



REPUBLIC OF KENYA



**In re Estate of Kiprop Sayore Piwot (Deceased) (Succession Cause
78 of 2007) [2022] KEHC 17092 (KLR) (16 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 17092 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 78 OF 2007
AC MRIMA, J
DECEMBER 16, 2022**

BETWEEN

SELINA NASIPWONDI PETITIONER

AND

SAMMY OTIENDE KAMADI OBJECTOR

RULING

1. The application subject of this ruling is the objectors' summons for revocation/rectification dated January 13, 2022. It was filed on January 20, 2022. I will hereinafter refer to it as 'the summons' or 'the objection'.
2. The objector sought the following orders: -
 - a. That the certificate of confirmation of grant for the Estate of Kiprop Saroye Piwot issued to Selina Nasipwondi Kiprop on May 20, 2021 be Revoked and or Rectified as the court may direct.
 - b. That this Hon Court be pleased to replace the name of Peter Kipyego Kiprop with that of the applicant as the beneficiary of 1.175 Acres, comprised in land parcel no 826 Sinyerere Scheme.
 - c. That costs of this application be provided.
3. The summons was supported by the grounds on the face of the summons and an affidavit sworn the objector on the even date.
4. The summons was opposed by the petitioner through a replying affidavit sworn by one Peter Kipyego Kiprop, one of the beneficiaries of the subject estate, on April 11, 2022.
5. Both parties filed their respective written submissions on the summons.



6. The gist of the objection Is The Alleged Agreement For Sale Entered Into Between The objector and the said Peter Kipyego Kiprop over the share of Peter Kipyego Kiprop in the instant estate. It was dated October 15, 2009. A copy of the said agreement was annexed to the summons. I will hereinafter refer to it as ‘the agreement’.
7. The Objector contended that the said Peter Kipyego Kiprop (hereinafter referred to as ‘Peter’) was to transfer his share of 2.2 Acres in the estate property known as plot no 826 Shinyerere Scheme (hereinafter referred to as ‘the land’) on conformation of the succession proceedings over the estate of the deceased herein who was the Peter’s father.
8. To his utter shock and surprise, the objector posited that instead Peter was apportioned a lesser size of the land than what they had agreed in the sale agreement and further Peter refused to either include the objector as a beneficiary of the estate in his place or to transfer his portion of the land to the objector, hence the summons.
9. The petitioner rendered her position against the summons citing several reasons.
10. This court has carefully considered the summons and the record as a whole.
11. The court came across the pleadings in Kitale Chief Magistrates Land Case No. 111 of 2021 Sammy Otiende Kamadi v Peter Kipyego Kiprop & another (hereinafter referred to as ‘the land case’). The land case sought the enforcement of the agreement. According to the petitioner, the land case is still pending before the magistrates court. There is, however, no doubt that the agreement subject in the land case concerned Peter’s share in the estate of his father.
12. The pendency of the land case alone has a great bearing to the summons and raises a serious legal challenge. It is on what happens if the summons is allowed, but eventually the land case is dismissed. In such a scenario, the orders allowing the summons will have to be reviewed and set-aside.
13. To avoid such a situation and in the interest of the limited judicial time, the age of the matter and without even venturing into the rest of the grounds raised by the petitioner in opposition to the summons, this court will conditionally allow the proceedings in this matter to proceed.
14. Having said so, the following orders do hereby issue: -
 - a. The summons for revocation/rectification dated January 13, 2022 shall be stayed pending the determination of the Kitale Chief Magistrates Land Case No. 111 of 2021 Sammy Otiende Kamadi v Peter Kipyego Kiprop & another.
 - b. Further proceedings in this cause shall issue. However, the share of Peter Kipyego Kiprop in this estate shall not be transferred to any party pending the outcome of the Summons for revocation/rectification dated January 13, 2022.
 - c. The prevailing status quo on the portion of land forming the share of Peter Kipyego Kiprop in the estate herein shall be maintained pending further orders of this Court.
 - d. Parties be at liberty to apply.
 - e. This matter shall be fixed for directions on the way forward on a date to issue.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 16TH DAY OF DECEMBER, 2022.

A. C. MRIMA



JUDGE

