



REPUBLIC OF KENYA



**In re Estate of Tabutany Tesol (Deceased) (Succession Cause  
62A of 2022) [2023] KEHC 27520 (KLR) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 27520 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE 62A OF 2022**

**RL KORIR, J**

**JULY 31, 2023**

**IN THE MATTER OF THE ESTATE OF TABUTANY  
TESOL (DECEASED)**

**IN THE MATTER OF**

**ALICE CHEPKEMOI KIMALEL ..... 1<sup>ST</sup> APPLICANT**  
**ANNAH CHEBET BUNEI ..... 2<sup>ND</sup> APPLICANT**  
**LUCY CHEPNGENO KOECH ..... 3<sup>RD</sup> APPLICANT**  
**KIBET NGETICH ..... 4<sup>TH</sup> APPLICANT**

**RULING**

1. The Applicants filed a Notice of Motion dated 14<sup>th</sup> November 2022 seeking the following orders: -
  - I. Spent.
  - II. That leave be granted to the firm of Nyaata & Nyaata Advocates to come on record and file any other requisite documents for the prosecution of this matter.
  - III. That this Honourable Court be pleased to set aside its Order issued on the 17<sup>th</sup> day of October 2018 in respect of this succession cause dismissing the Petition/closing the file for want of prosecution and readmit it for hearing and final determination.
  - IV. That this Honourable Court be pleased to grant leave and substitute the Petitioner/Proposed Administrator, the late Joshua Kipngetch Langat with the 1<sup>st</sup> Applicant, Alice Chepkemoi Langat herein and issue Grant of Letters of Administration.
  - V. That this court be gracious to issue an Order of mandamus compelling the Land Registrar to issue (1) a copy of the register of the plot LR No. Kericho.Silibwet.779 (2) official certificates of the illegal subdivisions, (3) copies of mutation and transfer forms of the same.



- VI. That any other necessary directions as the court may deem fit
- VII. That costs be in the cause.
2. The Application was brought under section 3 and 3A of the *Civil Procedure Act*, Order 12 Rule 1 and 7, Order 51 of the *Civil Procedure Rules* and sections 29 and 47 of the *Law of Succession Act*. It relied on the grounds on the face of the Application and further on the supporting affidavit sworn by Alice Chepkemoi Kimalel on 14<sup>th</sup> November 2022.
3. Alice Chepkemoi Kimalel (hereinafter referred to as the Applicant) stated that the Petition herein was filed by her deceased brother Joshua Kipngetch Langat.
- The Applicant further stated that the Petition was dismissed on 17<sup>th</sup> October 2018 without their knowledge. That it was dismissed by an inadvertent mistake as the area Chief who had been purportedly served failed to inform them.
4. It was the Applicant's case that the deceased Petitioner did not provide any addresses or contacts of the rest of the beneficiaries to the court and had not informed them of the existence of this file although he had recognized them as beneficiaries of the estate of the late Tabutany Tesol.
5. The Applicant stated that together with her co-Applicants, they encountered difficulties from the area chief and assistant chief when they went to get the requisite letter from them that listed the beneficiaries of the estate of the late Tabutany Tesol. The Applicant further stated that strangers had continued to intermeddle with the estate without any justification and on the premise that the deceased's daughters could not be included in the succession cause, a narrative that was supported by the area chief.
6. It was the Applicant's prayer that the Petition be reinstated as it contained all the beneficiaries and the subject land for succession.
7. Mr. Leteipa, counsel for the Applicants submitted that the parties had not participated in the proceedings and that there were no objectors. He asked the court to grant the Application in terms of prayers 3 and 4.
8. The only issue for determination was whether this court should reinstate the suit.
9. I have already outlined the Applicants' case and reasons why they wanted the suit reinstated. Reinstatement of a suit is at the court's discretion and such discretion is to be applied judiciously and not capriciously. In *Shah v Mbogo* [1967] E.A 116, the Court of Appeal held that:-
- “ This discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist the person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice”.
10. I am persuaded by the Applicants' reasons for wanting the suit reinstated. Their late brother Joshua Kipngetch Langat petitioned for Letters of Administration Intestate for the estate of their late father Tabutany Tesol sometime in the year 2009. Even though he included all the beneficiaries, he failed to inform them of the existence of this succession cause. I note that this succession cause was dismissed on 17<sup>th</sup> October 2018 which was about two years after the pioneer petitioner (Joshua Kipngetch Langat) had died.
11. The Applicants have stated that the estate of their late father was under threat of intermeddlers and that it was prudent that the suit be reinstated to prevent such intermeddling.



12. It is my finding that the reasons advanced by Alice Chepkemoi Kimalel on behalf of the other Applicants were plausible and in the interest of justice, I set aside this court's order dated 17<sup>th</sup> October, 2018 dismissing the Succession Cause. The suit should be reinstated for hearing on merits.
13. In the end, I grant prayers 2 and 3. The Applicant to take Directions on the outstanding prayers in the Application.
14. Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 31ST DAY OF JULY, 2023.**

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**R. LAGAT-KORIR**

**Ruling delivered in the absence of the parties. Siele (Court Assistant)**

