

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**SUCCESSION CAUSE NO. E054 OF 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE JONATHAN MARITIM  
SIROREI (DECEASED)**

**ELIZABETH SIROREI.....1<sup>ST</sup> PETITIONER/RESPONDENT**

**SHEM MAIYO.....2<sup>ND</sup>**

**PETITIONER/RESPONDENT**

**ZEBBEDDY MARITIM.....3<sup>RD</sup>**

**PETITIONER/RESPONDENT**

**DEDAN MARITIM.....4<sup>TH</sup>**

**PETITIONER/RESPONDENT**

**VERSUS**

**MARITIM SIROREI EZEKIEL.....APPLICANT/OBJECTOR**

**Coram: Before Justice R. Nyakundi**  
**M/s A.K. Chepkong'a & Co Advocates**  
**M/s Terer & Co Advocates**

**RULING**

1. What is pending before this court for determination is a summons for revocation of a grant dated 17<sup>th</sup> day of October 2024 where the Applicant/Objector is seeking the following orders:
  - a) Spent.
  - b) That the Grant of Letters of Administration made to Elizabeth Sirorei, Shem Maiyo, Zebbedy Maritim & Dedan Maritim be revoked.
  - c) That costs of the application be provided for.
2. The Application is made on the following grounds: -
  - a) That the Petitioner has obtained a grant in respect of the Estate of the Deceased herein on the 4<sup>th</sup> October 2024.

- b) That that the proceedings to obtain the Grant was defective in substance in that there was a pending application for an Objection to the making of a grant filed by the Objector on the 20<sup>th</sup> September 2024 which had not been determined.
  - c) That the proceedings to obtain the Grant were obtained fraudulently for the reasons that the Petitioners:
    - a. Clandestinely filled the application to be issued with the Grant without the knowledge of the other beneficiaries in the estate of the deceased.
    - b. Did not obtain the necessary consents from the rest of the family members in the Deceased's estate with whom they have an equal shared interest in the Estate.
    - c. Included strangers to the Estate of the Deceased in their Petition for grant of Letters of Administration Intestate.
    - d. Have not disclosed all the rightful beneficiaries of the estate of the Deceased.
  - d) That the grant was obtained by means of an untrue allegation of a fact essential in point of law.
  - e) That the grant was obtained fraudulently by the making of false statement and by the concealment from court of something material to the cause.
  - f) That it is in the interest of justice that the orders sought to be granted
3. In support of the application is the affidavit of Maritim Sirorei Ezekiel, the Applicant/Objector who deponed as follows;
- a. That I am a Kenyan Adult of sound mind hence competent to depose this Affidavit.*
  - b. That the Deceased is my biological father.*
  - c. That I know the 2<sup>nd</sup> Petitioner who is my brother.*
  - d. That the, 3<sup>rd</sup> and 4<sup>th</sup> Petitioners are my step brothers.*

- e. That the Petitioner filed this cause and a Grant of letters of Administration Intestate was issued to him on the 4<sup>th</sup> October 2024.
- f. That however I had earlier filed an objection to the making of the grant on the 20<sup>th</sup> September 2024 which was not heard or determined.
- g. That I am informed by my advocate which information I verily believe to be true that where a grant is yet to be issued and an application for the Objection to the making of the grant is pending before the Court, the correct procedure is for the said application to be heard first wherein the Court invites the Objector to file an answer to the application for grant and a cross-application.
- h. That I have not been served with any notices from the Court inviting me to file an answer to the application for grant by the Petitioners and a cross-application as required in law.
- i. That that as a result the proceeding to obtain the Grant was defective in substance in that there was an ending application for an Objection to the making of the grant which was not heard despite being duly filed on the e-filing portal and the requisite filing fee paid for.
- j. That the Petitioners clandestinely filed the Application to be issued with the Grant for the Estate of the deceased without my knowledge and did not involve all the beneficiaries of the estate of the Deceased.
- k. That I and the family of the Deceased were not consulted and did not consent to the Grant of letters of administration being issued to the Petitioners as is evident from the absence of the beneficiaries' signatures from P & A 38.
- l. That the Petitioners have included strangers to the Estate of the Deceased in their Petition for grant letters of Administration Intestate.

- m. The one ELIZABETH SIROREI who is the 1<sup>st</sup> Petitioner herein is a stranger to the estate of the deceased*
  - n. The petitioners have not disclosed all the rightful beneficiaries of the estate of the Deceased.*
  - o. The Petitioners left out the widow to my late brother Meshack Maritim Siroreyi and who is entitled to 4 acres from land parcel number MOIS BRIDGE SIRIKWA BLOCK 3.*
  - p. That I am advised by my advocate on record that the petitioners have no right whatsoever to administer state of the Deceased without involving me.*
  - q. That Benjamin Lagat is not a creditor of the Estate of the Deceased.*
  - r. That the Deceased did not sell any portion of his land to the said creditor.*
  - s. That the Petitioners have unclean hands and are attempting to defraud and disinherit other beneficiaries by clandestinely filing the Application to be issued with the Grant for the Estate of the Deceased.*
  - t. That the Petitioners have demonstrated a propensity to administer the Estate in a manner detrimental to the bona fide beneficiaries including the Objector.*
  - u. That the objector should be represented in the administration of the subject estate to avert any fraud or mischief against him.*
4. The Application is further supported by an affidavit dated 5<sup>th</sup> June 2025 sworn by SALINA JEPNGETICH MARITIM who deponed as follows;
- a) That I am a Kenyan Adult of sound mind hence competent to depose this Affidavit.*
  - b) That I am the 2<sup>nd</sup> Wife to the Deceased.*
  - c) That the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners are my step-sons while the 4<sup>th</sup> Petitioner is my son.*

- d) That I do not know the 1<sup>st</sup> Petitioner, one ELIZABETH SIROREI who is a stranger to the estate of the Deceased.*
- e) That I have never met her and she has never been involved in any of the family affairs of the Deceased.*
- f) That the Deceased never recognized her as his daughter and neither did he introduce her to any of the family members as such.*
- g) That I have only become aware of her existence and her claim to being the Deceased child at the filling of this Succession Cause.*
- h) That it would thus be prejudicial and contrary to the Law if the estate of the Deceased is administered by a person who is not a beneficiary of the Deceased.*
- i) That the Chiefs Letter dated the 19<sup>th</sup> March 2024 lists persons who are strangers to the estate of the Deceased and is thus misleading.*
- j) That the Deceased had only two wives that is me and my Co-wife, Tecla Chepngetich Sirorei.*
- k) That the children of the Deceased are:*

*From Tecla Sirorei-1<sup>st</sup> Wife*

- i. Meshack Maritim Deceased.*
- ii. Leah Sirorei - Deceased*
- iii. Hellen Sirorei*
- iv. Shem Maiyo*
- v. Nerious Lagat*
- vi. Rael Sirorei*
- vii. Ezekiel Maritim*
- viii. Christine Cherono*

*From Salina Jepngetich Maritim- 2<sup>nd</sup> Wife*

- i. Japheth Kipkorir - Deceased*
- ii. Dedan Maritim - Deceased*
- l) That Salina Jepngetich Maritim & Tecla Chepngetich Sirorei are the surviving spouses to the deceased and rank higher in the order*

*priority to be issued with the Grant of letters of administration intestate in the estate of the deceased*  
*m) That it is in the interest of justice that the orders sought be granted*

### **Analysis and Determination**

5. I have considered the application on summons for revocation of grant issued to the following beneficiaries Elizabeth Sirorei, Shem Maiyo, Zebbedy Maritim & Dedan Maritim on 4<sup>th</sup> October 2024. Before issuing the initial grant of letters of administration intestate, the same had been gazetted in the Kenya Gazette on 23<sup>rd</sup> August 2024. In the affidavit evidence annexed to the summons for revocation, the Applicants, Linah Maritim and Tecla Chepngetich Sirorei, take issue with the procedure adopted by one of the key administrators, Shem Maiyo, in petitioning for the grant of letters of administration without their participation or inclusivity. The Applicants did not stop there, they jointly alleged that the Petitioners had gone further to include persons who are strangers to the estate of the deceased.
6. Following these serious allegations touching on the integrity of the process in the making of grant of representation, a status conference was called suo moto which was attended by the following beneficiaries including the Area chief of the location:
  - a) Rael Chepkasi Sirurey
  - b) Hellen Jemutai Sirorei
  - c) Truphena Cheptebkweny
  - d) Julia Chebungei Sirorei
  - e) Tecla Jepngetich Siroret
  - f) Hosea Kirwa Maritim
  - g) Mereu Jemeli Lagat
  - h) Maritim Sirorei Ezekiel
  - i) Shadrack Kipkemboi Tanui

- j) Peris Chelimo Too
- k) Shem Kiplagat Maiyo
- l) Salina Jepn'getich Maritim
- m) Christine Jerono

7. The Law of Succession Act incorporates national values and principles of governance such as inclusivity, equality and public participation. In line with these values, it is mandatory for any petition for the making of a grant to be published in the official Kenya Gazette. This policy guideline is indispensable and non-negotiable for petitioners appointed as personal legal representatives under Section 66 of the Law of Succession Act. Procedurally, before initiating a petition for the grant of representation, an introduction letter must be issued by the area chief of the location in which the deceased and his or her family were domiciled during their lifetime, prior to the occurrence of death (the "Act of God"), which gives rise to the competence of intestate proceedings. In the present case, the administrators who were issued with the grant of letters of administration intestate neither consulted nor obtained the necessary consents from the sureties or beneficiaries legitimately entitled to shares of the estate.
8. The Law of Succession Act provides guidance on the proper persons to be appointed as administrators of the estate of a deceased person who has not left a will naming executors. In most cases, a number of relatives of the deceased may be eligible for such appointment. However, the appointed administrators may for various reasons prove to be incompetent after such appointment. An administrator or executor may engage in fraudulent activities including misappropriating assets of the estate without the knowledge of the beneficiaries. They may also unreasonably delay the administration of the estate, fail to comply with statutory timelines, or otherwise prejudice the estate. This provision of the law guides beneficiaries on the removal of difficult or problematic administrators in such circumstances.

9. The revocation flowing from the making of the grant of letters of representation as agitated by the applicants in this intestate estate is provided for under section 76 of the Law of Succession Act which gives the court the powers to annul or revoke a grant on an application of a party or *suo moto* on the grounds stipulated therein. The section provides 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 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 protect 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 para (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular.”*

10. These provisions have been interpreted and construed by the superior courts purposively as illuminated in the following case law. Thus, in **Re Estate of Wiliam Nzioka Mutisya (Deceased) [2018] eKLR** Hon. Justice GV Odunga aptly observed:

*“it is however my view that the administrators may be removed from their duties where, due to wrangles and disagreements amongst themselves, it is impossible for them to proceed diligently with the administration of the estate...In my view if the court finds that the administrators are unable to properly administer the estate due to their disagreements, nothing stops the court from removing them from the administration and appointing new administrators notwithstanding*



*the issue of priority or preference. This must be so because section 66 of the law of succession Act provides that:*

*When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned be made."*

11. The applicants contend that the current administrators by petitioning for the grant of letters of administration have acted contrary to the law in carrying out their duties whereas they initiated the making of the grant without consultation or consent from the other beneficiaries. In the meeting held in my presence, the beneficiaries informed the court that the administrators on record had been appointed through a process that was fatally defective, involving misrepresentation and non-disclosure of material facts. It also emerged that the surviving widows of the intestate estate of the deceased had never been involved in the process of appointing a personal legal representative to the estate, which had been initiated by one Shem Maiyo.
12. This is what the applicants have pleaded and which remained unopposed from the petitioners as to the revocation of grant under section 47, 67, 68 & 76 of the Law of Succession Act Rule 17 & 73 of the Probate & Administration Rules:
  - *That the proceedings to obtain the Grant were obtained fraudulently for the reasons that the Petitioners:*
  - *Clandestinely filled the application to be issued with the Grant without the knowledge of the other beneficiaries in the estate of the deceased.*
  - *She is a stranger to the estate of the deceased.*
  - *That the grant was obtained by means of an untrue allegation of a fact essential in point of law.*

- *That the grant was obtained fraudulently by the making of false statement and by the concealment from court of something material to the cause.*

13. Failure by the petitioners to abide by the provisions of the Law of Succession Act in the making of the grant of representation renders it a subject of revocation under section 76 of the law of succession Act for reasons of misinterpretation, non-disclosure of material facts necessary to sustain the integrity of the process and the resultant outcome. Therefore, the grant of letters of administration dated 4<sup>th</sup> October 2024 is void ab initio and has no legal effect in the administration of the estate of the deceased. It is therefore appropriate for the process to start de novo in compliance with the procedural law and succession matters. For avoidance of doubt reference is also made that the new nominated administrators shall fill the necessary forms namely Form P & A 80, P & A11, P & A 57 and P & A 5 being mandatory instruments to support the making of the grant of representation. This process shall also require the named petitioners to have their petitions forwarded to the Government Printer for gazettment. For the avoidance of doubt, the removal of the four administrators initially issued with the impugned Grant of Letters of Administration stands revoked, as the process appointing them has been found by this Court to be fatally defective. The summons for revocation succeeds to that extent with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 13<sup>TH</sup> AUGUST  
2025**

.....

**R. NYAKUNDI**

## **JUDGE**

### **In the Presence of:**

Mr. Rotich Advocate for the 2<sup>nd</sup> Petitioner

Mr. Mengich Advocate holding brief for Mr. Chepkong'a Advocate for the Objectors

Some of the beneficiaries listed above