



**Kipkemoi & another v Langat & 3 others (Succession Cause  
206 of 2015) [2024] KEHC 4101 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4101 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE 206 OF 2015**

**RL KORIR, J**

**APRIL 30, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE KIBET  
ARAP KIMARUN ALIAS KIBET KIMARON (DECEASED)**

**BETWEEN**

**RICHARD KIPKEMOI ..... 1<sup>ST</sup> PETITIONER**

**KIPKORIR ARAP MWEI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**GEOFFREY KIPKORIR LANGAT ..... 1<sup>ST</sup> INTERESTED PARTY**

**RICHARD KIPKIRUI MARISIN ..... 2<sup>ND</sup> INTERESTED PARTY**

**GEOFFREY CHERUIYOT KIPLANGAT ..... 3<sup>RD</sup> INTERESTED PARTY**

**JACQUILINE CHEPKIRUI SOI ..... 4<sup>TH</sup> INTERESTED PARTY**

**RULING**

1. The Notice of Motion dated 20th January 2021 was originally filed by Patrick Kiplangat Ngeno who is now deceased. His name in the present Application was substituted with Geoffrey Kipkorir Langat (now Applicant) who was the administrator and legal representative of the estate of Patrick Kiplangat Ngeno.
2. The Applicant sought the following orders:-
  - I. Spent.
  - II. Spent.
  - III. Spent.



- IV. That the Certificate of Grant issued to Richard Kipkemoi and Kipkorir Arap Mwei (the 1st and 2nd Petitioners herein) on 21st September 2016 be revoked.
- V. That upon granting prayer IV above, this Honourable Court be pleased to cancel Titles of the parcels of land registered as Kericho/Silibwet/4287-4314 issued pursuant to the Grant dated 21st September 2016 that might have been issued with respect to the parcel of land registered as Kericho/Silibwet/833 with effect from 21st September 2016.
- VI. That the court do make any other or further orders in the interest of justice.
3. The Application was brought under Order 40 Rule 1, 2 and 3 of the Civil Procedure Rules, Sections 1, 1A, 3, 3A and 63(e) of the *Civil Procedure Act* and sections 45, 47, 71, 76, 86 and 94 of the *Law of Succession Act* and Rules 44(1), 59(6) of the Probate and Administration Rules. The Application was premised on the grounds on the face of the Application and further by the supporting affidavit sworn by Patrick Kiplangat Ngeno on 20th January 2021.

**The 1st Interested Party's/Applicant's case.**

4. The Applicant stated that the late Kibet arap Kimarun alias Kibet Kimaron did not own the parcel of land known as Kericho/Silibwet/833 under which the Grant dated 21st September 2016 was confirmed.
5. It was the Applicant's case that the Grant issued on 21st September 2016 was issued on a non-existent parcel of land being Kericho/Silibwet/833. That the same had long been subdivided and that he owned the parcels of land registered as Kericho/Silibwet/1674 and Kericho/Silibwet/1675 which he purchased from Francis Kipngeno Laboso in 2007. It was the Applicant's further case that the succession proceedings were filed without following the due process of the law.
6. The Applicant stated that the Grant was obtained through concealment of material facts and it had since caused a lot of confusion as there was double sub-division of the land previously known as Kericho/Silibwet/833. That after the Grant was confirmed, the Land Registrar Bomet proceeded to carry out further sub-division and issued illegal Titles known as Kericho/Silibwet/4287-4314 without following the law.

**The Petitioners/Respondents' case.**

7. Through his Replying Affidavit dated 22nd February 2021, the 1st Respondent stated that the Interested Party could not be enjoined in the suit because he lacked locus.
8. It was the 1st Respondent's case that the present succession cause proceeded unchallenged since 2015 and despite the Applicant having numerous opportunities to raise his concerns, he failed to do so. That it had been over five years since this court determined and concluded the succession in favour of the beneficiaries.
9. The 1st Respondent stated that the Interested Party's Application was based on quick sand and had no basis in law.
10. It was the 1st Respondent's case that since this court determined the issue of parcel number Kericho/Silibwet/833, the appropriate forum for the Interested Party to air his grievances would be the Environmental and Land Court.



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

11. It was the Applicant's submission that the Grant should be revoked as the estate of the deceased did not constitute the parcel of land known as Kericho/Silibwet/833. That the said parcel of land ceased to exist in 3rd July 1986 and owing to the subsequent sub-divisions, the Applicant acquired Kericho/Silibwet/1674 and Kericho/Silibwet/1675 from Francis Kipngeno Laboso in 2007. It was the Applicant's further submission that the Land Registrar's Report supported his averments and further that his averments were not controverted or disputed by the Respondents.
12. The Applicant submitted that this court should revoke the Grant for concealment of material facts and he relied on section 76 of the [Law of Succession Act](#) and *Kenneth Ngunjiri and 10 others v Anthony Ngaruri Njuki and another* (UR).
13. It was the Applicant's submission that this court should cancel the subsequent Titles being Kericho/Silibwet/4287-4314 that were birthed after the Grant was confirmed. He relied on *In re Estate of Leah Wanguii Nding'uri (Deceased)* (2020) eKLR

### **The Respondents' written submissions.**

14. It was the Respondents' submission that the Applicant's ground for revocation of the Grant was that he was a purchaser for his suit properties and this was not one of the grounds provided under section 76 of the [Law of Succession Act](#).
15. The Respondents submitted that the Land Registrar's Report indicated that the Applicant did not acquire his parcels of land from the late Kibet Kimaron and that it was also clear that Francis Laboso was not a member of the family but he was a stranger to the estate. That the Applicant's Titles were founded on an illegality.
16. It was the Respondents' submission that the jurisdiction of the probate court was to distribute the free estate of a deceased. It was the Respondent's further submission that when there are issues regarding the ownership of land, the same ought to be resolved before such property is distributed. They relied on section 47 of the [Law of Succession Act](#), Rule 41(3) of the Probate and Administration Rules, *In re Estate of Julius Ndubi Javan (Deceased)* (2018) eKLR, *In re Estate of Stone Kathuli Muinde* (Deceased) (2016) eKLR and [Alexander Mbaka v Royford Muriuki Rauni and 7 others](#) (2016) eKLR.
17. The Respondents submitted that the Title Deeds obtained after the death of the deceased and before the succession proceedings begun were fruits of intermeddling and the same could not be allowed to stand. That the sale and purchase of the deceased's property by Francis Laboso and the Applicant was illegal, null and void. They relied on section 82 of the [Law of Succession Act](#) and [Morris Mwiti Mburungu v Denis Kimathi M'Mburungu](#) (2016) eKLR.
18. It was the Respondents' submission that the Applicant did not challenge the succession proceedings despite having numerous opportunities to do so. That section 76 of the [Law of Succession Act](#) did not provide for the revocation of a certificate of confirmation of Grant. They relied on [Re Estate of Joel Cheruiyot Rono](#) (2016) eKLR.
19. The Respondents submitted that the Supreme Court in Petition Number 8(E010) of 2021 [Dina Management Limited v County Government of Mombasa and 5 others](#) put to rest the overarching question of a Title acquired through unprocedural, unlawful and illegal means by an innocent purchaser.



20. 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. Two issues arise for my determination and they are as follows:-

- i. Whether the Grant of Letters of Administration issued on 26th February 2019 and confirmed on 11th March 2020 should be revoked.
- ii. Whether this court should cancel Titles in Kericho/Silibwet 4287-4314

21. 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.

22. 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.”

23. Similarly in the case of *Albert Imbuga Kisigwa v Recho Kavai 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.”

24. The Applicant invited this court to revoke the Grant issued on 29th March 2016 and confirmed on 29th September 2016. In his submissions, the Applicant submitted that the parcel of land subject to the Grant being Kericho/Silibwet/833 ceased to exist on 3rd July 1986 as the same had long been subdivided. That after the subdivision, he bought parcels of land namely Kericho/Silibwet/1674 and Kericho/Silibwet/1675 from Francis Laboso. It was his further submission that the Grant ought to be revoked as the Petitioners/Respondents concealed from the court that Kericho/Silibwet/833 was not part of the estate of the deceased.

25. On the other hand, the Petitioners/Respondents stated that the Applicant did not have the locus to seek revocation of the Grant. That the Applicant failed to raise his issues during the succession proceedings and was using the current Application to prevent them from succeeding their father’s property.

26. In their submissions, they submitted that Francis Laboso was not a member of their family and was a stranger to the estate. They further submitted that according to section 82 of the *Law of Succession Act*, a deceased’s immovable property cannot be sold before succession proceedings are filed. That the transfer to the Applicant took place before succession proceedings had been filed thus making the sale and purchase of the deceased’s property null and void.

27. In discussing the duty of a Probate Court, Gikonyo J. *in re Estate of Julius Ndubi Javan* (2018) eKLR 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 on the 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 prima facie valid should be determined before confirmation.....”

28. I have gone through the court record and I have noted that this suit has attracted numerous Applications after the Grant was confirmed on 21st September 2016. There seemed to be a lot of claims regarding Kericho/Silibwet/833 which was the land subject to the succession proceedings and the land upon which the Respondents took out the Grant.



29. In a bid to unravel the issues surrounding the parcel of land known as Kericho/Silibwet/833, this court directed the Land Registrar to file a status Report, which he filed on 29th August 2022.
30. I have keenly gone through and considered the Report by the Land Registrar and I note that Kericho/Silibwet/833 previously registered in the name of Kibet Kimaron (deceased) was sub divided on 3rd July 1986 into two portions being Kericho/Silibwet/1066 and Kericho/Silibwet/1067. Kericho/Silibwet/1067 was then transferred to Francis Kipngeno Laboso on the same day (3rd July 1986) and that was when the Title on Kericho/Silibwet/833 was closed.
31. I have looked at the deceased's Death Certificate and it indicated that the Kibet Kimaron died on 12th April 1994. This may suggest that the deceased had sold and subdivided part of the subject land (Kericho/Silibwet/833) to Francis Kipngeno Laboso on 3rd July 1986, several years before his death.
32. On 25th March 1994, Francis Kipngeno Laboso subdivided his parcel Kericho/Silibwet/1067 into ten parcels being Kericho/Silibwet/1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678 and 1679. The Applicant's contention was that he was the registered owner of Kericho/Silibwet/1674 and Kericho/Silibwet/1675 having purchased the same from Francis Kipngeno Laboso.
33. I have looked at the Green Cards contained in the Report and they indicate that the parcel of land known as Kericho/Silibwet/1674 was transferred to Patrick Kiplangat Ngeno (deceased) on 12th June 2007. Additionally, the parcel of land known as Kericho/Silibwet/1675 was also transferred to Patrick Kiplangat Ngeno (deceased) on 17th May 2007.
34. The Applicant further attached the Title Deeds to Kericho/Silibwet/1675 and Kericho/Silibwet/1674 as PKN 1a and PKN 1b respectively in his supporting Affidavit dated 20th January 2021. The Title Deeds indicated that Patrick Kiplangat Ngeno (deceased) was the owner of the said two parcels of land.
35. Based on the Green Card entries and the aforementioned Title Deeds, I am satisfied that Patrick Kiplangat Ngeno (deceased) was prima facie the registered owner of Kericho/Silibwet/1674 and Kericho/Silibwet/1675. It was therefore incorrect for the Respondents to state that the Applicant had no locus to seek revocation of the Grant. The Applicant had locus as his land had been subjected to succession proceedings and as per the Grant, his land would be shared out to the beneficiaries listed in the confirmed Grant.
36. It is clear from the Land Registrar's status Report that Kericho/Silibwet/833 ceased to exist when it was subdivided on 3rd July 1986 which therefore meant that the succession proceedings which were predicated on Kericho/Silibwet/833 were a nullity ab initio. I agree with the Applicant that Kericho/Silibwet/833 was not available for succession. What was available for succession was Kericho/Silibwet/1066 which was registered in the name of the deceased. The petitioners have argued that any transfers or dealings in Kericho /Silibwet was fraudulent. That might well have been the case.
37. This court however was not the right forum to determine with certainty whether the deceased sold his land prior to his death or whether the purchasers acquired titled unprodecurally. The right forum would be the Environment and Land Court. What is clear to this court is that Kericho/Silibwet/833 was no longer in the name of the deceased and available for distribution in the succession proceedings.
38. Flowing from the above, it is evident that the Grant issued on 29th March 2016 and confirmed on 21st September 2016 cannot stand and the same is therefore null and void.



39. I have noted that the Applicant sought revocation of the Certificate of Grant. Musyoka J. *in Re Estate of Joel Cheruiyot Rono* (2016) eKLR held:-

“A certificate of confirmation of a grant is not a grant 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 application stands on shaky ground.

The reasons given for the application are that the applicant had not been notified of the hearing of the confirmation application, hence there was no attendance on his part, and the hearing proceeded to his detriment. He urges that the certificate be revoked.

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 the 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.

I wonder whether any purpose would be served by revoking the certificate without touching the orders that gave rise to the certificate. If I revoke the certificate dated 29th February 2012, another certificate can still be generated from the orders of 29th February 2012, for the revocation would leave those orders intact”.

40. In the interest of justice, no purpose would be served if the Certificate of Grant is revoked and the Grant is left standing. In principle, the Applicant appears to be unhappy with the succession proceedings and that is what came out in the body of his Application and submissions. In exercise of my discretion and in the interest of justice, I will treat the principle prayer in the Application as a prayer for the revocation of the Grant.

41. After revoking the Grant dated 29th March 2016, the question then becomes whether the Titles known as Kericho/Silibwet/4287-4314 that were born out of Kericho/Silibwet/866 were legal. In *Santuzzabilioti alias Mei Santuzza (deceased) v Giancarlo Felasconi* (2014) eKLR, the court held:-

“This cannot be the case as the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession court can order a cancellation of title deed if a deceased’s property is being fraudulently taken away by non beneficiaries such as where the property is being sold before a grant is confirmed.”

42. Similarly *in re Estate of Leah Wanguii Nding’uri (Deceased)* (2020) eKLR, Wendoh J. held:-

“In this case, the respondents filed this cause and brought themselves under the provisions of the *Law of Succession Act*. The grant that was issued to the respondents was revoked. It means that, all actions taken by the respondents including the registration of the deceased’s



property in their names was rendered a nullity..... this court has jurisdiction to order cancellation of the said titles so that the land can revert back to the deceased's names.....”

43. I also find concurrence in the case of *re Estate of Muturi Katumuta* (2022) eKLR, where Gitari J. held:-

“In succession matter, the High Court has jurisdiction to issue any orders including cancellation of title deeds where the grant is revoked.”

44. Flowing from the above, it is my finding that any Titles that were procured from Kericho/Silibwet/833 as the mother Title are invalid, null and void. The Titles known as Kericho/Silibwet/4287-4314 are hereby cancelled.

45. I have noted from the court record that there was an Application dated 25th February 2019 which also sought the revocation of the Grant and the same was filed by Simeon Kipkemoi Sigilai. Simeon Kipkemoi Sigilai stated that he was the registered owner of Kericho/Silibwet/1676 having bought the same from Francis Laboso. This Application sought the same prayer as the current Application and the same will be determined once I make the final orders in the present Application.

46. In the final analysis, having found that the succession proceedings were a *nullity ab initio*, it follows that the resultant Grant that was issued on 29th March 2016 and confirmed on 29th September 2016 was also null.

47. In the end, I make the following orders:-

- I. The Grant issued on 29th March 2016 and confirmed on 21st September 2016 is hereby revoked.
- II. The Titles known as Kericho/Silibwet/4287-4314 be and are hereby cancelled.
- III. The Application dated 25th February 2019 seeking revocation of the impugned Grant issued on 29th March 2016 by virtue of the order (i) above succeeds. I make no orders as to costs.
- IV. Parties are at liberty to ventilate their respective claims to the suit land in the correct forum.
- V. The petitioners are at liberty to take out a new grant for distribution of the free estate of the deceased.

**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 KILETYEN FOR THE PETITIONER MR. MUGUMYA FOR THE OBJECTORS AND SIELE (COURT ASSISTANT)**

