



In re Estate of Jonah Kipsang Ngeno (Deceased) (Succession Cause E053 of 2021) [2025] KEHC 10355 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10355 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE E053 OF 2021**

JK SERGON, J

JULY 17, 2025

IN THE MATTER OF THE ESTATE OF JONAH KIPSANG NGENO (DECEASED)

BETWEEN

GILBERT KIPRONO SANG 1ST APPLICANT

RICHARD KIPKEMOI SANG 2ND APPLICANT

AND

ERICK KIPYEGON SANG 1ST RESPONDENT

CHEROTICH VIVILINE 2ND RESPONDENT

AND

KENNETH KIPROTICH SANG INTERESTED PARTY

ROBERT KIBET SANG INTERESTED PARTY

RULING

1. There are two applications coming up for determination: a notice of motion dated 7th February, 2025 and a notice of motion dated 11th March, 2025, these applications have been filed by the administrators of the estate. In the application dated 7th February, 2025 one set of administrators is seeking to have rental proceeds of a commercial plot constituting the estate of the deceased as upkeep pending the final distribution of the estate whereas in the application dated 11th March, 2025 the other set administrators is seeking to have the first set of administrators committed to civil jail for contempt of court orders dated 20th June, 2024 requiring them to sign mutation and transfer forms to effect final distribution of the estate of the deceased.
2. In the notice of motion dated 7th February, 2025 the applicants seeking the following orders;



- (i) The Rent collected from Commercial plot Kericho Municipality Block 1/2X5 be used as an upkeep for the Applicants and Interested Parties herein pending final distribution of the Estate.
 - (ii) Bett & Company Advocates be ordered to specify the legal fee ought to be paid from the Estate of Jonah Kipsang Ngeno (Deceased).
 - (iii) Any other or further relief that may be granted by the Court as it deems fit.
3. The application is supported by the grounds on the face of it and the supporting affidavit of Richard Kipkemoi Sang the 2nd Applicant/Administrator herein with consent of the Co-Applicant.
4. He avers that this honorable Court delivered a Judgment dated 12th October 2023, and ordered that the deposits in Absa Bank and Kenya HighLands Sacco to be used to pay legal fees and the remaining be shared equally among beneficiaries.
5. He avers that by the time Judgment was delivered Applicants and Interested Parties were receiving their incomes mainly from tea bushes, food crops, trees and livestock farming on their respective portions of land as per the wishes of the Deceased, however, the Respondents misused their powers by destroying properties in possession of Applicants and Interested Parties by causing deforestation, cutting timber, fire wood, burning charcoal, uprooting and destroying tea bushes plantation, spraying pasture with harmful chemicals, destroying food crops and these incidences were reported at Chepseon Police Station and recorded in the occurrence book.
6. He avers that the Applicants and interested parties income was destroyed, their investments in the Estate of the deceased destroyed by the Respondents and they were thereby seeking temporary relief from this honorable Court. As their entitlement in the available money in Absa bank and Kenya Highlands Sacco, cannot be accessed by any beneficiary before deduction of the legal fees, whereas Bett & Company Advocates the only law firm on record for Respondents at the time Judgment dated 12th October 2023 was delivered.
7. Viviline Cherotich Ngeno the 2nd Respondent/Administrator filed a replying affidavit in response to the application dated 7th February, 2025 on behalf of the 1st Respondent/Administrator.
8. She avers that from the outset the instant application is only aimed at obfuscating the matter at hand and to further delay and/or frustrate the finalization of administration of the estate of the deceased.
9. She avers that a grant of letters of administration Intestate in respect of the estate of Jonah Kipsang Ngeno (deceased) was made to her, the 1st Respondent together with the 1st and 2nd Applicants/Administrators herein, on the 11th March, 2022 and confirmed on the 12th day of October, 2023 and that the Applicants have all along been uncooperative and undermined efforts to distribute the deceased's estate.
10. She avers that contrary to the Applicants' assertions, the Applicants have participated in the proceedings all along and court gave the parties involved a chance to submit their various modes of distribution as well as submissions with regard to their respective modes of distribution, before rendering itself vide the impugned judgment
11. She avers that the Applicants together with the 1st and 2nd Interested Parties have been actively undermining distribution of the deceased's estate as they are currently renting out and collecting proceeds from those properties comprised in L.R.No.kericho/municipality Block No.1/2X5, for their personal gain, further jeopardizing the rightful division of the estate.



12. She avers that the judgment delivered by this Honourable court on 12th October ,2023 was rightfully rendered in accordance with the law wherein each beneficiary got a fair share of the estate .
13. She avers that it is not justifiable for the Applicants to allege that the Respondents caused evictions and various acts of destruction as the actions were done with the aim of creating access roads, which was an essential step following the Survey, undertaken in pursuit of the Honourable court's orders,to ensure that each beneficiary could access their allocated land. This necessitated removal of trees and crops that obstructed these designated pathways according to the Survey Plan.
14. She avers that the questions raised by the Applicants are questions that ought to be heard on appeal and this Honourable court ought to decline the Applicants' invitation to seat on appeal on its own decision and that the contentions presented in the application are only aimed to re-litigate matters which the Honourable court already pronounced a definitive judgment on and which the Applicants have not appealed against.
15. She avers that the application is prematurely before this Honourable court as the cause has not been fully concluded owing to the numerous applications filed before this Honourable Court by the Applicants which only serve to frustrate and/or delay the final distribution of the estate and that the advocates on record have supplied the estimated legal fees to the tune of Kshs. 4,432,982.80/= and annexed a copy of the Bill of Costs.
16. In the chamber summons dated 11th March, 2025 the applicants therein Erick Kipyegon Sang and Viviline Cherotich Ngeno are seeking the following orders;
 - (i) Spent.
 - (ii) That the 1st and 2nd Respondents named herein, be committed to jail for contempt of court for disobeying the orders of this Court given by the Honourable Justice Dr. J. K. Sergon on 20th June, 2024.
 - (iii) That the said Respondents be ordered or kept in prison for a term not exceeding (6) months or for such terms as this Honourable Court may deem fit to order.
 - (iv) That this Honourable Court does issue any other or further orders that it may deem just and fit to grant in the circumstances of the cause.
 - (v) That the Respondents do bear costs of this application.
17. The application is supported by grounds on the face of it and the supporting affidavit of Viviline Cherotich Ngeno, one of the administrators of the estate of the deceased on behalf of her co-applicant.
18. She avers that a grant of letters of administration Intestate in respect of the estate of Jonah Kipsang Ngeno (deceased) was made to her the 1st Applicant together with the 1st and 2nd Respondents herein on the 11th March, 2022 and confirmed on the 12th day of October, 2023.
19. She avers that subsequent to being issued with the Certificate of Confirmation of Grant, alongside the 1st Applicant herein, the other beneficiaries of the estate of the deceased including but not limited to, Beatrice Ngeno, Gladys Ngetich, Irene Ngeno initiated steps to have it implemented.
20. She avers that the efforts to distribute the deceased's estate were rebuffed by the Respondents herein who remained uncooperative and reluctant despite repeated requests to facilitate the final distribution of the estate.



21. She avers that in view of the Respondents' persistent efforts to actively undermine the process and frustrate the final distribution of the deceased's estate, they were constrained to file the Chamber Summons dated 19th December, 2023 seeking further orders to implement the said confirmed grant.
22. She avers that the Honourable court delivered its Ruling over the said application dated 19th December, 2023 on 20th June, 2024 and directed that the 1st and 2nd Respondents/Contemnor herein do execute the mutation and transfer forms for purposes of effecting the final distribution of the estate in compliance with the confirmed Grant.
23. She avers that the Respondent/Contemnor was present in court when the said Orders were issued.
24. She avers that nonetheless, they did duly notify the Respondents through Whatsapp Platform of the said Orders and further requested that they do avail themselves to sign the transfer forms within 14 days. However, the requests went unheeded.
25. She avers that their actions prompted them to instruct a duly licensed process server through Counsel on record who proceeded to serve the Order together with the Transfer and Mutation forms physically upon the Respondents.
26. She avers that despite having been served and/or being notified or reminded of the same through the Penal Notice dated 28 January, 2025, the Contemnors herein have willfully and deliberately refused to comply with the same and as a result, the implementation process has been stalled, she annexed a copy of the Affidavit of Service evidencing service of the Order, Transfer, Mutation forms and Penal Notice upon the Respondents.
27. She avers that their actions, have caused her and other beneficiaries of the estate, distress and frustration as the entire estate has been held at ransom by the Contemnors who have adamantly refused to execute the transfer forms necessary to complete distribution of the estate.
28. She avers that unless this Honourable court intervenes by issuing appropriate orders, they shall continue to suffer at the hands of the Contemnors who have continuously frustrated the implementation process despite having participated in the succession cause and having been fully aware of the Orders issued by this Honourable Court.
29. She avers that this Honourable Court has powers to prevent abuse of court process and punish for contempt of court.
30. She avers that the brazen contempt of the orders of this Honourable Court, aforesaid, by the Respondents, is not only geared towards further alienating our beneficial interest in the estate property but is also designed to undermine the dignity and authority of this Honourable Court.
31. She avers that they have no other means of enforcing the subject orders as consequence thereof the authority and dignity of this Honourable Court has been and continues to be exposed to public ridicule and disrepute.
32. She avers that unless this Honourable Court intervenes and punishes the Respondents for their contempt and utter disregard of Court's orders, they will persist in their actions thus lowering the dignity of this Honourable Court
33. Richard Kipkemoi Sang the 2nd Respondent filed a notice of preliminary objection seeking for the striking out or dismissal of the application dated 11th March, 2025 on behalf of Gilbert Kiprono Sang,



Kenneth Kiprotich Sang, Robert Kibet Sang and Nancy Chepkemai Sang the 1st, 3rd, 4th and 5th Respondents based on several grounds which can be condensed as follows;

(1.) That this Honorable Court lacks jurisdiction to hear and determine the Applicants application dated 11th March 2025 since:-

(a) There is no applicable law which justify the limitation of fundamental rights cited in the application dated 11th March, 2025 since aforesaid Application does not meet the requirement of Constitution of Kenya Article 24.

The application therein is frivolous, vexatious, brought in bad faith, and amounts to an abuse of the Court process. It should, therefore, be struck out or dismissed with costs.

34. Richard Kipkemai Sang the 2nd Respondent filed grounds of objection in response to the application dated 11th March, 2025 on behalf of Gilbert Kiprono Sang, Kenneth Kiprotich Sang, Robert Kibet Sang and Nancy Chepkemai Sang the 1st, 3rd, 4th and 5th Respondents based on several grounds which can be condensed as follows; (i) That the Respondents have initiated the process of executing court orders of this Honorable Court dated 20th June 2024 and therefore the application is premature, vexatious, brought in bad faith and otherwise an abuse of Court process, and should be dismissed with costs.
35. Richard Kipkemai Sang the 2nd Respondent filed a supporting affidavit alongside the grounds of objection in response to the application dated 11th March, 2025 on behalf of Gilbert Kiprono Sang, Kenneth Kiprotich Sang, Robert Kibet Sang and Nancy Chepkemai Sang the 1st, 3rd, 4th and 5th Respondents.
36. He avers that the application dated 11th March, 2025 is vexatious, frivolous, and premature as it seeks for conviction to jail for a term not exceeding 6 months based on selected paragraphs of the orders issued by this Court.
37. He avers that this Court issued orders with very specific terms and that the 1st and 2nd Respondent came up with a work plan of execution which include (i) sourcing finances to facilitate costs of survey and legal fees upon making an enquiry of the money available in Absa Bank and Kenya Highlands SACCO Society Limited, after deducting legal fees of Bett & Company Advocates; (ii) conferring a meeting for all beneficiaries for the purpose of seeking consent particularly on how to subdivide and decide on the sites each beneficiary is entitled to; (iii) signing transfer and mutation forms after the survey exercise with the guidance of legal officer and surveyors.
38. He avers that as part of the work plan, they had written letters to respective county surveyors to fix a date to conduct the survey exercise in compliance with the confirmation of grant issued on 12th October, 2023 and written a letter to Officers Commanding Chepseon and Kuresoi Police Stations requesting for security during the survey exercise.
39. He therefore avers that the application dated 11th March, 2025 ought to be dismissed with costs as it was filed prematurely and it amounts to abuse of court process.
40. This court directed the parties to exchange and file their written submissions.
41. The 1st and 2nd Applicants/Administrators herein filed submissions in support of their application dated 7th February, 2025 and in support of notice of preliminary objection and grounds of opposition filed in response to application dated 11th March, 2025 filed by the 1st and 2nd Respondents/Administrators. The Applicants contended that whereas the Respondents in their replying affidavit in response to the application dated 7th February, 2025 had conceded to the evictions and various acts of



destruction as these actions were done with the aim of creating access roads in an attempt to comply with court orders, the magnitude of destruction to wit; destroying crops, trees and pasture in order to create access roads was unwarranted.

42. The 1st and 2nd Applicants/Administrators maintained that they were entitled to the reliefs sought in the application dated 7th February, 2025 having aptly demonstrated that the sources of income for Applicants and interested Parties were destroyed by Respondents. They stated that they were not benefiting from the rents collected from L.R. No. Kericho /Municipality Block No. 1/2X5 and therefore urged this court to allow the application which would allow the Applicants and Interested Parties to benefit from the rents pending distribution of the estate per the wishes of the Deceased.
43. The 1st and 2nd Applicants/Administrators argued that they filed a notice of preliminary objection in response to an Application dated 11th March 2025 whereby the 1st and 2nd Respondents/Applicants were seeking orders for this Court to punish them by committing them to jail in prison for a term not exceeding (6) months among other related prayers. They reiterated that this Court lacks jurisdiction to hear and determine the application dated 11th MARCH, 2025 since there is no applicable law which justifies the limitation of fundamental rights cited in the application dated 11th MARCH 2025. They contended that the said application is frivolous, vexatious, brought in bad faith, and amounts to an abuse of the Court process and should therefore, be struck out or dismissed with costs.
44. The 1st and 2nd Respondents/Administrators filed submissions in support of their application dated 11th MARCH 2025, they maintained that this court is vested with the requisite jurisdiction to punish the Respondents/Contemnors for their contempt and utter disregard of court's orders dated 20th June, 2024; which actions are aimed at delaying the distribution of the estate and undermining the dignity of this court.
45. The 1st and 2nd Respondent/Administrators reiterated that the terms of the said order which was duly served upon the Respondents/Contemnors were clear and unambiguous. The said Order required the Respondents to execute mutation and transfer forms for the purpose of effecting final distribution of the estate in compliance with the Certificate of Confirmation of Grant dated 12th October, 2023.
46. The 1st and 2nd Respondents/Administrators urged this court to allow the application dated 11th March, 2025 and dismiss the Notice of Preliminary Objection together with the application dated 7th February, 2025.
47. I have considered the applications, responses and submissions by the parties and I find that the issue (s) for determination are whether this court should make orders that rental proceeds of commercial plot to wit Kericho Municipality Block 1/2X5 be used as an upkeep for the Applicants and Interested Parties herein pending final distribution of the Estate and whether to commit administrators of the estate of the deceased to civil jail for contempt of court orders dated 20th June, 2024.
48. On the issue as to whether rental proceeds of commercial property known as Kericho Municipality Block 1/2X5 constituting the estate of the deceased should be used as upkeep pending the final distribution of the estate per the wishes of the Deceased. It is the finding of this court that the beneficiaries participated in the instant succession proceedings, having found that the deceased died intestate, this court gave the beneficiaries a chance to submit on the various modes of distribution and make oral submissions in respect to their respective positions before it delivered a well reasoned judgment dated 12th October, 2023. This court having delivered its decision and issued a certificate of confirmation is hereby rendered functus officio on matters pertaining to the entitlements of beneficiaries in respect to the estate of the deceased to wit Kericho Municipality Block 1/2X5. Therefore this court finds that the application dated 7th February, 2025 is aimed to re-litigate matters



which the court already pronounced a definitive judgment on and which the Applicants have not appealed against.

49. On the issue as to whether to commit the administrators of the estate of the deceased to civil jail for contempt of court orders dated 20th June, 2024 which is the gist of the application dated 11th March, 2025, whereas as this court wishes to emphasize that it is indeed vested with the requisite jurisdiction to punish contemnors for contempt of court orders, it has considered the response filed to the said application and found that the respondents are not in contempt of the said order. It clear that they are in the process of executing court orders of this Honorable Court dated 20th June 2024. The respondents demonstrated that they had developed a work plan and set out some of the steps taken in compliance with court orders dated 20th June, 2024 and they had written letters to respective county surveyors to fix a date to conduct the survey exercise in compliance with the confirmation of grant issued on 12th October, 2023 and have even written a letter to Officers Commanding Chepseon and Kuresoi Police Stations requesting for security during the survey exercise. It is therefore the finding of this court that the application dated 11th March, 2025 is premature and an abuse of court process.

50. Consequently, the applications dated 7th February, 2025 and 11th March, 2025 are hereby dismissed.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 17TH DAY OF JULY, 2025

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Sang for 1st & 2nd Petitioner

No Appearance for the Respondent

