



REPUBLIC OF KENYA



**In re Estate of Chepkwony Arap Bett Arap Koibop alias Chepkwony Arap Bett (Deceased)  
(Succession Cause 85 of 2009) [2024] KEHC 3116 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3116 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 85 OF 2009**

**JK SERGON, J**

**MARCH 19, 2024**

**IN THE MATTER OF THE ESTATE OF CHEPKWONY ARAP BETT  
ARAP KOIBOP ALIAS CHEPKWONY ARAP BETT (DECEASED)**

**BETWEEN**

**RUTH CHEROTICH BETT ..... OBJECTOR**

**AND**

**SAMWEL KIMUTAI LANGAT ..... PETITIONER**

**RULING**

1. The application coming up for determination is a summons for revocation and/or annulment of grant 7th December, 2023 seeking the following orders;
  - (i) Spent
  - (ii) That pending the hearing and determination of this summons of revocation and/or annulment of grant, a prohibitory order do issue to prohibit any dealings involving land reference number Kericho/Kapsoit/451.
  - (iii) That the grant of letters of administration made to Samwel Kimutai Langat on 28th March, 2011 and confirmed on 31st January, 2012 be revoked on the following grounds : - (a) THAT the grant was obtained fraudulently by an untrue allegation of fact. (b) THAT the grant was obtained by untrue allegation of a fact essential in a point of law to justify the grant and that the Petitioner failed to disclose to court that the objector/applicant and other beneficiaries who are the bonafide dependants of the deceased was entitled to the estate of the deceased and not the Petitioner alone. © THAT the proceedings to obtain the grant were defective in circumstance.
  - (iv) That the registration of the estate land namely Kericho/Kapsoit/451 in the names of the Petitioner/Respondent be revoked and the same be restored to the names of the deceased.



2. The application is supported by grounds on the face of it and the supporting affidavit of Ruth Cherotich the applicant herein.
3. The Applicant avers that the late Chepkwony Arap Bett Arap Koibop alias Chepkwony Arap Bett (the deceased) died on 21st July, 1978 at Ketitui Village within Kapsoit Area in Kericho County, the deceased was polygamous and had two households, the Applicant is the second widow whereas Martha Bett (now deceased) was the first widow.
4. The Applicant avers that the petitioner filed the instant succession cause without her knowledge and that of the aforesaid beneficiaries and obtained letters of administration dated 28th March, 2011.
5. The Applicant avers that petitioner/respondent went ahead and confirmed the grant aforesaid on 31st January, 2012 without authority of the beneficiaries and purportedly distributed the estate land.
6. The Applicant avers that she and the co-beneficiaries of the two households did not participate in the succession proceedings and neither did they give their consent to the petitioner/respondent to institute the instant succession cause or consent as to how the estate land ought to be distributed. The Applicant was therefore not agreeable to the distribution of the estate property.
7. The Applicant avers that the petitioner/respondent went ahead and fraudulently registered the entire estate land to himself thereby leaving her destitute and without any share of the estate land.
8. The Petitioner/Respondent filed grounds of opposition and a replying affidavit in response to the summons for revocation and/or annulment of grant.
9. The Petitioner/Respondent stated that he was the son to the first wife (now deceased) and that his parents resided in Kericho/Kapsoit/522 until 1972 when the deceased married the objector/applicant as his second wife and settled both wives in Kericho/Kapsoit/522.
10. The Petitioner/Respondent stated that Kericho/Kapsoit/451 was bought out of the dowry of the first wife's daughters, however, upon the demise of the deceased, the objector/applicant commenced attempts of eviction against the petitioner/respondent and his siblings.
11. The Petitioner/Respondent stated this matter was adjudicated upon at the Ainamoi Land Disputes Tribunal and determined vide a court order dated 6th October, 2010 and the court ordered that the claimant the petitioner/respondent herein succeed Kericho/Kapsoit/451 and further that both parties to sub - divide Kericho/Kapsoit/522 equally into two portions and commence succession proceedings.
12. The Petitioner/Respondent stated that the objector/applicant who was well aware of the verdict never filed an appeal.
13. The Petitioner/Respondent stated the objector/applicant was aware of the instant succession proceedings and further that it is more than ten (10) years since the grant was confirmed.
14. The Petitioner/Respondent stated that the summons for revocation and/or annulment is frivolous and is intended to delay the conclusion of transmission of the deceased's estate.
15. The Petitioner/Respondent stated that this application for revocation and/or annulment offends section 7 of the *Limitation of Actions Act* and he would file a preliminary objection to have the application dismissed with costs.
16. The court directed the parties to file written submissions which I have duly considered.



17. The objector/applicant filed submissions in which she contended that the petitioners/respondents failed to file their response and did not serve them with the replying affidavit or the grounds of opposition, hence treated the instant application as unopposed.
18. The objector/applicant maintained that she was not involved in the succession proceedings. The petitioner/respondent processed the proceedings secretly with his co-beneficiaries from the first household and fraudulently registered to himself the estate land known as Kericho/Kapsoit/451 and therefore the second household was sidelined and did not participate in the succession cause.
19. The objector/applicant maintained that the letters of administration confirmed on 31st January, 2012 were obtained fraudulently by means of untrue allegations and were therefore defective in substance, the same should be revoked and Kericho/Kapsoit/451 constituting of the estate property equitably distributed among the beneficiaries of the deceased.
20. The petitioner/respondent filed submissions and maintained that the right procedure was followed in respect to the succession and transmission of Kericho/Kapsoit/451. The petitioner/respondent faulted the objector/applicant for failing to appeal against the court order and/or verdict of the then Ainamoi Land Dispute Tribunal or lodge a protest and/or objection against the succession proceedings before the grant was confirmed on 31st January, 2012.
21. The petitioner/respondent contended prohibitory orders against Kericho/Kapsoit/422 could not be issued as the parcel of land was no longer available for distribution owing to legal processes until it was transmitted to the petitioner. The petitioner/respondent cited the case *Re Estate of Alice of Alice Mumbua (Deceased) [2017] eKLR* where the Judge appreciated that issues raised in the application were post transmission and could not be handled within the cause and stated as follows; “ This court finished its work in accordance with the parties wishes, as the estate transmitted to the 1st respondent and a title deed was issued in her name. This dispute, post transmission, does not bring the matter within the purview of section 76 of the *Law of Succession Act* or the provisions of rule 73 of the P&A Rules.”
22. The petitioner/respondent urged this Court to dismiss the application before the Court be dismissed as it did not merit revocation under section 76 of the *Law of Succession Act* or prohibitory orders as the matter moved out of the family division and was embedded at the environment and land court.
23. I have considered the pleadings by the parties and I find that the issue for this court’s determination is whether the certificate of confirmation of grant intestate issued on the 31st day of January, 2012 ought to be revoked and/or annulled as the proceedings leading to the confirmation of grant were defective for the failure to disclose all the beneficiaries and based on untrue allegation of facts.
24. It is clear from the pleadings and the written submissions by the parties that the distribution of land reference number Kericho/Kapsoit/451 is a hotly contested issue among the parties. The petitioner / respondent submitted that the land parcel was purchased out of the dowry of the married daughters in the first household whereas the objector/applicant was adamant it formed part of the estate of the deceased and therefore ought to be equitably divided among the beneficiaries of the deceased. I have carefully examined considered this matter, I find that this issue was adjudicated upon at the Ainamoi Land Dispute Tribunal and resolved vide a court order dated 6th October, 2010, the objector/ applicant never lodged an appeal or review against the said court order or verdict of the then Ainamoi Land Dispute Tribunal.
25. I have also noted that the objector/ applicant in the instant application is seeking revocation and/or annulment of a certificate of confirmation dated 31st January, 2012. The objector/applicant failed to



lodge a protest and/or objection against the succession proceedings before the grant was confirmed on 31st January, 2012 and in any event it has been over ten (10) years since the grant was confirmed.

26. It is against such background that I find that the applicant has not made out a cogent case for revocation and/or annulment of grant. The applicant has not met the threshold for revocation and/or annulment of grant set out in section 76 of the *Law of Succession Act*. In the case of *Albert Imbuga Kisigwa v Recho Kavai Kisigwa*, Succession Cause No.158 OF 2000, Mwita J. noted as follows:

“(13) Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account the interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

28. In any event this court upon confirmation of grant is largely functus officio. In re Estate of Juma Shitseswa Linani (Deceased) [2021] eKLR the court held that where a person is unhappy with the process of confirmation of grant, such a person ought not to move the court under section 76 for revocation of grant. Instead, the person should file an appeal against the orders made by the court on distribution or apply for review of the said orders. This is because the court confirming a grant largely becomes functus officio so far as confirmation of the grant is concerned, and cannot revisit the matter unless upon review.

29. Consequently, the summons for revocation and/or annulment of grant dated 7th December, 2023 is dismissed with no order as to costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF MARCH 2024.**

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**J.K. SERGON**

**JUDGE**

**In the Presence of:**

C/A – Rutoh

Koskey for the Objector/Applicant

Miss Amaya holding brief for Korir for Petitioner/Respondent

