



REPUBLIC OF KENYA



**In re Estate of Kipleting Arap Kiptum (Deceased) (Probate & Administration
04 of 2021) [2024] KEHC 4580 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 4580 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 04 OF 2021**

JR KARANJA, J

MARCH 20, 2024

IN THE MATTER OF THE ESTATE OF KIPLETING ARAP KIPTUM (DECEASED)

BETWEEN

PETER KIPKOSGEI LETTING PETITIONER

AND

CHRISTINE CHEROP OBJECTOR

RULING

1. The Appellant, Peter Kipkoge Letting, vide the summons for revocation or annulment of grant dated 10th December 2018, essentially seeks for an order that a certificate of confirmation of grant dated 5th December 2018 issued to the Respondent, Christine Cherop be revoked for reasons set out in the summons as fortified by the Applicants averments contained in the supporting affidavit dated 10th December 2018. In the impugned certificate the estate property being laid Parcel No. Nandi/Arwos/97 was to be shared equally between the Applicant, the Respondent and one Pius Kipsuge Tuwei as the beneficiaries of the estate of the late Kipleting Arap Kiptum (deceased).
2. However, this application seeks to alter the confirmed mode of distribution on grounds that the Respondent made false statements and concealed material facts in her application for confirmation of the grant vide a summons for confirmation of grant whose date is not indicated and a copy is untraceable in this record neither, is it annexed to the application, its supporting affidavit or even the Respondent's replying affidavit dated 25th July 2019.

The Respondent's annexures indicate that she petitioned for grant of letters of administration intestate respecting the estate of the deceased on or about the 26th November 2013 at the Kapsabet Principal Magistrate's Court vide Succession Cause No. 144 of 2013. However, there is no indication whether or not the petitioner was successful and if it was, then the material grant was not annexed to



this application and is not in this record i.e. Kapsabet High Court Probate and Administration Miscellaneous Cause No. 04 of 2021.

3. None of the parties herein has made any effort to avail the material lower court file for the purposes of these proceedings and in particular, to confirm the existence of the material grant and its date of issue and also the existence of the summons for confirmation of grant which resulted in the issuance of the impugned certificate of confirmation of grant.

In the circumstances, the present application would be misconceived. The court cannot revoke or annul a grant or a certificate of its confirmation or both which are non-existent in this record and if they are indeed existent elsewhere it was incumbent upon the Applicant to demonstrate by credible evidence that the Respondent obtained the grant or the certificate of confirmation of grant or both by false statements and/or concealment of material facts.

4. In that regard, the Applicant did not provide sufficient and credible evidential material to show and prove that the material grant was fraudulently obtained and confirmed by the Respondent. Mere allegations of fraud without proof amount to nothing in terms of probative value especially if its taken into consideration that the application did not raise any dispute with the Respondent being a true beneficiary of the estate of her late father who was also the father of the Applicant and the now departed beneficiary Pius Kipsuge or Kipkosgei Tuwei who seemingly, was alive when the grant was made, issued and confirmed as the application does not contain a copy of the necessary death certificate.
5. The Applicant's supporting affidavit clearly indicates that application was prompted by the fact that the Respondent being a married woman ought not have shared the estate property equally with her two brothers and should have been content with the share accorded to her by the brothers based on an alleged allocation made by the deceased in his lifetime. All these did however, amount to discrimination of the Respondent on the basis of gender and also to treating this succession as if it were testate rather than intestate succession.

6. A person is deemed to die intestate in respect of all his free property for which he has not made a valid will (See, Section 34 of the [Law of Succession Act](#))

Free property is defined in Section 3 of [the Act](#) to mean the property of which a deceased person was legally competent to freely dispose during his lifetime and his interest in the property has not been terminated by his death.

In this case, the free property was the parcel of land described as Nandi/Arwos/97 which as per the impugned certificate of confirmation of grant was shared equally between the three surviving children of the deceased i.e. the Applicant, the Respondent and their late brother, Pius K. Tuwei. This principle of equality was in tandem with the provisions of Section 38 of [the Act](#) to the extent that it provides that: -

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of Section 41 and 42, devolve upon the surviving child, if there be only one or shall be equally divided among the surviving children.”

7. There being no evidence of fraud or any untoward act or omission on the part of the Respondent in obtaining the material grant and/or the impugned certificate of confirmation of grant dated 5th December 2018, it would follow that the present application is without merit and is hereby dismissed with each party bearing their own costs.

DELIVERED AND DATED THIS 20TH DAY OF MARCH, 2024

J. R. KARANJAH,



JUDGE

