



REPUBLIC OF KENYA



In re Estate of Anna Chepchirchir Kiprotich (Deceased) (Succession Cause 317 of 2009) [2022] KEHC 11142 (KLR) (20 June 2022) (Ruling)

Neutral citation: [2022] KEHC 11142 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 317 OF 2009**

EKO OGOLA, J

JUNE 20, 2022

IN THE MATTER OF THE ESTATE OF ANNA CHEPCHIRCHIR KIPROTICH (DECEASED)

BETWEEN

GRACE CHEPKOSGEI KIPROTICH 1ST OBJECTOR

KIMUTAI ROTICH 2ND OBJECTOR

DAVID KIBET ROTICH 3RD OBJECTOR

AND

IGNATIUS KIPKEMEI ROTICH 1ST PETITIONER

LOUIS M KIPRUGUT 2ND PETITIONER

MARK KIPLAGAT ROTICH 3RD PETITIONER

RULING

1. The petitioners/applicants application dated October 19, 2021 pray for the following orders;
 1. Spent
 2. That this honourable court be pleased to strike out application dated November 20, 2011 by the objectors.
 3. That upon issuance of order (2) above, the court do reinstate the grant of letters of administration issued on February 14, 2011.
 4. That an order of eviction be issued against the objectors in all the properties of the suit herein.
 5. That costs of this application be provided for.



2. The application is premised on the grounds set out therein and is further supported by the affidavit of Ignatius Kipkemei Rotich sworn on October 19, 2021.

Petitioners'/Applicants' Case

3. The 1st applicant averred that the objectors herein filed an application dated November 20, 2011 seeking to have the grant issued to them revoked. That the petitioners/applicants herein had petitioned court for grant letters of administration intestate which was confirmed on February 14, 2011.
4. The applicants case is that pursuant to a court order dated September 3, 2021, the Directorate of Criminal Investigations was ordered to investigate the identities of the objectors herein and to file a report to that effect. That the DCI carried out their investigations and filed a report as ordered by court on September 2, 2021. According to the applicants, the report by DCI concluded the objectors herein are not people they purport to be. The applicants contend that the objectors used fraudulent documents to move court in the filing of the application dated November 20, 2011. The applicants contend that pursuant to the findings of the said report, the objectors herein intentionally misled court.
5. The applicants averred that pursuant to the provisions of section 76 of the Law of Succession Act, only interested parties are allowed to apply for revocation of grant and that the objectors herein used falsified documents to rely on the said provision and as such their application should be dismissed.
6. The applicants averred that the objectors herein sneaked into their homestead while they were away and obtained orders using fraudulent documents, and the objectors now intend to acquire their property using illegal means. That is why they pray that the court do reinstate the grant issued on February 14, 2021 and also evict the objectors.
7. Further the applicants contend that the objectors' application was unmerited, as they do not fall within the meaning of dependants as provided for under section 29 of the Law of Succession Act.
8. The Applicants further maintain that the objectors herein have not shown court that they were dependants of the deceased prior to the deceased's death.
9. The applicants further averred that the objectors herein have been living in the applicants' home illegally as from 2012 when the said application was filed and to the detriment of the true beneficiaries of the deceased and contrary to the provisions of the Law of Succession Act.
10. The applicants maintain that the objectors herein had no justifiable cause to move this court as they had relied on falsified documents.

The Objectors'/Respondents' Case

11. Grace Chepkosgei Kiprotich, the 1st objector/ respondent herein in a replying affidavit sworn on December 3, 2021 opposed the application dated October 19, 2021. She deposed that the properties and/or assets that are subject of this succession cause are; land parcel No Eldoret Municipality Block 14/73 (0.9439) Ha, land parcel No Kakamega/Sergoit/148 (25.5 Ha), land parcel No Nandi/Kiminda/736 (0.08 Ha) and proceeds from Safaricom Ltd lease to be released to the petitioners.
12. The objectors averred that the above listed properties were the same properties save for land parcel No Nandi/Kiminda/ 736(0.08Ha) and the proceeds from Safaricom Ltd were listed in Eldoret High Court Succession Cause No 193 of 2003 In the Matter of the Estate of Vincent Komugor Kiprotich filed by Anna Chepchirchir Kiprotich. That in Eldoret High Court Succession Cause No 193 of 2003 the following persons were listed as the beneficiaries of the late Vincent Komugor Kiprotich; Anne



Chepchirchir Kiprotich (widow), Ignatius Kipkemei Rotich (son), Louis Michael Kiprugut Rotich (son) Mark Kiplagat Rotich (son) and Susan Kemboi (daughter).

13. The objectors allege that the late Vicent Komugor Kiprotich was their father and that they were included as beneficiaries of the said estate. The objectors further allege that the late Anna Chepchirchir Kiprotich concealed material facts when petitioning for the grant of letters of administration as to who the true beneficiaries of the late Vincent Komugor Kiprotich were. That upon confirmation of the said grant and issuance of the certificate of confirmation of grant, the late Anna Chepchirchir Kiprotich transferred all the properties belonging to Vincent Komugor Kiprotich to herself.
14. The objectors maintain that their application dated November 20, 2011 was made in good faith and in pursuit of their right to inherit as children and dependants of the estate of the late Vincent Komugor Kiprotich, having discovered that the assets in the said estate had been given to the late Anna Chepchirchir Kiprotich and later on passed to the petitioners herein to their exclusion.
15. The objectors contend that their identities in relation to their right to inherit from their late father can only be ascertained by DNA tests being conducted on them and the Petitioners herein. The Objectors further averred that they have an application in Eldoret High Court Succession Cause No 193 of 2003 seeking for revocation of grant and requesting for a DNA test to be conducted on the body of the late Vincent Komugor Kiprotich.
16. The 3rd objector contends that his national identity number is xxxxxxxx and not xxxxxx as indicated in the DCI report. The 3rd objector maintains that contrary to the allegations made by the DCI report, he worked at Kenya Power on contractual basis as field personnel and the identity number indicated on his job card as xxxxxx was erroneous as his correct national identity number is xxxxxxxx as indicated on his police clearance certificate.
17. The 1st objector contends that contrary to the allegations made in the DCI report, her national identity number is xxxxxx. The 1st objector also maintains that she did her KCPE at GK prisons.
18. The objectors further contend that the documents they used in the filing of the application dated November 20, 2011 were prepared and issued by different government offices, officials and persons who have not been afforded the opportunity to explain themselves.
19. The Objectors averred that pursuant to the provisions of section 76 of the *Law of Succession Act*, a grant made on the basis of concealment of material facts should be revoked and urged court to allow application dated November 20, 2011.
20. The objectors contend that they are not strangers who sneaked into the petitioners homestead but maintain they are dependants/beneficiaries of the estate of the late Vincent Komugor Kiprotich and that they have been living in the suit property from childhood to date.
21. The objector denied having illegally acquired the suit properties herein and maintain that the suit properties in question were the same ones in Eldoret High Court Succession Cause No 193 of 2003 belonging to their late father. The applicants further averred that the suit properties in the estate of the late Vincent Komugor Kiprotich have since been illegally registered in the names of the petitioners herein.
22. The objector averred that they are the true dependants of the estate of the late Vincent Komugor Kiprotich and are also dependants of the late Anna Chepchichir Kiprotich who took care of them during her lifetime and after the death of their mother and father.
23. The application was canvassed by way of written submissions. Both parties filed their submissions.



Determination

24. I have carefully considered the application, the affidavits and the submissions filed as well as the authorities relied upon. The only issue for determination is whether objectors are beneficiaries/dependants of the estate of the late Anna Chepchirchir Kiprotich.
25. This court in its ruling dated September 2, 2021 directed the Directorate of Criminal Investigations (DCI) Eldoret Central Police to investigate the identity cards, birth certificates and the death certificate produced in this court by the 1st and 3rd respondents, and to file a report to that effect. The petitioners herein had raised concerns about the identities of the 1st and 3rd objectors herein prompting court to order an investigation into the same.
26. On September 20, 2021 the Directorate of Criminal Investigations Eldoret West, filed its report in court and whose findings I need not reproduce here.
27. The objectors/respondents herein have challenged the contents of the said DCI report and maintain that the only way their respective identities can be proved is if this court orders that a DNA test be conducted between them and the petitioners herein. The objectors/respondents in the replying affidavit of Grace Chepkosgei Kiprotich have also stated that they have since filed an application in Eldoret High Court Succession Cause No 193 of 2003 seeking the revocation of grant therein and also requesting that a DNA test be conducted on the remains of the late Vincent Komugor Kiprotich in relation to their identities and that of the petitioners herein. I have looked at objectors annexures marked as GCK-7 and GCK-8 being copies of the said applications and it my observation that the same are not properly before this court since they have not been endorsed by the official receiving stamp as required.
28. In my view, the only way to put the issue of the identities of the objectors at rest is through a DNA test. However. It is it is not necessary to exhume the late Vincent Komugor Kiprotich for purposes of conducting a DNA test. It is possible for sibling DNA to be conducted to establish whether the objectors were sired by the deceased's husband herein.
29. I therefore, direct that both the petitioners and the objectors herein be subjected to DNA test to ascertain the issue of the paternity of the Objectors before this court can make a finding whether or not the said objectors are entitled to a share of the deceased's estate.
30. Accordingly, I hereby order as follows;
 - i. That a DNA examination shall be done on both the petitioners (namely Ignatius Kipkemei Rotich, Louis M Kiprugut Rotich and Mark Kiplagat Rotich) and the objectors (namely Grace Chepkosgei Kiprotich, Ben Kimutai Rotich and David Kibet Rotich) in order to determine the issue of the identities of the objectors herein.
 - ii. That the DNA to be done by Kenya Medical Research Institute (KEMRI).
 - iii. That matching samples shall be taken from the bodies of the petitioners and objector named in (i) above within (30) days from the date of this ruling.
 - iv. That the costs of conducting the DNA test be shared equally between the objectors and the petitioners.
 - v. That the Kenya Medical Research Institute to submit their report within (30) days from the date of submission of samples.



- vi. That this case will be mentioned on September 5, 2022 for further directions.
- vii. The application before the court is therefore premature, and may be revisited after the said DNA tests are concluded.

DATED, SIGNED AND DELIVERED THIS 20TH OF JUNE 2022.

EK OGOLA

JUDGE

