



**In re Estate of Kipsoi Ngasura (Deceased) (Succession Cause  
21 of 2016) [2022] KEHC 11538 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11538 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE 21 OF 2016**

**RL KORIR, J**

**JULY 29, 2022**

**IN THE ESTATE OF KIPSOI NGASURA (DECEASED)**

**BETWEEN**

**SAMWEL KIPRONO MARITIM ..... APPLICANT**

**AND**

**RICHARD KIMUTAI MARITIM ..... RESPONDENT**

**RULING**

1. The Application before Court is brought by way of Notice of Motion dated and filed on March 10, 2020. It is premised on sections 1A, 1B and 63(e) of the *Civil Procedure Act* and Order 51, Rule 1 of the *Civil Procedure Rules*. The Applicant prays as follows:
  1. That the honorable Court be pleased to issue an order directing the Deputy Registrar of the honorable Court to execute mutation and transfer forms for purposes of effecting transfer to the beneficiaries of the Estate of the late Kipsoi Arap Ngasura with respect to the parcel of land registered as Kericho/Ndaraweta/598 in compliance with the Grant of the Court dated July 10, 2017.
  2. That the honorable Court be pleased to issue an order directing the OCS Bomet Police Station to provide security to the beneficiary/Applicant for purposes of enforcing peace during the survey and sub-division exercise to be carried out on LR No Kericho/Ndaraweta/598.
  3. That the costs of the Application be borne by the Petitioner/Respondent.
2. The Application is based on the following grounds: -
  - a. The Petitioner/Respondent herein refused and/or neglected to sign off the mutation forms ever since the Grant was confirmed but is engaging the Estate in endless legal battles.



- b. The Petitioner neglected his role.
  - c. The respective beneficiaries are desirous to have titles to their parcels of land as per the confirmed Grant.
  - d. The Grant was confirmed on July 10, 2017, but the parties are yet to take out their titles as per the confirmed Grant.
  - e. That it is in the interests of justice that the Application is granted.
3. Alongside this Application is the Supporting Affidavit of the Applicant Samwel Kiprono Maritim dated and filed on March 10, 2020 and June 10, 2020 respectively.
  4. The Respondent herein also filed his Replying Affidavit in respect of this Application dated February 3, 2021.

### **Background**

5. From my perusal of the file, the brief facts are that the Applicant was originally issued with Grant of Letters of Administration intestate on June 30, 2016. However, the same was revoked on December 15, 2016 on grounds of material non-disclosure and concealment of facts. The Court in its Ruling dated March 9, 2017 ordered the recall of 8 title deeds for purposes of cancellation. Subsequently, the Court issued a new Grant of Letters of Administration to the Respondent, Richard Kimutai Maritim, on May 9, 2017 and dated May 10, 2017. On July 3, 2017, the Applicant (Samwel) proceeded to Court through Summons seeking a confirmation of Grant of Letters of Administration as one of the Administrators on the strength of the earlier (revoked) Grant of June 30, 2016. The Court however confirmed and issued the said Grant in the name of the Respondent, Richard, on July 10, 2017 in his (Richard Kimutai's absence).
6. Richard then brought an Application through a Notice of Motion dated October 19, 2017 in which he prayed that the Court issues orders restraining Samwel from administering the Estate and for the Court to review the orders it made on July 10, 2017. The Court in its ruling dated November 6, 2019 dismissed the said Application and stated that there was no error on the face of the Record. The Court observed that Richard had misled the Court when he alleged that the said confirmed Grant was issued in the name of a wrong person yet it was in his name. He was ordered to administer and wind up the Estate based on the mode of distribution indicated in the said Grant. The Estate is yet to be wound up as the Applicant (Samwel) claims that the Respondent (Richard) neglected his duties as an administrator. This forms the basis of the present Application.
7. By Court directions given on November 5, 2020, the parties were directed to canvass the Application by way of written submissions.

### **Applicant's Submissions**

8. The Applicant filed his submissions on March 25, 2022. He submitted on three issues being: whether the Deputy Registrar should execute the mutation and transfer forms, whether the OCS Bomet Police station should provide security and who should bear the costs of the Application.
9. Firstly, learned counsel for the Applicant submitted that it was the duty of the Respondent as the administrator to ensure the smooth conclusion of the succession matter yet he failed to do so to the detriment of the beneficiaries. That he was mandated by law to distribute the Estate or be removed as an administrator. That further, the Court had power to authorize the Deputy Registrar to execute the necessary documents for the completion of the distribution of the Estate. He cited the case of Kericho



High Court Succession Cause Number 236 of 2015, *In the Matter of the Estate of the late Barchok Arap Koskei alias Barchok A Koske alias Barchok Arap Kosgei (deceased), Lydiab Chepkirui Koske and Anna Cheronno vs Johnstoned Kipchirchir Arap Sigei//* where Ongeri LJ referred to the case of *Re Estate of Gitere Kabura (deceased)* [2020] eKLR and authorized the Deputy Registrar to exercise the mandate of the administrator by signing off the mutation forms. He also cited the decision of Kemei J in Machakos High Court, Succession Cause No 101 of 2007, in the Matter of the Estate of Richard Kasimu Kitivi (deceased) *Emelda Mukulu Kasimu vs Mariana Ngina Kasimu*.

10. Secondly, counsel submitted that the Applicant should be provided with security to ensure peaceful survey and subdivision of the land because the beneficiaries were apprehensive that their shares to the Estate were under threat and that they would be denied their right to ownership owing to the reluctance of the Respondent to administer the Estate. He cited the case of Meru High Court Succession Cause Number 155 of 2001, *in the Matter of the Estate of M'Iracha alias Irachgatumo (deceased), Titus Mbaabu M'Iracha M'Iracha vs Justus Muthamia & 3 Others* where Gikonyo J ordered the OCS of Nkubu Police Station to accord the surveyor maximum security.
11. Lastly, counsel submitted that section 27 (1) *Civil Procedure Act* required that costs follow the suit. He submitted that the Respondent should bear the costs of the Application.

### **Respondent's Submissions**

12. The Respondent failed to file any submissions despite being granted time for extension being granted this counsel by the Court. His response, therefore, is only contained in his Replying Affidavit dated February 3, 2021 sworn by Richard Kimutai Maritim.
13. The Respondent stated that the Applicant did not act in good faith when he sought a confirmation of the Grant whose aim was to bar the beneficiaries from taking care of their own liabilities. He further stated that he neither refused nor neglected to sign off the necessary documents and that it was the Applicant who had incited the other beneficiaries to shortchange those to whom they had already sold off their respective parcels. That some of the *bonafide* purchasers for value had been evicted without compensation and that he was only willing to distribute the Estate upon his co-beneficiaries settling all the outstanding liabilities to the *bonafide* purchasers. It was his averment that the prayer to have the Deputy Registrar execute the requisite documents will prejudice the interests of the said liabilities and that he ought to be given a chance to administer the Estate while catering for all the interests of the beneficiaries and the *bonafide* purchasers for value who were likely to be adversely affected should the Court grant the prayers in the Application.

### **Issues For Determination**

14. I have perused the earlier proceedings and considered the Application, the rival Affidavits and the submissions made by the Applicant. Two issues stand out for my determination as follows: -
  - i. Whether the Application is merited and prayers ought to be allowed?
  - ii. Who should bear the costs of the Application?

#### **i. Whether Application Is Merited And Whether The Prayers Sought Ought To Be Allowed.**

15. The *Law of Succession Act* provides a time period within which an administrator is expected to file for confirmation of Grant. Section 71 provides as follows:-

“71. Confirmation of Grants



1. After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for the confirmation of the grant in order to empower the distribution of any capital assets.”
16. The manner in which this section of the law is drafted is mandatory in nature as it employs the word ‘shall’. It therefore means that within a period of 6 months or before 6 months lapses, an administrator is required to apply to court for the confirmation of Grant. From the Record, the Grant was confirmed on July 10, 2017 about 2 months after the issuance of Letters of Administration to the Respondent herein which was May 10, 2017. It follows then that the Respondent was under a legal duty to carry on with the administration of the Estate.
17. Musyoka J *in the case of Re Estate of Agwang Wasiro (Deceased)* [2020] eKLR stated that a Grant holder holds the property as a personal representative of the deceased and for specific purposes only. He stated thus:

“However, there are limitations. In the first place, the grant-holder is not an absolute owner of the property in question. The property does not belong to him, but to the estate, and he holds it as a personal representative of the deceased. He holds the property for the purpose of administration and management only, with the ultimate objective of the same being distributed to the persons beneficially entitled to it under the law of inheritance, depending on whether the deceased person died testate or intestate.”(underlining mine for emphasis).
18. Further, section 83 of the Act outlines the duties of personal representatives as follows: -

“ 83. Duties of personal representatives

Personal representatives shall have the following duties—

  - i. to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
  - ii. to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
  - iii. to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
  - iv. to ascertain and pay, out of the estate of the deceased, all his debts;
  - v. within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
  - vi. subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section



and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;

- vii. within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
- viii. to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- ix. to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

- 19. In the present Application, it is common ground that there was the Estate has not been administered since the confirmation of Grant. This is even after the dismissal by the Court of the Application made by the Respondent on October 19, 2017 to review its orders dated July 10, 2017. The only explanation provided by the Respondent is that he has been fighting for the interests of other interested parties who had bought parts of the parcels and were likely to be prejudiced by the distribution of the Estate in the manner indicated in the Grant.
- 20. From the above section of the law, subsection (g) directs that an administrator must within 6 months or any other period as granted by the Court administer the Estate in the manner outlined in the confirmed Grant. The Respondent has failed to do this. Further, there is no Application before Court in which he prays for additional time to resolve the pending issues and complete the administration as required.
- 21. It is my finding that the Respondent has failed in his duty to expeditiously administer the Estate. It is also not clear whether the same will be brought to conclusion. In light of this, section 76 provides for the grounds upon which a Court may revoke a grant. It states as follows: -

76. Revocation or annulment of grant

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;



- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
  - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or
  - (ii) to proceed diligently with the administration of the estate; or
  - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.”

22. The actions or inactions of the Respondent in this case amount to the scenario outlined under section 76(d)(ii). At the same time, I am cognizant of the lengthy time it has taken for the Estate of the deceased to be distributed. The Grant having been confirmed on July 10, 2017 ought to have been executed by now. Owing to the detrimental nature of the effect of revoking a grant, I am persuaded that the interests of justice will not be served by revoking the said Grant as this will again subject the parties to lengthy probate process.

23. Rule 73 of the Probate Rules empowers the court to make any orders necessary for the ends of justice. It states thus: -

“Nothing in this rule 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 court”.

24. In Kerugoya Succession Cause No 36 of 2013, Re Estate of Wilfred Munene Ngumi (2020) eKLR, the court dealing with a similar case, stated thus: -

“Section 83 (g) of the Act mandates administrators of an estate to, within six months of confirmation of grant or longer period as the court may allow, complete the administration of the estate, and to produce to the court a full and accurate account of the completed administration. This undertaking cannot be done unless the necessary documents are executed by the relevant parties.....”

The court in this case directed the Deputy Registrar to execute the completion documents and went on to state as follows: -

“.....It is evident from the Applicant’s affidavit in support of the application and oral arguments by her Advocate, Mr Kahiga, that the respondents have refused to sign the necessary documents to facilitate execution of the court’s Judgment/decree. To prevent abuse of the court process, by the above legal provisions, this court has inherent powers to prevent such abuse. I therefore find, and hold that the petitioner’s summons dated September 23, 2019 and filed on September 25, 2019 to be merited.....”



25. Similarly, in Embu High Court Succession Cause No 13 of 2003, *Re Estate of the Late Kubuta Kamara Nguuro alia Pharis Njegegu (deceased)* [2021] eKLR, *Lucas Njagi Njegegu & 6 Others vs Jerusha Wambui Musa*, the court had the following to state in a similar situation:-

“ .... This state of affairs is not healthy and should not be countenanced by the court. The applicants prayed that the Executive Officer/Deputy Registrar do sign all the documents on behalf of the respondent. In *Rose Wanjiku Kuria vs Nganga Mugwe* [2003] eKLR and which decision I agree with, the court held that by virtue of Section 79 of the *Law of Succession Act*, the administrator gets all the property of the deceased vested in him/her and the court further stated that the Court’s Registrar or his deputy or any other officer of the court not having been granted Probate or letters of administration and therefore having had no property of the deceased vest in him and no powers and duties in accordance with provisions of the *Law of succession Act*, cannot become an executor or administrator and as such cannot administer the estate of the deceased person and the court to order him or authorize him to administer by signing any of those documents as requested in this summons, is to make an order which is not supportable under the *Law of Succession Act*.

However, this court being a succession court has ample powers donated to it by Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules to resort to, in order to meet the ends of justice. The task of administering the estate is still on the shoulders of the respondent (administrator). As I have already noted, despite the grant having been confirmed in the year 2007 and even after the subsequent amendment by Muchemi J (which included the Wang’uru Plot in the certificate), the respondent has nonetheless failed to administer the estate. I believe that court orders ought not to be issued in vain but must be complied with. Further, the office of administrator of estate of a deceased person is an office which is built on the foundation of trust and goodwill. Where such is seen to be lacking, then the court ought to invoke its powers to ensure that justice is done to the beneficiaries more so where the administrator puts the beneficiaries in an unenviable position.

In the instant case, the administrator having failed to distribute the estate and without any valid reason, the Deputy Registrar of this court ought to be ordered to sign all the relevant documents to effect the transfer of the properties to the beneficiaries. As such I allow prayer 5 of the application.....”

26. It is evident in the present case that a stalemate between the parties where the person who bears the legal authority to administer the estate has failed to do so and is unwilling until his demands are met. It would defeat the purpose of a Court order to overlook the confirmed Grant and proceed to consider the claims of the Respondent in the absence of a valid Application. The Court order dated July 10, 2017 confirming the Grant stands valid and must be adhered to. I therefore find prayer (1) of the Notice of Motion merited.
27. The next prayer was to issue an order to the Officer Commanding Station Bomet to provide security during the survey and sub-division of the land. Counsel for the Applicant cited the case of *Re M’Iracha alias Irachgatumo (supra)* in support of this prayer. A cursory look at the facts of that case indicate that there was deep seated acrimony between the parties such that the brothers of the Applicant had one time chased the surveyor away. On this basis, Gikonyo J ordered that the OCS provides security.
28. In this case, though there are unsettled disputes amongst the parties, there is no apparent acrimony that would warrant the presence of police security. The Applicant has not demonstrated to this Court



that there were any acts of violence committed or threatened against them in seeking to have the Grant executed. As such, I am not persuaded that the said prayer is warranted. Under the circumstances, I am only inclined to compel the Respondent to carry out the administration of the Estate as stipulated by the Grant. Prayer 2 is therefore dismissed.

## **ii. Who Bears The Costs Of The Application?**

29. Lastly, on costs, it is trite that costs follow the suit. It is clear in this suit however that the siblings are feuding over the estate of their deceased father and have engaged in several applications aimed at advancing individual gain at the expense of the beneficiaries. I therefore direct each party to bear their costs in this Application.

30. In the end, the Application is partly merited and I make the following orders: -

- i. That the Respondent be and is hereby directed to commence the distribution of the Estate by executing the necessary documents to give effect to the Grant dated July 10, 2017 within 60 days from the date of this Ruling.
- ii. That in the absence of the above, the Respondent be held in contempt of Court and the Deputy Registrar be and is hereby directed to execute all necessary documents to give effect to the Grant dated July 10, 2017 immediately after the lapse of 60 days.
- iii. That the execution of the completion documents by the Respondent, or in default by the Deputy Registrar will be deemed as sufficient for the subdivision and transfer of the parcels of land.
- iv. All parties are also directed to individually settle all existing liabilities which they have individually occasioned the Estate including any 3<sup>rd</sup> Party *bonafide* purchasers. A confirmation of settlement of all debts to be filed in Court alongside the full accounts of the Estate.
- v. The Respondent is hereby directed to render full and final account of the administration of the Estate in accordance with section 83 (f) and (g) of the [Law of Succession Act](#). He is also directed to file the same in Court at the lapse of 60 days.

31 Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF JULY, 2022**

.....

**R LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of Mr Mugumya, for the Applicant, Mr J K Koech for the Respondent and Kiprotich (Court Assistant).**

