



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kiprof Sayore Piwot (Deceased) (Succession Cause
78 of 2007) [2025] KEHC 5633 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5633 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 78 OF 2007**

RK LIMO, J

MAY 7, 2025

IN THE MATTER OF THE ESTATE OF KIPROP SAYORE PIWOT- DECEASED

BETWEEN

SELINA NASIPWONDI PETITIONER

AND

SAMMY OTIENDE KAMADI OBJECTOR

RULING

1. Sammy Otiende Kamadi, the objector/applicant has moved this court vide summons for revocation of grant/rectification of grant dated 13/1/2022 for the following orders;
 - a. That the Certificate of Confirmation of Grant for the estate of Kiprof Sayore Piwot issued to Selina Nasipwondi Kiprof on 20th May 2021 be revoked and/or rectified as the court may direct.
 - b. That this honourable court be pleased to replace the name of Peter Kipyego Kiprof with that of the applicant as the beneficiary of 1.175acres comprised in land parcel No.826 Sinyerere Scheme.
2. The applicant has listed the following grounds as the basis of the prayers sought;
 - a. That Peter Kipyego Kiprof sold him 2.2 acres out of Plot No.826 Sinyerere Scheme.
 - b. That Peter Kiprof Kipyego had promised to transfer the 2.2acres once he got title.
 - c. That when the grant was confirmed it emerged that the said vendor was only entitled to 1.175acres and not 2.2 acres he had sold to the applicant on 15/10/2009.



- d. That when the applicant made demand for the title from the vendor, the vendor declined on ground that the applicant was not a party in the succession cause and that the sale agreement was time barred.
 - e. That the vendor intends to defraud the applicant.
 - f. That the certificate of confirmation issued on 20/5/2021 be rectified by removing the name of the vendor Peter Kipyego Kiprop and replace it with the applicant as a beneficiary of 1.175 acres in the estate.
3. The applicant vide an affidavit sworn on 13/1/2022 reiterates the above grounds adding that he bought 2.2 acres comprised in the estate herein from Kipyeto Kiprop at an agreed price of Kshs.770,000/-. He has exhibited a copy of the agreement between him and the said Peter Kiprop as Exhibit 1.
 4. He avers that the said vendor had promised him that he would transfer the parcel bought once the succession proceedings were completed.
 5. He further depones that when the succession proceedings came to a close he went to check and confirmed that the vendor was only allocated 1.175 acres.
 6. That he subsequently filed a suit vide Kitale CMC ELC No.111/2021 to enforce the terms of the contract but the court found that the suit was time barred.
 7. He contends that the vendor is ill intended to defraud him.
 8. He through counsel Mr Nyakundi further submitted that there was a valid agreement executed by Peter Kiprop and the applicant in this application.
 9. He pleads with this court to exercise its discretion in light of the sale agreement which indicates that Peter Kiprop was paid some deposit in consideration of 2.2 acres of land. .
 10. He hold the view that this court has jurisdiction and discretion to enforce the said contract.
 11. He faults the applicant for acting in bad faith by disregarding a sale agreement which he claims was entered voluntarily between the 2 parties. He contends that he has come to court so that he can be considered a beneficiary by virtue of the sale agreement.
 12. The respondent through his counsel Mr Kiarie opposed this application through a preliminary point of law. His argument is that the applicant upon approaching this court got an order staying this application pending the determination of the EL Cause in Kitale CMC ELC No.111/21 where the applicant was seeking to enforce the agreement entered between him and Peter Kiprop.
 13. Mr Kiarie submits that the ELC matter was determined vide a ruling dated 9/10/23 where the applicant's suit was struck out.
 14. According to Mr Kiarie, with the determination of the ELC matter that extinguished the applicant's claim, he cannot come to this proceedings for relief. He submits that the applicant did not prefer an appeal in the ELC court.
 15. He submits that this court lacks jurisdiction and cannot exercise its discretion to enforce the agreement between the 2 parties.
 16. This court has set out both the applicant's case and the respondent's. This is an application for rectification/revocation of grant brought under Sections 74 and 76 of the [Law of Succession Act](#).



17. There is no doubt that the applicant's rights over the estate of the deceased in this cause are purchaser's interests. The applicant contends that he purchased 2.2 acres from a beneficiary in this cause to wit Peter Kiprop Kipyego (vendor). He is not claiming any interest in the estate as a dependant or beneficiary under the Law of Succession Act. His claim hinges on a contract or a sale agreement between him and the vendor.
18. This court finds that the application before it is outside the purview of Law of Succession Act and in particular the provision of Section 2(1) of the Act. This is because the application has nothing to do with the administration of the estate of the deceased person. The applicant's claim is basically a chose in action against Peter Kipyego Kiprop who happens to be a beneficiary of a parcel measuring 1.175 acres part of the estate. As a matter of fact there is a disconnect between the entitlement of the vendor to what is contained in the sale agreement. The certificate of confirmation of Grant indicates that Peter Kiprop (vendor) is entitled to only 1.175 acres while the sale agreement exhibited shows that the parcel sold is 2.2 acres.
19. The applicant may have a claim against the vendor for breach of contract/sale agreement but he has chosen the wrong forum by approaching a probate court when the claim is outside the purview of Law of Succession Act. He was well advised to approach the ELC Court to enforce his rights which by the way could be legitimate but he certainly cannot come to this court after his suit was dismissed in the lower ELC Court. This court lacks jurisdiction to entertain an appeal emanating from ELC Court even if it is the lower court. This is because Article 162(2) (b) as read with Article 165(5) (6) which limits the jurisdiction of this court in matters touching on disputes relating to ownership of land including enforcement of rights thereof.
20. The applicant should have either appealed against the decision in CMC ELC No.111/21 in the right forum or sought review or any other appropriate remedy in that court but certainly not here. The applicant is duly represented by counsel who should be well versed with viable options open to him.

In short this court finds that the application dated 13/1/22 is incompetent and bad in law for the aforesaid reasons. The same is struck out but I make no order as to costs in view of the predicament of the applicant who is intent at seeking justice but for the wrong forum chosen.

DELIVERED, DATED AND SIGNED AT KITALE THIS 7TH DAY OF MAY, 2025.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

RULING DELIVERED IN OPEN COURT

In the presence of;

Nyakundi for the applicant

Kiarie for the respondent

Munialo for the administrator

Duke/Chemosop –court assistants

