



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Kibii Maritim- (Deceased) (Miscellaneous Civil Application  
10 of 2024) [2024] KEHC 13236 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13236 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
MISCELLANEOUS CIVIL APPLICATION 10 OF 2024**

**JK SERGON, J**

**OCTOBER 30, 2024**

**IN THE MATTER OF THE ESTATE OF KIBII MARITIM-  
DECEASED**

**BETWEEN**

**WILLY KIPNGENO MARITIM ..... APPLICANT**

**AND**

**WILFRED CHEBET LANGAT ..... 1<sup>ST</sup> RESPONDENT**

**HILLARY KIPKOECH LELGO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application coming up for determination is a notice of motion dated 16th September, 2024 seeking for the following orders;
  - (i) Spent
  - (ii) Protection orders to issue against the respondents herein prohibiting interference and intermeddling with the assets of the estate of the deceased.
  - (iii) The court be pleased to make a declaration that the sale of three (3) points of land out of the deceased's land known as L.R Kericho/Kipchimchim/1627 by the 1st Respondent to the 2nd Respondent amounts to intermeddling with the property belonging to the deceased person within the meaning of section 45 of the Law of Succession Act and therefore unlawful, null and void.
  - (iv) The court be pleased to order eviction of the 2nd Respondent out of the property of the deceased known as L.R Kericho/Kipchimchim/1627 and further a permanent injunction do issue restraining the 2nd Respondent, his children, assigns, gents and/or any other



person acting on her behalf from entering into the deceased's property being L.R Kericho/ Kipchimchim/1627 or in any other way interfering with the land or otherwise intermeddling with the property belonging to the deceased's person

- (v) The Respondents be condemned to pay the costs of this application.
  - (vi) The Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
2. The application is based on the grounds set out on the face of it and the facts deponed in the supporting affidavit of Willy Kipngeno Maritim the applicant herein.
  3. The applicant avers that he is a beneficiary of the estate of the deceased and that the administration of the estate of the deceased is an ongoing process and that the same is yet to be finalised.
  4. The applicant avers that the 1st Respondent has since sold a portion measuring 3 points to the 2nd Respondent who has fenced off the portion and ploughed the land and that these actions by the Respondents were tantamount to intermeddling with the estate of the deceased within the meaning of section 45 of the Law of Succession Act and therefore unlawful, null and void.
  5. The applicant avers that unless restrained, the respondents will continue to intermeddle with the property of the deceased thereby occasioning prejudice and inimical to the interests of the applicant in the estate of the deceased.
  6. The applicant avers that this court should therefore issue eviction orders against the 2nd Respondent and a permanent injunction restraining the Respondents from intermeddling with the deceased estate.
  7. The applicant urged this court to grant the prayers sought in the application which is in the interest of justice, sanctity of the law and preservation of the estate of the deceased.
  8. The 1st respondent filed a replying affidavit in response to the application.
  9. The 1st respondent avers that she is the sole administrator of the deceased's estate by virtue of being the widow of the deceased and therefore ranks in priority to all other beneficiaries, the applicant included.
  10. The 1st respondent avers that the applicant has not challenged the mode of distribution in the trial court as envisaged in the Law of Succession Act and the present application is a mere protest clothed as a miscellaneous application.
  11. The 1st respondent avers that the issues raised in the application can only be addressed by the trial court through a proper appeal and yet the applicant has not filed a substantive appeal.
  12. The 1st respondent avers that pursuant to the ruling of the trial court on 1st November, 2023 she prepared a rectified summons for confirmation of grant in tandem with the ruling and was issued with a rectified certificate of confirmation of grant.
  13. The 1st respondent avers that in exercise of her powers as an administrator of the deceased's estate, she moved to get a court order for police protection during the survey process and secured the consents to ensure sub division of the estate of the deceased to the rightful beneficiaries, including the applicant herein.
  14. The 1st respondent avers that the instant application, if allowed, would be extremely prejudicial to her and the entire estate of the deceased.
  15. I have considered the pleadings by both parties and the issue (s) for determination are whether to issue protection orders against the respondents herein prohibiting interference and intermeddling with the



assets of the estate of the deceased and whether to issue eviction orders and a permanent injunction restraining the 2nd respondent and/or any other person acting on his behalf from entering into the deceased's property being L.R Kericho/Kipchimchim/1627.

16. On the issue of as to whether to issue protection orders against the respondents prohibiting interference and intermeddling with the assets of the estate of the deceased, it is clear that the 1st respondent is the sole administrator of the estate of the deceased, therefore her actions as an administratrix are sanctioned by the Law of Succession and therefore not tantamount to intermeddling of the estate of Kibii Maritim, deceased.
17. On the issue as to whether to issue eviction orders and a permanent injunction restraining the 2nd respondent and/or any other person acting on his behalf from entering into the deceased's property being L.R Kericho/Kipchimchim/1627, this court finds that the 2nd respondent has been listed as a beneficiary of the estate of the deceased in the rectified certificate of confirmation grant dated 8th November, 2023 and therefore issuing adverse orders would be prejudicial to the 2nd respondent.
18. In any event the applicant is yet to lodge an appeal or review contesting the mode of distribution that informed the rectified certificate of confirmation grant dated 8th November, 2023.
19. The upshot is that there is no merit in the application. The same is thereby dismissed with no orders as to costs.

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

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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Miss Cherono holding brief for O. Langat for applicant

Morata for the Respondent

