



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Grace Sokome Chepkurui (Deceased) (Probate & Administration
266 of 2007) [2022] KEHC 14039 (KLR) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14039 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 266 OF 2007
RN NYAKUNDI, J
OCTOBER 21, 2022
IN THE MATTER OF THE ESTATE OF THE LATE
GRACE SOKOME CHEPKURUI (DECEASED)**

IN THE MATTER OF

LABAN KIMUTAI CHEPKURUI 1ST APPLICANT

MICAH KIPLIMO CHEPKURUI 2ND APPLICANT

RULING

1. The applicants herein approached this court by way of chamber summons dated February 18, 2022 seeking the following orders;
 1. That this honourable court be pleased to review its confirmation orders on certificate of grant of letters of administration issued on January 19, 2009.
 2. That cost be provided for.
2. The application is based on the grounds that the applicants has discovered other properties of the estate of the deceased that which were not known to the them at the time the confirmation orders of certificate of confirmation of grant issued on January 19, 2009. Further, that the applicants too have discovered another set of name used by the deceased that was not known to the petitioners at the time of the confirmed orders and that the shares of heirs of the beneficiaries have been determined.
3. The applicants' case is that they have since discovered as administrators of the estate of the late Grace Sokome Chepkurui that the deceased owned another asset known as Elgeyo Marakwet/Iten Township/28 which was not within their knowledge at the time when we applied for orders of confirmation of grant of letters of administration (intestate). They have also discovered as that the deceased was also known as Tamurei Sawe which information was not within their knowledge at the time when they applied for orders of confirmation of grant of letters of administration (intestate).



4. The applicants stated that they came to learn of the new name when estate of Chemaiyo Sawe (deceased) who was her brother, was being administered. They discovered that they co-owned the property known as Elgeyo Marakwet/Iten Township/28. They contended that it was in the interests of justice that the confirmation of orders issued on January 19, 2009 be reviewed to capture the full name of the deceased as Grace Sokome Chepkurui alias Tamurei Sawe and the newly discovered asset Elgeyo Marakwet/Iten Township/28 and shares of the beneficiaries as follows:
 Laban Kimutai Chepkurui &
 Micah Kiplimo Chepkurui – Sergoit/Elgeyo border block 2 (Beliamo) – Jointly
 Rachel Jerono Kimeli – Elgeyo Marakwet/Iten Township/28 – Whole
5. The applicants deposed that they discovered that the deceased had sold the said property to one Rachel Jerono Kimeli. It is their contention that it is desirable that the said orders be reviewed to enable all the beneficiaries get their appropriate shares and the administrators to complete administration.
6. The application is expressed to be brought under rule 63 and 73 of the *Probate and Administration Rules*, section 80 of the *Civil Procedure Act* cap 21 laws of Kenya, order 45 rule 1 of the *Civil Procedure*.

Issues for Determination

Whether the court should review its confirmation orders on the certificate of grant of letters of administration issued on January 19, 2009

7. Rule 63 of the *Probate and Administration rules* provides;
 - (1) Save as is in the act or in these rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely order 5, rule 2 to 34 and orders 11, 16, 19, 26, 40, 45 and 50 (cap 21, Sub Leg), together with the High Court (Practice and Procedure) Rules (cap 8, Sub Leg), shall apply so far as relevant to proceedings under these rules.
 - (2) Subject to the provisions of the act and of these rules and of any amendments thereto the practice and procedure in all matters arising thereunder in relation to intestate and testamentary succession and the administration of estates of deceased persons shall be those existing and in force immediately prior to the coming into operation of these rules.
8. Rule 73 of the *Probate and Administration rules* provides;
 Nothing in these rules 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 the court.
9. Although this is a succession cause, order 45 of the *Civil Procedure Rules* would apply herein by dint of rule 63 (1) of the *Probate & Administration Rules*. The substantive requirements of order 45 of the *Civil Procedure Rules*, which deals with review are;
 - a. The discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant and could not be produced at the time when the decree was passed.
 - b. An applicant must demonstrate that there has been some mistake or error apparent on the face of the record.
 - c. Review can be possible for any other sufficient reason.



Whether there has been discovery of new and important evidence which was not within the knowledge of the applicant

10. The applicants claim that the deceased went by the name of Tamurei Sawe. The issue to be determined is whether they were aware that she went by this name at the time of making of the grant. A perusal of the proceedings indicates that the official search on the first property being it was indicated that the owner of the land was Tamurei Sawe and the same was indicated as part of the estate in P&A 5. On the issue of the alias, it is the finding of this court that this was not new information. The new information pertains to the property known as Elgeyo Marakwet/Iten township/28. The official search conducted does indeed show that the deceased was a joint owner of the said land. The search was conducted in 2020 and therefore it is crystal clear that this was information that was not within the knowledge of the applicant at the time of the confirmation of grant.

Whether there has been some error or mistake apparent on the face of the record

11. From P&A 5 did contain the name of the deceased including the alias but the certificate of confirmation of grant contained the name Grace Sokome Chepkurui and left out the alias of Tamurei Sawe. It is evident that this is an error apparent on the face of the record.
12. The applicants claim that the deceased sold the newly discovered property to Rachel Jerono Kimeli and asked that the same be added to the estate of the deceased and Rachel be added as a beneficiary. They have not annexed any sale agreement or any proof that the said property was sold but I have perused their pleadings and my attention is drawn to annexure LKC-2 wherein the said Rachel Jerono Kimeli is included as a beneficiary to the estate of Chemaiyo Sawe; the same person with whom the deceased owns the said property jointly.
13. In the premises I find that the application is merited and hereby review the confirmation orders of grant of letters of administration on January 19, 2009 as follows;
14. The confirmation orders be reviewed to capture the full name of the deceased as Grace Sokome Chepkurui alias Tamurei Sawe and the newly discovered shares of the beneficiaries as follows;
- Laban Kimutai Chepkurui & Micah Kiplimo Chepkurui – Sergoit/Elgeyo border block 2 (Beliomo) – Jointly
- Rachel Jerono Kimeli – Elgeyo Marakwet/Iten Township/28 – Whole
- It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 21ST DAY OF OCTOBER, 2022.

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R. NYAKUNDI

JUDGE

