



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Kipsoi Arap Maina (Deceased) (Succession Cause  
39 of 2018) [2024] KEHC 4154 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4154 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE 39 OF 2018**

**RL KORIR, J**

**APRIL 30, 2024**

**IN THE MATTER OF THE ESTATE OF KIPSOI ARAP MAINA (DECEASED).**

**BETWEEN**

**WILSON KIPKOECH MARIDANY ..... 1<sup>ST</sup> PETITIONER**

**DANIEL TERER ..... 2<sup>ND</sup> PETITIONER**

**DANIEL KIBII TERER ..... 3<sup>RD</sup> PETITIONER**

**AND**

**KIPRONO SONOYA (SUING AS THE LEGAL REPRESENTATIVE OF THE  
ESTATE OF THE LATE CECILIA CHEPCHUMBA SOI) ..... OBJECTOR**

**RULING**

1. Kiprono Sonoya (Applicant) filed the Notice of Motion Application dated 3rd August 2023 seeking the following orders:-
  - I. Spent.
  - II. Spent.
  - III. That the Certificate of Confirmation of Grant issued to Wilson Kipkoech Marindany, Daniel Terer and Daniel Kibii Terer (1st, 2nd and 3rd Petitioners herein) on the 24th of May 2023 be revoked and any consequential orders issued thereunder set aside.
  - IV. That this court be pleased to make any other orders as it deems fit in the circumstances.
  - V. That the costs of this Application be provided for.



### **The Applicant's case**

2. The Applicant stated that the subject land being Kericho/Ndaraweta/2153 measuring about 5 belonged to his parents Cecilia Soi (deceased) and Kipkemoi Elijah Soi. That the issue of ownership was determined by the Kericho Environment and Land Court Case Number 144 of 2017, a decision which had not been appealed.
3. It was the Applicant's case that through an order dated 3rd February 2022, the court directed the Deputy Registrar Kericho High Court to sign the relevant transfer forms for the subject land and a new title deed be issued to Cecilia Soi (deceased).
4. The Applicant stated that the Petitioners/Respondents concealed the above facts during the confirmation of the impugned Grant. Further that at the time of the confirmation, there was an objection filed by Kipkemoi Elijah Soi which had not been determined.
5. It was the Applicant's case that he was apprehensive that the Petitioners/Respondents would sell, transfer or waste the deceased's estate in a manner that would be prejudicial to them. That they would suffer substantial loss and irreparable damage as they would lose their home of more than 25 years.

### **The Response.**

6. The Respondents Wilson Kipkoech Marindany, Daniel Terer and Daniel Kibii Terer were sons to the late Kipsoi arap Maina and beneficiaries to his estate. They filed their Grounds of Opposition dated 29th September 2023. They stated that the Applicant had not come to court with clean hands. That the subject land belonged to the deceased and had not been transferred as alleged. They further stated that the deceased's estate was for the benefit of the beneficiaries named in their Petition.
7. It was the Respondents'/Petitioners case that they were unaware that one of their brothers, Henry Kipngetch Terer had a case in respect to the subject land. That the deceased in his lifetime did not have any case in respect to the subject land.
8. The Respondents stated that their father died on 23rd January 2004 and the alleged sale was alleged to have taken place in the year 2014. That there was a scheme to deprive the family of the deceased's estate.
9. It was the Respondents' case that the alleged Kericho ELC Number 144/2017 was a conspiracy to justify theft. That there was no way Henry Kipngetch could ask the court to evict his father from his home during his lifetime. It was their further case that their father died in the year 2014 and therefore could not be part of the case.
10. The Respondents stated that even if the court issued the orders in Kericho ELC Number 144/2017, the Applicant has failed to show why they did not transfer the land. That the land was still in the deceased's names and they had a right to administer it as per the confirmed Grant. They further none of the beneficiaries had seen the court order and that it was a clear sign of the scheme to steal the deceased's land.
11. It was the Respondents' case that the beneficiaries were so many including the deceased's grandchildren and any attempt to raise false claims would adversely affect the estate and its beneficiaries. That at the time of the confirmation of the Grant, no application was pending before this court as all the issues had been determined or settled before the court issued its final orders.
12. On 2nd October 2023, this court directed that the Application be canvassed by way of written submissions.



### **The Applicant's submissions.**

13. Through his written submissions dated 6th November 2023, the Applicant submitted that the Petitioners/Respondents in total disregard of the law, petitioned this court and were granted Letters of Administration for the subject land Kericho/Ndaraweta/2153 while aware of the court order dated 2nd February 2022 in Kericho ELC Number 144/2017 which declared Cecilia Chepchumba Soi and Kipkemoi Elijah Soi as the beneficial owners.
14. It was the Applicant's submission that the Respondents concealed the fact that the subject land that measured approximately 5 acres had been transferred to Cecilia Soi through the referenced court order. That the Respondents took advantage of the fact that the deceased died intestate and illegally acquired the Letters of Administration, information which the Applicant discovered after the lapse of the gazette period hence he could not file objection proceedings. He relied on [\*Jamleck Maina Njoroge vs. Mary Wanjiru Mwangi\*](#) (2015) eKLR.

### **The Respondents' submissions**

15. The Respondents submitted that the subject land was registered in the deceased's name and at the time of filing the present succession proceedings, the subject land was available for succession. That it was the deceased's children who were entitled to share the subject land as per their father's Will.
16. It was the Respondents' submission that if the Kericho suit existed, then the same was incompetent. That they looked at the annexures in the said Kericho suit and there was no grant of Letters of Administration filed. They relied on [\*Edema & 2 others v Edema & 5 others\*](#) (Miscellaneous Succession Cause E001 of 2022) [2022] KEHC 9960 (KLR) (6 July 2022) (Ruling).
17. The Respondents submitted that when they approached this court, they complied by filing all the necessary documentation and the succession proceedings commenced. That the Applicant then objected by laying a claim that he could not prove. They further submitted that the Applicant had been aware of the proceedings up to when the Grant was confirmed.
18. It was the Respondents' submission that the Applicant Kiprono Sonoya had no capacity to file the present Application. That he was also not a party in the Kericho ELC Number 144/2017. That no succession proceedings had been filed before the Kericho suit was filed. It was their further submission that the present Application had been brought to delay and misdirect the court.
19. The Respondents submitted that the subject land was intact and available for succession and was supposed to be shared as per the confirmed Grant.
20. I have considered the Notice of Motion Application dated 3rd August 2023, the Grounds of Opposition dated 29th September 2023, the Applicant's written submissions dated 6th November 2023 and the Respondents' written submissions dated 27th October 2023. The only issue for my determination was whether the Grant issued on 2nd July 2019 and confirmed on 24th May 2023 should be revoked.
21. Before I begin my analysis, I have noted a preliminary issue with the Application. The Applicant asked this court to revoke the Certificate of Grant issued to the Respondents. Kemei J. [\*in re Estate of Kiberenge Mukwa \(Deceased\)\*](#) (2021) eKLR correctly held:-

“A certificate of confirmation of a grant is not a grant of representation, but a certificate to the effect that the grant had been confirmed by the court. The discretion given to the court by the provisions in section 76 of the [\*Law of Succession Act\*](#) is for revocation of grants of



representation, not certificates that confirm those grants. There is therefore no power in those provisions for the court to revoke a certificate of confirmation of grant. As can be seen from the outset, the said appeal stands on shaky ground.

.....I am being invited to revoke a certificate of confirmation of grant. The certificate is not an order of the court. A certificate is not a judicial order. It is an extract from a court order made in the confirmation proceedings. The certificate is generated from the court order. It is important for the parties to differentiate between the character of a grant of representation and a certificate of confirmation of grant. A grant is a court order; it is a judicial pronouncement to the effect that some person has been appointed as administrator and granted the power to act as such. The certificate of confirmation of grant on the other side merely certifies that orders have been made to confirm the grant. The certificate of confirmation of grant is not the order itself but a confirmation that the grant has been confirmed and the shares of the beneficiaries ascertained.”

22. Similarly *in re Estate of Prisca Ong'ayo Nande (Deceased)* (2020) eKLR, Musyoka J. held:-

“.....A certificate of confirmation of grant is akin to that order or decree that is extracted from a ruling or judgement made by a court; it is an extract of the orders that the court makes on an application for confirmation of grant. Quite clearly, therefore, a certificate of confirmation of grant is not a grant of representation, and for that reason it is not available for revocation under section 76 of the *Law of Succession Act*.

In any event, as the certificate of confirmation of grant is a mere formal expression of the orders made by the court on a confirmation application, the revocation of the certificate, if at all it is revocable under section 76, which I continue to assert that it is not, would be of little consequence, for it is only the certificate that would be affected by such a revocation order, since the orders on confirmation, from which it is extracted would remain intact. The certificate is a mere extract, its revocation would not affect its source, the orders of confirmation of grant. A grant of representation is not equivalent to a certificate, it is not an extract from some order, and it is the order itself, appointing administrators, and it is the court granting representation. The orders on confirmation of a grant remain unaffected by a revocation or annulment of the certificate of confirmation of grant. The proper thing to do should be to have the confirmation orders vacated and thereafter the certificate of confirmation of grant annulled, following the setting aside of the orders from which it draws its life. Otherwise, failure to vacate the orders would mean that a fresh certificate could still be extracted from the same orders. The confirmation and the certificate are two separate or different things.”

23. I do not need to add anything further to the above authorities save that I invoke this court inherent power under Rule 73 of the *Probate and Administration Rules*, where such power is saved to meet the ends of justice or to prevent abuse of the process of court. Having read the Application, the Grounds of Opposition and the respective submissions by both parties, I understand the Applicant to be inviting this court to revoke the Grant issued on 2nd July 2019 and confirmed on 24th May 2023 on the ground that the Petitioners/Respondents concealed material information from the court when obtaining the impugned Grant.

24. The law on revocation of Grants is provided for in Section 76 of the *Law of Succession Act* which states 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;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
  - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
  - (ii) to proceed diligently with the administration of the estate; or
  - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.

25. Mwita J. in *Albert Imbuga Kisigwa vs. Recho Kavai Kisigwa* (2016) eKLR held:-

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing 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 interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

26. The Applicant stated that the Petitioners/Respondents concealed from this court material information when obtaining the impugned Grant. He stated that the ownership of the subject land i.e. Kericho/Ndaraweta/2153 was determined by the Environmental and Land Court in Kericho in suit number 144 of 2017. That the court held that his mother, Cecilia Soi was the beneficial owner. He attached a Decree in his Supporting Affidavit as KS2 which confirmed his averments.
27. On the other hand, the Petitioners/Respondents stated that they were unaware of the existence of a court case and order involving the subject land. They stated that there was a scheme to disinherit them of the subject land which in their view was open to succession. That the Applicant raised a malicious claim as to the ownership of the subject land, a fact that he could not prove.
28. The Petitioners/Respondents opined that the subject land was still in their deceased father’s name and no effort had been shown to indicate the transfer of the subject land.
29. I have looked at the aforementioned Decree (KS2) and it is prima facie evidence that the ownership of the subject land was determined by the Environmental and Land Court in Kericho through suit number 144 of 2017 (hereinafter referred to as the Kericho Suit). The Plaintiff in the Kericho Suit was Henry Kipngetch Terer and he had sought an eviction order against the late Cecilia Soi. The court held that Cecilia Soi was the beneficial owner of the subject land. By virtue of the court order in the



- Kericho Suit, I dismiss the Respondents' argument that the Applicant failed to transfer the subject land and was thus available for succession.
30. I have also noted that the said Henry Kipngetich Terer was one of the sons of the late Kipsoi arap Maina and as such was one of the beneficiaries of the estate of the deceased. The said Henry Kipngetich Terer appended his signature on the Consent form dated 7th August 2018 which was used in the Petition for Letters of Administration. He also appended his signature on the Consent form for the Confirmation of Grant of Letters of Administration dated 5th January 2023. In the Certificate of Confirmation of Grant dated 24th May 2023, he got a share of 1.5 acres of the subject land.
  31. From the analysis above, it is clear to me that the said Henry Kipngetich Terer being a beneficiary of the supposed estate of the late Kipsoi arap Maina was aware that the subject land had a beneficial owner by the name of Cecilia Soi. He had this knowledge when the succession proceedings begun up to when the Grant was confirmed and the same was not brought to the attention of this court.
  32. The court order from the Kericho Suit is valid and enforceable as far as this court is concerned. I have not been shown any evidence of an Appeal or Review against the court's decision. I therefore dismiss the Respondents' argument that the Kericho Suit was a conspiracy to justify theft. In fact what becomes clear is that the subject land was sold before succession proceedings were undertaken and the sale was not disclosed to other family members.
  33. The Respondents stated that the Applicant had been aware of the succession proceedings all through and should have objected earlier. That the current Application was a delay tactic. The Applicant on the other hand stated that he learnt of the Confirmed Grant after the statutory period for objecting had lapsed and was therefore unable to initiate objection proceedings.
  34. To be fair to the Applicant, there were two objections filed before the Grant was confirmed. The first Objection was dated 5th July 2019 and filed on 11th July 2022 by Kipkemoi Elijah Soi (husband to the late Cecilia Soi). The second Objection was dated and filed on 22nd October 2019 by Rael Jepkemboi Tonui in person. The second Objection by Rael Jepkemboi Tonui was dismissed by this court on 5th May 2021 for want of prosecution.
  35. The first Objection by Kipkemoi Elijah Soi (the Applicant's father) was not prosecuted and determined, a fact that the Applicant raised in the present Application. I have gone through the court proceedings and there are no proceedings on record to indicate that Elijah Soi prosecuted his Objection dated 5th July 2019. Order 17 Rule 2(5) of the [Civil Procedure Rules](#) provides:-  
A suit stands dismissed after two years where no step has been undertaken.
  36. By dint of the above provision, Elijah Soi's Objection dated 5th July 2019 stood dismissed.
  37. Having considered the Application, the response and the respective parties' submissions, it is my finding that the Petitioners/Respondents concealed from this court the existence of a court order that determined the ownership of the subject land. The Petitioners/Respondents now argue that the Kericho suit was commenced without Letters of Administration. They have not shown any evidence that the Environmental and Land Court entertained a claimant who had no locus in the case. Even if that be the case, it is trite that the Orders of the Environmental and Land Court have neither been set aside nor appealed. The Judgement and Orders therefore remain valid unless and until they are set aside. Needless to state, this court was not the right forum to determine the merits of the ELC Judgement.
  38. In the end, the Grant issued by this court (Dulu J.) dated 2nd July, 2019 and confirmed by this court on 24th May, 2023 is revoked. Each party will bear their costs of the Application.



Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED THIS 30<sup>TH</sup> DAY OF APRIL, 2024.**

**R. LAGAT-KORIR**

**JUDGE**

Ruling Delivered In The Presence Of Mr Koech Gideon For The Petitioners, Mr Mugumya For The Objector And Siele(court Assistant).

