

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**P & A CAUSE NO 93 OF 1993**  
**IN THE MATTER OF THE ESTATE OF THE LATE KIPKETER CHEPSIROR**  
**(DECEASED)**

**Coram: Before Justice R. Nyakundi**  
**Isaboke Bw. Orina & Company Advocates**  
**Owuondo Obinchu & Company Advocates**

**RULING**

1. What is pending before this court for determination is an application dated 13<sup>th</sup> June 2025 seeking the following orders:
  - a. That this honorable court restates and declare the Confirmation of Grant herein by Justice Mohammed Ibrahim and the certificate of confirmation of Grant issued and signed on the 4<sup>th</sup> December 2007 to be the correct position as far as the administration and distribution of the estate is concern
  - b. That this honorable court order and directs the Administrators estate of the late Kipketer Chepsiror to expeditiously distribute the estate in terms the distribution schedule approved and dated the 4<sup>th</sup> December 2007 during the confirmation of the Grant within sixty days from the date hereof
  - c. That the representative of the interested parties, one Joseph Kiptanui Chirchir be and is hereby included in the administration to make them four (4) John Kimeli Sum having died and give impetus to the process of distribution
  - d. Costs of this summons be provided for
2. The Application is made on the following grounds on the face of it among others:

- a. This honorable court issued and confirmed the Grant on the 4<sup>th</sup> December 2007
  - b. During the confirmation of the Grant all parties hereto appeared before hon. Justice Mohammed Ibrahim who had the privilege of seeing and talking to all the parties then confirmed the grant
  - c. All the beneficiaries in the grant and the interested parties are peacefully in possession and occupation of their respective interest on the estate
  - d. The Petitioners/Administrators however have been reluctant and not keen in distributing the estate
  - e. In the interest of justice, the Petitioners be directed to complete the distribution of the estate and present to court accounts for discharge as administrators and closure
3. In the same application one Joseph Kiptanui Chirchir swore an affidavit dated 13<sup>th</sup> July 2025 in which he solemnly stated as follows:

- a) That for the purpose of this Probate and Administration proceedings I am one of the Interested Parties herein and I appear herein as the leader of the Interested Parties.*
- b) That I know of my own knowledge that the interested Parties spread across from those who purchased from the late Kipketer Chepsiror and his children and those who too purchased land from the late Joseph Kibitok Tiony and later on from his children.*
- c) That I know of my own knowledge that both Kipketer Chepsiror and Joseph Kibitok Tiony died and were buried on the Estate that is the subject matter herein*
- d) That I know of my own knowledge that after the death of the two old men Probate and administration were commenced and the same were confirmed by Hon. Justice Mohamed Ibrahim.*

- e) *That I know of my own knowledge that the said Hon. Justice Mohamed Ibrahim confirmed the grant on the 4<sup>th</sup> December, 2007.*
  - f) *That I know of my own knowledge that all the parties to this cause appeared before Justice Ibrahim who had an ample opportunity to interact with them before he eventually confirmed the grant and issued the certificate thereof.*
  - g) *That I know of my own knowledge that the Petitioner/Respondents after getting the grant and confirmation of the same have demonstrated manifest reluctance towards distributing the Estate to the interested parties and other beneficiaries.*
  - h) *That the Petitioners have gone as far as attempting to question Justice Mohamed Ibrahim's decision on the confirmation of the grant.*
  - i) *That I know of my own knowledge that it is indeed due to the indolence and reluctance of the Petitioners to completing the process hereof that the said interested parties have choose me to lead them towards the process of obtaining their respective title hence have suggested my name be added as the forth administrator to give the process some impetus.*
  - j) *That I know of my own knowledge that the various area Chiefs have attempted to prevail upon the administrators to complete the process.*
  - k) *That I know of my own knowledge that there is no interested party who owe the administrators any debt.*
  - l) *That I make this affidavit in support of my Chamber Summons now before court.*
4. The same deponent on 13<sup>th</sup> July 2025 filed yet another affidavit in which he solemnly stated as follows:
- a. *That I have read the Affidavit sworn by Paul Keter dated the 18<sup>th</sup> July, 2025 and wish to respond thereto in the following manner.*

- b. *That am advised by my advocate on the record which advise I verily believe to be true that on the 15<sup>th</sup> July, 2025 the judge asked the Administrators herein to swear an affidavit explaining why they applied before him for a confirmed grant while the confirmed grant by Hon. Justice Mohammed Ibrahim is still in place*
- c. *That am advised further by my advocate on record which advise I verily believe to be true that the Court had indicated affirmatively that Hon. Justice Mohammed had confirmed truly that he confirmed the said grant on the 4<sup>th</sup> December 2007*
- d. *That am further advised by my advocate on record that it is the court's well founded that the being in place of two confirmations is a mistake of law apparent on the record and the grant that was issued by Hon. Justice Nyakundi has got to be cancelled as he has expressed himself for the correctness and clarity of the court's record.*
- e. *That the Administrators herein have not indeed explained and answered the questions that were raised by the Judge in their affidavit dated the 18<sup>th</sup> July, 2025.*
- f. *That I make this affidavit in support of the Court's position that the Certificate of confirmation of Grant issued and signed by Hon. Justice Mohammed Ibrahim is the correct grant and the latter one be cancelled accordingly and the administrators be ordered to distribute the Estate pursuant to Justice Mohammed Ibrahim's Certificate of Confirmation of Grant dated the 4<sup>th</sup> December, 2007.*

### **Analysis and Determination**

- 5. From the record a petition in support for letters of administration intestate was made on 3<sup>rd</sup> June 1993 in favour of Robert Kipkemei Keter, John Kimeli Sum, Paul Kipkorir and Samwel Kiprop Kili. The deceased died intestate and left the following surviving beneficiaries:
  - a. Robert Kipkemei Keter

- b. John Kimeli Sum
- c. Paul Kipkorir Keter
- d. Samwel Kiprop Kili
- e. Cecilia Chepkemboi
- f. Tecla Cheptoo
- g. Farida Cheptarus
- h. Jane Cherugut
- i. Teresia Kaptich

6. Thereafter on 13<sup>th</sup> February 1995 a certificate of confirmation of grant was issued to the administrators minus the details of the beneficiaries and allocation of shares as expressly stated under section 38 of the Law of Succession Act. However, on 4<sup>th</sup> December 2007 Mohamed Ibrahim J. as he then was endorsed a certificate of confirmation of grants in favour of the administrators as personal representatives to the deceased estate with the following mode of distribution:

<b>NAME</b>	<b>DESCRIPTION OF PROPERTY</b>	<b>SHARE OF HEIRS</b>
Robert Kipkemei Keter	Title no. LR.	2.15 Acres
Nicholas Ochieng Adongo	12399 measuring	0.2 Acres
John Kimeli Sum	21 Acres	1.4 Acres
Paul Kipkorir Keter		2.15 Acres
Samwel Kiprop Meli		1.95 Acres
Roselyn Chepkemei Sawe		1.7 Acres
Susan Saina		0.4 Acres
Christina Jelimo Tiony		1.1 Acres
Mary Chemobo		2.1 Acres
Josephine Jerono Sawe		0.15 Acres
Kennedy sawe Kiplagat		0.2 Acres
Samwel Kipsang		1.3 Acres
Joseph Chirchir		3.0 Acres

Kipkurgat Cheruiyot Maritim	0.15 Acres
Noah Cheruiyot	0.2 Acres
Joseph Oirere Nyasetia	1.1 Acres
Dennis Kipkorir Mutai	0.3 Acres
Julius Kipyego Tuei	0.1 Acres
David Kemboi Rugut	0.2 Acres
Victor Kiplagat	0.6 Acres
Anthony Wesonga Odima	0.35 Acres

7. Notwithstanding the existence of Justice Mohamed Ibrahim certificate of confirmation of grant which apparently had not been used to transmit the estate for decades to the respective beneficiaries Joseph Kiptanui Chirchir wrote a letter to the Deputy Registrar of the High court in this context:

*Kindly sir/madam I write to you concerning the above matter, which have been proceeding in the honorable court without the knowledge of all the beneficiaries, I also write to you on my capacity as chairman representing the 20 members who are beneficiaries on the suit estate of the late Kipketer Chepsiror.*

*We tried filling a protest in vain, since it requires a death certificate, which is also, missing from the court file and the same file has been in court several times per the attached documents, despite it not being in the judiciary registration system.*

*Attached to this letter are documents to support including my protest affidavit dated 4<sup>th</sup> October 2024 and amendmend grant purported to have been issued by the honorable court on the 7<sup>th</sup> August 2024 for your consideration.*

8. In the same communication Joseph Kiptanui Chirchir also swear an affidavit dated 4<sup>th</sup> October 2024 where he alleged as follows:
- a. *That, I am the chairman representing the beneficiaries by why of purchasing on the above Estate of Kipketer Chepsiror deceased, hence Authorized to make and swear this affidavit of protest.*
  - b. *That, the Applicants herein, PAUL KIPKORIR KETER and SAMUEL KIPROP MELI are the sons of the late Kipketer Chepsiror, the 1<sup>st</sup> petitioner herein PHILIMON KIPLAGAT is the son of JOHN KIMELI SUM deceased who had sold his whole portion of land and moved out before his death.*
  - c. *That, the said ESTATE of the late Chepsiror has a total of 20 beneficiaries by way of purchasing, the list and shares allocated as per attached.*
  - d. *That, I protest the change of the administrators of grants applied by the above petitioners and issued on the 7<sup>th</sup> August 2024, to the effect that the same was done without the consent of the whole buyers in the said estate and was made in bad faith to lockout some purchasers out of this succession process, and to deprive them of their actual measurements on ground.*
  - e. *That, I also protest the confirmation of the said grant issued on the 7<sup>th</sup> August 2024, since the same was made without the consent of all the beneficiaries in the estate and will make some beneficiaries lose land they purchased and some will lose measurements of purchased portions.*
  - f. *That, the distribution list filed on the 2<sup>nd</sup> September 2024, is the old list made in the first succession in the year 1993 and it doesn't reflect the interest of the buyers in terms of beneficiaries and measurements on ground, attached is the current list and measurements on ground.*

- g. That, The petitioners made the application of 23<sup>rd</sup> July 2024 in bad faith, despite all the beneficiaries agreeing to have new administrators to be as follows Paul Kipkorir Keter, Samuel Kiprop Meli, Samuel Kipsang, Joshua Kiplangat Lelei, Roseline Chepkemei Sawe, and Joseph Kiptanui Chirchir.*
- h. That, We held frequent meetings between June, July, August and September 2024 and none of the above mentioned administrators mentioned to us that they had made an application to this honorable court on the same subject matter, despite us agreeing to get an introduction letter from area chief for the purpose of succession process, attached is chiefs latter dated 30<sup>th</sup> September 2024.*
- i. That, I file this protest affidavit on my own behalf and on behalf of the 20 beneficiaries by way of purchase this suit estate of Kipketer Chepsiror.*
- j. That, I pray to this honorable court to involve all beneficiaries on the attached filed list, on every process of succession an the suit estate of the late Kipketer Chepsiror, this is for the interest of justice*
9. The culmination of all this is a grant of letters of administration dated 7<sup>th</sup> August 2024 based on summons for rectification of certificate of confirmation of grant dated 23<sup>rd</sup> July 2024. Thereafter by dint of this rectified grant this court seems to have revoked the certificate of confirmation of grant dated 4<sup>th</sup> December 2007. What is the legal effect of all these processes of law in the making of the grant of representation? The truth is the procedure adopted by the applicants to rectify the certificate of confirmation of grant is in violation of section 76 (a) (b) (c) of the law of Succession Act which provides inter alia that:
- 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*

10. The court in **Re Estate of Gitau (deceased) [2002] 2 KLR 43** addressed the issues as follows:

*“Distribution of the estate comes during the proceedings to confirm the relevant grant and a party dissatisfied with the distribution may not necessarily be dissatisfied with the grant of letters of administration and vice versa. That being the position, it becomes unreasonable for a person dissatisfied with the distribution of the estate only to proceed to ask for the revocation or annulment of the grant, which has nothing wrong.... While section 76 of the Law of Succession Act should therefore be relied upon to revoke or annul a grant it is proper to use the same section where the objector is challenging the distribution only. There are relevant provisions to be used for that purpose and section 76 is not one of them.”*

11. The revocation of grant of letters of administration is the power to be exercised cautiously and as a last resort with sufficient evidential material of a patent error of law which goes to the heart of the provisions of the Law of Succession Act. The defect to the making of the impugned grant must be fatal and incapable of being sustained to transmit the intestate estate of the deceased as envisioned in the letter and the spirit of the constitution imperative and statutory law applicable. In the present case there are many issues pleaded by the parties in their affidavits dated 23<sup>rd</sup> July 2024 in support of the

summons for rectification of certificate of grant. This application completely change the character and basic structure of the certificate of confirmation of grant. In our legal system the rectification of a grant of letters of administration is governed by section 74 of the Law of Succession Act and Rules 43 and 14(1) of the Probate and Administration Rules. This allows for the correction of errors in names, descriptions, or details of the deceased's death or the purpose of a limited grant. The court in **Re Estate of Charles Kibe Karanja (deceased) 2015 eKLR** held as follows:

*"If... There is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be affected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant."*

12. In the case at bar, there is an error of fact and law within the scope section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules in the approach taken by the court towards the making of the grant of letters of administration intestate dated 7<sup>th</sup> August 2024. There was already existing unimpeachable certificate of confirmation of grant dated 4<sup>th</sup> December 2007. The record is very clear that no summons for revocation of this legal instrument to govern the distribution of the intestate estate of the deceased had been filed pursuant to section 76 of the Law of Succession Act
13. This court has the jurisdiction under sections 1(A), 1(B), 3, 3(A) & 80 of the Civil Procedure Act as construed with Rule 73 (1) of the P&A and

Order 45 Rule 1 of the Civil Procedure Rules to review its own judgments and rulings under specific circumstances primarily when there is an error apparent to the face of the record, or due to discovery of new and important evidence that could not be produced earlier despite due diligence. These same provisions also give the Court the power to review its own decisions for any other sufficient reason. If the grant of letters of administration intestate, dated 7th August 2024 - along with all preceding and subsequent actions related to its issuance is allowed to stand as a legal instrument, it may occasion a grave miscarriage of justice or a flagrant violation of the law, thereby necessitating the intervention of this Court. The powers donated by the statute is not for this court to sit on appeal over its own decision but is to ensure the fair administration of justice and to render the decision in compliance with both procedural and substantive law.

14. In my considered view all those proceedings initiated towards the making of grant of letters of administration intestate dated 7<sup>th</sup> August 2024 and subsequent valid orders issued by this court are void ab initio under section 76 of the Law of Succession Act. This court in addition draws its inspiration to set aside the impugned grant of letters of administration intestate from the provisions of section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules together with the principles in ***Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR High Court of Kenya Nairobi Judicial Review Division; Misc. Application No. 317 of 2018*** and ***Evan Bwire v Andrew Aginda Civil Appeal No. 147 of 2006 cited fin the case of Stephen Githua Kimani v Nancy Wanjira Waruingi T/A Providence Auctioneers (2016) eKLR***
15. Therefore, the impugned grant having been vacated, the administrators and beneficiaries shall revert to the original certificate of confirmation of grant dated 4<sup>th</sup> December 2007. That any serious indictment likely to be

raised on this succession cause shall take into account the decision of the court given with finality on identification of the beneficiaries and net estate of the deceased. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 6<sup>TH</sup>  
AUGUST 2025**

.....

**R. NYAKUNDI  
JUDGE**

**owuondoobinchulaw@gmail.com**