



**In re the Estate of David Kiprugut Bor (Succession Cause
E018 of 2021) [2022] KEHC 10311 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 10311 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
SUCCESSION CAUSE E018 OF 2021
RN NYAKUNDI, J
JULY 29, 2022**

BETWEEN

STEPHEN KAPKITNY SITIENEI PETITIONER

AND

BERNEDINE JEBET CHERUTICH OBJECTOR

RULING

1. By way of an objection application dated December 1, 2021 the objectors object to the making of the grant of representation to the estate. The objection is based on the grounds that the objector was the lawful widow of the deceased and that the petitioner, being the father of the deceased, has instituted succession proceedings vide Eldoret high Court Succession Cause No. 123 of 2021 with the intention of disinheriting the family.
2. According to the applicant, the deceased left behind a widow and two children who are entitled to the estate;
Bernedine Jelagat Cherutich - Wife
Denver Jelimo Bor – Daughter
Yvonne Chemutai Bor – Daughter
3. She contended that the petitioner transferred motor vehicle registration number KCA 200R to his wife and charged the vehicle to Momentum credit which was a clear fact of intermeddling. He has also forcefully taken away one of the children, Denver Jelimo Bor and compromised her education by transferring her from a private school to a public one.
4. The respondent opposed the application vide a replying affidavit dated February 14, 2022 deposited by the petitioner. He deposed that the deceased was married to Anne Jepkosgei Kipsaina (Deceased) and annexed her death certificate as SK1. They were blessed with one issue; Denver Jelimo. He produced as



- SK2 the birth certificate. He stated that he is the legal guardian of the minor pursuant to a court order date September 3, 2021 issued by the Principal Magistrate Kapsabet. The same was annexed as SKS3.
5. The respondent's case is that the applicant is a stranger to the estate. he did not secretly move the court as a notice for application of grant was issued. The deceased was only blessed with one issue; Yvonne Chemutai Bor who has been identified as an adult and never depended on the deceased. he contended that the certificate of marriage that was annexed is only for the purposes of the suit which is for an ulterior motive if denying the rightful claimants their share of the estate.
 6. The respondent deponed that the person who would have been entitled to commence proceedings in respect of the proceedings is Denver Jelimo's mother and other beneficiaries including;
 1. Ronald Kipkemboi
 2. Ezekiel Bor
 3. Sarah Sitienei
 4. Alice Sitienei
 5. Susan Jebet
 6. Eunice Chebichii
 7. Joel Kipsum
 8. Vincent Rono
 7. He denied concealing any material facts and stated that he followed the right procedure. Further, that he has not wasted the property of the estate. It was his position that the application lacks merit and should be dismissed.
 8. The applicant, in response to the replying affidavit, filed a supplementary affidavit on February 3, 2022. She disputed paragraph 4 of the replying affidavit and deposed that the deceased had two wives, Anne Jepkosgei Kipsang and Bernadine Jebet Cherutich. She annexed as BJC-1 the certificate of marriage.
 9. She disputed paragraph 5 of the replying affidavit and stated that the deceased was blessed with two issues; Yvonne Chemutai and Denver Jelimo. She annexed their birth certificates as BJC" (a) and (b). Further, during the burial, the wives and children were acknowledged in the eulogy and they were also recognised in the funeral announcement. She annexed the same as BJC 3 and 4.
 10. The chief if Kapsimotwo location where the deceased and his family hail from, wrote a letter confirming the deceased left behind the applicant as a widow and two children. She annexed the letter as BJC5. She further contended that the guardianship given to the respondent was obtained fraudulently. She responded to paragraph 11 by stating she is the lawful widow and annexed as BJC8 her marriage certificate. She also produced as BJC 10 proof of a customary marriage and BJC10 a-j. she also stated that she lived with the deceased prior to his death and annexed as BJC2(a), b and BJC13 evidence of the same. She maintained that the beneficiaries in paragraph 27 were strangers to the estate.
 11. The applicant stated that the petitioner impersonated the deceased and transferred motor vehicle registration no. KCA 200R to himself then t his wife and son. She annexed proof of the same as BJC 16,17 and 18. She contended that this amounted to intermeddling and that it was on the interests of justice that the application be allowed.
 12. Upon reading the pleadings and affidavits in response thereto I have determined the following issues for determination;



a) Whether the grant of letters of administration should be revoked.

13. There exists a Succession cause 123 of 2021 concerning the same estate and it is in the interest of justice that the two files be consolidated. In that cause the court issued a grant of Letters of Administration Intestate to Bernedine Jebet Cherutich.
14. There is no grant that has been issued in the present succession cause. Further the petitioner in the present cause is the father of the deceased. Section 66 of the *Law of Succession Act* gives guidance on the preference of who may become an administrator as follows: -

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

15. The petitioner herein does not meet the criteria to be appointed an administrator. Given that the estate in question already has a grant of letters of administration issued to the applicant herein, it follows that there will be no second grant issued to the petitioner herein.
16. In the premises the proceedings in P&A E123 of 2021 cannot be allowed to continue as they relate to the estate in P&A 18 of 2021 wherein the Grant of Letters of Administration have already been issued.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 29TH DAY OF JULY, 2022.

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R. NYAKUNDI

JUDGE

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