



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of John Kipkemoi Arap Laboso (Deceased) (Succession Cause 161 of 2008) [2023] KEHC 25837 (KLR) (23 November 2023) (Ruling)

Neutral citation: [2023] KEHC 25837 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 161 OF 2008
JK SERGON, J
NOVEMBER 23, 2023**

IN THE MATTER OF THE ESTATE OF JOHN KIPKEMOI ARAP LABOSO (DECEASED)

BETWEEN

KENNETH CHERUIYOT APPLICANT

AND

WESLEY KIPLANGAT KIRUI RESPONDENT

RULING

1. In the instant succession matter there is a certificate of confirmation of grant dated 30th May, 2023 as per the terms of a judgment of this court of even date.
2. There are two applications coming up for this court's determination to wit a notice of motion dated 8th August, 2023 and a notice of motion dated 29th August, 2023.
3. There is a notice of motion dated 8th August, 2023 seeking the following orders;
 - (i) That there be a temporary stay of certificate of confirmation of grant dated 30th May, 2023.
 - (ii) That judgment dated 30th May, 2023 be reviewed and/or set aside.
 - (iii) That the certificate of confirmation of grant dated 30th May, 2023 be reviewed or set aside
 - (iv) That the honourable court be pleased to make an appropriate order
2. The application is supported by grounds on the face of it and the supporting affidavit of Kenneth Cheruiyot Kirui.
3. The Applicant avers that he is one of the grandsons of John Kipkemoi Laboso (the deceased herein) and therefore qualifies to be a dependent to the deceased's estate and further that there was no consent for



- the petitioner to hold in trust some of the deceased's assets as manifested in the certificate of confirmed grant.
4. The Applicant avers that his parents have since died and were buried in land parcel number [particulars withheld] and that they had developed the property by planting tea and the construction of permanent housing, he therefore was entitled to a share of the said land parcel.
 5. The Applicant reiterated that he was seeking a temporary stay of confirmation of grant dated 30th May, 2023 since the grant does not capture the entire list of assets of the deceased's estate and further that there exists another land parcel which was not included in the list of assets for distribution and the petitioner had excluded him from enjoying it.
 6. The Applicant reiterated that he was seeking to have the judgment dated 30th May 2023 reviewed and/or set aside since he did not participate during the hearings and further that the court annexed mediation resulted in a partial settlement.
 7. The Applicant avers that there is bad blood between him and the administrator/petitioner as depicted in the filing CMCC No. 9 of 2020 in Sotik whereby the administrator alongside other beneficiaries evicted him from land parcel number [particulars withheld].
 8. The Applicant avers that the proposed mode of distribution was solely prepared by the administrator and other beneficiaries without his input and further that it was a conspiracy to disinherit him.
 9. The Applicant maintains that he is highly prejudiced by the judgment on accord of the administrator's action not to disclose all the assets of the deceased especially the land in Kimulot whereby he and the other beneficiaries were enjoying the proceeds of tea to his detriment.
 10. The Applicant was therefore aggrieved by the respondent's actions leading to the confirmation of grant and delivering of an unjust judgment.
 11. There is a notice of motion dated 29th August, 2023 seeking the following orders;
 - (i) Spent
 - (ii) That this honourable court may be pleased to issue an order directing the Kericho County Surveyor to visit the estate and demarcate it according to the confirmed grant.
 - (iii) That this honourable court may be pleased to issue an order directing the officer in charge of the station (OCS) Kimulot Police Station and Londiani Police Station to render assistance to the surveyor who will be visiting the parcel of land for purposes of demarcation.
 - (iv) That the costs of this Application be provided for.
 12. The application is supported by grounds on the face of it and the supporting affidavit of Wesley Kiplangat Kirui the petitioner/administrator of the deceased's estate.
 13. The applicant avers this court delivered a judgment on 30th May, 2023 and that they were issued with a certificate of confirmation of grant on the same date.
 14. The applicant avers that when the surveyor visited the estate for demarcation one of the beneficiaries Kenneth Cheruiyot became hostile and denied the surveyor access to the estate thereby interfering with the demarcation process and the applicant was therefore seeking the court to issue an order directing the county surveyor to demarcate the estate as per the confirmed grant and order the OCS Kimulot Police Station and Londiani Police Station to provide security during the demarcation.



15. The applicant avers that unless the orders herein are granted the applicant and other beneficiaries of the deceased are likely to suffer irreparable loss and damages.
16. On 24th October, 2023 Wesley Kiplangat Kirui filed a replying affidavit opposing the application dated 8th August, 2023 and cited the same as being frivolous and without merit.
17. He vehemently denies the applicant's assertion that he was not involved in the proceedings yet he was duly served with summons but failed to appear at the proceedings.
18. He contends that the application does not meet the threshold of a review as there is neither discovery of new and important matter or evidence, nor any mistake or error apparent on the face of the record which would warrant a review and further that the grounds raised on new land could be rectified by filing a separate application for rectification of the grant distinct from the instant application for review.
19. He reiterates that the applicant being a grandchild is eligible to assert a share of the property if available, solely through the lineage of his deceased father, therefore, his entitlement to any portion of the property is contingent upon his deceased father's prior receipt of a share.
20. He further argues that the only recourse the applicant had was to file an appeal but the elected to file an application for review thereby squandering his opportunity to file an appeal as the statutory timelines for lodging an appeal had already lapsed.
21. He maintains that the applicant's failure to appear in the original proceedings and untimely application for review constituted a deliberate attempt to delay and disrupt court process.
22. I have considered the notice of motion dated 8th August, 2023 and the replying affidavit opposing the said application. I am inclined to agree with the averments in the replying affidavit and find that the application does not meet the threshold for review as set out in section 80 of the Civil Procedure Act or order 45 of the Civil Procedure Rules. I therefore find that the application lacks merit and I dismiss it.
23. I have considered the application dated 29th August, 2023 and I find merit in it and is allowed giving rise to issuance of the following Orders:-
 - (i) Kericho County Surveyor is ordered and directed to visit the estate parcels of land known as
 - (a) LR. No. [particulars withheld] (Tegunot) and
 - (b) L.R. No. [particulars withheld] and survey them according to the certificate of confirmation of grant dated 30th May, 2023.
 - (ii) The officers in charge of the station (OCS) i.e. Kimulot Police Station and Londiani Police Station are ordered and directed to provide security during the survey process.
 - (iii) Each party to bear its own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 23RD DAY OF NOVEMBER 2023.

J.K. SERGON

JUDGE

In the presence of:

No Appearance for Kenneth Cheruiyot

Wesley Kiplangat Kirui - Petitioner

