



In re Estate Cheramgoi Arap Ngerechi (Deceased) (Succession Cause 279 of 1999) [2024] KEHC 13142 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13142 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 279 OF 1999
JK SERGON, J
OCTOBER 30, 2024
IN THE MATTER OF THE ESTATE OF CHERAMGOI
ARAP NGERECHI (DECEASED)**

BETWEEN

SIMON CHERAMGOI PETITIONER

AND

HENRY TOWETT RESPONDENT

RULING

1. The application coming up for determination is a notice of motion dated 28th May, 2024 seeking the following orders;
 - (i) Spent
 - (ii) That the District Land Registrar, Bomet be directed to dispense with the production of the original title deed in respect of L.R. No Kericho/Kongotik/405 in effecting transfer by way of transmission pursuant to the certificate of confirmation of grant dated 13th February, 2014.
 - (iii) That there be no orders as to costs.
2. The application is premised on the grounds stated on the face of the motion and the facts deponed in the supporting affidavit of Simon Cheramgoi the applicant herein.
3. The applicant avers that he is the administrator of the estate of the deceased and that the grant of letters of administration intestate were issued to him and confirmed by this Court on 13th February, 2014.
4. The applicant avers that the process of transmission of the parcel of land known as L.R Kericho/ Kongotik/405 has not been completed owing to frustration occasioned by the respondent's refusal to surrender the original title deed for the property for purposes of issuance of the new title deeds.



5. The applicant avers that the original title of land parcel known as L.R Kericho/Kongotik/405 is in the possession of the respondent who vehemently declined to surrender the same despite numerous requests and demands.
6. The applicant avers that the respondent has been summoned to court on a previous occasions, however, he neither attended court nor produced the original title deed as directed in the summons.
7. The applicant avers that the refusal to produce or surrender the original title has occasioned an inordinate delay in the conclusion of the matter and that he is unable to render the final accounts in respect to the administration of the deceased's estate.
8. The respondent filed a replying affidavit in response to the application.
9. The respondent avers that he belongs to the second house in the instant succession cause and that he is not the appointed administrator on behalf of the second house and that vide an application dated 8th August, 2023 the petitioner was to enable the appointment of Bernard Kibet Langat as the administrator on behalf of the second house and that the same application ought to be heard and determined.
10. The respondent avers that the initial grant of letters of administration in the estate of the deceased were issued to the two widows of the deceased vide succession proceedings in the Principal Magistrate's Court in Kericho No. 25 of 1989 and was uncertain as to how the current proceedings mutated from the said succession cause and that the same should be properly interrogated by this Court.
11. The respondent vehemently denies that he is in possession of the original title deed in respect of L.R. No Kericho/Kongotik/405.
12. The respondent avers that the subject land title has the names Cheramgui A. Mngerechi which is different from the names appearing in the grant as Cheramoi Arap Ngerechi Kimelek alias Cheramgui A. Ngerechi and that this is a fundamental issue that should be addressed before further dealings with the title in finality.
13. The respondent further avers that the names of the deceased as they appear on the identity card as Cheramgoi A. Ngerechi does conform with the names on the grant.
14. The respondent avers that the names appearing on the gazette notice on 7th July, 1989 No. 3158 with the names of the deceased as Cheramgoi Arap Ngetich vis a vis the names appearing on the certificate of death Cheramgoi Arap Ngerechi Kimelek and this Court ought to make a determination on the same.
15. The respondent avers that the instant application filed against him is erroneous and premature yet the estate of the deceased is yet to be properly identified and administered by having administrators in place.
16. The respondent therefore urged this court to relook into the issues raised and give directions in the matter in the interests of justice to the entire estate of the deceased.
17. Having considered the application filed by the applicant, the sole issue for determination by this court is whether to direct the District Land Registrar, Bomet to dispense with the production of the original title deed in respect of L.R. No Kericho/Kongotik/405 in effecting transfer by way of transmission.
18. On the issue as to whether to direct the land registrar to dispense with the production of the original title deed in the transmission of the estate property, the answer is in the negative. This Court finds that this application is premature as there is an application on record dated 8th August, 2023 where the petitioner is seeking for the appointment of Bernard Kibet Langat as the administrator to represent the second house and that the same application is pending determination.



19. The issue of administrators in respect of the estate of the deceased ought to be resolved before the administrators can effect the final distribution of the estate of Cheramgoi Arap Ngerechi, deceased.
20. Consequently, the notice of motion dated May 28, 2024 is hereby ordered dismissed with no orders as to costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 30TH DAY OF OCTOBER, 2024.

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Bore for the Petitioner

Bosire for Henry Towett

