



**In re Estate of Tuei Kiplangat A Mastamedt alias Tue Mastamet (Deceased)  
(Succession Cause 56 of 2018) [2024] KEHC 4152 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4152 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE 56 OF 2018**

**RL KORIR, J**

**APRIL 30, 2024**

**IN THE MATTER OF THE ESTATE OF TUEI KIPLANGAT  
A MASTATEDT ALIAS TUE MASTATEMT (DECEASED)**

**BETWEEN**

**SAMUEL KIPKEMOI LANGAT ..... PETITIONER**

**AND**

**WESLEY KIPKORIR LEITICH ..... 1<sup>ST</sup> OBJECTOR**

**KIPRONO WESLEY LANGAT ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. The 1st Objector Wesley Kipkorir Leitich filed Summons for Revocation of Grant dated 22nd June 2020. He sought orders for revocation of the Grant of Letters of Administration obtained in the present succession cause.
2. The Application was brought under section 76 of the *Law of Succession Act* and Rules 44 and 73 of the *Probate and Administration Rules* Cap 160 of the Laws of Kenya. The Application was premised on the grounds on the face of the Application and further by the supporting affidavit sworn by Wesley Kipkorir Leitich on 22nd June 2020.

**The 1st Objector's/Applicant's case.**

3. The 1st Objector stated that the Grant issued to the Petitioner on 26th February 2019 and confirmed on 11th March 2020 in respect of the estate of the late Tuei A Mastamedt alias Tue Mastamet was obtained fraudulently and on the basis of concealment of material facts.
4. It was the 1st Objector's case that the Consent to the confirmation of the Grant was not signed by all the beneficiaries to the estate. That he was a creditor to the estate and he did not consent to the



confirmation of the Grant and therefore the Letters of Administration issued to the Petitioner and its subsequent confirmation were void.

5. The 1st Objector stated that the Petitioner secretly and fraudulently petitioned this court for the said Letters of Administration and deliberately ignored to notify him. That the Petitioner wanted to lock him out of the estate of the deceased despite him having purchased 6.0 acres of land in the land known as Kericho/Kongotik/742 (hereinafter referred to as the subject land). It was his further case that he bought the land between the year 2003 and 2010 and upon subdivision and demarcation, he was allocated 6.0 acres of the subject land.
6. It was the 1st Objector's case that he came to know of the proceedings recently when the Petitioner came to his land and bragged that he had obtained Letters of Administration and would sell the land and evict him whenever he pleased.
7. The 1st Objector stated that he had been living on the land and had been ploughing and planting crops there.
8. There was no clarity on Kiprono Wesley Langat's (2nd Objector) case. He neither stated his reason for objecting nor did he make any submissions on the objection. It is however important to note that the 2nd Objector (Kiprono Wesley Langat) was a beneficiary of the estate of the Twei Kiplangat A Mastamedt (deceased) by virtue of being his son and therefore the Petitioner's brother.

#### **The Petitioner's/Respondent's case.**

9. Through his Replying Affidavit dated 21st November 2022, the Petitioner stated that he was the son of the deceased, the late Twei A Mastamedt alias Tue Mastamet. He further stated that the Grant was obtained in adherence to the Law of Succession as all the dependants within the meaning of section 29 of the [Law of Succession Act](#) were included.
10. It was the Petitioner's case that all the beneficiaries to the estate of the deceased signed the Consent and further, that during the confirmation proceedings, his siblings who were dependants of the estate were present in court and consented to the mode of distribution. That the estate was equitably shared among the beneficiaries as all the sons each received 1.427 acres and the daughters decided not to inherit but proposed one of them to inherit 0.8 acres.
11. The Petitioner stated that the 1st Objector was neither a dependant nor a creditor of the estate. That he was not a child of the deceased and he did not possess any document executed between himself and his father in regards to any part of the deceased's estate.
12. It was the Petitioner's case that the succession proceedings were done openly and with the knowledge of all the dependants of the estate. That there was no challenge on the succession proceedings despite it going through the requisite stages.
13. The Petitioner stated that any person who claimed to have purchased a portion of the subject land from any beneficiary of the estate should wait until the estate is subdivided amongst the bonafide beneficiaries so as to invoke a transfer from the vendor.
14. It was the Petitioner's case that during the lifetime of the deceased, there was no demarcation, subdivision or transfer of the subject land and that after his death, any transfer or subdivision ought to be sanctioned through succession proceedings.
15. The Petitioner stated that the succession proceedings he undertook were backed by the law and while he undertook the proceedings, the Objectors were procuring Title Deeds in disregard of the succession process. That equity demanded that they should not have audience in this court. He further stated



that this Application was meant to frustrate their rights as bonafide beneficiaries of the estate of the deceased.

#### **The 1st Objector's written submissions.**

16. It was the 1st Objector's submission that this court should stay proceedings and execution of any orders issued. He submitted so because according to him, he had legally purchased 6.0 acres of Kericho/Kongotik/742 and attached a Sale Agreement dated 15th February 2003 between the Petitioner and himself and a letter by the Chief of Cheboin location dated 16th June 2020 which listed the correct number of beneficiaries including him.
17. The 1st Objector submitted that he was the owner of Kericho/Kongotik/742 which formed part of the deceased's estate. That the said parcel was the same one in the entire impugned Grant and it was important that this court stay the proceedings until the issue of the land parcel was determined. He relied on *Benson Mathu Wakaba and 2 others vs Doris Kigetu Maingi* (2022) eKLR.
18. The 1st Objector's submitted that there was concealment of material facts warranting the revocation of the Grant. That the Petitioner sold the subject land to him as evidenced in the Sale Agreement dated 15th February 2003 and the Petitioner being the seller, was on a mission to lock him out of the estate unfairly. He relied on section 76 of the *Law of Succession Act* and *In re Estate of George Gikundi (Deceased)* (2021) eKLR where the High Court in Chuka revoked a Grant and reversed the consequential orders.
19. He further submitted that he should be given an opportunity to state his claim as a creditor of the estate of the deceased having acquired an interest over Kericho/Kongotik/742. That the Petitioner concealed from the court that he (1st Objector) was a creditor of the estate by being a bonafide purchaser of the subject land.

#### **The Petitioner's written submissions.**

20. It was the Petitioner's submission that by the 1st Objector alleging that he bought portions of the subject land and the same having been contested by the administrator of the estate, this court had to decide on the question of ownership and it was his submission that this court lacked the jurisdiction to deal with the matter. He relied on *In re estate of Prisca Ong'ayo Nande (deceased)* (2020) eKLR where the Probate Court held that it had no jurisdiction to decide on the question of ownership of land. The 1st Petitioner further submitted that this was a matter under the jurisdiction of the Environment and Land Court.
21. The Petitioner submitted that the 1st Objector, in support of his contention that he bought 6.0 acres of the estate of the deceased, attached documents that were not written in the language of the court. That the documents were neither translated nor codified to the language of the court. He further submitted that the purported sale agreements did not bear the particulars of the deceased and were neither attested nor executed by the deceased. That the 1st Objector did not qualify to be a creditor of the estate.
22. It was the Petitioner's submission that the alleged sale in 2003 by the Petitioner could not be valid as he could not legally pass a good Title to anyone because he was not the proprietor of the subject land.
23. The Petitioner submitted that the Objectors did not approach this court with clean hands as they were busy procuring fraudulent Title Deeds as the Petitioner and other beneficiaries were engaged in succession proceedings. That the Objectors surrendered the fake Title Deeds when he moved this court through the Application dated 5th August 2020.



24. It was the Petitioner's submission that the estate of the deceased measured around 4.4 hectares (10.78 acres) and it was inconceivable how one person could own half of the estate to the exclusion of others. It was his further submission that the Grant showed that all the sons got equal shares and that the estate was administered fairly as was required of him under section 83 of the *Law of Succession Act*.
25. The Petitioner submitted that it was unclear from the present Application whether he was sued in his capacity as an administrator of the estate or as the purported vendor of the estate. That if it was the latter, then the remedy would be for the 1st Objector to wait until each beneficiary got his share and then pursue that particular heir. He further submitted that if he was sued in his capacity as an administrator, then the remedy would be in the Environmental and Land Court which would adjudicate over the legality of the sale and purchase.
26. I have gone through and considered the Summons for Revocation of Grant dated 22nd June 2020, the Replying Affidavit dated 21st November 2022, the 1st Objector's written submissions and the Petitioner's written submissions dated 22nd May 2023. The sole issue for my determination was whether the Grant of Letters of Administration issued on 26th February 2019 and confirmed on 11th March 2020 should be revoked.
27. 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.
28. Musyoka J. expounded on the application of section 76 of the *Law of Succession Act in re Estate of Prisca Ong'ayo Nande (Deceased)* (2020) eKLR where he stated that:-
- “Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for



representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.” (Emphasis mine)

29. Similarly in the case of *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa* (2016) eKLR, Mwita J. stated:-

“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 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.”

30. The 1st Objector stated that all the beneficiaries to the estate of the late Twei A Mastamedt alias Tue Mastamet did not sign the Consent. I have gone through the confirmation proceedings and in particular the Summons for Confirmation of Grant dated 18th November 2019 and I have noted that the attached Consent dated 18th November 2019 contained eight beneficiaries who all signed the Consent.

31. The 1st Objector stated the he was a purchaser for part of the deceased’s estate and he did not consent to the confirmation of the Grant. As rightly noted by the Petitioner, the 1st Objector was not a beneficiary to the deceased’s estate as he was not a child of the deceased or a dependant within the meaning of section 29 of the *Law of Succession Act*. Dependants under section 29 of the *Law of Succession Act* are listed as:-

Meaning of dependant

For the purposes of this Part, "dependant" means-

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.



32. By the 1st Objecter's own admission, he was a purchaser of part of the subject land. It is my finding that the 1st Objecter was not a beneficiary of the estate of the deceased and he was not required to consent to the mode of distribution. It is my further finding that all the beneficiaries of the estate of the late Tuei A Mastamedt alias Tue Mastamet properly consented to the distribution of the deceased's estate.
33. The other ground that the 1st Objecter relied upon was that the Petitioner concealed from the court that the 1st Objecter was a purchaser of part of the subject land and had therefore acquired interest in the subject land. In his submissions, he submitted that the Petitioner, with the deceased's authority, sold him a part of the subject land measuring 6.0 acres and he attached a Sale Agreement dated 15th February 2003.
34. I have gone through the Sale Agreement and I have noted that it was not drafted in the official language of the court but rather in the Kalenjin language. Section 86 of the [Civil Procedure Act](#) provides that:-
- (1) The language of the High Court and of the Court of Appeal shall be English, and the language of subordinate courts shall be English or Swahili.
  - (3) Written applications to the High Court and to the Court of Appeal shall be in English and to subordinate courts in English or Swahili.
35. Similarly, Article 7(2) of the [Constitution](#) of Kenya provides:-  
The official languages of the Republic are Kiswahili and English.
36. The Court of Appeal in [Raphael Lukale vs Elizabeth Mayabi & another](#) (2018) eKLR held that:-  
“The use of language and participation in culture today under Article 44 of the [Constitution](#) are fundamental rights. The official languages of the Republic of Kenya according to Article 7 are Kiswahili and English. Although Section 86 of the [Civil Procedure Act](#) provides that the official language of the High Court and Court of Appeal is English we think that by the aforesaid Article 44 this has changed, at least in so far as oral testimony in the High Court is concerned. We are of the considered view that today the relevance of that provision remains in the requirement that documents used in the proceedings in the High Court must be translated into English.....” (Emphasis mine)
37. It was very clear that the proceedings to be used by this court ought to be in English. In the event pleadings are not in English, then it is prudent that they are translated to English and such translation must be accompanied by a certificate of translation.
38. That said, as the attached Sale Agreements are not in the official court language, this court is unable to decipher their contents. Therefore, I find that the Sale Agreements relied upon by the 1st Objecter as evidence of purchase are inadmissible and the same are struck out.
39. However, there is *prima facie* evidence of intermeddling. In an Application before this court dated 5th August 2020, Samuel Kipkemoi Langat (Petitioner in current Application and the Application dated 5th August 2020) wanted this court to revoke the irregularly acquired Title Deeds being Kericho/Kongotik/1755, 1756 and 1758. Samuel Kipkemoi Langat accused Wesley Kiprono Leitich (1st Objecter) and his brothers Cheruiyot J. Langat, Benard Kipkemoi Langat and Kiprono Wesley Langat (2nd Objecter) of collusion and fraud in subdividing the subject land (Kericho/Kongotik/742) before the conclusion of succession proceedings.
40. On 26th July 2022, Mr. Mugumya Advocate who appeared on behalf of the 1st Objecter (Wesley Kiprotich Leitich) informed this court that the 1st Objecter did not oppose the cancellation of the



aforementioned Titles. On 15th November 2022, Mr. J.K Koech Advocate who appeared on behalf of the Petitioner (Samuel Kipkemoi Langat) informed this court that the aforementioned Titles had been surrendered to the Land Registrar, Bomet.

41. Flowing from the above, it is clear to me that the subject land was intermeddled with before the conclusion of the succession proceedings. The subject land was subdivided and sold during the pendency of the succession proceedings. As I had earlier stated, it was curious that the 2nd Objector (Kiprono Wesley Langat) was a brother to the Petitioner (Samuel Kipkemoi Langat) and a beneficiary to the estate of the deceased yet he was objecting to the Grant that had allocated him 1.427 acres of the subject land. This leads me to the conclusion that the 2nd Objector (Kiprono Wesley Langat) intermeddled with the subject land and sold off a part of it to the 1st Objector (Wesley Kipkorir Leitich) and knew very well that the whole subject land was not free for distribution as captured in the Certificate of Confirmation of Grant dated 5th March 2020.
42. The analysis above leads me to the conclusion that the 1st Objector/Applicant has satisfied part of the requisite requirements as provided by section 76 of the *Law of Succession Act*. The Grant was obtained fraudulently as there was concealment of the fact that the whole subject land (Kericho/Kongotik/742) was not free for distribution.
43. When I consider the evidence as a whole, it is evident that there is an ownership question surrounding the subject land. The 1st Objector claims beneficial ownership of part of the subject land while the Petitioner who is also the administrator denies the ownership claims. I agree with the Petitioner's submission that this court does not have jurisdiction to determine the issue of the ownership of the subject land. Such jurisdiction lay with the Environment and Land Court.
44. It is the primary duty of the Probate court to distribute the free estate of a deceased. In the case of *re Estate of Julius Ndubi Javan (Deceased)* (2018) eKLR, Gikonyo J. held:-

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the *Probate and Administration Rules* was enacted so that claims which are prima facie valid should be determined before confirmation.”

45. *In re Estate of Stone Kathuli Muinde (Deceased)* (2016) eKLR the court held that:-

“With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.

Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the *Civil Procedure Rules*. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained



in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it". (Emphasis mine)

46. The Applicant has demonstrated that the Grant was obtained by concealment of a material fact. Additionally, it would be counterproductive to have an enforceable Grant that subdivides land whose ownership is disputed.
47. In the end, I make the following orders:-
- i. The Grant issued on 26th February 2019 and confirmed on 5th March 2020 is revoked.
  - ii. The parties shall ventilate their claims to the subject land in the Environment and Land Court.
  - iii. The Administrator shall take out a new Grant for the distribution of the free estate of the deceased.
48. 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 Kenduiwo holding brief for Mr. J.k. Koech the petitioner  
Mr. Mugumya for the objectors and Siele(court assistant).**

