



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of the Late Matayo Arap Chirchir (Deceased) (Succession Cause E058 of 2021) [2022] KEHC 10882 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEHC 10882 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E058 OF 2021**

HK CHEMITEI, J

JUNE 23, 2022

IN THE MATTER OF THE ESTATE OF THE LATE MATAYO ARAP CHIRCHIR

BETWEEN

ROSE CHEMUTAI CHIRCHIR APPLICANT

AND

ESTHER CHEPKOECH CHIRCHIR RESPONDENT

RULING

1. The deceased herein died on 14th March 2021 leaving behind the respondent, the widow, and 6 children including the applicant. The respondent filed for the letters of administration on her own behalf and the beneficiaries and the same was granted on 14th June 2021.
2. The applicant has filed the application dated 8th November 2021 seeking to have the grant revoked and or annulled. She further seeks to have the administrator barred from administering the estate and further an account be opened so as the proceeds from the rentals and tea bonuses be deposited therein.
3. She is also seeking that a reputable estate agent be appointed to oversee the running of the estate real capital assets.
4. Her complaint is contained on the grounds on the face of the application as well as the supporting affidavit sworn on the same date. Her complaint is that she was never consulted before filing the cause and that the same was filed secretly by the respondent in conjunction with her siblings.
5. She accuses her mother of not only leaving behind some of the assets but undervaluing the same. She further tabled a list of some of the assets allegedly left behind and according to her the same was deliberate.



6. Her argument therefore is for the grant to be revoked and she be appointed to run the estate with her mother. She accuses her of deliberately wasting the estate and planning to share out or distribute without her input.
7. The respondent filed her reply vide the affidavit sworn on 22nd November 2021 in which she has deponed that the applicant is her daughter who is married just like the rest of her daughters. That she was married to one Henry kipchilis Cherop and they have been blessed with two children.
8. That although she had some marriage issues before the demise of the deceased, she has since gone back to her matrimonial home.
9. She went on to state that the applicant refused to sign the requisite forms when they were taken to her and that the rest of her children consented to her being the administrator of the estate.
10. That the properties left behind when filing the cause was not deliberate, but it was because the details were not clear and that some of them were subject of litigation. She said that in the application she made it clear that some of the assets were yet to be ascertained.
11. She went on to state that the estate assets were being repaired and renovated and that one of his sons was assisting over the same. In respect to the tea proceeds, she said that the same was not Kshs One million but about Kshs260,000 which she was yet to access.
12. She said that the estate was yet to be distributed contrary to the allegations by the applicant and that all that she was doing was to collect and manage the same on her own behalf and the children including the applicant. The applicant being a married woman was not in a position to manage the estate and in any case during the distribution level she shall be well taken care of just like the rest of her siblings.
13. The court has also perused the lengthy supplementary affidavit by the applicant sworn on 9th December 2021 and the further respondents replying affidavit sworn on 16th December 2021 each responding to each other's several affidavits and the attendant annexures.
14. The court has also perused the submissions by the parties together with the cited authorities.
15. It is apparent in my view that the issues before this court are clear, simple and straight forward. The applicant who is the deceased daughter is of the view that she has been locked out of the estate. She states that she was not consulted during the filing of this cause and being aggrieved she feels that she ought to be made one of the administrators of the estate.
16. She is also aggrieved that her mother is bend on mismanaging the estate together with her siblings especially the brothers. That some of the properties were deliberately left out when listing them.
17. The court has perused the affidavits in support and in opposition and the submissions and need not reproduce them here. It is not necessarily true that the applicant has been left behind since just like all other beneficiaries she has been listed.
18. At the same time the respondent clearly pointed out when filling P&A 5 form that some of the assets were yet to be established. Now that she disclosed this, I doubt whether she had the intention to conceal them. Thankfully and to the benefit of the estate the applicant has disclosed the same. This shall be necessary especially at the distribution level.
19. The court takes cognisance of the repairs being undertaken by the administrator especially on the rental properties. I do not think the repairs amount to wastage but improvement.



20. It is also noted that the applicant is married away just like her sisters and she is not necessarily at home unlike her mother and her brothers. To for instance bring her into daily management of the estate may be problematic.
21. Although the applicant submits that her mother is hell bend on disinheriting her, this is far from the truth. The estate is yet to reach distribution stage where each of the beneficiaries will be taken into account. All that the respondent is undertaking is collecting and maintaining the same which is to the advantage of everyone in the estate.
22. There is no evidence that the respondent has paid herself any sums from the estate unlawfully or for that matter the rest of the beneficiaries. Even the sum of money accruing from the tea produce is yet to be disbursed. There is no evidence of any wastage of the estate for now.
23. I think this court has said much to indicate that the application is not meritorious for now. This could have been perfectly applicable at the confirmation stage. For now, her interest is well taken care of just like her siblings. She should allow the widow to run the estate with the assistance she may require from her sons or any other source as long as the same is not wasted or done to the detriment of the estate.
24. Further and to allay any fears and for purposes of accountability to the estate and more so to this court, the administrator should be able to keep records of all the proceedings in the estate, including repairs, payment of liabilities and any incoming income to the estate as the case may be. In other words, she should be accountable as per the grant bestowed upon her.
25. The application is otherwise dismissed with no order as to costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 23RD DAY OF JUNE 2022.

H K CHEMITEI

JUDGE

