



REPUBLIC OF KENYA



**In re Estate of Paul Kiplangat Soi (Deceased) (Succession Cause
18 of 2009) [2022] KEHC 16525 (KLR) (16 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16525 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 18 OF 2009
AN ONGERI, J
DECEMBER 16, 2022**

IN THE MATTER OF THE ESTATE OF THE LATE PAUL KIPLANGAT SOI (DECEASED)

BETWEEN

GLADYS CHELANGAT SOI 1ST PETITIONER

GILBERT KIPNGETICH LANG'AT 2ND PETITIONER

AND

SOPHIA CHEPKOECH SOI PROTESTOR

RULING

1. The Application coming for consideration in this ruling is the one dated December 1, 2021 seeking the following orders:-
 - (i) That pending the hearing and determination of this application, the status *quo* as at November 1, 2021 be maintained.
 - (ii) That the ruling and orders issued by this court on June 12, 2020 be reviewed and the certificate of confirmation of grant dated September 24, 2021 be set aside and or varied accordingly.
 - (iii) That costs of this application be provided for.
2. The application is based on the following grounds: -
 - (i) That 5 acres of parcel number Kericho/kipsonoi/251 a settlement scheme was allocated to the first house of Sophia Chepkoech Soi without due consideration that the said parcel was bought and paid for through the sweat and toil of Alice Cherono Soi (deceased) mother of the applicants.



- (ii) That the court did not take into consideration that 5 acres of Kericho/kipsonoi/251 is a riparian land that floods whenever there is heavy rainfall.
- (iii) That the number of children in the second house is 7 and not 5 as the protestor had indicated.
- (iv) That the court never gave directions as to how the pension debit in Post Bank would be distributed.
- (v) That the court should take into consideration that the second house repaid Kenyan shillings two hundred and ninety thousand (Kshs 290,000/=) to Joseah Kipngetich Chirchir family who bought part of the land that was under a caution placed in the year, 2000 and it is the first house who benefited from the transaction since the second family were chased away from the homestead.
- (vi) That the court never considered that the price of land at Kapsimbiri is higher than Kipsonoi during the distribution.

3. The application is supported by the affidavit of Gladys Chelangat Soi the first petitioner/applicant in which it is deposed as follows: -

- (i) That 5 acres of their parcel no Kericho/kipsonoi/251 was allocated to the first house, without due consideration that the said parcel of land is a settlement scheme that was bought through loans that their mother contributed immensely through proceeds of all forms of farming including milk produce to KCC, maize harvest to KCPB from the said land that was owned by their deceased father;
- (ii) That about 5 acres of their land parcel Kericho/kipsonoi/251 is a riparian land that floods whenever there is heavy rainfall;
- (iii) That the number of children in their house is 7 and not 5 as was indicated by the respondent who reduced the number of children in their family in order to disadvantage them and in return benefit her and her children as the number of children in a house is a factor which is considered during distribution of the estate;
- (iv) That the court never gave directions on how the pension debit in Post Bank could be distributed; and the court should take into consideration that the second house repaid Kshs 290,000 to Joseah Kipngetich Chirchir's family who bought part of their land that was already under caution, placed in the year 2000 and it is the first house that benefited from the proceeds of the sale as the second house was chased from the homestead;
- (v) That the court should have taken into consideration during distribution that the price of land at Kapsimbiri is higher than Kipsonoi hence it is important that valuation of the respective parcels should precede the distribution;

4. The respondents filed grounds of opposition to the application dated March 25, 2022 as follows: -

- (i) That the application is fatally defective, misconceived, lacks merit and is an abuse of court process;



- (ii) That the grounds upon which the applicant seeks review does not meet the threshold provided under order 45 of the Civil Procedure Rules, 2010;
- (iii) That the evidence raised by the applicant was available at the time when the court delivered its ruling on the June 12, 2020, yet they were not raised by the applicants for determination;
- (iv) That the grounds raised by the applicant are suitable for appeal and not review as the applicant faults this court to the effect that it failed to consider the nature and value of the property of the deceased and the number of beneficiaries of the 2nd house and in fact indicates that the court failed to give its determination on the issue of pensions held at Post Bank;
- (v) That the ruling sought to be reviewed was delivered on June 12, 2020, one year and ten months ago thus the applicant unreasonably delayed in approaching this court for review.

5. The parties filed written submissions as follows: -

The respondent submitted that for any party seeking review, he/she must satisfy himself/herself as to the required threshold and must meet the following conditions:

- (a) The party must have discovered new and important evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made;
- (b) There must be a mistake or error apparent on the face of the record;
- (c) The party must provide any other sufficient reason; and
- (d) The application must be made without unreasonable delay.

- 6. The applicant submitted that the 5 acres of land Kericho/kipsonoi/251, a settlement scheme was allocated to the first house of Sophia Chepkoech, without due regard that the said parcel was bought by the hard work of Alice Cheroni Soi (deceased), who was the mother of the applicants and it is therefore in the interest of justice that the same should have been allocated to the applicants as the first house never contributed anything to its acquisition.
- 7. It was submitted by the applicants that the 5 acres of the Kericho/kipsonoi/251 that was allocated to the 2nd house is riparian land that floods whenever it rains, this therefore disadvantages the 2nd house as compared to the 1st house; and further, that the court never gave directions as to how the pension debit in post bank would be distributed, and if directions are not given, then part of the estate of the deceased will remain undistributed and it would be wasted or remitted to the unclaimed financial assets authority.
- 8. The applicant submitted that the court never took into consideration that the 2nd house repaid Kshs 290,000 to Joseah Kipngetich Chirchir's family, who bought part of the land that was under a caution lodged in the year 2000, and it is the first house who benefited from the said transaction as the 2nd family were chased away from the homestead.
- 9. It was further submitted by the applicant that the court never considered that the price of land at Kapsimbiri is higher than Kipsonoi during the distribution and therefore the distribution as per the



certificate of confirmed grant is unfair to the 2nd house and therefore the court should review its ruling so as to bring fairness and parity to both houses.

10. The respondent on the other hand submitted that the grounds put forward by the applicants in support of their application are all matters that were within their knowledge at the time the ruling of June 1, 2020 was passed by the court and nothing prevented them from availing it to the court at the time the matter was heard and determined; and that had the applicants been vigilant enough while pursuing their matter, they would have availed this information to the court.
11. The respondent submitted that the applicants have failed to demonstrate the discovery of new evidence and as such the prayer for review is unmerited on this ground.
12. It was further submitted by the respondent that the applicant has not shown that there was any mistake or error apparent on the face of the record, and further that the grounds raised by the applicants are not self-evident and must be established by a long process of reasoning on points that may reasonably lead to two or more opinions, as such there is therefore no error apparent on the face of the court record and the applicant's application fails.
13. It was submitted by the respondent that the applicants having failed to establish the first two grounds of review, there is no other justifiable reason as to why the application for review should be granted and thus the same ought to be dismissed.
14. The respondent submitted that a delay of one year and ten months is not reasonable, and the applicants have not given any justification as to why they decided to seek review of the court's ruling one year and ten months later. It was further submitted that the applicants have not met any of the required threshold for review, as the grounds relied upon in their application qualify to be grounds of appeal as opposed to grounds for review.
15. The sole issue for determination in this application is whether the court should review the orders issued on June 12, 2020.
16. The conditions upon which the court should review its orders are as follows: -
order 45 of the [Civil Procedure Rules](#) provides that: -
 - (1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
17. In [Re Estate of Simoto Omwenje Isaka \(deceased\)](#) (2020) eKLR; the court stated as follows: -“ order 45 provides for three circumstances under which an order for review can be made. To be successful, the applicant must demonstrate to the court that there has been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. A party may successfully apply for review, secondly, if he can demonstrate to the court that there has been some mistake or error apparent on the



face of the record. The third ground for review is worded broadly: an application for review can be made for any other sufficient reason.”

18. In *Republic v Advocates Disciplinary Tribunal Ex Parte Apollo Mboya* (2019) eKLR, Mativo, J (as he then was), stated as follows: “A clear reading of the above provisions shows that section 80 gives the power of review while order 45 sets out the rules. The rules restrict the grounds for review. They lay down the jurisdiction and scope of review. They limit review to the following grounds- (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.”
19. This case has been in court since the year 2009 when the succession cause was filed and the applicants had the opportunity to raise the issue they are seeking to raise in this application.
20. On June 12, 2020, this court gave a ruling stating how the property should be divided after hearing all the parties.
21. I find that the applicants had the opportunity to raise the issues they are now raising since the same were within their knowledge.
22. The applicants submitted that the 5 acres of land Kericho/kipsonoi/251,(the suit property) a settlement scheme was allocated to the first house of Sophia Chepkoech, without due regard that the said parcel was bought by the hard work of Alice Cherono Soi (deceased), who was the mother of the applicants and it is therefore in the interest of justice that the same should have been allocated to the applicants as the first house never contributed anything to its acquisition.
23. I find that these facts were within the knowledge of the applicants at the time the hearing which gave rise to the ruling dated 12th June was done. The court in the said ruling first made a determination on the issue of what properties belonged to the estate of the deceased.
24. If indeed the suit property was purchased by the applicants’ mother, the same ought to have been registered in her name and not in the name of the deceased herein.
25. The only recourse for the applicants have is to appeal against the decision of the court.
26. On the issue that some beneficiaries were left out, the same should be redressed by filing of a summons for rectification to cater for them.
27. I find that the applicants have not established the basis for review of the ruling and orders issued by this court on June 12, 2020 and the certificate of confirmation of grant dated September 24, 2021.
28. The application dated December 1, 2021 be and is hereby dismissed with no orders as to costs.

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

A. N. ONGERI

JUDGE

