



**In re Estate of the Late Kibilo Kipkoske A Chumo alias Kipkoske Chumo alias Kipkoske arap Chumo alias Kipkoske Kibiko arap Chumo (Deceased) (Succession Cause 152 of 2001) [2024] KEHC 13224 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13224 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 152 OF 2001  
JK SERGON, J  
OCTOBER 30, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE KIBILO KIPKOSKE  
A. CHUMO ALIAS KIPKOSKE CHUMO ALIAS KIPKOSKE ARAP  
CHUMO ALIAS KIPKOSKE KIBIKO ARAP CHUMO (DECEASED)**

**BETWEEN**

**CHARLES LANGAT ..... APPLICANT**

**AND**

**PAUL TOO ..... 1<sup>ST</sup> RESPONDENT**

**KIPYEGON KOSKE TOO ..... 2<sup>ND</sup> RESPONDENT**

**JOEL KIPKORIR KOSGEI ..... 3<sup>RD</sup> RESPONDENT**

**LUCIA CHEPKOECH CHUMO ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The application coming up for determination is a notice of motion dated 8th November, 2023 seeking the following orders;
  - (i) Spent
  - (ii) Spent
  - (iii) That this honourable court be pleased to issue a temporary injunction restraining the 1st respondent, children, agents, servants, heirs or any other person claiming through him from interfering with the status quo or encroaching on the portion of Kericho/Kipchimchim/369 currently being used by the applicant to access the main road and a further order do issue to the 1st respondent to vacate the said portion pending full implementation of the mediation



agreement adopted in this court on 20.12.2022 and the certificate of confirmation issued on 20/7/2023.

- (iv) That the costs of this application be provided for.
  - (v) That the honourable court be pleased to make such further and or other orders as it may deem just and expedient in the circumstances of this case.
2. The application is premised on the grounds stated on the face of the motion and the facts deponed in the supporting affidavit of Charles Langat the applicant herein.
  3. The applicant avers that the instant succession cause has lingered for over 20 years culminating in a mediation process which yielded an agreement wherein all the beneficiaries agreed on how to distribute the vast estate. The applicant avers that the mediation agreement was filed in court on 14.12.2022 and adopted by court on 20.12.2022 and that this court issued a certificate of confirmation of grant on 20.7.2023.
  4. The applicant avers that the beneficiaries have settled on the subject property having erected their main homesteads thereon and that all beneficiaries have an access to the main road.
  5. The applicant avers that as per the mediation agreement the survey exercise was to be conducted as per the certificate of confirmation of grant dated 20.7.2023 upon availability of funds.
  6. The applicant avers that after filing and adoption of the mediation agreement, the 1st respondent interfered with status quo by encroaching on the applicants portion facing the main road and further that the 1st respondent should have waited for the survey process as each party is entitled to 3.2 acres and has an access to the main road connecting Kipchimchim and Brooke Trading Centre.
  7. The respondent(s) filed a preliminary objection dated 25th September, 2024 in response to the application on the following grounds;
    - (i) That whereas the process of the execution of the mediation settlement is ongoing, the orders sought herein are intended to delay and/or otherwise frustrate execution thereof.
    - (ii) That this cause having been settled by way of mediation settlement on 14.12.2022 and a certificate of confirmation of grant rectified accordingly the notice of motion is premature and/or otherwise an abuse of court process.
    - (iii) That unless leave of this Honourable Court is sought and obtained the proceedings herein offend the provisions of section 39 of the Court Annexed Mediation Rules, 2022.
  8. The application came up for inter partes hearing and Mr. Langat Learned Counsel for the applicant reiterated that they were seeking for a status quo order pending finalization of the succession process.
  9. Mr. Koech Learned Counsel for the respondents argued that the succession matter has been finalised and previously referred for mediation and therefore leave of court should be sought in order to reopen the matter as stipulated in rule 39 of the Mediation Rules.
  10. Having considered the application filed by the applicant and preliminary objection filed by the respondent(s), the issue (s) for determination by this court are whether to issue a temporary injunction and whether the preliminary objection is merited.
  11. On the issue of whether to issue a temporary injunction, the answer is in the negative because the applicant has not met the threshold required for order of temporary injunction.



12. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen, Herman Philipus Steyn Also Known As Hermannus Phillipus Steyn & Hedda Steyn* [2014] KECA 606 (KLR) stated inter alia as follows; “ There is no scope to confuse between an interlocutory and permanent orders of injunction and since the fundamentals about the implications of the interlocutory orders of injunction are settled, at least for over four decades, since *Giella* case (*supra*) they could neither be questioned nor be elaborated in detailed research. Since those principles are already codified by authoritative pronouncements in the precedents they may be conveniently noted in brief as follows: In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;
- (a) establish his case only at a prima facie level,
  - (b) demonstrate irreparable injury if a temporary injunction is not granted, and
  - (c) ally any doubts as to (b) by showing that the balance of convenience is in his favour.”
13. On the issue of as to whether the preliminary objection is merited, this court finds this succession cause having been resolved by way of a mediation settlement on 14.12.2022 and a certificate of confirmation of grant rectified accordingly. Rule 39 of the Civil Procedure (Court-Annexed Mediation) Rules, 2022, is applicable. The respondents rightly pointed out, the said section which provides as follows:-
- “(1) No application for setting aside of an order or decree arising from a mediation settlement agreement shall be filed except with the leave of court.
  - (2) An application for leave under sub-rule (1) shall be supported by an affidavit detailing the grounds upon which the applicant intends to rely in setting aside the order or decree.
  - (3) The following shall constitute the grounds upon which an application to set aside an order or decree arising from a mediation settlement agreement—
    - (a) misconduct, fraud, or a fundamental mistake by the mediator as relates to the mediation proceedings that goes to the core of the matter: Provided that the misconduct, fraud or mistake should not have been known by the applying party at the time of execution of the settlement agreement and should be one which affected the process and outcome of the mediation in such a way that it would be unfair and inequitable to enforce it in its form;
    - (b) fraud, collusion, or misrepresentation by any party to the mediation (other than the party applying) or any witness or person who took part in the proceedings and whose participation materially affected the outcome;
    - (c) a fundamental mistake by any or all of the parties to the mediation as to the existence or state of the subject matter, person or thing; or to any set of facts that materially affected the parties’ decision to enter into the subject agreement and which has rendered such agreement unfair and inequitable;
    - (d) where a party was, at the time of the making of the agreement, under some legal incapacity to take part in the subject mediation proceedings or to conclude and execute a binding settlement; or



(e) where the settlement agreement is invalid under Kenyan or international law, or is or has become incapable of enforcement under Kenyan law.

(4) At the hearing of an application to set aside an order or decree, no party shall, without leave of court, be allowed to canvass any other ground in support of the application other than the grounds specified in sub-rule (3). ”

14. . The gist of the foregoing provisions being that the applicant ought to have sought for leave of this Court prior to filing the instant application.

15. It is the finding of this Court therefore that the notice of motion dated 8/11/2023 is improperly before this court having been filed without leave of court. The same is ordered struck out with each party bearing their own costs.

16. The preliminary objection is consequently upheld.

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

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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Miss Koech for Respondent

Miss Cherono for the Applicant

