



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kiprop Maina (Deceased) (Succession Cause
26 of 2004) [2024] KEHC 10347 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 10347 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 26 OF 2004**

JK SERGON, J

JULY 31, 2024

**IN THE MATTER OF THE ESTATE OF THE LATE KIPROP
MAINA (DECEASED)**

IN THE MATTER OF

**HENRY KIPNGETICH CHEPKWONY 1ST PETITIONER
CHARLES KIPNGENO 2ND PETITIONER
ERICK KIPRUTO CHERUIYOT 3RD PETITIONER**

RULING

1. The application coming up for determination is a notice of motion dated 8th March, 2024 seeking the following orders;
 - (i) Spent
 - (ii) That this honourable court be pleased to direct the Deputy Registrar to execute the transfer documents over and in respect to L.R. Kericho/Kiptere/2092 to facilitate the subdivision, transfer and registration of the resultant parcel to and/or in favour of the beneficiaries in terms of the rectified certificate of confirmation of grant issued herein on 29th February, 2024.
 - (iii) That this honourable court may be pleased to grant such further orders as may be just and/or expedient to enable the lawful heirs of the deceased herein, to benefit from the orders of this honourable court and the resultant certificate of grant issued on 29th February, 2024
 - (iii) That, the costs of this application be provided for.
2. The application is supported by grounds on the face of it and the supporting affidavit of Kipyegon Stephen Cheruiyot, who avers that he was given consent to swear the affidavit by Henry Kipngetch Chepkwony the 1st petitioner herein.



3. He avers that on 29th February, 2024 this honourable court gave directions to the application of summons for rectification of grant to the effect that the estate herein be distributed in accordance with the proposed mode of distribution and that he and other beneficiaries were aggrieved by the 2nd and 3rd petitioners who neglected and/or reneged to sign the completion documents, they were therefore seeking this court to sign the completion documents on behalf of the 2nd and 3rd petitioner.
4. The 2nd petitioner herein Charles Kipngeno filed a replying affidavit in response to the instant application.
5. The 2nd petitioner avers that the instant application is not only defective in form and substance, it amounts to an abuse of court process for the following reasons;
 - (i) That the Applicant is a stranger to this proceedings and being a grandson to the deceased, lacks the requisite locus standi to participate in these proceedings
 - (ii) That the Applicant is not a co-administrator with Henry Kipngetch Chepkwony to purport and/or swear an affidavit on his behalf as an administrator of the estate herein.
 - (iii) That vide a ruling delivered herein on 16th December, 2022 this honourable court annulled as earlier granted and directed for a fresh grant to be issued in the joint names of Henry Kipngetch Chepkwony and Charles Kipngeno.
6. The 2nd petitioner avers that the estate property had been distributed vide a ruling delivered on 16th December, 2022 and the applicant in an attempt to review the distribution obtained ex parte orders and is now seeking reinforcement thereof.
7. The 2nd petitioner avers that there is an error on the face of record, it is necessary in the circumstances to seek a review of the orders erroneously and/or mistakenly issued on 29th February, 2024 and that there is an application for review of the impugned orders issued on 29th February, 2024 pending hearing and determination.
8. The 2nd petitioner avers that the judgement delivered on 16th December, 2022 has not been subject to review and/or appeal, consequently the distribution of the estate herein is in accordance with the certificate of confirmation of grant issued on 16th December, 2022 and subsequently rectification thereof at the instance of the applicant is an anomaly.
9. The 2nd petitioner avers that the purported rectified certificate of confirmation of grant obtained by the applicant on 29th February, 2024 was erroneously issued as a consequence of the applicants' misrepresentation of facts.
10. The 2nd petitioner avers that he had not delayed the process of distribution and had obtained limited grant of letters of administration of the estate of Shadrack Cheruiyot Koros with a view to setting in motion the process of distribution of the confirmed grant issued herein on the 16th December, 2022.
11. The matter came up for inter partes hearing and the parties made oral submissions, Stephen Cheruiyot present in person, stated that he would rely on the grounds of the instant application dated 8th March, 2024, in which he maintained that Charles Kipngeno failed to cooperate and sign the transmission forms and therefore urged this court to execute the documents so that they can conclude the instant succession cause. He stated that they had included their sisters in sharing the estate.
12. Miss Koech representing the 2nd and 3rd petitioners stated that they vehemently oppose the instant application relying on the replying affidavit. She pointed out that the applicant is a stranger in the



- instant succession proceedings yet he purported to sign and prosecute the application on behalf of Henry Kipngetich Chepkwony.
13. She stated that the applicant was merely a grandson to the deceased. She reiterated that the rectification of grant was an anomaly, that the orders were issued erroneously and therefore in addition to dismissing the instant application, the proceedings leading to the rectification of grant should be struck out.
 14. Stephen Cheruiyot retorted that he was a grandson and beneficiary of the deceased and that Henry Kipngetich had authorized the filing of the instant application. Stephen Cheruiyot maintained that the 2nd and 3rd petitioners were hellbent to delay the finalization of the instant succession proceedings.
 15. Having considered pleadings and oral submissions by the parties, the sole issue for determination by this court is whether to order the Deputy Registrar to execute the transfer documents over and in respect to L.R. Kericho/Kiptere/2092 to facilitate the subdivision, transfer and registration of the resultant parcel to and/or in favour of the beneficiaries in terms of the rectified certificate of confirmation of grant issued herein on 29th February, 2024. I find that the answer is in the negative.
 16. I have keenly perused the record and find that the orders for rectification of grant were issued, ex parte pursuant to an application dated 15th September, 2023, the matter was scheduled for inter partes hearing on 29th February, 2024 and a Hearing Notice was served to the firm of M/s Koech Chepkurui and Associates and subsequently filed in the court record.
 17. On the day for inter partes hearing, this Court noting that there was no response to the summons for rectification of grant and no attendance on the part of the 2nd and 3rd petitioner, allowed the application as unopposed, hence, the 2nd and 3rd petitioners cannot feign ignorance and fault this court for issuing the court orders on 29th February, 2024 erroneously.
 18. The above notwithstanding, I have taken note of the replying affidavit of the 2nd petitioner vehemently opposing the instant application. It raises weighty issues, the application was filed by one Stephen Cheruiyot a grandson and beneficiary of the deceased purportedly with the consent and/or on behalf of Henry Kipngetich Chepkwony an administrator of the estate of the deceased. I have considered the respondent's averments and I am persuaded that Stephen Cheruiyot is a stranger to the instant succession proceedings and thereby lacks the locus standi to prosecute the instant succession cause. I therefore find that in the circumstances the application should be struck out for being incompetently before this Court with no orders as to costs.
 19. In light of the foregoing, the notice of motion dated 8th March, 2024 is hereby struck out with no orders as to costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 31ST DAY OF JULY, 2024.

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Koech for the Respondent

Stephen Kipyegon – Present in Person

