



**In re Estate of Elizabeth Chelimo Too alias Elizabeth Chelimo Sirma (Deceased)
(Succession Cause 23 of 2023) [2024] KEHC 5895 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 23 OF 2023
RN NYAKUNDI, J
MAY 24, 2024**

**IN THE MATTER OF THE ESTATE OF ELIZABETH CHELIMO TOO
(DECEASED) ALIAS ELIZABETH CHELIMO SIRMA (DECEASED)**

BETWEEN

JOHN SIRMA KOECH PETITIONER

AND

GRACE JEPTUM CHUMBA 1ST RESPONDENT

PAUL NGENY 2ND RESPONDENT

PETER KEINO 3RD RESPONDENT

DAVID MUTAI 4TH RESPONDENT

PETER KIPTARUS ROP 5TH RESPONDENT

ANNE KIMENJO JELAGAT 6TH RESPONDENT

AND

PERIS CHEPTUM BUSIENEI APPLICANT

RULING

1. The applicant approached this court vide a Summons for revocation of grant dated 03/03/2024 seeking the following orders;
 - a. Spent
 - b. Spent



- c. The amended certificate of confirmation of grant issued to John Sirma Koech on 31st March 2023 be revoked or annulled.
 - d. The Uasin Gishu County Land Surveyor is hereby compelled to stop the implementation of grant issued on 31st March 2023 and cancel titles emanating from sub division of the parcel known as Turbo East/Leseru Block 3 (Tugoin)51
 - e. Costs be borne by the respondent.
2. The application is premised on the grounds set out therein and the contents of the affidavit sworn in support of the same. The applicant contends that the amended grant issued on 23/12/2022 was obtained by concealment of material information, non-disclosure, illegality, impropriety and through a corrupt scheme. She stated that she was a daughter to the deceased and she never participated in the succession cause until she learned by surprise that the deceased's parcel of land known as Turbo East/ Leseru Block 3 (Tugoin)51 was to be sub divided. She stated that the signature in the court document purported to be her signature is not hers as she has never signed any document with regards to the succession of her fathers' property.
 3. The court directed that the application proceeds by way of written submissions vide a ruling dated 15/04/2024. However, none of the parties have since filed submissions on the same. Additionally, the respondents have not filed any responses to the application.
 4. I note that the applicant seeks to have the grant of letters of administration issued in Succession Cause No. 23 of 2010 revoked despite the fact that she is the biggest beneficiary of the distribution. Additionally, the purpose of issuing the amended certificate of confirmation of grant was to ensure that the property known as Turbo East/Leseru Block 3 (Tugoin)51 was distributed to the beneficiaries of the estate as it was jointly registered in her fathers' name and in the name of John Sirma Koech, the petitioner herein.
 5. From a perusal of the forms submitted as proof of ownership of Turbo East/Leseru Block 3 (Tugoin)51 being the certificate of search, it is evident that the property was registered in the names of David Kimaiyo Sirma and John Sirma Koech. The applicant herein was a daughter in law to Elizabeth Chelimo Sirma. Vide an application dated 04/10/2016 the applicant herein sought orders for revocation of grant and filed another application for preservative orders dated 21/11/2016. Upon obtaining preservative orders, the applicant seemingly abandoned the application and later on consented to the rectification of the grant which was the subject of the Summons for rectification dated 27/09/2022. She appended her signature to the consent for the rectification but claims the same was not her signature. The applicant is not the daughter of the deceased in this succession cause.
 6. It is trite law that litigation must come to an end. Counsel for the parties are complicit in this plethora of interlocutory applications that have plagued this suit and in so doing they are acting against the interests of justice. In my considered view, the applicant has not proved the allegations that it is not her signature contained in the consent to the rectification of grant. In *R.G Patel -V-Lalji Makanji* [1957] EA 314 the former Court of Appeal for East Africa stated thus:

“Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”



7. In the case of *Ndolo -V-Ndolo* [2008] 1 KLR (G &F) 742 the Court stated that:

“We start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases.....” “.....In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

8. Section 109 of the *Evidence Act* places the burden of proof on the applicant as it provides that:

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie in a particular person.

9. It is clear that other than claiming there is fraud, has not presented any cogent evidence in support of the same. It follows that the application fails in its entirety.

10. In the premises, I find as follows;

- a. The application dated 15/04/2024 is unmerited and hereby dismissed. Each party shall bear its own costs.
- b. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 24TH DAY OF MAY 2024

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R. NYAKUNDI
JUDGE

