



REPUBLIC OF KENYA



**In re Estate of Lulei Rono (Deceased) (Succession Cause E052 of 2024)  
[2025] KEHC 11886 (KLR) (11 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11886 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E052 OF 2024  
RN NYAKUNDI, J  
AUGUST 11, 2025  
IN THE MATTER OF THE ESTATE OF LULEI RONO (DECEASED)**

**BETWEEN**

**BENEDETA JELAGAT RONO ..... APPLICANT**

**AND**

**DAVID KIPKETER CHELULEI ..... 1<sup>ST</sup> ADMINISTRATOR**

**SALINA CHEPTALAM LULEI ..... 2<sup>ND</sup> ADMINISTRATOR**

**RULING**

1. What is pending before me for determination is a summons for orders to preserve and protect the estate and revocation of Grant application dated 13<sup>th</sup> November 2024 premised under Section 45 and 76 of the [Law of Succession Act](#) and Rule 73 P&A Rules where the Applicant is seeking the following orders:
  - a. Spent
  - b. Spent
  - c. That the grant of Letters of Administration issued on 9<sup>th</sup> day August, 2024 to the Respondents herein be revoked and/or annulled.
  - d. That upon granting prayer b above, the Applicant herein Benedeta Jelagat Rono be granted the letters of Administration.
  - e. Costs be on cause.
2. The Application is based on the grounds on the face of it among others;
  - a. That the administrators herein have invited contractors to do excavators on the subject parcel to extract gravel.



- b. The parcel is being wasted as a big portion and all beneficiaries have never consented to the same.
  - c. That the petitioners have concealed information about the survivors of the deceased.
  - d. The estate has suffered serious and massive losses because of the intermeddlers in the estate.
  - e. That attempts to stop the contractors from extracting murram on the farm has been frustrated.
  - f. That interest of justice dictates that the orders sought be granted so as to preserve the deceased's estate and the wider interests of all beneficiaries.
3. The Application is supported by the Annexed Affidavit dated 13<sup>th</sup> November 2024 sworn by Benedeta Jelagat Rono, the Applicant herein where she avers as follows:
- a. That my late father died intestate.
  - b. My late father was the owner of the parcel of land known as Kapsaret/kapsaret Block 6 (kamoson) 15.
  - c. That the administrators herein are wasting the estate by allowing 3<sup>rd</sup> parties to extract gravel from the parcel of land
  - d. That the same excavation was done without consultation with all the beneficiaries of the estate.
  - e. That the excavation creates a pit that may not be filled. The same is also hazardous as it can hold water and children might fall into the pit and the same may be fatal.
  - f. That the petitioners have concealed information about the list of the survivors of our late father.
  - g. The Petitioners have omitted the name of our late siblings being, the late Joseph Kiptum Bitok and our mother the late Chemoso Rono in form 5 of the application for letters of administration.
  - h. That my efforts to have the administrators to stop wasting the estate has fallen to deaf ears.
    - i. That I am interested in preserving the estate for my benefit and that of other beneficiaries to the estate.
4. The Application is opposed vide a Replying Affidavit dated 25<sup>th</sup> November 2024 sworn by David Kipketer Chelulei where he avers as follows:
- a. That I am an administrator of the estate of the Lulei Rono having been duly appointed as such vide the grant of letters of administration issued to myself and Salina Cheptalam Lulei on 9<sup>th</sup> August 2024.
  - b. That I do swear this Affidavit with the knowledge and consent of my co-administrator Salina Cheptalam Lulei.
  - c. That the objector's application is misleading, malicious, devoid of merit and crafted with the aim of seeking undeserved sympathy.
  - d. That the Objector's allegations that my co-administrator and I are wasting the estate by allowing third parties to extract gravel from Kapsaret/kapsaret Block 6 (kamoson) 15 are untrue as the said excavations are being conducted on Evans Kiplimo Meli's land parcel reference No. Kapsaret/kapsaret Block 6(kamoson)/168. As a matter of fact, we are ready and



willing to invite this Honourable Court to conduct a site visit and ascertain the correct position on the ground.

- e. That in response to paragraph 7 of the Objector's Supporting Affidavit, the allegations contained therein are unfounded and in any case, she has not made mention of any of the alleged survivors that have been allegedly left out.
- f. That in response to paragraph 8 of the objector's Supporting Affidavit I am informed by my advocate on record that it is not necessary to include the names of the deceased person's in form 5 as long as their representatives and their interests have been catered for.
- g. That the objector's application has been bought in bad faith with a view of pursuing her selfish gains of becoming the sole administrator of our father's estate. The objector has been uncooperative from the onset when we began the process of filing this succession proceeding over the estate of our late father. For starters, she blatantly declined to sign form 38 for purposes of giving her consent to the making of a grant of administration intestate to a person of equal or lesser priority simply because she wanted to be the sole administrator of the estate of our late father. Further, to that the objector has all along been on a mission to incite other family members with a view of having them support her to be the administrator to no avail as other family members have objected to her being the administrator of the estate of our late father. She is therefore on a revenge mission with a view of settling personal scores.
- h. That I am advised by my advocate on record, which advise I verily believe to be true, that in succession proceedings where a deceased person was polygamous, it is advisable to have representatives from each of the deceased's households and in this case, since the late Lulei Rono left behind two households, both the first and the second household are properly represented as the first household's interest is represented by myself as the first born son of the late Pirech Chemoso Rono who was our mother in the first house and the second household is represented by my co-administrator Salina Cheptalam Lulei who is the widow of the deceased person. As such, both households are duly represented.
- i. That the objector's interest has been properly catered for as she is duly listed as a beneficiary of the late Lulei Rono's estate and her interest will be duly catered for when the distribution of the estate is done.
- j. That I swear this Affidavit in opposition to the objector's application dated 13<sup>th</sup> November 2024.

### **Analysis and Determination**

5. I have considered the application, its supporting affidavit and annexures thereto and also the replying affidavit in opposition of the same. The main issue for determination is;  
  
Whether the application meets the threshold for the revocation of a grant by dint of Section 76 of the [Law of Succession Act](#).
6. It is essential for this Honourable Court to highlight the legal framework governing the revocation of grant. Revocation of the grant is provided for in section 76 of the [Law of Succession Act](#). The grounds upon which the grant may be revoked are well provided therein. The said section provides that revocation can either be at the instance of an applicant or can be by the court suo moto. However, it is a prerequisite that the conditions for revocation as set out under section 76 must be proved.



7. I take note that the power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. There must be evidence of wrong doing for the court to invoke section 76 of the *Law of Succession Act* and order for revocation of or annulment of a grant. Besides, when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice. Generally, the trial court has jurisdiction to revoke a grant if the conditions under section 76 are satisfied.
8. Moreover, in In the case of Jamleck Maina Njoroge Vs Mary Wanjiru Mwangi [2015] eKLR, the court discussed circumstances when a grant can be revoked. The court observed that:

“ 11. The circumstances that can lead to the revocation of grant have been set out in section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

9. Section 76 of the *Law of Succession Act* provides as follows:

“76. Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any Interested Party or of its own motion-

- a. that the proceedings to obtain the grant were defective in substance;
- b. that 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;
- c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either;
  - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
  - (ii) to proceed diligently with the administration of the estate; or
  - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or



- e. that the grant has become useless and inoperative through subsequent circumstances.”

10. The above section 76 was interpreted 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.”

- 11. The law is very clear as per section 76 which circumstances will persuade the court to exercise discretion to revoke a grant which has been issued to appoint the administrators under section 76 of the Law of Succession Act. One such primary condition is that the Applicants must demonstrate that the proceedings in the making of the impugned grant were defective in substance. This is about an applicant showing by way of material evidence that certain procedural defects exist on the face of the record which renders the impugned grant fatally defective.
- 12. The Applicant alleges that the petitioners have concealed information about the list of the survivors of our late father and that the Petitioners have omitted the name of their late siblings being, the late Joseph Kiptum Bitok and their mother the late Chemoso Rono in form 5 of the application for letters of administration.
- 13. In an answer to this allegation, the Petitioners have counter demanded the objection in the making of the grant that the proceedings were tainted with impropriety, incorrectness, illegality resulting in the impugned grant to be fatally defective. It is their contention in their respective Replying Affidavit that the Applicant summons for revocation is malicious and lacking basis upon which this court can invoke its powers under section 76 of the Law of Succession Act.
- 14. I have taken the liberty to assess the summons for revocation by the Objector/Applicant and the Replying Affidavit by the Petitioners who were issued the Grant of Letters of Administration Intestate on 9<sup>th</sup> August 2024 by this Court. In reviewing the application, the letters of the area chief dated 28<sup>th</sup> March 2023 are indicative of the following beneficiaries survived of the deceased namely;



1. 1<sup>st</sup> Wife: The Late Basiliza Jepkorir Rono  
Children Id No
  1. Pirech Chemoso Rono Deceased
  2. Annah Chepkurgat Bungei XXXXXXXX
  3. Joseph Kiptum Bitok Deceased
  4. Benedete Chelagat Koech XXXXXXXX
  5. Pacifica Chemeli Rono Deceased
  6. David Kipketer Chelulei XXXXXXXX
  7. John Kipsang Rono XXXXXXXX
  8. Elphas Rono XXXXXXXX
  9. Emmanuel Kipserem Deceased
  10. Isaac Kimaru Chelulei XXXXXXXX
  
2. 2<sup>nd</sup> Wife: Salina Cheptalam  
Children Id No
  1. Stephen Kiplimo Bitok XXXXXXXX
  2. Lucy Chepchirchir Metto Deceased
  3. Cecilia Cherobon 20041857
  4. Simion Kipruto Deceased
  5. Tecla Chepsat Kutto XXXXXXXX
  6. Emily Chebet XXXXXXXX
  7. Nelson Kiprotich Lelei XXXXXXXX
  8. Abraham Kipkemei Tum
  9. Vincent Bitok XXXXXXXX
  10. Gilbert Tuwei XXXXXXXX
  11. Lawrence Tirop XXXXXXXX
  12. Moses Kipkurui XXXXXXXX
  
15. The Applicant objected without producing a substitutive authentic letter from the area chief of the beneficiaries of the intestate estate invited the court to revoke the grant of Letters of Administration with an allegation that it was obtained by way of concealment of material facts on the true dependents to the estate. This evidence cannot be ascertained without an alternative letter of the local Chief outlawing the one dated 23<sup>rd</sup> March 2023. To that end, the applicant's objector has not discharged the evidential burden as required of her under section 107(1), 108 and 109 of the *Evidence Act*. In addition, I have thoroughly perused the record more specifically the primary instrument generated by the locational chief, it does confirm that David Kipketer Chelulei is a son to the deceased from the 1<sup>st</sup>



House and he shares a direct lineage with the Applicant/Objector as siblings within the consanguinity and affinity family framework. As for Salina Cheptalam Lulei, she is a surviving widow of the Deceased from the 2<sup>nd</sup> House. Her appointment under the law ranks her first on appointment of administrators to be involved in the devolution of the Intestate estate of the Deceased. She is by law a senior ranking member of the family, unless they are compelling or exceptional circumstances, no child of the deceased should be substituted as an Administrator when there is a surviving spouse.

16. What seems to be in contention from these Affidavits, is family/siblings rivalry and nothing to do with the interest of justice in the administration of the intestate estate. From the foregoing, it is my view that the two (2) Administrators were properly and duly appointed under the powers donated by section 66 of the [Law of Succession Act](#) to represent the two (2) houses survived of the Deceased. In any case, if the family so desires, they can move the Court for an incremental of two (2) more Administrators as provided for under section 66 of the [Law of Succession Act](#), capped at 4 Legal Representatives in the intestate administration. The Applicant is therefore at liberty to persuade her other siblings that her appointment to the office of administration is more deserving than her brother David Kipketer Chelulei. That for now is not the business of this Court. We have the two (2) who are the holders of the Grant of Representation who fit the legitimacy class under section 29 as read with section 66 of the [Law of Succession Act](#). However, if in the process of petitioning of the making of the Grant of Representation, there are direct beneficiaries to the intestate estate of the deceased, it is never too late to move the area Chief to generate an amended letter which is more inclusive and comprehensive as to who are the true and bonafide beneficiaries survived of the deceased. That oversight or act of omission or commission by the location chief alone is incapable of persuading this court to exercise its discretion of revoking the Grant under section 76 of the [Law of Succession Act](#).
17. For the avoidance of doubt, chiefs are not angelic or endowed with supernatural powers for all purposes and intends to know the specifics of every family member under their dominion. This Court takes judicial notice that rarely do chiefs or their quo equal administrators in their respective wards and locations keep a repository, or a family case file or record for each of the inhabitants in their area of jurisdiction. If there is a such a policy of documentation is not a matter within the knowledge of this Court. As it is therefore, chiefs and assistant chiefs are by the ordinance of this Republic are public servants employed on tenured terms as governed by the Public Service Act. It cannot be gainsaid that the primary data as to the survivorship of a deceased person is dependent upon what the Applicant proceeds to diligently give to the local administrators when a necessity has arisen to petition for grant of representation intestate under the [Law of Succession Act](#).
18. This impugned Grant is at a very infant stage for one to start to invoke the doctrine of forgery, misrepresentation or fraudulent acts towards the making of the Grant to administer the estate of the deceased. Why do I say so? The law provides that once the administration of the intestate estate has been placed in the right hands within the definition of section 29 as construed with section 66 of the [Law of Succession Act](#), the legal Representative are permitted to faithfully and diligently make good any omissions as to the net estate and beneficiaries to the Intestate estate so that confirmation proceedings can commence in earnest on distribution of the estate on or before the expiry of six (6) months. This Grant is yet to be confirmed and a Certificate of Confirmation issued by this Court to render the Applicants/Objectors claim to inheritance prejudicial or occasioning an injustice.
19. A review of the file from the Affidavits also shows that there are elements as regards what constitutes free property survived of the Deceased. That question is better answered by the beneficiaries themselves and as of now we have Administrators duly appointed by this court to faithfully move diligently to establish the true inventory of the assets and liabilities of the deceased. The prima facie case presently as regards to the assets of the Deceased are as breaded by the Petitioners. On the issue of existence of



other assets out there, yet to make to the inventory to the court file, it is never too late such annexed titles to be incorporated by filing a Supplementary Affidavit. That therefore is also not a ground to revoke a Grant of Representation under section 76 of the Law of Succession Act. It is also evident from the court file that these succession proceedings seem to be starting to invoke heated and emotive issues among the siblings and if not avoided, it is a threat likely to derail the integrity of this process to have the distribution of the estate undertaken fairly, efficiently, effectively and proportionately in honour of the Constitutional imperatives in Article 159 which embodies the maxim Justice shall not be delayed for justice delayed is justice denied.

20. For those reasons I have stated, the invocation of section 76 of the Law of Succession Act by the Applicant/Objector to annul the proceedings in the making of the Grant of Representation lacks merit and it is ill advised.
21. One other thing of significance is on this question of preservation of the estate of the deceased which is alleged to be under wastage, dissipation, depreciation, alienation or sale before final proceedings before confirmation and distribution of the estate. What the Applicant has provided as evidence of that wastage, alienation, interference or damaging of a portion of that estate by way of excavation are photographic impressions without legal tenured instruments of ownership. It is trite law that he who alleges must proof existence or non-existence of facts in issue if he or she desires secure judgement in his or her favour from the Court of law. This issue seems to be very contentious as reflective from the Petitioners' Replying Affidavit where they assert that the property in question is not free property of the deceased as defined in section 3(1) of the Law of Succession Act. I have indeed reevaluated the Affidavit evidence which has been tendered before this court and I am of the view that there is need for further cogent evidence as to the ownership of this parcel of land which is under excavation as alleged by the Applicant/Objector and denied by the Petitioners'.
22. It is settled law under section 3 of the Law of Succession Act, upon the death of a Deceased person, his or her estate means his or her free property during his or her lifetime. His or her free property refers to the property that the deceased was legally competent and freely to dispose of it in respect of each his or her interest has not been terminated by his or her death.
23. Having looked through the affidavits on this disputed issue from the outset, must be returned to the Administrators to file a true inventory of the free property survived of the deceased before any conservatory and preservation orders are issued by this Court. In this regard, there is need for instruments documenting what is precisely free assets both movable and immovable on account of the Intestate estate. Notwithstanding that position, it is pertinent to bring to the notice of the current Administrators and Beneficiaries alike the provisions of section 45 of the Law of Succession Act which provides;

45. No intermeddling with property of deceased person

1. Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
2. Any person who contravenes the provisions of this section shall-
  - a. be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of



imprisonment not exceeding one year or to both such fine and imprisonment; and

- b. be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

24. There can be no doubt that there may be inconsistencies with the record on inventories of the deceased estate as provided under section 3 of the Law Succession Act and also with the rightful persons with the beneficial entitlement to the estate. But that alone need not occasion the revocation of a Grant of Letters of Representation. However, it is trite that if fraud, misrepresentation and the defect on the face of the record is fatal to the entire proceeding that will suffice to revoke a Grant of either probate or intestate administration. However, in making such a determination, the court is clothed with wide powers under *the Constitution* in Article 159 (2)(d)(e), section 1A, 3A of the *Civil Procedure Act* as read with Rule 73(1) of the Probate and Administration Rules not to revoke a Grant of Representation if there is another way of achieving a proper result.

25. In the case at bar, the applicant's complaint is within the parameters of what constitutes a prima facie case for an order for an inventory of the assets on account of the deceased's estate. Secondly, there is the issue of some beneficiaries with legal entitlement having not been precisely named in some of the affidavits filed by the Petitioners. That to me will not be a legal basis to revoke the appointment of the spouse to the deceased to represent the second house alongside that of the son allegedly representing the first house in the administration of the Intestate estate. All those legal lacunas being grievances raised by the Applicant/Objector can be addressed by way of an amendment brought forth by the Petitioners before filling summons for confirmation of Grant.

“It is trite that it is incumbent upon a personal representative to discharge three functions in relation to the estate of the deceased. First, the personal representative is to pay the just debts and testamentary expenses of the deceased. Secondly, the personal representative is to collect and realise the assets of the deceased. Thirdly, an executor or administrator is to distribute the assets of the estate. There can be no effective management of the estate without the proper collection and realization of the assets of the deceased, which must be of necessity include their protection from adverse claims.” (see *Dasa Yetman & Another Vs Susan Evanko SCCA 39 OF 1998*)

26. Ultimately, it is reasonable to say that intermeddling of an estate of the deceased before distribution is a criminal offence and that Administrator or person is liable to be sued by the rightful representatives, beneficiaries and even creditors to be prosecuted before a Court of Law. It has also been noted that the slightest acts of interference are sufficient to attract penal sanctions. It is the duty bearer who is the Applicant/Objector in this case to adduce cogent evidence that the property being excavated by the petitioners was and is registered in the name of the deceased during his lifetime. That is not the case here. The remedy of injunction or preservation of the marked property or parcel of land by photographic impressions fails in this respect discussed above.

- a. Likewise, based on the evidence and the inquiry made in support of section 76 of the *Law of Succession Act*, the remedy of revocation of the Grant of Letters of Administration dated 9<sup>th</sup> August 2024 also fails for want of merit.



- b. In the alternative leave be and is hereby granted to the Administrators to amend any instruments filed in the making of Grant of Representation to ensure that the litigation on survivorship and free property of the deceased is conducted not on the false hypotheses on the facts in issue.
- c. That the amendment of the inventory account together with an amended letter to be issued by the area chief be shared with the rest of the beneficiaries to confirm their authenticity and credibility as to the information contained therein which should go in tandem with the provisions of section 3 and section 29 of the *Law of Succession Act*.
- d. The matter be mentioned on 16<sup>th</sup> September 2025 for a status conference.
- e. Costs be in the cause.

**DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 11<sup>TH</sup> AUGUST 2025**

.....

**R. NYAKUNDI**

**JUDGE**

In the presence of:

Nyambegera Advocate

