Grant be revoked and the Beneficiaries be given an opportunity to re-distribute the Estate of the deceased.
33. The 2nd Petitioner/Respondent filed submissions and reiterated that the applicant failed to demonstrate how the grant is useless and in operational and further that the applicant has not demonstrated that the administrators have failed to produce an inventory or account of distribution of the estate of the deceased.



34. He contended that The Court of Appeal affirmed the position in Joyce Ngima Njeru & another vs. Ann Wambeti Njue [2012] eKLR where it held that; ‘The central core of the ingredients required to be established under section 76 of the L.S.A. is that it is meant to be used as a vehicle to attack and fault the process of either obtaining the Grant or inactive use of the Grant after being lawfully obtained in circumstances where it has become useless. It is not meant to fault the decision on the merits.’
35. I have considered the application, replying affidavit and written submissions on record and find that the issue for determination whether to revoke the Certificate of Grant of letters of administration made to Ann Cherono Koech and Arnold Kipngeich Koech and confirmed on 16th day of May 2007 on the grounds that grant is useless and inoperational.
36. This court has considered the cases by the respective parties and finds that the grant in question was confirmed on 16th May, 2007 and that there was substantial implementation of the confirmed grant, distribution in terms of the shares listed and motor vehicle having been transferred as per the terms of the confirmed grant.
37. It is further the finding of this court that the summons for revocation is a thinly veiled attempt to have this Court re-distribute the estate of the deceased, yet the confirmation of grant was done above board and with the participation of all the beneficiaries of the estate of the deceased who were of age at the time.
38. The applicant has not aptly demonstrated that the confirmed grant has been rendered useless and inoperative following subsequent circumstances as per section 76 (e) of the *Law of Succession Act*. The provisions of section 76 were clearly expounded In re Estate of Prisca Ong’ayo Nande (Deceased) [2020] eKLR where it was stated that: “Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”
39. In light of the foregoing, the Summons for Revocation of Grant dated 11th March, 2025 is found to be without merit. It 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

Ogare holding brief for Dr. Akhula for the 2<sup>nd</sup> Petitioner

Cherotich holding brief for Ngeno for Applicant

