



**In re Estate of Sila Kiplagat Letting (Succession Cause
46 of 2014) [2024] KEHC 5919 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5919 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 46 OF 2014
RN NYAKUNDI, J
MAY 24, 2024
IN THE MATTER OF THE ESTATE OF SILA KIPLAGAT LETTING**

BETWEEN

BEATRICE JELIMO LETTING APPLICANT

AND

ST VINCENT CATHOLIC CHURCH (KAPTELTON RESPONDENT

RULING

1. Before me are Summons dated 20/6/2023 filed by Beatrice Jelimo Letting, the Applicant wherein she seeks the following orders;
 1. That Sylvia Jepkosgei who was granted letters of administration intestate gave false information this misleading the Court by presenting herself and Nancy Jeruto leaving out 5 other beneficiaries yet they are surviving namely; Beatrice Jelimo Letting, Gladys Jebet, Jackson Kibor, Cornelius Kiprono and Boniface Kipchumba.
 2. That the grant was obtained fraudulently by making false stated that Catholic Diocese of Eldoret (St. Vincent Kapteldon) was a creditor in the estate of the late Sila Kiplagat Letting when it is not and thus not a beneficiary of the whole or part thereof of land parcel known as Kapsaret/kapsaret Block 5 (kapteldon)/91 as per the schedule to the confirmed grant.
 3. That the Petitioner has concealed material facts in respect of the deceased heirs hence she cannot purport to consider to administer the estate of the deceased heirs hence she cannot purport to consider to administer the estate of the deceased fairly.
 4. That the Petitioner has denied any involvement in the proceedings herein.
 5. That in the circumstances the interest and welfare of all the dependants shall not be adequately taken care of by the Petitioner.



6. That a proper succession cause has been filed and concluded being Eldoret Chief Magistrate's Court Succession Cause No. 14 of 2016 wherein Beatrice Jelimo Letting was given Letters of Administration.
2. The Application is premised on the grounds deponed in the Affidavits sworn on 20/6/2023 by Beatrice Jelimo Letting, Sylvia Jepkosgei Letting and Nancy J. Keino being the Applicant.

The Applicant's Case

3. The Applicant is a daughter of the deceased. The Applicant deposed that she petitioned Court for letters of Administration for her late father's estate vide Eldoret Chief Magistrate's Court Succession Cause No. 14 of 2016 in which grant was issued to her on 31/5/2016 and confirmed on 20/7/2022. The Applicant further deposed that she later learnt of the existence of this instant cause in January 2023, through the firm of Kiboi Tuwai & Co. Advocates, Eldoret and that upon perusing the proceedings culminating to the grant being issued to one Sylvia Jepkosgei Letting being her sister she learnt that the Petitioner therein had only disclosed that she had two children as beneficiaries leaving out the other (5) from the list of beneficiaries being; Beatrice Jelimo Letting, Gladys Jebet, Jackson Kibor, Cornelius Kiprono and Boniface Kipchumba. The Applicant further contended that the Petitioner made a false Statement/Information that the Catholic Diocese of Eldoret (St. Vincent Kapteldon) was a creditor in the estate herein. According to the Applicant the introductory letter by the Assistant Chief was defective in form and substance. The Applicant maintained that she is aware that their late father did not sale parcel of land known as Kapsaret/kapsaret Block 5 (kapteldon)/91 to anyone and that she has only come to learn through the succession proceedings herein that the Catholic Diocese of Eldoret (St. Vincent Kapteldon) was indicated as a creditor thereon and have their claim based on an agreement dated 14/8/2012 which agreement is purported to have been done way after the demise of their father on 29/5/2008. She contended that the said letter has its subject as parcel of land known as Plot No. 19 Kesses which is not parcel of land known as Kapsaret/kapsaret Block 5 (kapteldon)/91 which is the only parcel belonging to their late father and subject of this instant proceedings. The Applicant maintained that the Petitioner herein therefore obtained the grant of letters of administration intestate by misleading the Court. The Applicant want the Grant of Letters of Administration issued in this present Cause ne cancelled and revoked.

The Submissions

4. The application was canvassed vide written submissions. The Applicant filed their submissions on 15/1/2024 whereas the Respondent filed its submissions on 8/3/2024.

The Applicant's Submissions

5. Counsel for the Applicant submitted that the deceased Sila Kiplagat Letting died on 29/5/2008. He left behind land parcel known as Kapsaret/kapsaret Block 5(kapteldon)/91 Measuring 0.41Ha and in the year 2014, the succession process was commenced vide this cause through the initiative of Esther Letting (now deceased) who was the spouse of the late Sila Kiplagat Letting, that said Petitioner was issued with Chief's letter dated 7/1/2014 indicating that the following were beneficiaries of the estate; Nancy Jeruto, Sylvia Jepkosgei and St. Vincent Catholic church (Kapteldon). Form P & A 5 was signed by Nancy Jeruto and Sylvia Jepkosgei and on 7/8/2014, a grant of letters of administration intestate was issued to Esther Jepngetich Letting who however passed on 17/2/2014.
6. Counsel further submitted that the record herein indicates that on 26/10/2015, the daughter of the deceased herein one Sylvia Jepkosgei filed an application dated 26/10/2015 seeking to substitute the deceased administatrix and on 2/3/2016, a grant was issued thereof and which was confirmed



on 16/1/2017 wherein it is indicated that the only estate property being Kapsaret/Kapsaret Block 5(Kapteldon)/91 to be distributed wholly to Catholic diocese of Eldoret, St. Vincent Catholic Church (Kapteldon).

7. Counsel stated that the Applicant herein, who is the first child of Sila Kiplagat Letting (deceased) whom this proceedings relate filed the summons for revocation or annulment of grant on 7/8/2023 in her capacity as the daughter and the administratrix in the estate of her late father having duly been granted letters of administration in Eldoret Chief Magistrate's Court Succession Cause No. 14 of 2016. Counsel further stated that it is the Applicant's prayer that the grant of letter of administration issued to Sylvia Jepkosgei made on 16/2/2017 be revoked and annulled on the following grounds that:
 - a. Sylvia Jepkosgei who was granted letters of administration intestate gave false information thus misleading the court by presenting herself and Nancy Jeruto leaving out 5 other beneficiaries yet they are surviving namely: Beatrice Jelimo Letting, Gladys Jebet, Jackson Kibor, Cornelius Kiprono and Bonface Kipchumba.
 - b. Grant was obtained fraudulently by making of false statement that Catholic diocese of Eldoret, St. Vincent Catholic Church (Kapteldon) was a creditor in the estate of the late Sila Kiplagat Letting when it is not and thus not a beneficiary of the whole or part thereof of the only estate property being Kapsaret/Kapsaret Block 5 (Kapteldon)/91 as indicated on the schedule to the confirmed grant.
 - c. The petitioner has concealed material facts in respect of the deceased's heirs hence she cannot purport to consider to administer the estate of the deceased fairly.
 - d. The purported petitioner, Sylvia Jepkosgei Letting has denied being involved in the proceedings herein and has sworn an affidavit to that effect annexed to the subject application.
8. Counsel submitted that the only issue of determination whether the Applicant herein has made up sufficient grounds to warrant revocation of annulment of grant. Counsel cited Section 76 of the [Law of Succession Act](#) which outlines the conditions to be met before a grant can be revoked. Counsel also cited the case of In the matter of the Estate of LAK (Deceased) 2014 eKLR in that regard. Counsel argued that the application herein meets all the foregoing conditions for revocation of grant and in particular that the proceedings leading to the issuance of grant was defective, the grant was obtained by means of untrue allegations of a fact essential in point of law, and that the grant was obtained fraudulently by the making of false statement and concealment of something material to the case. Counsel submitted that the Applicant herein has in her Supporting affidavit deponed that the petitioner herein disclosed only two children as beneficiaries out of other five children from the list of beneficiaries being Beatrice Jelimo Letting (the Applicant), Gladys Jebet, Jackson Kibor, Cornelius Kiprono and Bonface Kipchumba. Counsel urged the Court to be guided by the case of in the [Estate of Moses Wachla Kimotho \(Deceased\)](#) Succession Cause No. 122 of 2002 (2009) eKLR where the court made pronouncement on the importance of disclosing all material facts before a Court of law while seeking letters of administration and confirmation thereof.
9. Counsel further submitted that the Applicant also deponed that the Petitioner made false statement/information that Catholic Diocese of Eldoret (St. Vincent Kapteldon) was a creditor to the estate of the deceased when the same is not true. The essence and fault as regards the alleged transaction is that the deceased Sila Kiplagat Letting did not sale his land parcel known as Kapsaret/kapsaret Block 5(kapteldon)/91 to anyone. Counsel stated that it is purported that his wife Esther Letting (dcd) sold the same to the said church on 14/8/2008. Counsel argued that if indeed the transaction took place, then the said Esther Letting sold the subject land parcel without any legal authority and in total disregard of all the other beneficiaries stated above. Counsel maintained that alleged transaction was



null and void and in contravention of Sections 45 and 82 of the Law of Succession Act. Counsel placed reliance on the holding in the case of in Re estate of Jamin Inyanda Kadumbi (Deceased) [2021] eKLR.

10. Counsel further argued that the purported administrator one Sylvia Jepkosgei in her affidavit in support of revocation has denied any participation in the cause herein. She has also questioned the signatures purported to be hers. Similarly, her sister Nancy J. Keino has also denied participating in this cause. According to Counsel what can be discerned from this position therefore is a possibility of some fraud and which is one of the grounds for revocation of grant.

The Respondent's Submissions

11. Counsel for the Respondent submitted that the late Silas Kiplagat Letting died on 29/5/2008 leaving behind that parcel of land known as Kapsaret / Kapsaret Block 5 (kapteldon) / 91 measuring approximately 0.41 Ha and that upon his demise, the Deceased was survive by the following persons:
 - i. Esther Letting-Widow (now Deceased);
 - ii. Nancy Jeruto-Daughter;
 - iii. Sylvia Jepkosgei-Daughter
12. Counsel further submitted that after his demise, the original Petitioner (the late Esther Letting- widow) became desirous of moving and/or relocating to Lessos. At the same time, officials from the St. Vincent Catholic Church (Kapteldon) were desirous of expanding their Church. He stated that the members of the said church became aware that the said Esther Letting wanted to move away from the place where the land in which she was staying , namely Kapsaret / Kapsaret Block 5 (kapteldon)/91 which was adjacent to the church, thereby the officials from the said church entered into negotiations with the said Esther Letting (Deceased) with a view to purchasing the same, however, they were mindful enough to insist that she secures an alternative land before engaging on the issue of sale so that she and her family should be settled and to avoid being landless. Thereafter, Counsel stated that the said Esther Letting informed the Church officials that she had found land owned by her relative, one Joel Rotich and that they have agreed to buy it. Counsel further submitted that the said Letting entered into a transaction with the said Mr. Joel Rotich on 14/8/2012 for 1.0 Acres in land parcel known as Plot No.29 Barekeiyo Farm Block 7954/2 at Kshs. 200,000/= as evidenced by the Sale Agreement of the same date and as it happened on that very same day being 14/8/2012 the said Esther Letting entered into a Sale Agreement with the Officials from the a fore mentioned Church for the subject land namely Kapsaret / Kapsaret Block 5 (kapteldon)/91 at a consideration of Kshs. 300,000/=.
13. Counsel submitted that the land agreement for the sale and payment of the land was done on the same date, Esther and her two (2) daughters Sylvia Letting and Nancy J. Keino were informed, involved and consented to the said Agreement between Esther Letting (Deceased) and the officials from the said Catholic Church and that The same Advocate prepared both Sale Agreements that were entered into that day.
14. Subsequently, Counsel stated that the Church and its members were instrumental in assisting the said Esther Letting and family to migrate to the new place (Lessos) and ensured that she was settled well and that to this end, they even had a tree planting ceremony with the family in the new place of abode.
15. Counsel further submitted that in the year 2014, the succession process was commenced vide Eldoret High Court Family cause No. 46 of 2014; Estate of the late Silas Kiplagat Letting through the initiative of Esther Letting and that the said Esther Letting was issued with chief's letter dated 7/1/2014 indicating that the following were beneficiaries of the estate: Nancy Jeruto-Daughter; Sylvia Jepkosgei-Daughter and St. Vincent Catholic Church-Purchaser. He stated that on the Succession Cause No.



- 46 of 2014, was gazetted in which Form P & A 5 had signatures from the following persons; Nancy Jeruto and Sylvia Jepkosgei. Counsel maintained that in the said Gazette Notice, the church was listed under liabilities to the estate and that on 7/8/2014, a grant of letters of Administration intestate in the Eldoret High Court P &A No. 46 of 2014, was made in favour of Esther Jepng'etich Letting as evidenced vide Grant of letters of Administration issued on 13/8/2014.
16. Unfortunately, Counsel submitted that the Administratrix Esther Jepng'etich Letting died on 17.2.2014 and her daughter, one Sylvia Jepkosgei, filed application dated 26/10/2015 seeking to substitute the deceased Administratrix as evidenced and on 2/3/2016, a grant was issued to Sylvia Jepkosgei having appointed as Administratrix in place of Esther Jepng'etich Letting, and later on 28/4/2016, the Administratrix Sylvia Jepkosgei filed application dated 24/2/2016, for confirmation of grant and that subsequently on 16/1/2017, the grant was confirmed and the certificate of confirmation was issued to confirming the rights of each beneficiary of the estate being Kapseret/kapseret Block 5 (kapteldon)/91 to Catholic Diocese of Eldoret, St. Vincent Catholic Church (Kapteldon).
 17. Counsel stated that given these developments, the Administratrix of the instant Estate, on 28.7.2020, gave her personal documentation necessary for purposes of transmitting the estate to the church, including: Kra Pin Certificate No. A007334733P and National Identity Card No. 20043392 S/NO. 280285158. Concurrently, Counsel stated the officials from the aforementioned Church engaged their Advocates to conduct the process of transmitting of the estate to the church, however, when their Advocates conducted an official search at the land office, they found that there was caution already filed by one Beatrice Jelimo Letting who was claiming beneficial interest and later it transpired that the said Beatrice Jelimo Letting and her siblings had filed another cause being Eldoret Succession Chief Magistrate's Cause No. 14 of 2016; Estate Of Silas Letting - Beatrice Jelimo Letting -petitioner. Counsel further stated that it emerged that the said Beatrice Jelimo Letting was appointed as Administratrix of the Estate of the late Silas Kiplagat Letting on 37/5/2016 in Eldoret Chief Magistrate Court No.14 of 2016 and even more disturbing to the officials from the said Church was to discover that that Sylvia Jepkosgei Letting and Nancy Jeruto Keino who had participated in Eldoret High Court Succession No. 46 of 2014 equally participated in the latter succession cause (namely Eldoret Chief Magistrate Court No. 14 of 2016) to the extent of giving consent for making of a grant to the Administratrix herein (being Beatrice Jelimo Letting) while knowing that they had participated in Eldoret High Court Case No. 46 of 2014.
 18. Counsel submitted that above-mentioned parties thereafter proceeded to unlawfully distribute the land that had been erstwhile sold to the church and went ahead and distributed the estate amongst themselves as per certificate of confirmation dated 20/7/2022. Counsel argued that of great significance is that the area chief, vide a letter dated 10/3/2015, recognized St Vincent Kapteldon Catholic Church as purchaser of the estate and that unfortunately, at the time of confirmation, they did not give the church the property from the estate.
 19. With regard to issues for determination Counsel outlined the duty of the Succession Court to prevent abuse of Court process. Counsel submitted that there exists an inescapable duty on this Honourable Court to prevent the abuse of the court process by unscrupulous and unethical litigants. Counsel stated that this duty was succinctly stated *in the Matter of The Estate of George M'mboroki Meru* HCSC No. 357 of 2004 and in the case of *In Re Estate of the Late Kyengo Kiilu Ngungi* (Deceased) [2019] eKLR.
 20. In regard to failure to disclose that there is a pending Succession Cause. Counsel submitted that in application of the aforementioned principles, it is trite law that there cannot exist two proceedings leading to the issuance of the two different grants with regard to the same Estate. Counsel stated that in this case, the said Esther Jep'netich Letting commenced succession proceedings in this matter over the Estate of the late Silas Kiplagat Letting, however the said Beatrice Jelimo secretly, fraudulently



and maliciously commenced succession proceedings over the same Estate in Eldoret Succession Chief Magistrate's Cause No. 14 OF 2016. In so doing, the said Petitioner deliberately hid or failed to reveal to that Honourable Court certain crucial material facts, namely that there is already an ongoing succession cause that deals distribution of late Silas Kiplagat Letting. Counsel argued that had this fact been disclosed from the outset, it would have been sufficient to act as a bar to preventing the succession cause in Eldoret Succession Chief Magistrate's Cause No.14 OF 2016 from being filed in the first place.

21. According to Counsel, the Petitioner in Eldoret Succession Chief Magistrate's Cause No.14 Of 2016 is merely forum shopping for a favourable determination because she ought to have initiated an objection in the instant succession. Counsel submitted that courts have ruled before that it would be imprudent for two different Certificates of Confirmation of Grants to be issued over the same Estate. Counsel relied on the holding *in Re Estate of the Late Kyengo Kiilu Ngungi* (Deceased) [2019] (*supra*), *In re Estate of Peter* (Deceased) [2020]eKLR and the case of *Peter Muturi Waitthuo & another v Margaret Nyakarima Waitthuo & another* [2016] eKLR in that regard.
22. On whether the Applicant has established fraud. Counsel submitted that it has been held that allegations of fraud must be distinctly pleaded and distinctly proved. He cited the case of *Re Estate of Dedan Kabiru Kibonge* (Deceased) [2021] eKLR and the case of *Vijay Morjaria -V-Nansingh Madhusingh Darbar & Another* [2000] eKLR.
23. With regard to the standard of proof. Counsel submitted that the standard of proof in fraud is higher than “on a balance of probability”. Counsel cited the case of *Ndolo -V-Ndolo* [2008] 1KLR and the case of *Central Bank of Kenya Limited -V-Trust bank Limited & 4 Others* [1996] eKLR.
24. With regard to who bears the burden of proving allegations of fraud. Counsel submitted that the Courts have stated that this burden lies squarely on the person alleging fraud. Counsel stated that the basis for this is found in Section 109 of the *Evidence Act*, Cap 80,Laws of Kenya, which places the burden of proof on the Applicant.
25. In the end, Counsel submitted that the Applicant has failed to distinctly state the allegations of fraud, and has fallen short of proving the said allegations up to the required standards and discharging the burden of proof falling on her and as it stands, her assertion having not been supported by sufficient evidence remains to be mere allegations.

Determination

26. I have carefully evaluated the summons for revocation of grant dated 20th June, 2023, and the one dated 7th August, 2023 sworn by learned counsel Joseph Songok on behalf of the beneficiaries to the estate, the remedies sought, the affidavit in support sworn by Beatrice Jelimo Letting. Having appreciated parties' pleadings on record, and respective submissions, it is clear that the only issue for determination in the instant Cause is; whether the Grant of Letters of Administration issued to Sylvia Jepkosgei Letting on 2/3/2016 and confirmed on 16/3/2017 should be revoked.

27.

76. Revocation or annulment of grant

“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 has ordered or allowed; 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. The Applicant wants the Court to revoke the Grant herein on grounds that the said Grant was obtained through fraud and by concealment of material facts important to this case. The Applicant allege that the Petitioner failed to disclose to this Court that there are other beneficiaries in the estate herein and that parcel of land known as Kapsaret/kapsaret Block 5 (kapteldon)/91 forming part of the deceased’s estate was irregularly sold to the Respondent.
29. The Respondent on the other hand has refuted the allegations by the Applicant by stating that it did enter into a sale agreement with the then Petitioner, Emily Jepngetich Letting (Deceased) for the purchase of parcel of land known as Kapsaret/kapsaret Block 5 (kapteldon)/91 wherein Emily Jepngetich Letting in her capacity as the widow of the deceased sold the subject land to the church. The Respondent further contended that two of the Applicant’s sisters being Sylvia Jepkosgei and one Nancy Jeruto who also participated in the proceedings leading to the confirmation of the grant herein, a fact that has however been allegedly disputed by the said Sylvia Jepkosgei as evidenced in her affidavit on record.
30. From the record, it is not in dispute that the estate herein currently has two Certificates of Confirmation of Grant with respect to the estate herein, one that was issued by this Court dated 16th February, 2017 by Githua J. and the other that was issued in Eldoret Chief Magistrate’s Court Succession Cause No. 14 of 2014 dated 20th July, 2022. In the case of *Jamleck Maina Njoroge V Mary Wanjiru Mwangi* (2015) eKLR the court observed:

“The Circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

31. Additionally, in the case of *Albert Imbuga v Recho Kavai Kisigwa*, Succession Cause No. 158 of 2000, Mwita J made remarks on the guiding principles of the revocation of a grant as follows:

“(13) Power to revoke a grant is 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.”

32. My reading of the two applications gives sufficient reasons for this court to take legal action. There is prima facie evidence that there are two certificates of confirmation of grant for the same estate but from different constitutional organs under Art 50(1) of the Constitution. It is crystal clear that the chief magistrate's court exercised jurisdiction of adjudicating over the estate of the deceased whereas at the same time the high court also processed a probate cause with the ultimate outcome of a decreed certificate of confirmation of grant. The two forums operating at different levels suffered the effect of misrepresentation of facts and non-disclosure that is to say the final decisions made were induced in some way or another by material or temporal interests by the parties who petitioned for the issuance of the grant of letters of representation. The two applications are in agreement in one common denominator that either of the petitioners who moved to the high court and the chief magistrate's court, for issuance of certificate of confirmation of grant are guilty of fraudulent misrepresentation. The author of Snell's Equity 31st Edition paragraph 8-06 defined fraudulent misrepresentation as

“ A false statement of fact which is made by D to C knowingly, or without belief in its truth, or recklessly, without caring whether it is true or false, with the intent it should be acted upon and which is in fact acted upon by C. D will be liable in such a case even though the misrepresentation was made with no corrupt motive and with no exception of profit and even though the person defrauded had a full opportunity of discovering fraud or had an agent who knew the truth.”

33. In the present case, it is the concealment of the fact that on 2nd March, 2016 grant of letters of administration intestate were issued to Esther Jepleting with Sylvia Jepkosgei to administer the estate of Silas Kiplagat Letting without disclosing that the estate was also survived by other beneficiaries namely: Beatrice Jelimo Letting, Gladys Jebet, Jackson Kibor, Cornelius Kiprono and Bonface Kipchumba. This grant of letters of administration were to be later confirmed by the High court on 16th February, 2017. Incidentally for reasons which are not very clear from the affidavits filed before this court, Beatrice Jelimo Letting had also initiated probate administration cause No. 14 of 2016 before the chief magistrate's court to the extent that on 20th July, 2022, a certificate of confirmation of grant was issued to the administrator to distribute the estate to:



| Description Of Property | Beneficiary | Shares Of Heirs |
|---|--------------------------|-----------------|
| Kapsaret/kapseret Block 5(kapteldon)91 | Beatrice Jelimo Letting | 0.25 Acres |
| Kapsaret/kapseret Block 5(kapteldon)91 | Nancy Cheruto Keino | 0.1 Acres |
| Kapsaret/kapseret Block 5(kapteldon)91 | Sylvia Jepkosgei Letting | 0.1 Acres |
| Kapsaret/kapseret Block 5(kapteldon)91 | Gladys Jebet | 0.1 Acres |
| Kapsaret/kapseret Block 5(kapteldon)91 | Jackson Kibor | 0.15 Acres |
| Kapsaret/kapseret Block 5(kapteldon)91 | Cornelius Kiprono | 0.15 Acres |
| Kapsaret/kapseret Block 5(kapteldon)91 | Bonface Kipchumba | 0.15 Acres |

34. Incidentally in the certificate of confirmation of grant in succession cause No. 46 of 2014 before the High court on 16th February, 2017 declared as follows:

| Schedule | Description Of Property | Share Of Heirs |
|---|---|----------------|
| Catholic Diocese Of Eldoret St. Vincent Catholic Church (kapteldon) | Kapsaret/kapseret Block 5(kapteldon)91 | Whole |

35. At a glance of the two certificates of confirmation of grant from the different jurisdictional forums, there is a material fact that is important, significant and essential to a reasonable person in deciding whether or not in this particular transaction or issue at hand to rule with certainty as to the genuineness of either certificate of confirmation of grant to the estate of the deceased. Material here means that the subject matter of the statement or concealment relates to a fact of circumstances which will be significant to the decision-making process in the administration of the intestate estate survived of the deceased. How is one to distinguish from a significant and an insignificant, trivial or unimportant detail of what constitutes the free estate of the deceased and on whose account was it distributed under Section 29 as read with section 38 of the *Law of Succession Act*. In this regard, two petitioners with locus standi to petition for grant of letters of administration for reasons of their consanguinity and affinity concealed from each other material facts in the making of the grant of representation. I therefore find that fraud or material misrepresentation has been established on diverse dates in the making of the two grants of letters of administration in the matter of the Estate of the late Silas Kiplagat Letting. There are two purported certificates of confirmation of grants which co-exist alongside each other but their remedies are repugnant and inconsistent with one another. For this, I find it necessary to deal with how



courts have revisited the principles of election of remedies. The best explanation on this doctrine flows from the decision in *Hlatwayo V Mare and Deas* 1912 AD 242 at 259;

“At bottom the doctrine is based upon the application of the principle that no person can be allowed to take up two positions inconsistent with one another, or as is commonly expressed to blow hot and cold, to approbate and reprobate.”

36. The principle that in this situation the law will not allow that a party to blow hot and cold is a fundamental one of general application. If that is so, I will be surprised if this court is not inspired to exercise discretion under Section 76 of the *Law of Succession Act* to revoke the two certificates of confirmation of grant in favour of the Estate of the late Silas Kiplagat Letting. Here is a suggestion in the instant application that the beneficiaries have suffered for long due to the delay in administering or transmitting the estate to the beneficiaries. However my thoughts on the matter is for the parties to proceed on the basis of the express language of the law of Succession founded therein on identification of the beneficiaries and free property of the estate and on that footing, mediate or submit to the court for an equitable remedy on distribution. Much of the controversy and confusion which culminated in the issuance of the two certificates of confirmation of grant for the same estate as contributed immensely in the estate remaining and distributed. These matters are well known with the beneficiaries and administrators alike to this intestate estate. Therefore, if they drop their hardline stance, the same principles of law and rules of evidence are applicable to them in whatever court the proceedings are instated afresh on a priority basis to bring this probate cause to a closure.
37. This discussion on this subject matter of the intestate estate, cannot be complete without admonishing the administrators who have sworn in their affidavits that they have undertaken faithfully to administer such estate according to law and to render a just and true account thereof whenever required by law so to do. Section 83 of the Succession Act provides that in granting letters of administration, the administrator has a duty to administer the estate and that upon confirmation of grant of letters of administration, do file a probate account to the court, a consequence of which the estate shall be liquidated followed with a discharge of the administrators from any responsibilities. From the record, the administrators are quick to apply for confirmation of grant but I have refused to distribute the assets of the estate to the beneficiaries in accordance with the law. The aspect of not complying with the six months timeline, to distribute the assets and furnish an inventory and account of the estate to court is a violation of section 83(g) of the *Act*. The said section should not remain a death letter in the Succession act which circumstances have bedevilled the administration intestate estates in Kenya, where administrators deal with the estate on such terms and conditions as they think fit and just. I find that the administrators to this estate to a greater extent have failed the performance yardstick of transmitting the estate within six months on confirmation of the grant of letters of administration.
38. So far as these two applications go, there is explicit finding that this legalistic overlap over the two certificates of confirmation of grant goes further than justice collateral misrepresentation and non-disclosure of material evidence to the making of the grant of representation and that seems abundantly clear that section 76 of the *Law of Succession Act* and it is difficult to disregard the fatal defect in the two legal instruments issued by the court. In that immediate context, the certificate of confirmation of grant dated 16th March, 2017 and the one dated 20th July, 2022 be and are hereby revoked for being non-responsive in transmitting the intestate estate of the late Silas Kiplagat Letting.
39. Each of the parties bear their own costs.
40. It is so ordered.

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



.....
R. NYAKUNDI
JUDGE

