



REPUBLIC OF KENYA



**In re Estate of Deborah Tarkok Chirchir (Deceased) (Succession Cause  
26 of 2018) [2023] KEHC 349 (KLR) (27 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 349 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 26 OF 2018  
RN NYAKUNDI, J  
JANUARY 27, 2023**

**BETWEEN**

**JOYCE JAMATIA CHIRCHIR ..... APPLICANT**

**AND**

**HELLEN J. CHEPKWONY ..... RESPONDENT**

**RULING**

1. By a Notice of Motion March 25, 2019, the objector/applicant seeks the following orders:-
  1. That the order made on May 7, 2018 for the transfer of Eldoret Chief Magistrate's Court Succession Cause No. 159 of 2016 from the Chief Magistrate's Court to this Court be set aside and quashed.
  2. The proceedings and pleadings made after the issuance of the said order be nullified and be set aside.
  3. That the petition for probate of written Will filed herein on July 12, 2018 be nullified and expunged from the Court record.
  4. The purported written Will dated June 16, 2011 annexed to this petition on July 12, 2018 be declared invalid.
  5. The estate be partially distributed in terms of the consent agreed by the beneficiaries in the consent agreed by the beneficiaries in the consent dated July 6, 2017. In the alternative that this matter be fixed for hearing on the issue of distribution.
  6. An inventory of all capital assets of the deceased be made before full distribution is made.
  7. An order of injunction be and is hereby issued restraining Hellen Cherotich Chepkwony one of the administrators herein from evicting the applicant Joyce Jematia Chirchir and her



children from the residential house in Elgon View situate on parcel of land number Eldoret Municipality Block 13/270 pending the hearing and determination of this application and until the estate is fully distributed vide a Certificate of Confirmation of grant.

8. An order of injunction be and is hereby issued restraining Hellen Cherotich Chepkwony and any administrator from selling, leasing wasting or interfering with parcel of land number Chirchir Farm Timboroa measuring 165 acres pending the hearing and determination of this application interpartes and thereafter pending the hearing and determination of these succession proceedings.
  9. An order be and is hereby issued restraining Hellen Cherotich Chepkwony and Bamboo Bay Holdings Limited from withholding remittance of monthly rent of Kshs.100,270/= to Joyce Jematia Chirchir in respect of the premises on parcel of land number Eldoret Municipality Block 7/57 and status quo do prevail that the monthly rental income from the commercial premises on parcel land number Eldoret Municipality Block 7/57 be shared equally between the four children of the deceased namely: Martin Kibet Chirchir, Joyce Jematia Chirchir, Elizabeth Jepchumba Cheruiyot and Hellen Cherotich Chepkwony pending the determination of the Succession proceedings.
  10. An order that Bamboo Bay Holdings Limited do remit to the Applicant her monthly rent dues from parcel of land known as Eldoret Municipality Block 7/57 for the months of February and March 2019.
  11. An order that Bamboo Bay Holdings Limited be restrained from managing and receiving rental income in respect of parcel of land number Eldoret Municipality Block 7/57 and an independent real estate agent be appointed to manage the said property, receive rent and distribute rental income equally among the four administrators pending the distribution of the estate.
  12. Costs of this application be in the cause.
2. The application is premised on the grounds set out therein and, on the facts, deponed in the affidavit of Joyce Jematia Chirchir, sworn on March 25, 2019.

### **The Objector's /Applicant's Case**

3. The Applicant deposed that she is the daughter of the late Deborah Tarkok Chirchir who died on January 19, 2012. Further that on June 7, 2016, the objector together with her siblings; Martin Kibet Chirchir, Elizabeth Jepchumba Cheruiyot and Hellen cherotich Chepkwony lodged succession proceedings in Eldoret Chief Magistrate Court, Succession Cause No.159 of 2016 for the grant of letters of administration which grant of letters of administration intestate were jointly issued to them on September 23, 2016 being the only children of the deceased.
4. The applicant further deposed that on July 10, 2017 the said beneficiaries applied for summons for confirmation of grant agreeing to distribute the said estate unequal shares to all the four beneficiaries.
5. The applicant further deposed that on March 5, 2018, her sister Elizabeth Jepchumba Cheruiyot secretly made an application to transfer Succession Cause No. 159 of 2016 from the Eldoret Chief Magistrate's Court to the High Court which application was disallowed as it sought to convert intestate proceedings to testate proceedings. Further that on April 19, 2018, the said co-administrator made another application in the High Court seeking to transfer the said matter from the Chief Magistrate's Court to the High Court which application was allowed by Hon. Justice H.K. Chemitei on May 7, 2017.



6. The applicant further deposed that on July 6, 2018 the said filed was duly received at the High and new number was issued being Succession Cause No. 26 of 2018 being this instant cause.
7. The applicant contends when the said file was transferred the said co-administrator organized for filing of fresh succession proceedings for the grant of letters of administration with Will annexed instead of securing for a date for the confirmation of grant.
8. The applicant contends that the transfer from the lower court was made in bad taste with the view of instituting fresh proceedings with the view of stealing the match from the applicant. The applicant wants the petition for the grant of probate with Will annexed filed on July 12, 2018 expunged from the court's record.
9. The applicant maintains that none of the other administrators in Succession Cause No.159 of 2016 consented to the said conversion.
10. The applicant further deposed that when she inquired from her siblings as to why the said matter was being transferred, she was informed that the lower court did not have pecuniary jurisdiction.
11. The applicant contend that the purported Will was introduced four years after the death of the deceased and two years after filing the original succession cause at the Chief Magistrate's Court. The applicant argues that this high suspicious.
12. The applicant maintains that the said Will is a forgery orchestrated by the respondent herein with view of disinheriting her as she not mentioned in the said Will at any give point, yet she is the biological daughter of the deceased herein.
13. The applicant contends the alleged signature of the deceased herein at page (1) of the said Will differs from the one at page (2) and that there is no stamp or address of the advocate who allegedly prepared the said Will.
14. The applicant argues that the mode distribution in the purported Will is skewed in favour of the respondent and her husband Joseph Chepkwony having been bequeathed property known as LR No.8898/1/71, Eldoret Municipality Block 12/213 and Eldoret Municipality Block 7/57 which are all prime property with commercial premises in the heart of Eldoret town Central Business District.
15. The applicant contends that the alleged witnesses Andrew Tuwai Kiboi and Emmy Sabul were not known to the deceased herein but at the material time were members of staff of Chemitei & Company Advocates. The applicant maintains that the purported Will is for all intents and purposes invalid having been fraudulently generated by the respondent herein.
16. The applicant contends that the respondent herein forged her signature in the Notice of withdrawal of the application for confirmation of granted dated February 28, 2018 and filed on March 5, 2018. The Applicant wants the said notice expunged and the grant be partially confirmed in terms of the Consent dated July 6, 2017 and signed by all the beneficiaries of the deceased's estate. Further the applicant maintains that at no time did the Petitioner herein withdraw the petition for the grant of letters of administration intestate dated June 6, 2016 and filed on June 7, 2016 vide Succession Cause No. 159 of 2016 which was transferred to this court and as such it is odd for testate proceedings to filed where there already exist intestate proceedings.
17. The applicant contends that in this matter, the full inventory of the estate of the deceased has not be disclosed. The applicant maintains that the following assets were omitted from the deceased's estate: -
  1. Sergoit/Koiwoptaoi Block 8/13



2. LR No. Eldoret Municipality Block 7/57
  3. LR No. Eldoret Municipality Block 12/212
  4. LR No. Eldoret Municipality Block12/213
  5. LR No. 8898/1/71
  6. Money held in Barclays Bank, Eldoret Branch
  7. Herds of cows, sheep and goats
  8. Share in Bamboo Bay Investment Limited and Bamboo Bay Holdings Limited.
18. The applicant contends that the respondent has threatened to evict her and her children from the residential house in Elgon View situated on land parcel Eldoret Municipality Block 13/270 where she has been occupation since the deceased passed away in the year 2014.
  19. The applicant maintains all the four beneficiaries of the deceased have been sharing proceeds from the rental income in respect of commercial premises on parcel of land known as Eldoret Municipality Block 7/57 in equal shares through Bamboo Bay Holdings pending the full distribution of the estate of the deceased. The applicant contends that the respondent herein being one the directors of Bamboo Bay Holdings Limited has withheld monthly remittance of rental proceeds in respect of the said premises belonging to her from the months of February and March 2019 without any lawful cause.
  20. The applicant further deposed that the respondent herein is in the process of attempting to lease out part of the estate namely Chirchir Farm Timboroa measuring 165 acres to third parties and unless she is restrained the estate shall be wasted whilst there are pending succession proceedings in court.
  21. The applicant wants that in place of Bamboo Bay Holdings an independent real estate agency be appointed to manage proceeds from parcel of land known as Eldoret Municipality Block 7/57.

### **The Respondent's Case**

22. The application is opposed vide the respondent's replying affidavit dated May 8, 2019. She deposed that she is one of the beneficiaries of the deceased's estate herein. That on June 7, 2016, the respondent together with her siblings Elizabeth Jepchumba Cheruiyot, Martin Kibet Chirchir and Joyce Jematia Chirchir filed intestate proceedings in Succession Cause No.159 of 2016 on the basis of the belief that their deceased mother had not left a Will behind.
23. The respondent further deposed that on July 15, 2017, a meeting was convened by Hon. Justice Hillary Chemitei, at Boma Inn Hotel in Eldoret, and was attended by all the beneficiaries of the deceased including the objector herein. The respondent deposed that at the meeting they informed by convener that their deceased mother had left a Will with him when he was in private practice, before he was appointed to serve in the bench, which Will was read to them.
24. Consequently, the petitioner's instructed their Advocate on record M/S Kibichy and Company Advocaes to make an application seeking the transfer of Succession Cause No. 159 of 2016 from the Chief Magistrates Court to the High Court.
25. The respondent denied the averments by the applicant herein that their sister Elizabeth Jepchumba Cheruiyot, had secretly transferred this matter from the lower Court to the High Court.
26. The respondent maintains that in light of this new development of the Will the High made an order transferring the matter from the lower court to the High Court for hearing and disposal.



27. The respondent further maintains that the petitioners again instructed the firm of M/S Kibichiy and & Company Advocates to file a Notice of Withdrawal, withdrawing the application for grant of representation intestate. That the said notice was signed by all the petitioner including the objector herein, who was neither coerced nor forced to do so.
28. The respondent maintains that the present cause was lodged in good faith and that there are no pending proceedings in the lower court or any other court going on currently as the intestate proceedings and grant were withdrawn.
29. The respondent maintains that the Will dated June 16, 2011, was drawn by competent Advocate Mr. Hillary Chemitei now Hon. Justice Hillary Chemitei and was executed by the deceased and witnessed by two competent witnesses and thus valid.
30. The respondent denies the allegation of forgery. The respondent further denies that the Will is skewed in her favour. The applicant maintains that parcel of land Known as LR NO.8898/1/71 situated at Timboroa is a graveyard and the same has been bequeathed to Bamboo Bay Holdings Limited, a company in which the deceased was a shareholder. That LR Nos. Eldoret Municipality Block 12/213 and Eldoret Municipality Block 7/57 have been bequeathed to Bamboo Bay Investment Limited a company in which the Objector is one of the directors and shareholders.
31. The respondent further deposed that during the lifetime of the deceased, she allowed their sister Elizabeth Jepchumba Cheruiyot, to take possession of parcel of land known as Eldoret Municipality Block 2/212 and build a house on it.
32. The respondent deposed that her husband Joshua Chepkwony, is not and has never been a director or shareholder of either Bamboo Bay Investments Limited or Bamboo Bay Holdings Limited and has never interfered with the deceased's estate.
33. The respondent maintain that she was never aware of the existence of the Will until it was read by Hon. Justice Hillary Chemitei, at Boma Inn Hotel in Eldoret.
34. The respondent maintains the deceased herein was an alumna of Alliance Girls' High School and Kapsabet Girls' High; was trained and had a long career as a teacher and thus understood the contents of her own Will.
35. The respondents contends that no property forming part of the estate of the estate of the deceased has been omitted as alleged by the Objector. That all the properties listed by the Objector were fully captured in the written Will of the deceased dated June 16, 2011. Further that land parcel known as Sergoit/Koiwoptai Block 8/13 had been transferred by the deceased to the respondent before her demise on September 5, 1999 and a title deed issued.
36. The respondent further deposed that following their mother's death, Kshs.200,000/= being held at Barclays Bank Ltd was equally shared out amongst the then administrators of the deceased being Elizabeth Jepchumba Cheruiyot, Martin Kibet Chirchir, Joyce Jematia Chirchir and the respondent herein. That they each got Kshs.50,000/=. The respondent argues that the objector herein was never entitled to the said share as they later came to from the contents of the Will.
37. The respondent maintains that she has in no way interfered with the estate of the deceased, particularly Chirchir Farm measuring 165 acres. The respondents maintains that the allegations by the applicant are not supported by any proof. The respondent contends that from time to time the objector leased out 100 acres of the said farm but never shared the proceeds thereof with the rest of the beneficiaries. The respondent further maintains that to date the objector has the exclusive use of the 100 acres and is also currently using 42 acres of the said farm where she has a homestead and has a large herd of livestock



- which includes cows, goats and sheep that rear on the said land. The respondent further deposed that the objector also has a large crop production on the said Farm.
38. The respondent contends that the objector's son one Geoffrey Kiprono Barsulai, secretly and without their knowledge moved into the deceased's house in Elgon View situated parcel of land known as Eldoret Municipality Block 13/270 after her death. The respondent maintains that the said Geoffrey Kiprono Barsulai, is neither an administrator nor a beneficiary of the deceased's estate. The respondent maintains that the said Geoffrey Kiprono Barsulai, is an adult capable of fending for himself as he works as a Food and Beverage Manager at Sirikwa Hotel.
  39. The respondent denies the allegations that the objector herein lives with her family in the house at Elgon View situated on parcel of land known as Eldoret Municipality Block 13/270. The respondent maintains that the objector herein has been residing in her Kimumu home situated on parcel of land known as Usain Gishu/Kimumu/2022 with her husband, James Kipkurui Barsulai, and their family for over 25 years.
  40. The respondent contends that the objector's son the continued occupation of parcel of land known as Eldoret Municipality Block 13/270 is nothing short of intermeddling with the estate of the deceased.
  41. The respondent is opposed to the proposal the partial distribution of the estate as per the consent that was based on the withdrawn intestacy proceedings. The respondent maintains that the said consent goes against the express terms of the Will as has since been overtaken by events.
  42. The respondent contends that the Objector has been receiving her share of the monthly rent as derived from the property known as Eldoret Municipality Block 7/57. That in February, 2019 Kshs.73,000/= was remitted to the objector through her Advocate whereas in March, 2019 Kshs.68,000/= was equally remitted to the objector.
  42. The respondent maintains that Bamboo Bay Holdings has efficiently managed and collected rental income during the lifetime of the deceased, with her concurrence has continued to do so following her death. That there have never been any complaints from any of the beneficiaries of the deceased herein including the objector. The respondent is opposed to suggestion that another agent be appointed in its place.
  43. The respondent urged the court to dismiss this instant application or alternatively urged the court that matter proceed by way of viva voce evidence.
  44. Martin Kibet Chirchir, Isaack Kiptarus Birgen and Elizabeth Jepchumba Cheruiyot also filed Replying Affidavits in which they echoed the averments by the respondent herein.
  45. The application was canvassed by way of written submissions.
  46. Both parties filed their written submissions.

### **Determination**

47. I have read carefully considered the pleadings, evidence and submissions by the respective parties.
48. From my perusal of the pleadings on record, it is crystal clear that the issues being raised by respective parties solely touch on the administration and distribution of the estate of the deceased.
49. Bearing in mind that the mode of distribution in the instant cause is the main bone of contention, the court can only determine the issues aforementioned if parties were to tender viva voce evidence. The issues being raised herein are weighty and cannot be determined at the juncture, they would naturally require the calling of witnesses and evidence.



50. In light of all the above, I do make the following final orders on the application before me: -
- i. The Application dated March 25, 2019 be canvassed by way of viva voce evidence.
  - ii. Each party shall bear its own costs noting that the claim herein is a succession cause involving members of one family.

Orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 27<sup>TH</sup> DAY OF JANUARY, 2023.**

**R. NYAKUNDI**

**PRESIDING JUDGE**

