



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**SUCCESSION CAUSE NO. 29 OF 1996**

**MATHEW SIMOTWO .....APPLICANT**

**PAULINE CHELANGAT RONO.....PETITIONER**

**VRS**

**KIKWAI RONO.....1ST RESPONDENT**

**WILLIAM RONO.....2ND RESPONDENT**

**RAEL RONO.....3RD RESPONDENT**

**RULING**

1. This matter relates to the estate of Kiprono Langat (Deceased), who died on 11th August 1993. An application for grant of letters of administration intestate was made by Pauline Langat (now deceased) and issued on 11th November 1997. An application for confirmation of the grant was made, and the grant duly confirmed on 29th September 1998.

2. The applicantE, Mathew Simotwo has now filed the application dated 31st July 2014 which is supported by his affidavit of the same date in which he seeks the following orders:

**1. That this Honourable court cause the legal representative of the deceased Petitioner Pauline Chelangat Rono (deceased) namely Mathew Simotwo to be substituted in this suit as the Petitioner and proceed with this suit in place of**

**Pauline Chelangat Rono (deceased).**

**2. That Certificate of Confirmation of a Grant issued to Pauline Chelangat Rono (deceased) on 29th September, 1998 be revoked.**

**3. That a new Certificate of Confirmation of a Grant be issued to Mathew Simotwo in a place of Pauline Chelangat Rono (deceased).**

**4. That such other and/or further direction be given by this Honourable court to meet the ends of justice.**

**5. That the costs of this application be in the cause.**

3. The application is based on the following grounds:

**1. That Pauline Chelangat Rono passed away in the year 2002.**

**2. That before the demise of the said Pauline Chelangat Rono had been issued with Certificate of Confirmation of a Grant of Letters of Administration Intestate on the 29th September, 1998.**

**3. That the applicant herein wishes to proceed with the remaining part of administration of the estate of the Deceased Kiprono Langat.**

4. The respondents opposed the application and filed an affidavit in response sworn on 28th September 2014 by Mr. Kikwai Rono.

5. In the said affidavit, Mr. Simotwo deposes that the petitioner, Pauline Chelangat Rono (deceased) is his father, clearly an error as the record indicates that the petitioner is female, so she is his mother. Her certificate of death annexed to the affidavit indicates that she died on 15<sup>th</sup> February 2002.

6. Mr. Simotwo further deposes that before her death, the petitioner had been issued with a Certificate of Confirmation of Grant on 29th September, 1998. According to the applicant, though the petitioner is now deceased, the succession proceedings survive and can be finalized by her legal representative. He therefore prays that he should be substituted for the deceased petitioner as he is one of the beneficiaries of the estate of Kiprono Langat.

7. In his submissions, Mr. Simotwo stated that the grant in respect of this matter was confirmed in 1998, and that there were six beneficiaries of the estate. The administrator of the estate was his mother. His submission was that they wanted a substitution of the administrator, his mother being deceased, so that they could proceed with the administration of the estate.

8. He also stated that there was only one parcel of land in the estate, being Kericho Kipsonoi/168. It was also his submission that the administrator had not followed the grant in administering the estate.

9. In response, Mr. Akinyi for the respondents noted that the matters that the applicants were raising had been dealt with by the Court, and were therefore res judicata. The applicants had not appealed against the decision of the Court, and for this Court to hear and determine them would amount to the Court sitting on appeal on its decision, out of time, a process that is highly irregular.

10. Mr. Akinyi further noted that the only asset constituting the estate of the deceased was land parcel number Kericho Kipsonoi/168, which property had been identified by the administratrix, the mother of the applicant. The property had been subdivided and the title closed on 4th May 1999, and there is therefore no estate liable to be administered even were the Court to allow the substitution. According to the respondents, the only property the applicant can subdivide is Kericho Kipsonoi/198 which is in the name of his mother.

11. The respondents further noted that the applicant is the grandchild of the deceased, while the respondents are the children of the deceased. The applicant's mother had passed away in 2002, while the grant of the deceased's estate was confirmed in 1998. Mr. Akinyi noted that the applicant had waited for 12 years before coming to court, and he urged the court not to allow the application, which is an abuse of court process, and to condemn the applicant to costs.

12. In his reply, Mr. Simotwo insisted that no survey of the land had been done, and he wished that the Court should allow his application and allow a survey of the land to be done.

### **Determination**

13. I have considered the application in this matter and the response thereto, as well as the oral submissions of the parties made before me. I have also read the record of the Court since the grant was applied for by Ms. Pauline Chelangat Rono in 1996.

14. I note, as indeed the applicant in this matter concedes, that the grant was confirmed on 29th September 1998. His mother, who was the administrator of the estate, was issued with the certificate of confirmation of grant.

15. From the averments by the respondents, it appears that the applicant's mother carried out the administration of the estate and sub-divided the sole asset of the estate, Kericho/Kipsonoi/168. Separate titles were then issued for the resulting sub-divisions.

16. More telling from the record, however, is the ruling of the Court (Sergon J) on an application made by the applicant and two others, Johana Kipkosgei and Richard Simotwo seeking revocation of the grant issued to their mother, Pauline Chelangat Rono. The application was dated 16<sup>th</sup> November 2009.

17. In his ruling dated 16th May 2014, the Learned Judge, after considering the application before him and the court record, stated as follows:

**“There is no dispute that Pauline Chelangat Rono successfully applied for the grant of letters of administration intestate in respect of the Estate of Kiprono Arap Langat, deceased. The administratrix identified L. R. Kericho/Kipsonoi/168 as the only Estate asset. She distributed the aforesaid asset to the beneficiaries and as of now titles have been issued and the land is no longer in the deceased's name. In essence, title was closed upon subdivision on 4th May 1999. The Petitioner, Pauline Chelangat Rono passed away in 2000. The Applicants are before this court seeking for the revocation of the grant issued to the Petitioner who is already dead and has not been substituted. Strictly speaking, there is no one to defend the allegations levelled against the deceased administratrix. For this reason, I find the summons for revocation of grant incompetent. There was a considerable delay in filing the summons for revocation of grant. It was filed 9 years after the administratrix died and 11 years after the grant was confirmed. By the time the summons was being filed the administration of the Estate was complete hence there is nothing remaining to talk about. The Applicants are guilty of laches hence they cannot be assisted in law and in equity. (Emphasis added)**

18. I note that the decision of Sergon J was not appealed against. Instead, the applicant approached the same Court soon thereafter seeking essentially the same orders, though in this case disguised as an application for substitution of the petitioner.

19. I am constrained to agree with the respondents that the present application is an abuse of the court process in light of the matters set out above. More than two decades have elapsed since the demise of the deceased, and the confirmation and distribution of his estate. The administratrix of the estate was the applicant's mother, and she duly distributed the estate in accordance with the confirmed grant. As observed by the respondents, there is no longer anything to administer, the sole asset of the estate having been subdivided in accordance with the confirmed grant. No point would be served in substituting the applicant as administrator in place of his deceased mother, the distribution of the estate being complete. In any event, even were substitution of the administrator necessary, the respondents, who are children of the deceased, would rank in priority to the applicant, who is a grandson.

20. In the circumstances, I find no merit in this application. It is hereby dismissed.

21. I note that this is the second time that the applicant has dragged the respondents to Court on a matter that was finalized eighteen years ago. It is my view therefore that the dictates of justice demand, and I so order, that the applicant meets the respondents' costs of the application.

22. It is so ordered.

**Dated, Delivered and Signed at Kericho this 28th day of July 2016**

**MUMBI NGUGI**

**JUDGE**