



In re Estate of Michael K Sang alias Michael Kiprono A Sang (Deceased) (Succession Cause 114 of 2013) [2024] KEHC 13143 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13143 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 114 OF 2013**

JK SERGON, J

OCTOBER 30, 2024

**IN THE MATTER OF THE ESTATE OF MICHAEL K.
SANG ALIAS MICHAEL KIPRONO A. SANG (DECEASED)**

BETWEEN

NANCY CHEPKEMOI SANG 1ST PETITIONER

JOHN KIPKORIR RONO 2ND PETITIONER

AND

CAROLINE RONO BENEFICIARY

RULING

1. The application coming up for determination is a chambers summons dated 6th November, 2023 seeking the following orders;
 - (i) That the orders of the honourable court contained in the ruling of the court dated 16th day of September, 2022 be reviewed and set aside.
 - (ii) That the grant of letter of administration issued to the applicants on 6th May, 2014 be reinstated.
 - (iii) That an order to issue directing the Registrar of Lands Kericho to cancel entry number 2 and 3 in the register of land parcel L.R. No. Kericho/Chepseon Block II (Sitian)/122; close the registers for all numbers resultant from subdivision registered on 13th day of September, 2019 and restore the name of Micheal Kiprono A. Sang (deceased) as the proprietor of the land parcel L.R. No. Kericho/Chepseon Block II (Sitian)/122
 - (iv) That rectified certificate of confirmation of grant dated 13th November, 2017 be cancelled



- (v) That upon grant of prayer no. (ii) and (iv) above, the grant of letters of administration reinstated and be confirmed under the mode of distribution proposed by the applicant
- (vi) That the costs of this application be in the cause.
2. The application is premised on the grounds stated on the face of it and the facts deponed in the supporting affidavit of Nancy Chepkemoi Sang, the 1st petitioner and the administratrix of the deceased's estate on behalf of her co-administrator John Kipkorir Rono.
 3. The 1st petitioner avers that the grant of letters of administration issued to her and her co-administrator was confirmed by this honourable court on the 11th March, 2017 and a certificate of confirmation of grant was issued to them.
 4. The 1st petitioner avers that pursuant to rectification, this court issued a rectified certificate of confirmation of grant dated 13th November, 2017.
 5. The 1st petitioner avers that pursuant to a further rectification made on 27th November, 2018, and in order to comply with the orders of the court, they proceeded to the lands registry and on presenting the transmission forms, the letters of administration and the rectified certificate of confirmation of grant, they noticed that land parcel L.R. No. Kericho/Chepseon Block II (Sitian)/ 19 was not in existence as the deceased had subdivided it into various portions and sold some leaving the only land parcel number L.R. No. Kericho/Chepseon Block II (Sitian)/122 in his name.
 6. The 1st petitioner avers that listing land parcel L.R. No. Kericho/Chepseon Block II (Sitian)/19 as one of the properties of the deceased was as a result of failure on the part of the advocates who conducted the succession on their behalf not advising them to obtain certificates of official searches of all the properties of the deceased.
 7. The 1st petitioner avers that the certificate of confirmation of grant and the rectified certificate of confirmation of grant dated 13th November, 2017 contain several errors which were listed as follows;
 - a. L.R. No. Kericho/Chepseon Block II (Sitian)/19 was included as part of the estate, yet the register was closed on subdivision by the deceased, hence the beneficiaries who were given shares in the same parcel could not get titles.
 - b. That the remainder of the land owned by Micheal Kiprono Sang upon subdivision of L.R. No. Kericho/Chepseon Block II (Sitian)/19 is the land parcel known as L.R. No. Kericho/Chepseon Block II (Sitian)/122, which measures 115.15 hectares or 284.5356 acres while land parcel L.R. No. Kericho/Chepseon Block II (Sitian)/19 was erroneously distributed under the impression that the size is 374.53 acres, hence some beneficiaries' whose shares are indicated under the rectified certificate of confirmation of grant could not get their portions.
 - c. The share of Caroline Rono of 59.9 acres has been indicated to be excised from land parcel known as L.R. No. Kericho/Chepseon Block II (Sitian)/19 yet the parcel above is not in existence and furthermore, she occupies and has developed the land parcel known as L.R. No. Kericho/Kipkelion/ChepseonBlock 12 (Ngatumek)/15 and her share should be on this parcel.
 - d. The size of land parcel Kericho/Kipkelion/ChepseonBlock 12 (Ngatumek)/15 is indicated as measuring 48.2 acres instead of 48.2 hectares.
 - e. The shares apportioned to the beneficiaries are not in agreement with the directions of the court given on 27th November, 2018 and the Succession Act on equal sharing, hence there is need to review and set it aside the decision.



- f. A survey of land parcels known as L.R. No. Kericho/Chepseon Block II (Sitian)/19, Kericho/Kipkelion/ChepseonBlock 12 (Ngatumek)/17 and Kericho/Kipkelion/ChepseonBlock 12 (Ngatumek)/15 was done and the surveyors advised the parties that the parcels of land on the ground are at variance with the sizes appearing on the title documents
- g. The sizes of the parcels comprising the estate and available for distribution are as follows;
 - (i) L.R. No. Kericho/Chepseon Block II (Sitian)/122 measuring 63.56 hectares translating to 157 acres
 - (ii) Kericho/Kipkelion/ChepseonBlock 12 (Ngatumek)/17 measuring 3.2 hectares
 - (iii) Kericho/Kipkelion/ChepseonBlock 12 (Ngatumek)/15
8. The 1st petitioner avers that as a result of these challenges, the land registrar registered forms RL 39 and RL 42 against L.R. No. Kericho/Chepseon Block II (Sitian)/122 which is an irregularity that needs to be rectified.
9. The 1st petitioner avers that the parcel of land known as L.R. No. Kericho/Chepseon Block II (Sitian)/19 was closed on subdivision after the completion of succession but it turns out that the subdivision was irregular and therefore ought to be reversed.
10. The 1st petitioner avers that they have discovered the following assets albeit belatedly and aver that they form part of the estate of the deceased that is L.R No. Kericho/Chepseon Block II (Sitian)/26 and Kericho Municipality Block 631/1/59. She further averred that those parcels were yet to be ascertained by the time confirming the grant and/or during rectification.
11. The 1st petitioner avers that in order to complete the distribution of the estate herein, it is imperative to have the grant issued reinstated and for the rectified certificate of confirmation of grant cancelled and a fresh one issued reflecting the proper shares of the beneficiaries and free from all errors manifest in the rectified certificate of confirmation of grant dated 13th November, 2017.
12. The petitioner avers that in order to have this matter finalised, it is imperative to have the orders sought in the application granted, as the shares of the beneficiaries that were transferred were erroneous resulting from the land sizes captured in the confirmation of grant dated 13th November, 2017.
13. The petitioner proceeded to list the assets constituting the estate of the deceased at the time of death as follows; L.R. No. Kericho/Chepseon Block II (Sitian)/122, Kericho/Kipkelion/ChepseonBlock 12 (Ngatumek)/15, Kericho/Kipkelion/ChepseonBlock 12 (Ngatumek)/17, Kericho/Chepseon Block II (Sitian)/26 and Kericho Municipality Block 631/1/59.
14. The applicant therefore urged this court to review its orders of 16th September, 2022 reinstate the succession cause herein and in the interest of justice cancel all titles resultant from the subdivision of L.R. No. Kericho/Chepseon Block II (Sitian)/122 and restore the name of the deceased person in the register of the property and the distribution of all the properties be done afresh.
15. The beneficiary respondent filed grounds of opposition in response to the chamber summons dated 6th November, 2023 based on several grounds to wit;
 - (i) That the application is based on the wrong provisions of the Law of Succession Act and the Probate Rules.
 - (ii) That the import of the application is that the administrators have failed to discharge their duty as espoused in the Law of Succession Act and failed to render a full and accurate account of the



estate after six months of issuance of the certificate of confirmation of grant and therefore this court should invoke the relevant legal provisions to have the administrator removed suo motto for failing to discharge their duties.

- (iii) That no consents have been granted by the beneficiaries despite the far reaching consequences of the application given the fact that the sub divisions were done way back in 2019 and the land parcels have been sold to third parties.
 - (iv) That the claim to have the portions redistributed is an attempt at having the grant revoked without following procedure and/or meeting the requirements as provided for which is an abuse of court process.
 - (v) That the applicants seek to review a ruling dated 16.9.2022 which is not annexed to the instant application and that the beneficiary/respondent is not privy to the content of the said ruling, thereby rendering the application inept.
 - (vi) That this court is functus officio and it is not seized with the jurisdiction to cancel titles.
16. The application came up for inter partes hearing and this court directed the parties to file written submissions in respect of the application.
 17. The applicants reiterated that they have faced many challenges in the administration of the estate to wit; that some of the properties included in the certificate of confirmation of grant do not exist, the certificate of confirmation of grant has undergone several rectifications with persisting mistakes and/or errors and the discovery of new assets which form part of the estate of the deceased.
 18. The applicants reiterated they had established sufficient cause warranting this court to set aside the ex parte orders issued on 16th September, 2022.
 19. The applicants reiterated that this court should order cancellation of titles and restoration of land to the name of the deceased, to pave way for the proper distribution of the estate of the deceased.
 20. The applicants contended that this court is vested with powers and/or jurisdiction under section 47 of the Law of Succession Act and rule 73 of the Probate and Administration Rules to allow the application and thereby ensure that justice prevails in the matter. They cited the case of *Munyasya Mulili & 3 others v Sammy Muteti Mulili* [2017] eKLR - Succession Cause 265 of 2004 under similar circumstances in which Nyamweya J. (as she then was) observed that; “this court has wide inherent powers in succession matters to make such orders as may be expedient, to ensure that the ends of justice are met and prevent abuse of court process by parties under section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules.”
 21. Having considered the material placed before this Court together with the written submissions, it is apparent that this Court is being invited to exercise its power of review under rule 63 of the Probate and Administration Rules and to further apply its inherent power under Rule 73 of the Probate and Administration Rules to determine the summons dated 6th November, 2023. Under Rule 63 of the Probate and Administration, the Court is permitted to apply the Provisions of Order 45 of the Civil Procedure Rules to entertain an Application for review.
 22. On the issue as to whether to review and/or set aside the ruling of the court dated 16th day of September, 2022. This court, upon carefully studying the record, finds that the applicant must have been referring to the ruling of Lady Justice Ongeri delivered on 16th December, 2022.
 23. In the said ruling the Learned Judge held that there was a rectified certificate of confirmation of grant dated 13th November, 2017 and an order directing that all beneficiaries get an equal share of the estate



property. The Learned Judge directed that the said certificate of confirmation be executed accordingly and the failure by the administrators to execute the grant meant that the grant would stand revoked.

24. The Administrators have moved this Court with the instant application citing various challenges in executing their mandate as administrators. First, it is stated that some properties included in the certificate of confirmation of grant do not exist. Secondly, it is pointed out that the certificate of confirmation of grant has undergone several rectifications with persisting mistakes and/or errors. Lastly, that there are discoveries of new assets which form part of the estate of the deceased.
25. In light of these developments, this Court is satisfied that it is prudent to set aside the ruling of this court dated 16th December, 2022 in exercise of its power of review.
26. It is not in dispute that in her ruling dated 16th December, 2022, Lady Justice Ongeri stated in paragraph 36 as follows:

“The Administrators are granted 30 days to execute the Certificate of Confirmation issued herein. Failure to do so, the grant will be revoked in accordance with Section 76 of the Law of succession”

It would appear the Administrators did not execute the certificate of confirmation of Grant within the period limited by Court of thirty (30) days. The grant therefore lapsed automatically stood revoked at the lapse of 30 days. The Administrators have pointed out that they were unable to fully execute the grant due to a myriad of challenges they pointed out in the instant application. This Court is convinced that the applicants have given good reasons why the Order revoking the grant should be reviewed, set aside and the grant reinstated.

27. As pertains to the transactions on L.R. No. Kericho/Chepseon Block II (Sitian)/122, the administrators of the estate cited that one of the challenges faced in administration of the estate of the deceased was the fact that L.R. No. Kericho/Chepseon Block II (Sitian)/19 which was distributed by this Court in the rectified certificate of confirmation of grant dated 13th November, 2017 no longer exists as the deceased had subdivided into various portions and sold some portions during his lifetime leaving only L.R. No. Kericho/Chepseon Block II (Sitian)/122.
28. The applicants stated that the registrar had also registered forms RL 39 and RL 42 against L.R. No. Kericho/Chepseon Block II (Sitian)/122 citing irregularities in the subdivision of the parent title.
29. It would appear the Land Registrar upon finding out that the deceased had intervivos subdivided LR. No. Kericho/Chepseon Block II (Sitian)19 into various portions which he disposed of and remaining with LR. No. Kericho/Chepseon Block II (Sitian) 122 proceeded to register transmission forms against the aforesaid title yet it was not listed as part of the deceased's estate in the Certificate of Confirmation of Grant or Rectified Certificate of Confirmation of Grant. Its obvious that the aforesaid entries were made in execution of the Certificate of Confirmation of Grant or rectified grant. The Court therefore has the power to cancel such entries. This Court is satisfied that Prayer (iii) of the Summons should be granted and therefore it is in the interest of justice to close the registers for all numbers resulting from subdivision registered on 13th day of September, 2019 and restore the name of Micheal Kiprono A. Sang (deceased) as the proprietor of the land parcel L.R. No. Kericho/Chepseon Block II (Sitian)/122.
30. On the issue as to whether to cancel the rectified certificate of confirmation of grant dated 13th November, 2017. The administrators having cited the various challenges in implementing the rectified certificate of confirmation, they are seeking to have the grant cancelled and a fresh one should issued and the parties invited to propose schedule of distribution reflecting the proper shares of the beneficiaries



free from the all errors manifest in the rectified certificate of confirmation of grant dated 13th November, 2017.

It is the finding of this court the administrators are unable to diligently administer the estate of the deceased citing errors on the grant. This Court therefore revokes the rectified certificate of grant dated 13th November, 2017.

31. For the avoidance of doubt, the summons dated 6th November, 2023 is allowed giving rise to issuance of the following Orders:-
- (i) The ruling and resultant orders of this Court made on 16th December, 2022 are reviewed and set aside.
 - (ii) The grant of Letters of Administration issued to the Applicants on 6th May, 2014 is reinstated.
 - (iii) An Order is issued directing the Registrar of Lands Keicho Lands Registry to cancel entry Nos. 2 and 3 in the Register of Land Parcel No. Kericho/Chepseon Block II (Sitian)/122 and to close the registers to all numbers resultant from subdivision registered on 13th September, 2019 and to restore the name of Michael Kiprono A Sang (deceased) as the proprietor of the Land Parcel No. Kericho/Chepseon Block II (Sitian)/122.
 - (iv) The Rectified Certificate of Confirmation of Grant of Letters of Administration issued and dated 13th November, 2017 is canceled.
 - (v) The grant of Letters of Administration issued on 6th May, 2014 having been reinstated, Parties are at liberty to make the necessary application to have the grant confirmed and provide a schedule of distribution reflecting the proper shares to the beneficiaries.
 - (vi) This being a Succession Cause involving family members, a fair order on costs is to direct that each party bears its own costs.

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

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Kiletyen for the Respondent

Kirui for the Petitioners

