



**In re Estate of Kipseron Chumo (Deceased) (Succession Cause
34 of 2019) [2024] KEHC 9237 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 34 OF 2019**

JK SERGON, J

JULY 31, 2024

IN THE MATTER OF THE ESTATE OF THE LATE KIPSERON CHUMO (DECEASED)

BETWEEN

ESTHER CHEPKEMOI SERON APPLICANT

AND

JACKLINE CHEPKOECH RESPONDENT

RULING

1. The application coming up for determination is a notice of motion dated 14th May, 2024 seeking the following orders;
 - (i) That this honourable court be pleased to review and/or set aside the orders for confirmation of grant given on 21st October, 2021 and issue orders for confirmation of grant accommodating the liabilities of the estate as per the order of the Environment and Land Court given on 2nd February, 2023 and issued on 7th February, 2023. The grant be reviewed to the following extent:
 - a. Jane Cherugut Seron - 2.40 acres
 - b. Ruth Chepkemoi Seron - 2.40 acres
 - c. Esther Chepkemoi Seron - 2.40 acres
 - d. Daniel Kiprotich Kirui - 2.40 acres (to hold in trust for the family of Samwel Seron)
 - e. Kipkemoi Yegob Robert - 0.40 acres
 - f. Jackline Chepkoech - 0.10 acres
 - g. Ronald Kipngetch Yegon - 0.30 acres



- h. Kirui Charles Kiprotich - 0.21 acres
 - i. Evalyne Chebet - 0.42 acres
 - j. Linner Chepkoech - 0.10 acres
 - k. Caroline Cheron - 0.10 acres
 - l. Gladys Chepkoech Chepkwony - 0.15 acres
 - m. Nancy Chepkirui Chepkwony - 0.10 acres
 - n. Eucabeth Chelangat - 0.10 acres
 - o. David Kipkurui Cheruiyot - 0.10 acres
 - p. Chepkorir R. Joyce - 0.20 acres
- (ii) That the certificate of confirmation of grant given on 21st October, 2021 be set aside in favour of upholding the orders given by the Environment and Land Court on the 2nd February, 2023 so as to enable each beneficiary and liability to obtain individual titles for the portions of land that have been allocated to them and/or purchased.
- (iii) That costs of this application be provided for.
2. The application is based on grounds stated on the face of it and is supported by the facts deponed in the supporting affidavit of Esther Chepkemai Seron the applicant herein.
 3. The applicant avers that the deceased died on 16th November, 1998 and a certificate of confirmation of the letters of administration of the said estate were issued to the administrators on 21st October, 2021.
 4. The applicant avers that the Environment and Land Court at Kericho vide ELC No. E030 of 2021 made orders that the purchasers should be included as liabilities in the succession cause and should therefore be included in the confirmed grant and further that the said orders arose out of the adoption of a mediation agreement as a judgement of the court.
 5. The applicant avers that the mediation process was conducted transparently and without coercion and that all parties had the opportunity to participate voluntarily. The mediation agreement was duly signed by all parties after they had read and understood its contents.
 6. The applicant avers that in her capacity as the administratrix of the estate of the deceased she wished to have the grant reviewed in order for the liabilities of the estate to be included in the confirmed grant so as to enable them proceed with the distribution of the estate of the deceased to its completion.
 7. The respondent herein Jackline Chepkoech filed a replying affidavit in response to the instant application.
 8. The respondent avers that the instant application is not genuine as the applicant was looking for a way to include intruders who had illegally occupied their father's land and refused to vacate despite having filed ELC No. E030 of 2021, in which the said intruders were told to allow the confirmed grant to give land to the beneficiaries of the estate and later follow whoever sold land to them. The respondent further avers that she had filed an application challenging the orders obtained irregularly in ELC No. E030 of 2021 and that the application is due for hearing.
 9. The respondent avers that the aim of the applicant's application is to scuttle the distribution of the estate as per the confirmed grant, since the applicant is settled in most of the estate property.



10. The respondent therefore urged this court to dismiss the application for review and order that the confirmed grant be executed within set timelines.
11. The matter came up for inter partes hearing, Mr. Kirui holding brief for Mr. Motanya for the 2nd petitioner, urged this court to review the orders confirming the grant issued on 21st October, 2021 following orders of the Environment and Land Court that the purchasers be accommodated in the succession cause as liabilities.
12. Mr. Ngeno for the 1st petitioner, stated that he would be relying on the averments in the replying affidavit to oppose the application. He contended that there was no discovery of new facts that warranted this court to review its orders.
13. He maintained that the purchasers bought land from the children of the deceased and not from the deceased, the applicants were therefore intermeddlers of the estate. He reiterated that they had filed an application to set aside the consent orders of the court in ELC No. E030 of 2021. He further argued that the beneficiaries should be given their rightful shares of the estate and that this court should not be used to sanitize illegal transactions.
14. It is clear from the material placed before this court that the Environment and Land Court referred the dispute to the Court Annexed Mediation. The Court Annexed Mediation settled the dispute resulting to the Mediation Settlement Agreement dated 10th January, 2023. All the parties to that dispute including Jackline Chepkoech, the 1st Petitioner herein executed the Mediation Settlement Agreement. The Mediation Settlement Agreement was adopted by the Environment and Land Court, adopted the Mediation Settlement Agreement as its decision.
15. In the Mediation Settlement Agreement, it is expressly stated that the Court should authorize the County Surveyor to subdivide the parcels of land according to the confirmed grant that incorporates the Purchasers. The 1st Petitioner has opposed the instant Application arguing that the Purchasers were intermeddlers of the Estate and that the Court should not sanitize illegal sale transactions undertaken by the children of the deceased and not the deceased.
16. The 1st Petitioner further stated that she has filed an Application seeking to set aside the Mediation Settlement Agreement. However, the 1st Petitioner failed to tender any evidence showing she challenged the Mediation Settlement Agreement which was adopted as the decision of the Environment and Land Court. In the circumstance, I find her objection to be without merit.
17. Having considered pleadings and oral submissions by the parties, the sole issue for determination by this court is whether to review and or set aside the orders for confirmation of grant given on 21st October, 2021 and issue orders for confirmation of grant accommodating the liabilities of the estate as per the order of the Environment and Land Court given on 2nd February, 2023 and issued on 7th February, 2023. The answer is in the affirmative. The parties being privy to the fact that the probate court does not have jurisdiction to determine third party claims in respect of the estate of the deceased, had the matter referred to the Environment and Land Court vide ELC No. E030 of 2021 and the court issued orders to the effect that the purchasers should be included as liabilities in the succession cause and should therefore be included in the confirmed grant. This court is cognizant of the fact that the orders arose out of the adoption of a mediation agreement of the parties as a judgement of the Environment and Land Court, which mediation agreement is yet to set aside.
18. *In Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR; though persuasive Musyoka J. observed as follows; "...The Law of Succession Act, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the



deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the Civil Procedure Act and Rules, which have elaborate rules on suits by and against executors and administrators...

Clearly, disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation...”

19. Consequently, the notice of motion dated 15th May, 2024 is hereby allowed in its entirety. However, on the issue of costs, this being a probate matter each party to bear its costs.

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

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Kirui holding brief for Motanya for Applicant

W. K. Ngeno for Respondent

