



**In re Estate of Kipketer Arap Rugut (Deceased) (Probate & Administration
4 of 2022) [2025] KEHC 9193 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9193 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 4 OF 2022**

JR KARANJA, J

JUNE 18, 2025

**IN THE MATTER OF THE ESTATE OF KIPKETER
ARAP RUGUT (DECEASED)**

BETWEEN

JANE CHEPCHIRCHIR APPLICANT

AND

SUSAN JEBET KIKWAI RESPONDENT

RULING

1. The grant of letters of Administration Intestate, subject of the present application was issued on 18th March 2014, to Elena Chesang and Jane Chepchirchir as the Petitioners. They were thus required to administer the estate of their late husband Kipketer Arap Rugut [deceased] in accordance with the law and render a just and true account whenever required by law to do so.
2. Whereas the Frist Petitioner [Elena] was the First Wife of the deceased, the Second Petitioner [Jane] was the Second Wife. The affidavit in support of their petition indicated that the deceased was survived by the Petitioners and their children comprising of five [5] sons and three [3] daughters. The sole estate property was Land Parcel No. Mogobich/Cheptililik/ Block 2/140.
This is what was left in store by the deceased for all his heirs and/or dependants.
3. Unfortunately, the First Petitioner passed on prior to the confirmation of the grant. The record does not show at what point in time her replacement [if any] was appointed or formally appointed. Nonetheless, a summons for confirmation of grant dated 17th October 2023 was taken out in the name of the Second Petitioner and an alleged daughter of the departed First Petitioner [i.e. Susan Jebet Kikwai] and on the 18th July 2024, the grant was confirmed and a certificate of confirmation of grant issued in the names of both the actual Petitioners.



4. It is instructive to note that despite the Certificate of Confirmation of grant dated 18th July 2024 being issued to the two Petitioners including the departed First Petitioner, the summons of confirmation of grant dated 17th October 2023, was taken out by the said Susan Jebet Kikwai as the First Petitioner and Jane Chepchirchir as the Second Petitioner.
5. Not being a duly appointed administrator of the estate, the late First Petitioner's daughter was not in a position to apply for confirmation of grant either on her own or in conjunction with the Second Petitioner even though she was a beneficiary of her late father's estate through her late mother, the actual First Petitioner.
6. Be that as it may, as per the certificate of confirmation of grant, the estate property Nandi/Mogobich/Cheptililik Block 2/140 was to be shared equally between the Second Petitioner and the beneficiaries, Sally Jeruto and Susan Jebet Kikwai. All these beneficiaries were to jointly own the estate. The other part of the estate Land Parcel No. Nandi/Kabote Squatters No. 20 was an additional property which was not included in the petition for grant. It was however, included in the Certificate of Confirmation of Grant to be shared wholly to the Second Petitioner.
7. Apparently, the process of distributing the estate proved to be problematic such that the beneficiary [Susan], filed an application for orders that the officer manning Nandi Hills Police Station do provide security for purposes of the County Land Surveyor carrying out a survey on the estate property to enable proper distribution of the estate.
8. The application was made vide the ex-parte Notice of Motion dated 5th August 2024 and was granted by the court on 9th August 2024. The certificate of urgency accompanying the motion indicated that the Applicant was the Administrator of the estate and was issued with the certificate of confirmation of grant. That the surveyor was to visit the property and sub-divide it to ascertain the acreages of all the beneficiaries to enable processing of title deeds.
9. The court order in that regard was to the effect that the property be surveyed by the county surveyor and that the officer in charge of Nandi Hills Police Station to provide security to the surveyor during the exercise.

The record is not clear as to whether the survey was effectively conducted and what is emerging from the Respondent's submission in the present application is that the survey may not have been effectively conducted if at all it was conducted. The Respondent alludes to the Applicant and her children being hostile to the point of interfering with the survey process.

10. The present application vide the Notice of Motion dated 21st November 2024, is made against the Respondent/ Beneficiary by the Applicant/2nd Petitioner seeking the basic order that the court order issued on 9th August 2024 together with the order made on 10th July 2024 confirming the grant be set aside and that the summons for confirmation of grant dated 17th October 2023 be reinstated for hearing.
11. The application was canvassed by written submissions. Both parties filed their respective submissions through their respective advocates. The court having considered the application, the rival submissions and the record would hold the view that the application is improper and incompetent before court for the reason that Order 12 of the *Civil Procedure Rules* is not one of those provisions of the *Civil Procedure Rules* directly imported to succession proceedings by dint of Rule 63 of the *Probation and Administration Rules*.
12. Ironically, the Respondent in her response and submissions failed to notice the error aforementioned which would make the application amenable to dismissal on that ground alone. However, considering



that the error is essentially a procedural technicality and that Rule 73 of the *Probate & Administration Rule* empowers the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process it would be prudent and necessary to revert to the court record for a fair and just decision on this matter.

13. In that regard and as pointed out hereinabove, despite the grant being issued to the Petitioners first and second wives of the deceased, it was confirmed at the instance of the second petitioner/ wife of the deceased and the Respondent daughter of the deceased and his First Wife/Petitioner. However, at the time, the Respondent was not a duly appointed co-administrator of the estate nor was she regularly substituted as such to replace her departed mother/ First Petitioner.
14. Even though the application for grant was made by the Respondent together with the Second Petitioner, the impugned certificate of Confirmation of grant was issued in the names of the departed First Petitioner and the Second Petitioner. The name of the Respondent was not included as an administrator or Co-Administrator of the estate. Ironically, prior to the issue of the Certificate of Confirmation of grant on 18th July 2024, the Respondent raised an objection to her very own application for confirmation.
15. The affidavit of protest dated 5th February 2024 was however, compromised by a consent entered by the parties oblivious of the fact that the Respondent was yet to be co-opted as an administrator of the estate.

The consent was recorded in court on the 10th July 2024, to the effect that the estate property Land Parcel No. Nandi/Mogobich/Cheptililik Block 2/140 be shared equally among the beneficiaries in terms of paragraph seven [7] of the affidavit of protest. Further that Land Parcel No. Nandi/Kabole Squators No. 20 be wholly distributed to the Second Petitioner and not as indicated in the said paragraph seven [7] of the protest.

16. In the said paragraph seven [7] of the protest, Parcel No. Nandi/Kabole Squators No. 20 was to be distributed jointly to the Second Petitioner, the Respondent/Objector and the beneficiary Sally Jeruto. Other deserving beneficiaries of the estate were omitted from the distribution of the estate.

Coupled with the foregoing, the application by the Respondent made on 5th August 2024 for the police to provide security to the County Surveyor while in the process of carrying out a survey on the estate property was for purpose of implementing the distribution of the estate in accordance with the original certificate of confirmation of grant.

17. It was not clear whether or not the survey was carried out effectively to the satisfaction of all the beneficiaries considering that it was herein alleged that some of the beneficiaries were hostile and attempted to disrupt the survey exercise. It was also intriguing that the application for police protection was made by the Respondent ex-parte the rest of the beneficiaries in such an emotive matter as the present dispute. This was a clear indication of the Respondent acting in bad faith in that regard.
18. It is therefore clear from all the foregoing factors that the process of confirming the grant was defective in as much as it was marred with irregularly and misrepresentations such that it was evident that the parties had not agreed on the distribution of the estate and that most of the beneficiaries were left out of the distribution. Further, an additional property i.e Land Parcel No. Nandi/Kabole Squators No. 20 which was not included in the Petition as part of the deceased's estate was included as part of the estate during the confirmation proceedings.
19. For all the reasons foregoing, this court in exercise of the powers conferred to it under Rule 73 of the *Probate & Administration Rules* and pursuant to the provisions of Section 76 of the *Law of Succession Act*, hereby revokes the certificate of confirmation of grant dated 18th July 2024 with orders that the



parties engage and come up with an agreeable mode of distribution before taking out a fresh certificate of confirmation of grant. Further, the Respondent, Susan Jebet Kikwai or Susan Chebet Kikwai, be and is hereby substituted for the departed Frist Petitioner as a Co-Administrator of the estate together with the Second Petitioner.

20. Otherwise, this matter be given a mention date on status and/ or way forward.

Ordered accordingly.

DELIVERED AND DATED THIS 18TH DAY OF JUNE, 2025

HON. J. R. KARANJAH,

JUDGE

