



REPUBLIC OF KENYA



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**In re Estate of Chelule Arap Bunei (Deceased) (Succession Appeal
E008 of 2021) [2025] KEHC 306 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 306 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION APPEAL E008 OF 2021
RL KORIR, J
JANUARY 21, 2025
IN THE MATTER OF THE ESTATE OF CHELULE
ARAP BUNEI (DECEASED)**

BETWEEN

LUDIAH CHEPKIRUI CHELULE APPELLANT

AND

JOSEAH KIPYEGON CHELULE 1ST RESPONDENT

NICHOLAS KIBET RONO 2ND RESPONDENT

*(Being an Appeal from the Ruling of Senior Resident Magistrate, Omwange
J. at the Magistrate's Court at Sotik, Succession Cause Number 46 of 2019)*

RULING

1. The deceased, Chelule Arap Bunei died on 2nd June 2004. His sons, Joseah Kipyegon Chelule (from the 1st household) and Nicholas Kibet Rono (from the 2nd household) petitioned the trial court in Sotik for Letters of Administration Intestate vide Succession Cause Number 46 of 2019.
2. From the Chief's Letter dated 8th July 2019, the deceased had two wives i.e. the late Sarah Chepkirui Bunei and Hellen Chelangat Sang. He listed the deceased's dependants as follows:-
1st Household.
 - i. The late Sarah Chepkirui Bunei Widow
 - ii. Tabutany Chepngeno Keter Daughter
 - iii. Tapsabet Chepngeno Keter Daughter
 - iv. Ludiah Chelule Daughter in law



- v. Esther Sang Daughter
 - vi. Grace Chebet Chebukto Daughter
 - vii. Ludiah Cheptonui Sigilai Daughter
 - viii. Joseah Kipyegon Chelule Son.
2nd Household.
 - i. Hellen Chelangat Sang Widow
 - ii. Nicholas Kibet Rono Son
 - iii. Wikabet Chepkirui Cheruiyot Daughter
 - iv. Joel Kipkemoi Rono Son
 - v. Zeddy Cheptonui Ngerechi Daughter
 - vi. Mercy Chepkemoi Koech Daughter
 - vii. Nelly Chepkoech Kirui Daughter
 - viii. Leonard Kipngeno Rono Son
 - ix. Benard Kipngetch Rono Son
 - x. Sharon Cheronu Bunei Daughter
3. A Grant was issued on 11th March 2020 in the joint names of the Petitioners (Joseah Kipyegon Chelule and Nicholas Kibet Rono). The Petitioners then applied for confirmation of the Grant through Summons dated 15th October 2020 and the Grant was confirmed and a Certificate of confirmation of Grant was issued on 12th January 2021.
4. The schedule of distribution as per the confirmed Grant was as follows:-
- Kericho/Kanusin/561
- i. Joseah Kipyegon Chelule 0.15ha
 - ii. Ludiah Chelule 0.15ha
 - iii. Nicholas Kibet Rono 0.30ha
- Kericho/Kanusin/565
- i. Joseah Kipyegon Chelule 0.325ha
 - ii. Ludiah Chelule 0.325ha
 - iii. Nicholas Kibet Rono 0.75ha
5. Ludiah Chepkirui Chelule (objector and now Appellant) filed Summons for Revocation of the Grant dated 9th February 2021. She wanted the Grant revoked on the grounds that it was obtained fraudulently with no consent and through concealing of material facts. She stated that she was the deceased's daughter in law and during the deceased's lifetime sometime in the year 1961, the deceased relocated from Kericho/Chesoan/561 and Kericho/Chesoan/565 and allocated the same to her late husband. That they had lived on the said parcels peacefully and the Petitioners were determined to subdivide their land.



6. On 16th March 2021, the trial court (Omwange J.) dismissed the Application for revocation.
7. Being aggrieved with the Ruling of the trial court, the Appellant filed her Memorandum of Appeal dated 7th April 2021 appealing against the Ruling and relied on the following grounds:-
 - I. That the learned trial Magistrate erred in law and fact in allowing the Application for confirmation of Grant by the Respondents without considering the fact that the Petitioner did not consent to filing the Succession Cause.
 - II. That the learned trial Magistrate erred in law and fact in dismissing our Application for revocation of Grant in blatant disregard of Articles 40 and 27 of the Constitution of Kenya.
 - III. That the learned trial Magistrate erred in law and fact by denying our Application for revocation of Grant in total disregard of Rules 26(1) and 40 of the Probate and Administration Rules whereby there was concealment of material facts by the Respondents herein.
 - IV. That the learned trial Magistrate erred in law and fact by failing to consider and/or appreciate the Appellant evidence on record consequently arriving at an erroneous conclusion.
 - V. That the learned trial Magistrate erred in law and in fact by holding that the Appellant did not establish a prima facie case to warrant the grant of revocation orders thus occasioning an injustice to the Appellant.
 - VI. That the learned trial Magistrate erred in law and fact in his Ruling by failing to appropriately consider and determine the issues presented by the Appellant hence denying the Appellant the orders sought therein.
 - VII. That the learned trial Magistrate erred in law and in fact by failing to require the attendance of the daughters of the deceased in the succession proceedings who also have equal rights to inherit from their father as the sons.

The Appeal.

8. The Appeal was admitted for hearing on 22nd October 2021. When the Appeal came for directions on 21st July 2022, the court, having interviewed the parties stayed the Appeal and ordered the parties to go to mediation. The court was of the view that the parties would benefit from mediation.
9. On 22nd September 2022, the Petitioners/Respondents informed the court that they had agreed at the mediation but the Objector/Appellant did not participate in the mediation. The court adopted the Mediation Agreement dated 2nd September 2022 and filed on 3rd September 2022 and further directed the beneficiaries to draft a schedule of distribution in accordance to the Mediation Agreement.
10. The Appellant's advocate (Ms. Chemutai) asked this court for time to look at the Mediation Agreement and take instructions from the Appellant. On 23rd May 2023, the Appellant filed an affidavit in opposition to the Mediation Agreement and her advocate asked the matter to be sent back to mediation. The court referred the matter back to mediation on 31st May 2023.
11. Parties came back to court on 16th October 2023 and the Petitioners/Respondents informed the court that they had attended mediation and the Objector/Appellant had not been co-operative. They further asked this court to determine the case. The court adopted the Mediation Agreement dated 20th June 2023. The court further ordered the Respondents to file their responses to the Appellant's affidavit opposing the Mediation Agreement.



12. On 2nd July 2024, this court ordered the parties to file a Consent and schedule for distribution. On 18th November 2024, the matter came up for confirmation of Grant and the Petitioners informed this court that they had agreed on the issue of sharing but the Appellant had refused to participate. That the Appellant claimed that the land was given to her by the deceased and that she wanted a larger share.

Analysis and determination.

13. From the above chronology, it was clear that the Appellant was aggrieved by the decision of the trial court to dismiss her Application for revocation of the Grant and she consequently filed an Appeal. The court was of the opinion that the matter and specifically the issue of distribution of the deceased's estate would be amicably resolved through mediation.

14. It was clear that there was a procedural mix up in this matter. Ordinarily, as in the present case, once an Appeal has been filed, the court would admit the Appeal and proceed to hear it. However, the court is mandated to promote Alternative Dispute Resolution mechanisms in all matters that come before it. Article 159(2) of the *Constitution* of Kenya, 2010 provides that:-

In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

- (a) justice shall be done to all, irrespective of status;
- (b) justice shall not be delayed;
- (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);
- (d) justice shall be administered without undue regard to procedural technicalities; and
- (e) the purpose and principles of this Constitution shall be protected and promoted. (Emphasis added)

15. Further, section 59C of the *Civil Procedure Act* provides:-

1. A suit may be referred to any other method of dispute resolution where the parties agree or the Court considers the case suitable for such referral.
2. Any other method of alternative dispute resolution shall be governed by such procedure as the parties themselves agree to or as the Court may, in its discretion, order.....

16. Section 26 of the *High Court (Organization and Administration) Act* provides that:-

1. In civil proceedings before the Court, the Court may promote reconciliation amongst the parties thereto and shall encourage and permit the amicable settlement of any dispute.
2. The Court shall, in relation to alternative dispute resolution be guided by the Rules developed for that purpose.....

17. I associate myself with the sentiments of Asati J. in *Owuor v Ondiek* [2023] KEELC 21028 (KLR), where she stated:-

“.....Court- Annexed Mediation is a form of Alternative Dispute Resolution whereby cases which are brought to court for litigation are referred to mediation for possible settlement. It is in with the Alternative Dispute Resolution Mechanisms recognized under Article 159 of the *Constitution* of Kenya 2010.....”



18. This court sent the parties to mediation twice i.e. on 21st July 2022 and 31st May 2023 which led to the adoption of two Mediation Settlement Agreements dated 2nd September 2022 and 20th June 2023.
19. The success of the mediation was frustrated by the Appellant who failed to attend and participate in the mediation talks and the referenced Mediation Agreements did not bear her signature which in the mind of this court was that the Appellant did not consent to the modes of distribution contained in the Mediation Agreements. In any event, that was made clear when the Appellant filed an affidavit in opposition to the Mediation Agreement dated 2nd September 2022. I have also noted from the record that despite being summoned to attend court, the Appellant consistently failed to show up.
20. In as much as this court abhors the conduct of the Appellant, it cannot infringe upon her right of appeal. The Appellant filed her Record of Appeal and deserved to be heard on merit. Indeed the Appeal had been admitted way back on 22nd October, 2021.
21. In the interest of justice, I make the following orders:-
 - i. The Mediation Agreements being unimplementable are hereby set aside.
 - ii. The Appeal be set down for directions expeditiously.
 - iii. The Appeal shall stand dismissed if after 45 days of today the Appellant shall have taken no step to prosecute it.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 21ST DAY OF JANUARY, 2025.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the absence of the parties. To be notified through the court registry.

