



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Late Cecil Kiplelei Arap Keino (Probate & Administration
34 of 2011) [2025] KEHC 7008 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7008 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 34 OF 2011
JRA WANANDA, J
MAY 23, 2025**

BETWEEN

**LEAH SILVIA KIPLELEI 1ST APPLICANT
BERNICE PRUDENCE CHEMUTAI 2ND APPLICANT
MILLER M. KIPCHIRCHIR 3RD APPLICANT
ALICE GETRUDE CHEPTOO 4TH APPLICANT
NOAR ALEX KIMALEL 5TH APPLICANT**

AND

PAUL KATAMO LIMO EXECUTOR

RULING

1. The Application herein seeks reinstatement of this Succession Cause which was dismissed for want of prosecution about 4 years ago. It is the Notice of Motion dated 20/11/2024, filed by the Applicants through Messrs Korir Jepleting & Co. Advocates, and seeks orders as follows:
 - i. That this Honourable Court be pleased to set aside or vary its dismissal order of the 20th November 2020 and thereafter reinstate the Application dated 30th March 2012 and fix it for hearing on merit.
 - ii. That this Honourable Court be pleased to have this suit transferred and litigated at the High Court of Kenya at Kapsabet.
 - iii. Costs of this Application be provided for.
 - iv. Such other further and/or other reliefs be made as the Court may deem fit and expedient.



2. The background of the matter is that the deceased, Cecil Kiplelei Arap Keino, died on 27/11/2011 at the age of 68 years. He was alleged to have left the written Will dated 2/02/2008. By his Petition filed on 9/02/2011 through Messrs Sirtuy & Co. Advocates, the Executor, Paul Katama Limo applied for a Grant of Probate of the said Will in respect to the estate of the deceased. It is apparent that in the Will, the deceased is said to have distributed his properties between his 2 presumed wives, namely, one Leah Silvia Kiplelei (1st Applicant herein) and one Dorcas Chepleting. On 4/05/2011, the Applicants, through Messrs Ngala & Co. Advocates entered Appearance.
3. It appears that along the way, the Executor met challenges on the ground in his attempts to take possession of the portion of the properties bequeathed to Dorcas Chepleting and sought the Court's assistance. I say so because by the Application dated 30/03/2012 filed through Messrs Lel & Bungei Advocates, the Executor sought injunctive orders to restrain the Applicants from dealing with the said properties. The record reflects that the orders were then granted on interim basis on 4/04/2012 pending inter partes hearing of the Application, when the Applicants failed to attend Court. Subsequently, the Executor, by the Application dated 22/06/2012, applied for committal to civil jail of the Applicants for allegedly defying the said orders.
4. Nothing substantial seems to have taken place thereafter in the case, save that by the Notice of Change of Advocates dated 6/01/2014, Messrs Ngala & Co. was replaced by Messrs Rotuk & Co. as Advocates for the Applicants. The record reflects that the Executor consistently failed to attend Court to prosecute his said Application dated 30/03/2012 for injunction. In the circumstances, on 10/11/2018, H. Omondi J (as she then was), dismissed the Application for want of Prosecution.
5. The matter again went quiet and, in the circumstances, by the Notice dated 4/11/2020, the Court, suo motu, issued a Notice inviting the parties to attend Court on 20/11/2020 for "Confirmation/Rectification/Revocation of Grant". In other words, in view of the prolonged inaction, the Court was inviting the parties to attend Court to show Cause why the Succession Cause should not be concluded, terminated or closed. When on the said 20/11/2020, no party attended Court in compliance with the Notice, H. Omondi J (as she then was), dismissed the entire Succession Cause for want of prosecution.
6. In support of the current Application seeking reinstatement, the 1st Objector, Leah Silvia Kiplelei has sworn an Affidavit, which she deponed, she swore on behalf of the other Applicants who had given her authority to do so. She observed that the Cause was dismissed for the reason of the Applicant's consistent non-attendance in Court, and basically, that the Objectors should not be punished for the mistakes of the Advocates.
7. I may also mention that Messrs Korir Jepleting & Co. Advocates which filed the instant Application had filed the Notice of Change of Advocates dated 20/11/2024 thus replacing Messrs Ngala & Co. Advocates.
8. Although there is a Return of Service in the file indicating service of Hearing Notices upon the Executor's Advocates, Messrs Lel & Bungei, and also upon him personally, and although I even adjourned the matter once as a result of the Executor's absence, neither the Executor nor his Advocates attended Court nor filed any response to the Application for reinstatement.

Determination

9. The issue that arises for determination in this matter is "whether the dismissal of this Succession Cause in the year 2020 for want of prosecution should be set aside and the Cause reinstated".



10. Although the Applicants call themselves “Objectors”, I have not come across any formal Objection filed by them and so, technically, they do not even qualify to be termed as “Objectors”. I have therefore deliberately refrained from referring to them by that description.
11. Regarding the Application itself, it is clear that this Succession Cause as well as the Application dated 20/03/2020 which the Applicants now wish to have reinstated were both filed by the Executor and not the Applicants. In fact, the target of the Application for injunction dated 20/03/2020 and which is also sought to be reinstated are the current Applicants herein whom the Executor wished to have restrained from dealing with the subject properties. This is therefore an strange situation in which a litigant is seeking the reinstatement of an Application against himself.
12. Be that as it may, the Executor not having himself applied for reinstatement, I do not know of any provision of law under which the Applicants now purport to be applying to bring back the Executor’s dismissed Succession Cause and the Application for injunction when the Executor has himself not sought such orders. Are the Applicants now purporting to be acting on behalf of the Executor? This Cause, having been dismissed for want of prosecution, only the Executor, who commenced it, can have the requisite locus to apply for its reinstatement, not the Applicants who are actually the Defendants thereto. Assuming that the Court agrees to reinstate the Cause and also the Application, will the Applicant then force the Executor to prosecute the Succession Cause and the Application for injunction, and by what mechanism?
13. My view is that since the Executor appears to have lost interest in pursuing his Petition by which he sought to implement the Will and to finalize the bequest of assets to the beneficiaries, and which Will he is the one who presented to this Court in the first place for adoption, if the Applicants wish to have the deceased’s estate administered as per their wishes, then their option will be to file their own, fresh Succession Cause. They cannot force the Executor to prosecute this Succession Cause which was dismissed for want of prosecution 4 years ago for the reason of the Executor’s lack of interest.

Final orders

14. For the foregoing reasons, I rule and order as follows:
 - i. The Applicant’s Notice of Motion dated 20/04/2021 is hereby dismissed.
 - ii. As the Application was not opposed, I make no order on costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 23RD DAY OF MAY 2025

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

N/A for the Applicants

N/A for the Executor-Respondent

Court Assistant: Edwin Lotieng

Eldoret High Court Probate & Administration Cause No. 34 of 2011

