



REPUBLIC OF KENYA



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**In re Estate of the Late Charles Chemimoi Kimurgor (Deceased) (Succession Cause 31 of 2017) [2025] KEHC 11977 (KLR) (11 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11977 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 31 OF 2017**

**RN NYAKUNDI, J**

**AUGUST 11, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE  
CHARLES CHEMIMOI KIMURGOR (DECEASED)**

**RULING**

1. Before this Court for determination are two (2) Applications. The first application is summons for revocation or annulment of grant dated 5<sup>th</sup> day of May of 2025 where the Applicant is seeking the following order:
  - a. That the amended confirmation of the grant of letters of administration (intestate) to Matilda Chemeli Murgor And Caroline Chebet Murgor as issued on 8<sup>th</sup> April 2025 be revoked (or annulled) on the ground that the amendment to the confirmation of grant was obtained fraudulently by the making of a false statement and through the concealment from court of something material to this matter.
2. The Application is made on the following grounds among others;
  - a. That the Administrators herein, Matilda Chemeli Murgor And Caroline Chebet Murgor made an application dated 25<sup>th</sup> March 2025 seeking to have this Honorable Court amend the Certificate of Confirmation of Grant in respect of the Deceased's estate to include a property known as Mombasa/Block XXVI/756 (the Property) allegedly on the basis that it had been inadvertently omitted from the Deceased's schedule of assets (the Application) as it had not been discovered by the Administrators at the time of filing for grant of representation.
  - b. That in the Application, the Administrators stated that in respect of the Property the Deceased "is the registered proprietor since 1996".
  - c. That this Honorable Court granted the Administrators the prayers they sought through an order dated 8<sup>th</sup> April 2025 (the Orders) amending the confirmation of grant to include the Property.



- d. That the Administrators herein wilfully and maliciously failed to disclose to this Honorable Court that the 1st Interested Party is currently the registered proprietor of the Property, a fact well known to both Administrators, and to their counsel on record, Muthee & Partners LLP, given the Property is the subject of proceedings in ELCPC E003 of 2024 before the Environment and Land Court at Mombasa in which Matilda Chemeli Murgor is the plaintiff purportedly on behalf of the Deceased's estate, and is represented by Muthee & Partners LLP (the ELC Proceedings).
- e. That the Administrators wilfully and maliciously, and with intent to defraud this Honorable Court, failed to disclose that the green card in respect of the Property, which they themselves adduced in the ELC Proceedings in their List and Bundle of Documents dated 22<sup>nd</sup> February 2024, clearly indicate that a transfer was registered in favour of Salim Mohamed in February 1996, who subsequently transferred it to a related party of the 1<sup>st</sup> Interested Party in December 2004, which in turn transferred it to the 1<sup>st</sup> Interested Party in 2015.
- f. That the Administrators were fully aware that the Deceased is no longer the registered proprietor of the Property, yet they explicitly swore an affidavit to that effect.
- g. That the ELC Proceedings have been ongoing since February 2024, and in their pleadings therein, the Administrators disclose that they became aware of the Property in 2022, contrary to what they have deponed in the Application which was heard by this Honorable Court.
- h. That the Administrators deliberately adduced before this Honorable Court, in support of the Application, an old copy of the title in respect of the Property with intent to mislead this Honorable Court.
- i. That by obtaining the Order under false pretences, the Administrators have attempted to:
  - a. Co-opt this Honorable Court in its fraudulent bid to dispossess the 1st Interested Party of the Property
  - b. Undermine the jurisdiction of the Environment and Land Court in which the ELC Proceedings are still ongoing.
- j. That the Administrators also relied on a provision of the Law of Succession Act and the Probate and Administration Rules intended for minor rectifications of errors on the grant of representation to introduce a property without regard for other stakeholders such as the 1<sup>st</sup> Interested Party.
- k. That the 1<sup>st</sup> Interested Party is apprehensive that the Administrators intend to rely on the amended confirmation of grant which lists the Property as part of the Deceased's estate to engage in fraudulent dealings on the Property and to undermine the 1st Interested Party's defence in the ELC Proceedings. Already, the Administrators have used the Orders, which they obtained fraudulently, to confirm to the Environment and Land Court that the Property did indeed form part of the Deceased's estate.
- l. That unless this application is certified as urgent and the Amended Certificate of Confirmation of Grant in respect of the Deceased's estate issued on 8<sup>th</sup> April 2025 is revoked/annulled, the 1<sup>st</sup> Interested Party's position in the ELC Proceedings will be greatly prejudiced.
- m. That it is only fair and just that this application be allowed as prayed.



3. The Application is supported by the annexed affidavit sworn by Chabilal Mulji Patel who deponed as follows;
- a. I am a director of the 1st Interested Party herein and hence competent to swear this Affidavit. From time to time, I will be referring to documents collectively marked, paginated and annexed to this affidavit as Exhibit CMP.
  - b. The Administrators of the Deceased's estate, Matilda Chemeli Murgor And Caroline Chebet Murgor made an application dated 25<sup>th</sup> March 2025 seeking to have this Honorable Court amend the Certificate of Confirmation of Grant in respect of the Deceased's estate to include a property known as Mombasa/block XXVI/756 (the Property) allegedly on the basis that it had been inadvertently omitted from the Deceased's schedule of assets (the Application) as it had not been discovered by the Administrators at the time of filing for grant of representation.
  - c. This Honorable Court granted the Administrators the prayers they sought through an order dated 8 April 2025 (the Orders) amending the confirmation of grant to include the Property and issued an amended certificate of confirmation of grant.
  - d. In the Application, which I have perused, the Administrators stated that, in respect of the Property, the Deceased 'is the registered proprietor since 1996'.
  - e. The Administrators wilfully and maliciously to disclose to this Honorable Court that the 1st Interested Party is currently the registered proprietor of the Property, a fact well known to both Administrators, and to their counsel on record, Muthee & Partners LLP, given the Property is the subject of proceedings in ELCPCC E003 of 2024 before the Environment and Land Court at Mombasa in which Matilda Chemeli Murgor is the plaintiff on behalf of the Deceased's estate, and is represented by Muthee & Partners LLP(the ELC Proceedings).
  - f. The Administrators wilfully and maliciously, and with intent to defraud this Honorable Court, failed to disclose that the green card in respect of the Property, which they themselves adduced in the ELC Proceedings in their List and Bundle of Documents dated 22<sup>nd</sup> February 2024, clearly indicate that a transfer was registered in favour of Salim Mohamed in February 1996,who subsequently transferred it to a related party of the 1st Interested Party in December 2004,which in turn transferred it to the 1<sup>st</sup> Interested Party in 2015.
  - g. The Administrators were fully aware that the Deceased is no longer the registered proprietor of the Property, yet they explicitly swore an affidavit to that effect.
  - h. The ELC Proceedings have been ongoing since February 2024, and in their pleadings therein, the Administrators disclose that they became aware of the Property in 2022, contrary to what they have deponed in the Application which was heard by this Honorable Court
  - i. I understand from counsel on record, whose advice I verily believe to be true, that the Administrators have committed various offences in deponing that the Deceased is the registered proprietor of the Property in a bid to secure the Orders. For one, I am advised that the Administrators have made a willful and reckless statement which is false in a material way contrary to Section 52 of the *Law of Succession Act*. I am further advised that on the basis that the Orders were obtained fraudulently through making a false statement to this Honorable Court and by concealing a material fact from this Honorable Court, the amended certificate of confirmation of grant should be annulled/revoked in accordance with the provisions of Section 76(b) of the *Law of Succession Act*. Finally, I am advised that the Administrators have committed perjury contrary to Section 108 of the Penal Code.



- j. I also note from the Application, that the counsel on record for the Administrators, Elijah Gathu of Muthee & Partners LLP also represents the plaintiff in the ELC Proceedings. Being the Administrators' professional advisor and an officer of the court, and being aware of the ELC Proceedings, counsel for the Administrators was able to advise the Administrators against making false statements under oath in support of the Application but failed to do so. In drawing the affidavit dated 25<sup>th</sup> March 2025, I am advised by counsel on record, whose advice I verily believe to be true, that Mr. Gathu has suborned perjury.
  - k. The Administrators deliberately adduced before this Honorable Court, in support of the Application, an old copy of the title in respect of the Property with intent to mislead this Honorable Court.
  - l. By obtaining the Order under false pretences, the Administrators have attempted to:
    - a. co-opt this Honorable Court in its fraudulent bid to dispossess the 1st Interested Party of the Property; and
    - b. Undermine the jurisdiction of the Environment and Land Court in which the ELC Proceedings are still ongoing.
  - m. I am also advised by counsel on record, whose advice I verily believe to be true, that the enabling law invoked by the Administrators in the Application, that is, Section 74 of the Law of Success Act as read with Rule 43 of the Probate and Administration Rules, is reserved for rectifications of minor errors such as spellings of names or errors as to the date and location of the deceased's death. The Administrators have sought to rely on these provisions to include the Property and, in the amended confirmation of grant issued on 8<sup>th</sup> April 2025, MATILDA CHEMELI MURGOR, who is also the sole plaintiff in the ELC Proceedings to the exclusion of her co-administrator, is listed as the beneficiary of the Property. It is unclear whether the other beneficiaries are even aware of the Application.
  - n. Based on the Administrators' conduct thus far, I am apprehensive that the Administrators intend to rely on the amended confirmation of grant which lists the Property as part of the Deceased's estate to engage in fraudulent dealings on the Property and to undermine the 1st Interested Party's defence in the ELC Proceedings. Already, the Administrators have used the Orders, which they obtained fraudulently, to confirm to the Environment and Land Court that the Property did indeed form part of the Deceased's estate. See page 113 of Exhibit CMP for a copy of submissions filed in the ELC Proceedings by the Administrators referencing the Orders.
  - o. Unless this application is certified as urgent and the Amended Certificate of Confirmation of Grant in respect of the Deceased's estate issued on 8 April 2025 is revoked/annulled, the 1<sup>st</sup> Interested Party's position in the ELC Proceedings will be greatly prejudiced.
4. The second application is summons dated 17<sup>th</sup> June 2025 brought pursuant to section 76 of the [Law of Succession Act](#) and Rule 44 (1) of the Probate and Administration Rules where the Applicant is seeking the following orders;
- a. Spent
  - b. That pending the hearing and determination of this Application and/or until further orders of this Honorable Court, a status quo order do issue, preserving the prevailing occupation,



possession, and use of the parcel of land known as Mohoroni L.R. NO. 21959/14, forming part of the estate of the deceased.

- c. An order of injunction do issue, restraining the Respondent, Purported Purchasers their agents, servants, assigns or any other person acting at her behest, from evicting, harassing, or in any manner interfering with the Applicant's quiet possession and occupation of Mohoroni L.R.NO. 21959/14 pending the hearing and determination of this application.
  - d. That this Honorable Court do find and declare that the purported amendment or rectification of the Grant of Letters of Administration made by the Respondents was fraudulent, unlawful, and calculated to aid an illegality, and was done to the detriment of the Applicant and other interested parties with beneficial and equitable interests in the estate.
  - e. That the Grant of Letters of Administration issued on the 16th July 2020, and/or any subsequent rectification thereof, be revoked for having been obtained by means of misrepresentation, concealment of material facts, and deliberate non-disclosure of purchasers and co-beneficiaries with proprietary claims on the estate.
  - f. That the costs of this Application be provided for.
  - g. That this Honorable Court do grant such other or further reliefs as it shall deem just, equitable, and expedient in the circumstances of this case.
5. The Application is made on the following grounds on the face of it among others;
- a. That the deceased, Charles Chemimoi Kimurgor, passed away on 20<sup>th</sup> December 2009, and a grant of letters of administration intestate was issued to the Respondent on 16<sup>th</sup> July 2020.
  - b. That the Respondent unilaterally obtained the grant, contrary to pre-existing arrangements and agreements, and without the participation, consent, or notification of the
  - c. That the Respondent subsequently sought to amend the said grant fraudulently, with the intent to dispose of or alienate parts of the estate, including Mohoroni L.R. NO. 21959/14, without declaring liabilities or existing interests such as purchasers and residents on the land.
  - d. That the said amendment was designed to defeat equitable rights, and to mislead the court into believing that no other parties had interest in the subject parcel or the estate at large.
  - e. That unless restrained, the Respondent's actions will result in dispossession, unlawful eviction, and further fragmentation of the estate, leading to irreparable loss, injustice, and hardship upon the Applicant and other rightful beneficiaries.
  - f. That it is just and necessary in the interest of justice and proper administration of estates that this Honorable Court intervenes to preserve the estate, revoke the fraudulent grant, and issue directions for fair re-administration.
6. The Application is supported by the annexed affidavit dated 17<sup>th</sup> June 2025 sworn by Amos Kiprotich who deponed as follows;
- a. That I am the applicant herein, a purchaser and/or beneficially interested party in the estate of the late Charles Chemimoi Kimurgor (deceased) and therefore competent and authorized to swear this affidavit in support of the Chamber summons application herein.



- b. That the deceased, Charles Chemimoi Kimurgor, died intestate on or about the 20<sup>th</sup> day of December 2003, and the Respondents herein, were subsequently issued with a Grant of Letters of Administration Intestate on 16<sup>th</sup> July 2020 in respect of his estate.
- c. That the said grant was obtained unilaterally by the Respondent without consultation, consent, or disclosure to other interested parties and purchasers, including myself, contrary to prior arrangements and agreements known within the family and among stakeholders. That in 2009, prior to the grant, a meeting was held in which agreements and representations were made concerning the administration of the deceased's estate, particularly touching on the parcel of land known as Mohoroni L.R. NO. 21959/14, where I and others have established residence and made developments.
- d. That I am informed, and verily believe, that the Respondent has since amended or rectified the original grant without due notice, consultation, or reference to the beneficiaries and third parties with proprietary or beneficial interest in the estate.
- e. That the said amendment or rectification was fraudulent and calculated to unlawfully exclude purchasers and other beneficiaries for the Respondent's own benefit and in a manner likely to lead to illegal evictions, dispossession, and conflict over the estate's property.
- f. That the Respondent deliberately concealed material facts from the court during both the initial petition and subsequent amendment of the grant, including the existence of persons in occupation of the estate property and the interests they hold.
- g. That the parcel of land known as Mohoroni L.R. NO. 21959/14 is currently occupied by several persons, including myself, who have invested in structures, developments, and community livelihood over the year under legitimate belief and expectation of good title or interest through the estate
- h. That unless this Honorable Court intervenes urgently, there is a real and imminent risk of illegal eviction, forceful dispossession, and irreversible loss, and the estate risks being alienated, wasted, or mismanaged to the prejudice of the Applicant and other legitimate stakeholders.
- i. That it is in the interest of justice that the grant issued to the Respondent on 16<sup>th</sup> July 2020 and/or any subsequent amendments be revoked for having been obtained through misrepresentation, fraud, and concealment of material facts from the court.
- j. That it is further in the interest of justice that the status quo currently prevailing in respect of the occupation and use of MOHORONI L.R. NO.21959/14 be preserved pending the full and fair hearing of this application.
- k. That I swear this affidavit in good faith and in support of the prayers sought in the Chamber Summons filed herein.

### **Analysis and Determination**

7. There are many issues raised in the two applications which go to the root of the amended certificate of confirmation of grant dated 8<sup>th</sup> April 2025.
8. This court has read through the affidavits of Amos Kiprotich dated 11<sup>th</sup> June 2025 and the subsequent affidavit sworn by Chabilal Mulji Patel. The legal and evidential material requires further interrogation by this court, particularly in relation to the primary certificate of confirmation of grant and the subsequent amended certificate of confirmation of grant dated 8<sup>th</sup> April 2025. The integrity of the



process in the making of the grant of representation which is key in the distribution of inheritance rights to the beneficiaries appears to be questioned by both applicants at various levels.

9. In determining the two limbs, this court has weighed and balanced the competing claims of both parties bearing in mind that each application must be determined on its own peculiar facts. I therefore exercise my discretion to grant interim conservatory and preservation orders against the transmission of the model deed in the amended certificate of confirmation of grant pending the filing of additional evidence including if necessary a trial within a trial under Article 50 of [the Constitution](#) 2010.
10. The trial within a trial on the contentious issues shall be held on 24th September 2025. In addition, both legal counsels are directed to file their legal perspectives on the matter focusing on the interpretation of the applicable law as the distribution of the estate in question. It is so ordered.

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

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**R. NYAKUNDI**

**JUDGE**

