



In re Estate of Joshua Kibomet Munai (Deceased) (Succession Cause 45 of 1996) [2024] KEHC 11427 (KLR) (26 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11427 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 45 OF 1996
JK SERGON, J
SEPTEMBER 26, 2024**

IN THE MATTER OF THE ESTATE OF JOSHUA KIBOMET MUNAI (DECEASED)

BETWEEN

JOHN KIPNGETICH KIRUI PETITIONER

AND

PAUL KIPRONO KIRUI 1ST APPLICANT

MARTIN KIPRUTO TONUI 2ND APPLICANT

RULING

1. The application coming up for determination is a chambers summons dated 29th April, 2024 seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) That this honourable court be pleased to issue a declaration that the respondent has violated the terms of the grant and that he has not diligently administered the estate.
 - (iv) That the respondent be compelled by this honourable court to sign and/or execute all the requisite documents for transmission of LR Kericho/Chemoiben/30-Plot in Litein Township, Kericho/Kipwastuiyo/310, Kericho/Joubert/KedowaBlock3/Sheet No. 1/ Plot No. 103, Kericho Chemoiben/24-Commercial Plot in Litein Township as per the certificate of confirmation and in default this honourable court authorise the Deputy Registrar to sign and/or execute the requisite documents for such transmission for the applicants' share pursuant to the certificate of confirmation of grant issued on 18th November, 2019.



- (v) That Paul Kiprono Kirui and Martin Kipruto Tonui be to complete the process of succession of the estate of the deceased and John Kipngetich Kirui be removed as an administrator.
 - (vi) That the grant of letters of administration intestate issued to the petitioner John Kiprono Kirui on 27th April, 1998 be re-issued to Paul Kiprono Kirui and Martin Kipruto Tonui and the name John Kipngetich Kirui be removed.
 - (vii) That the certificate of confirmation of grant issued on 18th November, 2019 to the petitioner John Kipngetich Kirui be re-issued to Paul Kiprono Kirui and Martin Kipruto Tonui to proceed with registration of the documents at the lands office.
 - (viii) That costs of this application be in the cause.
2. The application is supported by grounds on the face of it and the supporting affidavit of Paul Kiprono Kirui and Martin Kipruto Tonui the applicants herein.
 3. The applicants aver that they are beneficiaries of the estate of the deceased, who died intestate on 6th December, 1982.
 4. The applicants aver that the petitioner has failed to cooperate with the beneficiaries of the estate and as a result the certificate of confirmation issued on 18th November, 2019 is yet to be executed.
 5. The applicants are therefore seeking to be substituted as administrators of the estate of the deceased instead of John Kipngetich Kirui the petitioner herein. The applicants seeking to have the certificate of confirmation of grant issued on 18th November, 2019 to John Kipngetich Kirui be rectified to read Paul Kiprono Kirui and Martin Kipruto Tonui who are beneficiaries of the estate of the deceased.
 6. The applicants filed a further affidavit and aver that the certificate of confirmation of grant in the estate was issued to one Josiah Kiptonui arap Kirui on 27th April, 1998 who died before he could transfer the property of the deceased to the beneficiaries.
 7. The applicants aver that after the demise of Josiah Kiptonui arap Kirui, the petitioner herein John Kipngetich Kirui applied to be issued with a rectified certificate of confirmation and the rectified certificate of confirmation of grant was issued to him on 18th November, 2019.
 8. The applicants reiterated that the petitioner/respondent herein is not cooperative and therefore the beneficiaries of the deceased and family representatives resolved to nominate the applicants as administrators of the estate and attached a copy of minutes of the family meeting held on 30th May, 2024.
 9. John Kipngetich Kirui the petitioner/respondent filed a replying affidavit in response to the application.
 10. The petitioner/respondent avers that this Court is functus officio as the rectified Certificate of Confirmation of Grant issued to him on 18th November, 2019 has been fully implemented.
 11. The petitioner/respondent avers that Hon. Justice George Dulu, distributed the defunct estate to the respective beneficiaries save for the plots comprising of Kericho/Chemoiben/30 measuring 0.06 acres and Kericho/Chemoiben/24 measuring 0.05 acres respectively whereby he was entrusted to hold the plots in trust on behalf of the estate.
 12. The petitioner/respondent avers that the plots he holds in trust on behalf of the estate, majorly consist of business premises wherein all the proceeds are collected and channeled through to a designated joint account domiciled at K.C.B Litein Branch and proceeds shared equally amongst the beneficiaries.



13. The petitioner/respondent avers that sometime in 2023 one of the tenants renting a premise in Kericho/Chemoiben/30, situated in Litein fell into arrears and he made effort to recover the rent arrears including filing a case seeking to levy distress in the Business Tribunal, vide Tribunal Case No. E063 of 2023 whereby he discovered that the said tenant was no longer a tenant but landlord of the said premises. The tenant had purportedly entered into a sale agreement to purchase Kericho/Chemoiben/30 with the applicants.
14. The petitioner/respondent avers that Kericho/Chemoiben/30 was entrusted to him to hold interest on behalf of the estate of the deceased and therefore an alleged transaction in respect to the said parcel is null and void ab initio.
15. The petitioner/respondent filed grounds of opposition in opposition to the chamber summons dated 29th April, 2024 based on the following grounds;
 - (i) The orders sought overstretch the jurisdiction and powers of this Court as the rectified Certificate of Confirmation of Grant issued to the Petitioner/ Respondent herein on 18th November, 2019 has been fully implemented and as such, there is nothing left which is capable of being administered. In view of full implementation of the rectified Certificate of Confirmation of Grant issued on the 18th November, 2019, this Honourable Court is now functus officio.
 - (ii) Pursuant to, the rectified Certificate of Confirmation of Grant issued to the Petitioner/ Respondent on 18th November, 2019 Hon. Justice George Dulu, distributed the defunct estate to the respective beneficiaries save for the Plots comprising of Kericho/Chemoiben/30 measuring 0.06 acres and Kericho/Chemoiben/24 measuring 0.05 acres respectively whereby the Petitioner/Respondent herein was entrusted to hold the plots in trust on behalf of the estate. The Plots being held by the Petitioner/Respondent herein in trust on behalf of the estate, majorly consists of business premises wherein all the proceeds are collected and channelled through to a designated Joint Account domiciles at K.C.B Litein Branch and proceeds shared equally amongst the beneficiaries.
 - (iii) None of the applicants herein ever raised any queries regarding the management and administration of the Plots comprising Kericho/Chemoiben/30 in various meetings held before the inception of the instant application. The Respondent/Administrator has diligently observed all the terms and conditions of trusteeship.
16. Having considered pleadings by the parties, the issues for determination by this court is whether to compel the petitioner/respondent to sign or execute the requisite transmission documents or in default authorise the Deputy Registrar to sign and/or execute the requisite documents for such transmission pursuant to the certificate of confirmation of grant issued on 18th November, 2019 and whether the applicants herein should be allowed to complete the process of succession of the estate of the deceased and John Kipnetich Kirui be removed as an administrator.
17. On the issue as to whether to compel the petitioner/respondents to sign or execute the transmission documents or in default authorise the Deputy Registrar to sign or execute for such transmission pursuant to the certificate of confirmation of grant issued on 18th November, 2019, this court has considered the replying affidavit and grounds of opposition filed in response to the instant application. The petitioner/respondent stated that this court distributed the defunct estate to the respective beneficiaries save for two commercial plots comprising of Kericho/Chemoiben/30 and Kericho/Chemoiben/24 whereby he was entrusted to hold the plots in trust on behalf of the estate, the proceeds are collected in joint account and shared equally amongst the beneficiaries. The petitioner/



respondent further stated that the rectified Certificate of Confirmation of Grant issued to the Petitioner/ Respondent herein on 18th November, 2019 has been fully implemented and as such, there is nothing left which is capable of being administered. This therefore renders this issue moot as courts do not issue orders in vain. Ojwang, J (as he then was) in *B. v Attorney General* [2004] 1 KLR 431 observed that “The Court does not, and ought not to be seen to, make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”

This Court is convinced by the Respondent’s averment that rectified Certificate of Confirmation of Grant was fully implemented and there is nothing to administer further.

18. On the issue as to whether the applicants herein should be allowed to complete the process of succession of the estate of the deceased and John Kipngetch Kirui be removed as an administrator, this court finds that the applicants have not aptly demonstrated that the administrator violated the terms of the grant and/or failed to diligently administer the estate thereby warranting the interference of this court. It is noteworthy to point out that the probate court has the inherent power to issue orders that may be necessary for the ends of justice as prescribed in section 47 of the *Act* and Rule 73 of the *Probate and Administration Rules*. The latter rule provides as follows: “Nothing in this rule shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court.” It is the finding of this court that the applicants have not made out a good case for the removal of the administrator on account failure to diligently carry out and/or complete administration of the estate of the deceased in accordance with the grant as confirmed by this court.
19. Consequently, the chamber summons dated 29th April, 2024 is hereby dismissed. This being a probate matter, each party to bear its costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 26TH DAY OF SEPTEMBER, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Bii for the Applicant

No Appearance for Migiro for the Respondent

