



**Sirtui v Republic (Miscellaneous Criminal Application
E235 of 2021) [2025] KEHC 4366 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4366 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E235 OF 2021
RN NYAKUNDI, J
APRIL 4, 2025**

BETWEEN

PASCALLY KIMOSBEI SIRTUI APPLICANT

AND

REPUBLIC PROSECUTOR

RULING

1. The Applicant in his notice of motion seeks the following orders:
 - a. That this honourable court be pleased to order stay of proceedings in Eldoret Chief Magistrate Court Criminal Case No 891 of 2020 pending the hearing and determination of this application inter parties
 - b. That this Hon. Court be pleased to order stay of proceedings in the Eldoret Chief Magistrate Court Criminal Case No 891 of 2020 pending the hearing and determination of Eldoret Probate And Administration No 95 of 2009 In the Matter of the Estate of the Late Kimeto Arap Kili Through Hellen Cheptum Kinenei & 3 Others vs Kiplagat Stephen Kitur.
 - c. That costs of this application be in the cause and which application is heard on the following grounds:
 - a. That the applicant is a beneficiary in eldoret probate & administraiton no 95 of 2009 in the matter of the estate of the late Kimeto Arap Kili through hellen cheptum kebenei & 3 othrs vs kiplagat stephen kitur which is pending determination.
 - b. That the applicant in the will dated 17th January, 2007 of the Estate of the Late Kimeto Arap Kili was bequeathed Nandi/Mutwot/713.
 - c. The said property Nandi/Mutwot/713 which the applicant was bequeathed is subject to the proceedings in Eldoret Chief Magistrate Court Criminal Case No 891 of 2020



and also the subject property in Eldoret Probate & Administration No 95 of 2009 Estate of The Late Kimeto Arap Kili thus similar as the applicant was bequeathed the said property in the will of the estate of Estate of The Late Kimeto Arap Kili

- d. That the alleged titles have been cancelled by the High Court in Eldoret Probate & Administration No 95 of 2009 In The Matter Of The Estate Of The Late Kimeto Arap Kili Through Hellen Cheptum Kebenei & 3 Others Vs Kiplat Stephen Kitur
- e. That the applicant will suffer irreparable harm if the suit in Eldoret Chief Magistrate Court Criminal Case No 891 of 2020 is not stayed pending hearing and determination of Probate & Administration No 95 of 2009 In The Matter Of The Estate Of The Late Kimeto Arap Kili Through Hellen Cheptum Kebenei & 3 Others Vs Kiplagat Stephen Kitur
- f. The ends of justice will be defeated if Eldoret Chief Magistrate Court Criminal Case No 891 of 2020 is allowed to proceed.
- g. The prosecution mandate is to act on public interest and not be a tool to aid an existing limping civil case by the complainants.

And Which Application is further grounded on the annexed affidavit of Pascaly Kimosobei Sirtui the Applicant herein and on such or further grounds as may be adduced at the hearing hereof :-

- a. That I am a farmer and having been charged with obtaining registration by false pretense contrary to section 320 of the penal code in Kapsabet Principia Magistrate Court Criminal Case No 30 of 2018 which was transferred to Eldoret Chief Magistrate Court As Criminal Case No 891 of 2020
- b. That I have read the contents of the complaint statement and believe that the facts of the statement are untrue. That the said land in question was legally transferred to me by my late father.
- c. That I am a beneficiary in Eldoret Probate & Administration No 95 Of 2009 In The Matter Of The Estate Of The Late Kimeto Arap Kili Through Hellen Cheptum Kebenei & 3 Others Bvs Kiplagat Stephen Kitur which is pending determination
- d. That I confirm that in will dated 17.1.2007 of the estate of the late Kimeto Arap Kili I was bequeathed Nandi/mutwo/713
- e. That I confirm that the property which I was bequeathed Nandi/Mutwot/713 is subject to the proceedings in Eldoret Chief the property in Eldoret Probate & Administration No 95 of 2009 Estate Of The Kimeto Arap Kili thus similar as the applicant was bequeathed the said property in the will of the estate of Estate Of The Late Kimeto Arap Kili
- f. That I will suffer irreparable harm if the proceedings in Eldoret Chief Magistrate Court Cr Case No 891 of 2020 is not stayed pending hearing and determination of Probate & Administration No. 95 Of 2009 In The Matter Of The Estate Of The Late Kimeto Arap Kili Through Hellen Cheptum Kenei & 3 Others Vs Kiplagat Stephen Kitur
- g. That the ends of justice will be defeated if ELdoret Chief Magistrate Court Cr Case No 891 of 2020 is allowed to proceed
- h. That I confirm that the prosecutions mandate is to act on public interest and not be a tool to aid an existing limping civil case by the complainants



- i. That is fair, just, expedient and in the interest of justice that this application be allowed and the orders be issued
 - j. That this application has been brought promptly and in utmost good faith
 - k. That I swear this affidavit in support of the application now before this Honourable Court
2. I have considered the application, together with affidavit evidence. I am of the legal view that there is no merit to stay proceedings pending before the Chief Magistrate's court. It is so ordered

GIVEN UNDER THE HAND AND SEAL of THIS COURT ON 4TH DAY of APRIL 2025 AT ELDORET.

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R. NYAKUNDI

JUDGE

