



In re Estate of Kipleting Arap Kiptum (Deceased) (Miscellaneous Application Probate & Administration 04 of 2021) [2025] KEHC 2621 (KLR) (11 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2621 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
MISCELLANEOUS APPLICATION PROBATE & ADMINISTRATION 04 OF 2021
JR KARANJA, J
MARCH 11, 2025
IN THE MATTER OF THE ESTATE OF KIPLETING ARAP KIPTUM:.....:(DECEASED)

BETWEEN

PETER KIPKOSGEI LETTING PETITIONER

AND

CHRISTINE CHEROP OBJECTOR

RULING

1. The Applicant/Objector, Peter Kipkogei Letting, vide the application dated 26th March 2024 seeks against the Petitioner/Respondent, Christine Cherop, the following basic orders: -
 - (i) That there be a temporary stay of execution of the ruling delivered by this court on 20th March 2024.
 - (ii) That this court be pleased to review, vary and/or set aside the said ruling.Prayer [i] is at this juncture tenable having been overtaken by events.
2. Section 47 of the *Law of Succession Act* and Rules 49 and 73 of the Probate and Administration Rules are invoked in the application as the enabling provisions of the law for orders sought on the basis of the grounds set out in the appropriate notice of motion of which ground three [3] appears to take the pole position to the extent it is a contention that new and compelling evidence is now available to warrant review.
3. Ironically, the proper enabling provision for an application such as the present one was not invoked herein. This is Section 80 of the *Civil Procedure Act* as read with Order 45 of the Civil Procedure Rules. This omission may however, be treated as a procedural technicality which does not go to the substance of the application and may as well be disregarded.



4. Order 45 Rule 1 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 or 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”.

5. The hearing of this application was by way of written submissions which were duly filed by the Applicant through Kiprof Luseria & Company Advocates and by the Respondent, through Kipkosgei Choge & Company Advocates. These have been given due consideration by the court against the grounds and averments in support of and in opposition to the application as reflected in both the supporting and replying affidavits deponed by the Applicant and Respondent respectively.

6. As may be deduced from the supporting grounds and the rival submissions the main issue arising for determination is whether the necessary parameters in terms of the aforesaid provisions of the Civil Procedure Rules have been established by the Applicant for exercise of this Court’s discretion in his favour and in particular, whether new and compelling evidence which was not within the knowledge of the Applicant and could not be produced when the impugned order was made has since been discovered by the Applicant.

7. The impugned order or ruling made on the 20th March 2024 by this court arose from the Applicant’s summons for revocation of grant dated 10th December 2018.

The Applicant actually sought an order for revocation of the certificate of confirmation of grant dated 5th December 2018 and issued to the Respondent respecting the Estate property known as Land Parcel No Nandi/Arwos/97 which was to be shared equally amongst the true beneficiaries of the deceased including the Applicant, the Respondent and their siblings brother, Pius Kipsuge Tuwei.

For the reasons stated in the impugned ruling, the summons for revocation of grant was dismissed.

8. The present application was apparently a reaction to the dismissal order for which a review is now sought by the Applicant.

Other than ground three [3] of the application, the rest of the grounds are merely informative and amount to a re-visit of the dismissed summons for revocation of grant disguised herein as valid grounds for review of the impugned ruling or order.

9. Grounds six [6], seven [7] and nine [9] refers to the existence of a will, yet this was an intestate rather than a testate succession. In any event, the matter of the will was raised and considered in the dismissed application for revocation of the grant. It cannot be a new matter for the purposes of the present application.

Grounds four [4] and five [5] relate to the process of obtaining and confirming the grant and are irrelevant for purpose of a review of the impugned ruling.



10. Ground eight [8] is also irrelevant in as much as it relates to the process of obtaining the grant and the certificate of confirmation of grant.

Ground ten [10] alludes to a mistake of an advocate, hence irrelevant for purposes of this application. In any event, Rule 1 of Order 45 Civil Procedure Rule, refers to some mistake or error on the face of the record.

11. The all important ground three [3] was not duly established and proved by the material availed herein by the applicant. It does not set out any of the parameters necessary for an order of review. There has been no demonstration of any new and compelling evidence to warrant review of the impugned ruling. Mere allegations in that regard cannot stand without relevant and credible evidence.

12. In sum, the grounds for the application and the Applicant's submissions in support thereof are all unsustainable for grant of an order of review in favour of the Applicant.

The application is devoid of merit and is hereby dismissed with costs to the Respondent.

Ordered accordingly.

DELIVERED AND DATED THIS 11TH DAY OF MARCH, 2025

HON. J. R. KARANJAH,

JUDGE

