



REPUBLIC OF KENYA



**In re Estate of Kipkoros Kiplagat (Succession Cause 145 of 2000)
[2023] KEHC 407 (KLR) (27 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 407 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 145 OF 2000
RN NYAKUNDI, J
JANUARY 27, 2023**

BETWEEN

PHILOMENA KANDIE PETITIONER

AND

**KIMOI KAPKOROS ALIAS ELIZABETH KIMOJ JACOB
KAPKOROS OBJECTOR**

RULING

1. The applicant approached this court by way of Chamber summons dated November 9, 2022 seeking the following orders;
 1. Service be dispensed with in the first instance.
 2. Stay of the orders/directions given on October 31, 2022 in this matter and the hearing of this matter on November 15, 2022 be and are hereby granted pending the *inter partes* hearing of this application.
 3. Time be and is hereby given to the petitioner/applicant and the objector/respondent to do further consideration and explore alternative options including the out-of-court settlement of this matter between November 2022 and January 2023.
 4. Costs be provided for.
2. The application is premised on the grounds set out therein and the contents of the affidavit in support of said application.
3. The applicant's case is that she seeks for of re-scheduling the hearing of this matter from November 15, 2022 to January, 2023 in order to do further reflection on the matter of the administration and distribution of the estate of the deceased person in this matter. Her grounds for seeking rescheduling are that she needs to consult with other family members to reach an amicable settlement on the issue



of the parcels of land. She requests the court adjourn the matter to a later date for the family members to consult.

4. The respondent opposed the application vide a replying affidavit. She deposed that application is an abuse of the court process, delaying tactics and a clear attempt to obstruct the cause of justice. The court on March 28, 2022 directed parties to file respective modes of distribution pursuant to which we filed the same but the applicant refused/or neglected to file their proposal. Further, that matter has been before the honourable court for approximately 23 years and the applicant has mischievously filed the application beforehand to further delay the process and deny justice to the objector respondents.
5. The respondents contend that none of the daughters intends to relinquish their rightful shares and hence no need of negotiations and consultations as stated by the petitioner. The petitioner through her children have issued threats of physical harm and death to the respondent and her siblings over their demand of their rightful shares. The said threats of harm were issued through short SMS messages on their respective phones (See annexed herewith and marked "MJK I"). there being no plausible reason for postponement of the Hearing of the Objection proceedings, the respondents pray that the same proceeds as scheduled.

Analysis and determination

6. It is clear that there is only one issue for determination, and that is whether the adjournment sought by the applicant should be granted.
7. I have considered the age of the matter and it is evident the matter has been in court for far too long. The applicants' reasons for adjournment are not plausible enough for this court to postpone the objection proceedings. Further it appears that the application is overtaken by events as the court is about to close for vacation. However, it must be emphasized that litigation must come to an end. Further, that, the applicant was granted ample time to file a mode of distribution.
8. It is evident that this a protracted probate cause. The beneficiaries who have a stake of inheritance in the intestate estate have been weaponizing against each other since February 26, 2001 using the court process. In my view there is no proper reason where the mode of distribution has not been concluded pursuant to section 35, 36, 37, 38 and 40 of Law of succession Act read as a whole. During the status conference this court took a hard-line stand as far as further adjournment is concerned given the age of the succession cause. My second reading of the record and litigation history of this matter provided an insight that the affidavits filed by both parties paint a picture of a claim on distribution which is at cross purposes requiring it to be tested vide viva voce evidence. Typically, I could have rendered my decision on the basis of the skeleton submissions filed in that respect. However, I am guided by the powers donated in rule 73 of the Probate and Administration Rules which provides as follows:

“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
9. I therefore take a less travelled road by arresting my ruling against the legitimate expectation of the parties to give them a last chance to convene a family mediation meeting to iron out the issues which have held them hostage for that long. Why mediation? Mediation is a tried and tested process for resolving disputes. It is relatively quick, informal, and cost-effective. It gives parties control over the process and can result in solutions that better meet their needs than the court process can. It can also provide wider benefits, both to the parties and to society and the economy.



10. This direction is time bound and only applicable within a period of 30 days from today's date. In order to make it more facilitative, the deputy registrar does identify a suitable mediator under the court annexed mediation programme to convene an urgent meeting of the parties in compliance with this ruling. Status conference on March 20, 2023.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 27TH DAY OF JANUARY 2023.

In the presence of:

Mr Cheptarus for the Respondent

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R NYAKUNDI

JUDGE

