



REPUBLIC OF KENYA



**In re Estate of the Ruth Chepkemoi Kemei alias Chemogurgei w/o Kemei (Deceased)
(Succession Cause E003 of 2021) [2025] KEHC 2387 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2387 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE E003 OF 2021**

JK SERGON, J

MARCH 13, 2025

**IN THE MATTER OF THE ESTATE OF THE RUTH CHEPKEMOI
KEMEI ALIAS CHEMOGURGEI W/O KEMEI (DECEASED)**

BETWEEN

BETTY CHEPKORIR 1ST OBJECTOR

JOAN CHEPKOECH 2ND OBJECTOR

AND

SAMWEL KIMUTAI METTET PETITIONER

RULING

1. The application coming up for determination is a notice of motion dated 17th December, 2024 seeking the following orders;
 - (i) Spent.
 - (ii) That the firm of M/S D. Bett & Co. Advocates be granted leave to come on record for the Objectors/Applicants.
 - (iii) Spent.
 - (iv) That pending hearing and determination of the Application of Revocation/Annulment of Grant this Honourable Court be pleased to issue orders staying the implementation/execution of grant dated the 28th day of March 2023.
 - (v) That as a result summons for Revocation/annulment of grant filed together with this application be fixed for mention for direction or hearing.
 - (vi) That the costs of this application be provided for.



2. The application is based on grounds on the face of it and the supporting affidavit sworn by Betty Chepkorir the 1st applicant/objector and on behalf of her sister the 2nd applicant/objector.
3. She avers that the late Ruth Chepkemai Kemei alias Chemogurgei (Deceased) was their grandmother and that the said grandmother passed on the 18th day of June 1992 and left several beneficiaries, she attached a copy of chief's letter highlighting the beneficiaries of the estate.
4. She avers that in the year 2021 their brother Samwel Kimutai Mettet the petitioner/respondent filed this succession cause secretly in regard to the estate of their grandmother Ruth Chepkemai Kemei and that the Grant of Letters of Administration of the estate of their late grandmother was confirmed on the 28th day of March 2023 and that as per the said Grant she and her sisters Winy Chepngetich Chepkwony and Joan Chepkoech were left out when it comes to sharing of the estate.
5. She avers that one of her sisters Winy Chepngetich Chepkwony has since stated that she is not interested in getting a share of the estate given that she is well off in her place of marriage.
6. She avers that the Petitioner/Respondent is in the process of executing/implementing the said Grant thus rendering filing of this application for stay of implementation of Implementation of Grant necessary and that if the orders sought are not granted the Application for Revocation of Grant filed may be rendered nugatory.
7. She avers that they do not have another land parcel and if the Petitioner/Respondent is not prevented from implementing the Grant dated the 28th day of March, 2023 they will be disinherited.
8. She avers that given that the Grant has been confirmed leave should be sought from court given that parties were not represented by Advocates earlier and that it is therefore their prayer that their Advocates are granted leave to come on record to represent them and they be given stay orders pending the hearing and determination of the Application for Revocation.
9. She avers that the Petitioner/Respondent has allocated their mother Rachel C. Tele a small size of 0.5 Acres and yet each of them as per Confirmed Grant is getting an approximate of 1.7 Acres and in addition they are not taking care of their mother and as such that share is unfair.
10. She avers that she is aware that all the beneficiaries are entitled to equal rights when it comes to sharing of the estate.
11. Samwel Kimutai Mettet the petitioner/respondent filed a replying affidavit in response to the application.
12. He avers that he informed all his siblings before filing and/or instituting the instant succession proceedings by collecting signatures of all his siblings who were ready and willing to participate in the succession proceedings.
13. He avers that all his siblings were aware of the institution of the succession proceedings and the petition was signed by all his siblings and hence it is not true that the succession proceedings were done without their knowledge.
14. He avers that the objectors are legally married and have their own parcels of land from the families they got married to.
15. He avers that pursuant to several family meetings, it was resolved that the estate be shared among his brothers and that half an acre be allocated to their mother for subsistence farming.



16. He avers that the execution of the estate is at an advanced state and they have already registered the confirmed grant at the land office awaiting for the surveyor report to implement the same.
17. He avers that the grant to the estate was confirmed on the 28th day of March, 2023 and no review and/or appeal has been preferred against the same on the mode of distribution and that court upon confirming a grant largely becomes functus officio as far as confirmation of grant is concerned and cannot revisit the matter unless upon review.
18. This court directed the parties to file their written submissions.
19. The objector /applicants filed their submissions and contended that whereas the Petitioner/ Respondent states that before instituting this succession cause he informed all siblings and had several meetings at their mother's home, he has not attached anything to prove his assertions and therefore the only inference to be drawn is that this succession cause was initiated without consulting or informing all the beneficiaries of the estate. They reiterated that it was therefore their submission that there be stay of implementation or execution of confirmed grant dated 28th day of March 2023 pending hearing and determination of summons for revocation of grant otherwise the Petitioner/Respondent may implement they said grant complicating the matter for objectors.
20. The objector/ applicants contended that given that grant had been confirmed and the objectors were not represented, leave should be sought by advocates to come on record and it is their prayer that the said firm of advocates M/S D. Bett & Co Advocates be granted leave to come on record for the objectors. The objector/applicants maintained that the Petitioner/Respondent will not be prejudiced in any way if the prayers sought are granted given that the petitioner and the objectors will have their day in court at the time of hearing for summons for revocation of grant.
21. The objector/applicants contended that they are dependents of the deceased by virtue of section 29 of the Law of Succession Act, their marital status notwithstanding.
22. The objector/applicants maintained they met the prerequisites provided under order 42 rule 6 of the Civil Procedure Rules. They reiterated that substantial loss may result unless the orders sought are granted, if the orders sought are not granted, the Petitioner/Respondent may implement or execute a confirmed grant dated 28th day of March 2023 thus complicating the matter and thereby disinheriting the objectors. In addition it is in the interest of justice for orders sought to be granted to accord to the Petitioner/Respondent with an opportunity to be heard. They cited the case of Antoine Ndiaye Versus African Virtual University (2015) eKLR Justice Gikonyo held a stay of execution should only be granted where sufficient cause has been shown by the applicant and in the determining whether sufficient cause has been shown the court should be guided by three prerequisites provided Under Order 42 Rule 6 of The Civil Procedure Rules.
23. The petitioner/respondent filed his submissions and cited Section 71(2) of the Succession Act which provides that: "...provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares." and Rule 40(4) of the Probate and Administration Rules which provides that "Where the deceased has died wholly or partially intestate, the applicant shall satisfy the court that the identification and shares of all persons beneficially entitled to the estate have been ascertained and determined." The petitioner/respondent maintained that the Applicants have all along been aware and involved in the succession proceedings. The Applicants, together with all other beneficiaries, signed the consent dated 27th May 2021. As provided in Section 71(2) of the Succession Act and Rule 40(4) of the Probate and Administration Rules, a list of all beneficiaries, including the Applicants and that until now, 4 years 2



months later, the Applicants have never raised any issues regarding the administration and distribution of the estate.

24. This court finds that the sole issue for determination is whether the firm of M/S D. Bett & Co. Advocates should be granted leave to come on record for the Objectors/Applicants and whether to issue orders staying implementation/execution of grant dated the 28th day of March, 2023.
25. On the issue as to whether the firm of M/S D. Bett & Co. Advocates should be granted leave to come on record for the Objectors/Applicants, they contended that given that grant had been confirmed and the objectors were not represented, leave should be sought by advocates to come on record and it was therefore their prayer that the said firm of advocates M/S D. Bett & Co Advocates be granted leave to come on record for the objectors.
26. The objector/applicants maintained that the Petitioner/Respondent will not be prejudiced in any way if the prayers sought are granted given that the petitioner and the objectors will have their day in court at the time of hearing for summons for revocation of grant.
27. In this case the Objector/ Applicants were participating in the proceedings for the first time when they filed the present application. They had therefore not been represented by any counsel. The Certificate of Confirmation of Grant was issued on 28th March, 2023. No judgment was rendered in this matter to warrant the said firm of advocates seeking leave to come on record for the Applicants herein. Order 9 Rule 9 of Civil Procedure Rules, 2010 stipulates as follows:-

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court” (emphasis court). a. upon an application with notice (sic) to all the parties; or b. upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
28. Although the Respondents were not contesting the prayer for the said firm of M/S D. Bett & Co. Advocates coming on record for the Applicants herein, this court did not find it necessary to grant the same. In the instant matter, it is evident that there was no judgment in this Cause and the Applicants were not previously representing themselves in this Cause or being represented by any advocate as was contemplated in order 9 Rule 9 of the Civil Procedure Rules, it was not therefore necessary for the firm of M/S D. Bett & Co. Advocates to have sought leave to come on record for the Applicants herein. In any event, Rule 63 (1) of Probate and Administration Rules provides the provisions in the Civil Procedure Rules which apply to succession proceedings as follows: “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 Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX (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.”
29. While taking into cognizance the fact that order 9 rule 9 of the Civil Procedure Rules serves a special and important purpose in litigation, order 9 rule 9 of the Civil Procedure Rules is not one of the rules directly imported into and applies to succession cases.
30. On the issue as to whether to issue orders staying implementation/execution of grant dated the 28th day of March, 2023, pending the hearing and determination of the summons for revocation and/or annulment of grant. It is evident that the grant to the estate was confirmed on the 28th day of March, 2023 and that no review and/or appeal has been preferred against the same on the mode of distribution thereby warranting orders for stay of execution and that in any event this court upon confirming a



grant largely becomes functus officio as far as confirmation of grant is concerned and cannot revisit the matter unless upon review.

31. In the case of re Estate of Juma Shitseswa Linani (Deceased) [2021] eKLR though persuasive, it was held that;

“where a person is unhappy with the process of confirmation of grant, such a person ought not to move the court under section 76 for revocation of grant. Instead, the person should file an appeal against the orders made by the court on distribution or apply for review of the said orders. This is because the court confirming a grant largely becomes functus officio so far as confirmation of the grant is concerned, and cannot revisit the matter unless upon review.”

32. Consequently, the notice of motion dated 17th December, 2024 is found to be without merit. It is dismissed with each party bearing their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 13TH DAY OF MARCH, 2025.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

No Appearance

