



REPUBLIC OF KENYA



In re Estate of the Late Kiplangat Arap Maina (Deceased) (Succession Cause 18 of 2007) [2025] KEHC 5854 (KLR) (9 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5854 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 18 OF 2007**

JK SERGON, J

MAY 9, 2025

IN THE MATTER OF THE ESTATE OF THE LATE KIPLANGAT ARAP MAINA (DECEASED)

BETWEEN

GEOFFREY KIPKORIR CHERUIYOT PETITIONER

AND

VIOLA CHEBET MAINA PROTESTOR

AND

ESTHER CHEPKORIR KORGOREN OBJECTOR

RECHO LANGAT OBJECTOR

RULING

1. The objectors filed a summons for confirmation of grant dated 6th February, 2024 seeking the following orders;
 - (i) That the Letters of Administration intestate made to the applicant on the 29th day of April, 2008 be confirmed.
 - (ii) That costs of the application be in the cause.
2. The Application is based on the grounds stated on the face of it and the facts deponed in the affidavit sworn by Geoffrey Kipkorir Cheruiyot the petitioner/administrator of the estate herein.
3. He avers that the grant of letters of administration of the estate of the deceased was made to him on 29th April, 2008 and therefore he has the authority to swear the instant affidavit as an administrator of the estate of the deceased's estate.



4. He avers that the deceased died intestate on 16th September, 1980 and left several dependents and had the following assets comprising the estate of the deceased; Kericho/Cheptalal/552 and Kericho/Cheptalal 584.
5. He avers that it is now over six (6) months since the grant was issued and no objections contemplated.
6. He avers that there is no dependent of the deceased who has been left out and the estate is due for distribution as follows;
Kericho/Cheptalal/552
Geoffrey Kipkorir - 8 acres
Joseph Kiprono Cheruiyot - 8 acres
Esther Korgoren Chepkorir - 2 acres
Recho Langat - 1 acre
Alice Chumo - 1 acre
Kericho/Cheptalal/584
Jane Chepngeno Cheruiyot - 8 acres
Recho Langat - 1 acre
Alice Chumo - 1 acre
7. Viola Chebet Maina the Protestor/Beneficiary filed a notice of preliminary objection premised on section 71 (1) of the Law of Succession Act against the summons for confirmation of grant on the following grounds;
 - (i) That the petitioner/administrator is one Geoffrey Kipkorir Cheruiyot hence the objectors have no locus standi to file summons for confirmation.
 - (ii) That the summons is an abuse of the court process.
8. The court directed the parties to file submissions in respect to the preliminary objection, however, at the time of writing this ruling the petitioner/administrator had not yet filed his submissions.
9. The Protestor/Beneficiary filed submissions in support to the preliminary objection and reiterated that the petitioner/administrator under section 71 (1) is duly authorised by law to file for summons of confirmation being the holder of the grant of representation and that the law does not donate these functions unto any other party.
10. The Protestor/Beneficiary argued that the objectors have not challenged the preliminary objection as filed and therefore the same should be allowed with costs.
11. The Objectors filed their response to the preliminary objection albeit belatedly, they argued that the instant succession cause present relates to the estate of the Late Kiplangat arap Maina in which Geoffrey Kipkorir Cheruiyot is the administrator of the estate. Therefore, he is allowed to institute proceedings on behalf of the estate of the deceased. His affidavit in support of summons for confirmation of grant, shows that he instituted the suit and not the objectors as the protestors herein alludes. The objectors reiterated that it is trite law that the estate of a deceased person can only be represented in any legal proceedings by a person duly authorized to do so on behalf of the estate. Only a person who has been issued with grant of letters of administration has capacity to represent the estate of a deceased person which position is fortified by Section 82(1) (a) of the Law of Succession Act only grants the person



representative of the deceased the powers to "Enforce, by suit or otherwise, all causes of action which by virtue of any law, survive the deceased or arising out of his death for his personal representative." The objectors maintained that the administrator of the estate who instituted the summons and therefore the preliminary objection ought to be struck out and the summons for confirmation of grant be granted as prayed.

12. I have considered the application, responses to the application and I find that the sole issue for determination is whether the preliminary objection has any merits. On one part, the protestor maintained that the petitioner/administrator under section 71 (1) is duly authorised by law to file for summons of confirmation being the holder of the grant of representation and that the law does not donate these functions unto any other party. On the other part the objectors contended that Geoffrey Kipkorir Cheruiyot the petitioner/administrator of the estate had legal capacity to institute proceedings on behalf of the estate of the deceased and therefore the affidavit in support of summons for confirmation of grant, shows that he instituted the suit and not the objectors as the protestors herein alludes. This court having considered the arguments by both parties and carefully perused the summons for confirmation of grant dated 6th February, 2024 which is the bone of contention between the parties and finds that whereas the parties captured on the face of the summons are the objectors, the summons have been filed by the petitioner/objector and the affidavit in support of the confirmation of grant was sworn by one Geoffrey Kipkorir Cheruiyot, the petitioner/administrator of the estate of the deceased who has legal capacity to institute proceedings on behalf of the estate of the deceased. This court therefore finds that the issue raised on locus standi in the preliminary objection is a procedural technicality, the primary duty of the court is to do justice and that duty cannot be fettered by procedural technicalities. *The Constitution* under Article 159 on judicial authority enjoins courts of law to do justice without undue regard to procedural technicality moreso Article 159(2) (d) which states: "Justice shall be administered without undue regard to procedural technicalities." In *James Mangeli Musoo v Ezeetec Limited* [2014] eKLR Marete J., observed as follows on procedural technicality; "A technicality, to me is a provision of law or procedure that inhibits or limits the direction of pleadings, proceedings and even decisions on court matters. Undue regard to technicalities therefore means that the court should deal and direct itself without undue consideration of any laws, rules and procedures that are technical and or procedural in nature. It does not, from the onset or in any way, oust technicalities. It only emphasizes a situation where undue regard to these should not be had. This is more so where undue regard to technicalities would inhibit a just hearing, determination or conclusion of the issues in dispute." This Court has inherent powers to give orders which are necessary to meet the ends of justice. Section 3A *Civil Procedure Act* provides: "Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. This is further buttressed by Section 1A & 1B of the *Civil Procedure Act* which provides for overriding objectives of the Act which is to facilitate the just, expeditious resolution of disputes.
13. Accordingly, I find that the preliminary objection dated 19th February, 2025 has no merits and it is hereby struck out, the summons for confirmation of grant and the Protest to proceed for full hearing.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 9TH DAY OF MAY, 2025

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh



Miruka for Viola Maina (Beneficiary)

No Appearance for Kibet Kirui for Petitioner

No Appearance for Miss Chelimo for the Objectors

