



REPUBLIC OF KENYA



**In re Estate of Chepkeitany Chesaire (Deceased) (Succession Cause 184 of 2002) [2025] KEHC 11587 (KLR) (4 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11587 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 184 OF 2002  
RN NYAKUNDI, J  
AUGUST 4, 2025**

**IN THE MATTER OF THE ESTATE OF CHEPKEITANY CHESAIRE (DECEASED)**

**BETWEEN**

**CHRISTINA KABON NEETICH ..... 1<sup>ST</sup> OBJECTOR  
EVERLYNE JEPCHIRCHIR KEITANY ..... 2<sup>ND</sup> OBJECTOR  
NANCY JERONO KEITANY ..... 3<sup>RD</sup> OBJECTOR**

**AND**

**EDWIN KIPKEMBOI NGETICH ..... PETITIONER**

**RULING**

1. What is pending before this Court for determination are Chamber Summons dated 7<sup>th</sup> May 2025 in which the Applicants are seeking the following orders:
  - a. Spent.
  - b. That pending the hearing of this summons inter-partes, this Honorable Court be pleased to grant an order for the preservation of the Estate of the late Chepkeitany Cheraisi and restrain the Petitioners/Respondents herein either by themselves their agents and/or servants from intermeddling with the estate assets to wit parcel number:
    - a. Uasin Gishu/Kaptagat/89 Measuring 9.8 acres
  - c. That this Honorable Court do issue an order appointing new Administrators of the estate as the current Administrators have intermeddled in the Estate.
  - d. That the grant issued and the certificate of confirmation of grant issued 10<sup>th</sup> July 2024 in favor of the Petitioners/Respondents herein be revoked.



- e. That costs of this application be borne by the Respondents.
2. The Application is based on the following grounds among others:
- a. That the grant was obtained fraudulently by the Petitioners/Respondents who made false statements.
  - b. That the proceedings to obtain the grant were defective in substance in view of what is set out in (a) above and also by failing to meet the mandatory requirements regarding the Petition as laid down in the *Law of Succession Act* and the Probate and Administration Rules.
  - c. That the grant was obtained without obtaining consent and disclosing that there were other beneficiaries to the estate of the deceased herein, who are the current applicants.
3. The Application is supported by the annexed affidavit sworn by Nancy Jerono Keitany who avers as follows:
- a. That I am the 3<sup>rd</sup> Objector/Applicant herein and the daughter and beneficiary of the estate of Chepkeitany Cheraisi (deceased) who was my father and hence competent to swear this affidavit.
  - b. That my father was survived by:
    1. 1st House
      - a. Kimoi Tapkigen Chepkeitany-widow (deceased)
      - b. Mary Chepkemoi Keitany-daughter
      - c. Eunice Jerop Keitany-daughter (deceased)
      - d. Sally Jemaiyo Keitany-daughter
    2. 2nd House
      - a. Kong'ato Tabyaby-widow (deceased)
      - b. Joseph Kipngetich Keitany-son (deceased)
      - c. That the late Chepkeitany Cheraisi died intestate on 26.10.1994 (Annexed hereto marked NJK 1 is a copy of the death certificate)
      - d. That the late Chepkeitany Cheraisi left the following properties:
        - i. Uasin Gishu/Kaptagat/89 Measuring 9.8 Ha
      - e. That on 8.02.2007, the 1<sup>st</sup> Objector and the Respondent herein obtained grant of letters of administration in their names.
      - f. That on 10<sup>th</sup> July 2024, the said grant was confirmed.
      - g. That I and my sister, the co-objector herein, therefore holds inheritance rights to the estate of our late father Joseph Kipngetich Keitany by virtue of the *Law of Succession Act*.
      - h. That the Respondents have discriminated against us and have not provided for us in the succession proceedings.



- i. That the Respondents have excluded us as rightful beneficiaries of the estate and the Respondents did not include us on the succession process neither did they seek our consent.
  - j. That in the circumstances, the grant and the Certificate of Confirmation of grant issued is defective and should be annulled.
  - k. That the Respondents should be called upon to account for the false information they gave to this Honorable Court.
4. The Application is opposed vide a Replying Affidavit dated 28<sup>th</sup> May 2025 sworn by Barnabas Kiprof Keitany who avers as follows:
  - a. That I am a male adult of sound mind, and one of the administrators of the estate herein.
  - b. That my counsel on record has read to me the contents of an affidavit of protest dated 7<sup>th</sup> May, 2025 and having understood its import which I wish to respond as follows.
  - c. That the instant application has been brought in bad faith, is an abuse of the court process, frivolous and without merit and to further delay the distribution of the estate.
  - d. That the application for revocation has been brought late in the day when the grant has already been confirmed.
  - e. That the person named as the petitioner/respondent is a stranger to me in terms of administration of the estate as he is not a petitioner and he was never issued with letters of administration therefore the application is defective.
  - f. That the 1<sup>st</sup> Petitioner/Applicant herein is my co-administrator and a grant of letters of administration was issued in our names on 8<sup>th</sup> February, 2007.
  - g. That we agreed on the mode of distribution when we held a meeting on the 5<sup>th</sup> day of May 2024 and endorsed the same at the chief's office on the 13<sup>th</sup> day of May, 2024.
  - h. That the issue of administration was therefore resolved and summons for confirmation of grant together with our mode of distribution was filed and confirmed on 10<sup>th</sup> July, 2024 as per the mode of distribution and subsequently a certificate was issued.
  - i. That the 1<sup>st</sup> applicant who is also my co-administrator was in agreement with the mode of distribution thus she cannot purport to apply for revocation of the grant she was issued and never raised an objection to it.
  - j. That the allegation by the 2<sup>nd</sup> applicant that they were not involved in the succession proceedings are untruthful since they even signed the consent of making of a grant known as form 38 on 7<sup>th</sup> August, 2007.
  - k. That the issues raised by the protestor in the affidavit.
  - l. Vit of protest have already been adjudicated and a ruling on the same delivered on 20<sup>th</sup> September, 2022 directing that parties take a date for confirmation.
  - m. That in response to the contents of paragraph 10 I wish to confirm that the certificate of confirmation is not defective as it was confirmed as per our agreed mode of distribution.



- n. That in response to paragraph 11 of the supporting affidavit I wish to reiterate that the respondent called upon to account for the false information is not a petitioner or administrator in this succession proceedings.
  - o. That I am duly informed by my counsel on record which information I believe to be true that whoever alleges must prove and the applicants have not given substantiated reasons as to why the grant should be revoked.
  - p. That I pray that the instant application be dismissed for lack of merit for the administrators to be allowed to perform their duties as was agreed.
5. The application is also supported by submissions filed on behalf of the Applicants dated 18<sup>th</sup> June 2025 learned counsel relied on the principles in Ronoh v Ronoh (2005) eKLR

### Decision

6. In simple terms, the certificate of confirmation of grant issued to the duly appointed administrators under Section 66 of the Law of Succession Act confers authority by the Court to act on behalf of the deceased's intestate estate. Once the grant of letters is issued in the first instance and later confirmed or on before 6 months, the personal legal representative has the authority to distribute the estate to the beneficiaries including creditors if any. The certificate of confirmation of grant is protected under the law as the final decree of the court on succession litigation on the merit and it can only be revoked or annulled under the doctrine of necessity purely on the point of law as generally premised under section 76 of the Law of Succession Act. The following grounds are capable of revoking the grant of letters of administration.
- a. The proceedings to obtain the grant were defective in substance
  - b. The grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case.
  - c. 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. The personal representatives has failed, after due notice and without reasonable cause either
  - e. To apply for confirmation of the Grant within one year from the date thereof, or such longer period as the court order or allow
  - f. To proceed diligently with the administration of the estate
  - g. Produce to the court, within the time prescribed, any such inventory or account of administration or has produced any such inventory or account which is false in any material particular
7. In this case, the applicant sought revocation of the grant made by this Court in July 2024, on the ground that she was not included as a beneficiary, despite there being no dispute that she is a daughter of the deceased. The Respondent has not denied in the affidavit that the applicant is a daughter to the deceased and being a beneficiary as such, she ranks in equal priority with the other beneficiaries named in the confirmation of grant. It is crystal clear from the record that she signed the necessary instruments geared towards the making of certificate of confirmation of grant
8. The issue for determination by this court is whether the applicant herein has furnished sufficient grounds for grant of revocation order under section 76 of the Law of Succession Act. Based on the



pleadings and the record filed in this case it is uncontroverted that the applicant is a daughter to the deceased and therefore a legitimate beneficiary to the estate under section 29 of the Law of Succession Act. As aforesaid grounds advanced revocation of the certificate of confirmation of grant are that the respondent's failure Barbabas Kiprop Keitany not to include Nancy Jerono Keitany as a beneficiary to the estate. The provisions of the law is that the appointed administrator of the deceased estate is vested with the mandatory legal duty under section 35, 36, 37, 38, 40, 41 & 42 of the Law of Succession Act to discharge his/her duties fairly and with non-discrimination as provided under Art 27 (4) of the constitution. Apart from the above the law enjoins the court as a last resort to invoke the provisions of the law to revoke the granted letters of administration of the deceased's estate on any of the prescribed grounds under section 76 of the Law of Succession Act.

9. As I sit from the record the administrator not sufficiently explained where Nancy Keitany did not make to the final list of beneficiaries dated 10<sup>th</sup> July 2024. It is also true that in the consent filed in court on 7<sup>th</sup> August 2006 to the making of grant of Administration intestate Nancy Keitany duly endorsed the legal instrument. However, her name seems not to have been included as a beneficiary with an entitlement of her share of the real property comprised in the deceased's estate. There is no tangible evidence that she rescinded her right to inheritance. In resolving the above question I have taken into account the proceedings in the entirety and I take the liberty to exercise discretion not to revoke or annul the certificate of grant of confirmation but go for a lesser evil of setting aside the distribution of the intestate estate to the following beneficiaries:

Name

1. Barnas Kiprop Ketany
2. David Kiptoo Kiptoo Keitany
3. Edwin Kipkemboi Ngetich
4. Samuel Kipkogei Ngetich
5. Christine Kabon Ngetich
6. Mary Jepkemoi Kangongo

10. In the persuasive case of *Commonwealth Bank of Australia v Quade* (1991) 178 CLR 134, the Court observed as follows: -

“In determining whether the matter should be tried afresh, it will be necessary for the appellate court to take account of a variety of possibly competing factors, including, in addition to general considerations relating to the administration of justice, the degree of culpability of the successful party...any lack of diligence on the part of the unsuccessful party and the extent of any likelihood that the result would have been different if the order had been complied with and the non-disclosed material had been made available. While it is not necessary that the appellate court be persuaded in such a case that it is “almost certain” or “reasonably clear” that an opposite result would have been produced, the question whether the verdict should be set aside will almost inevitably be answered in the negative if it does not appear that there is at least a real possibility that that would have been so.”

11. In my view, the *raison d'être* of revoking letters of administration is to ensure proper administration of the estate, and to protect the interest of the beneficiaries, which is paramount. In the present matter the applicant has shown sufficient cause while the administrators proceeded at the initial level at the time of sharing out the estate her name was left out without any sufficient reasons as required by law.



Furthermore, given that the applicant is a daughter to the deceased and having not rescinded her right to inheritance, the omission is in contravention of sections 35, 36, 37, 38, 40, 41 & 42 of the Law of Succession Act as construed with Art 27 (4) of the constitution. Before I take leave of this matter, I take judicial notice that the estate has not been distributed as early ordered on 10<sup>th</sup> July 2024 and on that strength the prejudice and injustice is minimal to the legitimate expectations of the listed beneficiaries. The administrators are advised to file an amended distribution matrix within 21 days from today's date to correct the patent defect envisioned in the law. The status conference to be held on 16<sup>th</sup> September 2025 as to no order to costs.

**DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS THIS 4<sup>TH</sup> AUGUST 2025**

**R. NYAKUNDI**

**JUDGE**

Representation:

M/s Chebii & Co Advocates

M/s Kibii & Co Advocates

